

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 28, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Division of Health

FROM: (Agency Name, Address & Phone No.) Department of Health and Human Resources

State Capitol Complex, Building 3, Room 265, Charleston, WV 25305

Telephone: (304) 558-3223

LEGISLATIVE RULE TITLE: Behavioral Health Client Rights, 64CSR59

1. Authorizing statute(s) citation: WV Code Section 27-5-9(g)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 29, 1998

b. What other notice, including advertising, did you give of the hearing?

Notice was sent to all licensed behavioral health providers, hospitals with psychiatric units, advocacy organizations, consumer organizations and family member organizations.

c. Date of Public Hearing(s) or Public Comment Period ended:

July 30, 1998

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

Attached X No comments received

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

August 3, 1998

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (please type):

Marsha Dadisman, Acting Director, Regulatory Development

Department of Health and Human Resources, Bldg. 3, Rm. 265

Capitol Complex, Charleston, West Virginia 25305

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

Ted J. Johnson, Director

Division of Mental Health and Community Rehabilitation Services

Department of Health and Human Resources

Bldg. 6, Room 717, Charleston, West Virginia 25301 (304) 558-0627

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

- a. Give the date upon which you filed in the State Register a notice of the time and place a hearing for the taking of evidence and a general

description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

64CSR59

**TITLE 64
LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 59
BEHAVIORAL HEALTH CLIENT RIGHTS**

SUMMARY

This proposed legislative rule amends an existing rule. The proposed amendments add a new section regarding advanced directives for services and make changes in the provisions of the rule related to consent for and refusal of treatment.

Underlining and strike-throughs indicate language changes, except underlining and strike-throughs are not indicated for the section renumbering necessary as the result of the proposed changes and for section renumbering necessary to correct the current rule to make it conform to the text breakdown required by the Secretary of State in 153CSR6.

For further information contact: Ted J. Johnson, Director, Division of Mental Health and Community Rehabilitation Services, Office of Behavioral Health Services, Bureau for Behavioral Health and Health Facilities, Department of Health and Human Resources, telephone (304) 558-0627, State Capitol Complex, Building 6, Room 717, Charleston, West Virginia, 25305.

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.

64CSR59

**TITLE 64
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STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE PROPOSED RULE

The purpose of the revisions is to make the rule more reflective of current practice and to be consistent with other Department rules.

**TITLE 64
LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 59
BEHAVIORAL HEALTH CLIENT RIGHTS**

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**TITLE 64
LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 59
BEHAVIORAL HEALTH CLIENT RIGHTS**

TABLE OF CONTENTS

§64-59-1. General	1
§64-59-2. Application and Enforcement	1
§64-59-3. Definitions	1
§64-59-4. Adoption of Other Standards	4
§64-59-5. Clients' Rights Generally	4
<u>§64-59-6. Advance Directives</u>	5
§64-59-6. <u>§64-59-7. Clients' Right to Treatment.</u>	6
§64-59-7. <u>§64-59-8. Medical and Dental Care, Other Therapies and Informed Consent</u>	8
§64-59-8. <u>§64-59-9. Right to Refuse Treatment</u>	13
§64-59-9. <u>§64-59-10. Research and Experimental Treatment</u>	13
§64-59-10. <u>§64-59-11. Seclusion and Restraints</u>	14
§64-59-11. <u>§64-59-12. Confidentiality and Records.</u>	18
§64-59-12. <u>§64-59-13. Right to Unrestricted Communication</u>	22
§64-59-13. <u>§64-59-14. Personal Clothing and Possessions</u>	24
§64-59-14. <u>§64-59-15. Outdoor Exercise and Other Recreational Programming</u>	24
§64-59-15. <u>§64-59-16. Physical Environment</u>	26
§64-59-16. <u>§64-59-17. Food</u>	29
§64-59-17. <u>§64-59-18. Clients' Labor, Earnings and Funds</u>	31
§64-59-18. <u>§64-59-19. Employee Responsibilities</u>	33
§64-59-19. <u>§64-59-20. Juveniles' Additional Rights</u>	34
§64-59-20. <u>§64-59-21. Client Advocacy and Grievance Procedure</u>	35
§64-59-21. <u>§64-59-22. Severability</u>	38

TITLE 64
LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

AUG 3 2 39 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 59
BEHAVIORAL HEALTH CLIENT RIGHTS

§64-59-1. General.

1.1. Scope - This legislative rule establishes the rights of clients of State-operated behavioral health facilities.

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 client rights and dignity.

§64-59-2. Application and Enforcement.

2.1. Application - This rule applies to State-operated behavioral health facilities.

2.2. Enforcement - This rule is enforced internally by the secretary of the department of health and human resources or his or her designee, or externally by individual action.

§64-59-3. Definitions.

3.1. Administrator - The chief executive officer of the facility.

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

3.3. Behavioral Health - Mental health.

3.4. Behavioral Health Facility - Mental health facility.

3.5. Client - Any individual receiving treatment or services in or from a state-operated behavioral health facility.

3.6. Clinical director or chief medical officer - The person who has the responsibility for decisions involving clinical and medical treatment of clients in a behavioral health facility, as

specified in W. Va. Code §27-1-7.

3.7. Facility - A behavioral health facility.

3.8. 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 client's needs, strengths, weaknesses, response to initial interventions and prognosis for resolution of acute symptoms, and other components as indicated in this rule.

3.9. Legal Representative -

3.9.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;

3.9.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;

3.9.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);

3.9.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;

3.9.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;

3.9.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;

3.9.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

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

3.9.i. If a legal representative has been appointed for or designated by any client as having the authority to exercise on behalf of the client one or more of the client's rights under this rule, the facility 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 client. This provision does not relieve the facility of the responsibility of informing the individual client 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 client of his or her legal rights granted under this rule or state or federal law or rules and regulations. If the client has a legal representative, the name, address and telephone number of the legal representative shall be recorded in the client'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 facility shall also maintain a copy of the document documenting or designating the legal representative. The facility 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.

3.10. Behavioral Health Facility - Any inpatient, residential or outpatient facility for the care and treatment of the mentally ill, developmentally disabled or addicted which is operated by the department of health and human resources.

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

3.12. 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.

3.13. Neglect - Any negligent, reckless or intentional failure to meet the needs of a client, or applicable statutory or regulatory requirements, including but not limited to: lack of needed supervision, nutritional deprivation, or failure to implement or update a treatment plan.

3.14. Physical Abuse - The use of physical force, body posture or gesture or body movement that inflicts or threatens to inflict pain on a client. Physical abuse includes, but is not limited to: unnecessary use of physical restraint; use of unnecessary force in holding or restraining a client; improper use of physical or mechanical restraints; use of seclusion without proper orders or cause; slapping, kicking, hitting, pushing, shoving, choking, hair pulling, biting, etc.; inappropriate horseplay; raising a hand or shaking a fist at a client, crowding or moving into a client's personal space; intentional inflicting of pain; punitive measures of any kind, including the use of corporal punishment, withholding meals for punitive reasons, inappropriate removal from treatment programs, restricting communication, or withdrawal of rights or privileges; or physical sexual abuse, i.e., any physical or provocative advance such as caressing or fondling, sexual intercourse, etc.

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

3.16. Secretary - The secretary of the West Virginia department of health and human resources.

3.17. Sexual Harassment - Physical advances or, nonverbal conduct that is sexual in nature

that 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.

3.18. 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 client. Verbal abuse includes, but is not limited to: the use of a threatening or abusive tone or manner in speaking to a client; the use of derogatory, vulgar, profane, abusive or threatening language; verbal threats; teasing, pestering, deriding, harassing, mimicking or humiliating a client; derogatory remarks about the client, his or her family or associates; or sexual innuendo, sexually provocative language or verbal suggestion.

§64-59-4. Adoption of Other Standards.

In addition to the standards set forth in this rule, the relevant portions of Conditions of Participation for Hospitals, 42 C.F.R. Part 482 (Oct. 1, 1997), and Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded, 42 C.F.R. Part 483, Subpart I (Oct. 1, 1997), pertaining to certification for participation in Medicare and Medicaid; the Patient Rights and Organizational Ethics Standards set forth in the 1995 Comprehensive Accreditation Manual for Hospitals of the Joint Commission on the Accreditation of Healthcare Organizations, pages 63-83; and the standards set forth in the 1993 edition of Outcome Based Performance Measures of The Accreditation Council on Services for People with Disabilities, pages 1-11 and 133-137, 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.

§64-59-5. Clients' Rights Generally.

5.1. 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.

5.2. No Discrimination. All behavioral health facilities shall make available all services to persons in need without discrimination because of race, creed, color, sex, age, national origin, marital status, lack of wealth, handicap or duration of residence.

5.3. Civil Rights of Clients. Every client served by any facility operated 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 been appointed a legal representative and the court has made a specific finding that the client is incompetent to exercise the specific right or category of rights.

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

5.5. Clients' Rights in A Facility or Group Setting Generally. Clients shall be housed with other clients of similar age and activity levels, unless specific reasons such as the need to protect a client with a low level of adaptive skills and ability for self defense are noted in the treatment plan.

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

5.7. Right of Privacy. A client has a right to as much privacy as the area in which he or she is residing will allow, and the right to move about freely unless his or her safety is threatened.

5.8. No Deprivation of Rights As Punishment. No client can be deprived of a right provided by law or regulation as punishment. No client 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.

5.9. Every client, upon his or her admission to a behavioral health facility, 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 posted in a prominent public place in each facility.

§64-59-6. Advance Directives.

6.1. A client may enter a behavioral health facility 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 facility. Advance directives may address preferences in health care, behavioral health care services or conduct of business. Advance directives may be withdrawn verbally or in writing at any time. The existence of an advance directive does not indicate a lack of competency or other inability to care for oneself.

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

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

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

6.1.c. Advance directives concerning preferences in behavioral health services will

be honored until withdrawn verbally or in writing, unless honoring the advance directive would endanger the client's life or be dangerous to others. The behavioral health facility will consider initiating commitment proceedings whenever it is believed following an advance behavioral health service directive would pose a danger to the client or others.

6.3. If a client does not have an advance directive at the time of admission, the behavioral health facility 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 shall be easily understood and shall be presented verbally and in writing.

6.3.1. Clients may not be coerced into writing or signing an advance directive, nor shall clients be coerced into not writing or signing an advance directive nor shall the provision of service be conditioned on the existence or non-existence of an advance directive.

§64-59-6. §64-59-7. Clients' Right to Treatment.

7.1. General. All clients of behavioral health facilities have a right to treatment in the least restrictive setting, and are entitled to care and treatment including habilitation, rehabilitation, medical care, education and training, when 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.

7.2. Prohibition on Admission for Confinement. No individual shall be admitted to a behavioral health facility for the sole purpose of confinement.

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

7.4. Periodic Psychiatric Evaluation. Every client of a behavioral health facility has the right to a careful and periodic psychiatric evaluation no less frequently than once every three (3) months.

7.5. Appropriate Treatment Based on Examination and Diagnosis. Every client of a behavioral health facility has a right to treatment based on appropriate examination and diagnosis by a staff member operating within the scope of his or her professional license.

7.6. Initial Program Plan. Every client of a behavioral health facility has the right to an initial program plan completed within seventy-two (72) hours of admission or initiation of service. The initial program plan shall identify immediate needs and interventions, determine data or assessment needs, and establish responsibility for collecting data, performing assessment and implementing immediate care or interventions. The client has the right to participate in the development of the initial program plan.

7.7. Interim Program Plan. Every client has the right to an interim program plan within

seven (7) days of admission or initiation of service. The interim plan shall expand and update the initial plan based on data collected, assessments conducted, and the results of any initial interventions. The client has the right to participate in the development of the interim plan.

7.8. Individualized Program Plan (IPP). Every client of a behavioral health facility has the right to a master individualized program plan. Explicit discharge plans shall be written for clients in an inpatient setting. The master plan shall be developed by an interdisciplinary team consisting of members representing the major behavioral health professions and other service providers who provide care and treatment. The client has the right to participate in the development of the master plan.

7.9. Minimum Requirements of the Individualized Program Plan. Every client's program plan shall at a minimum:

7.9.1. Be based on a comprehensive assessment of the client's presenting problems, physical health, mental health, emotional status and behavioral status;

7.9.2. Contain written, functional objectives, methods for achieving them, and expected achievement dates;

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

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

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

7.9.6. Delineate the specific criteria to be met for termination of treatment or programming;

7.9.7. Indicate the extent of client and family participation in planning; and

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

7.10. Review of Plan. The treatment plan shall be reviewed by appropriate members of the interdisciplinary team at least every ninety (90) days to determine the need for continued hospitalization, if applicable, and to determine the success of the plan or need for revisions in the treatment plan. If the client is being treated on an outpatient basis, the plan shall also be reviewed every ninety (90) days to determine its success or need for revisions. Revisions shall include a description of needed services.

7.11. Right to Ongoing Participation in Treatment Planning. Every client of a behavioral health facility is entitled to participate in the development and periodic revision of his or her individual treatment plan and shall be notified of its content as well as of all proposed changes in

that plan, including but not limited to: plans for continued hospitalization, discharge, transfer to another facility or ward, changes in the therapy program and changes in medication. The client shall be provided with a reasonable explanation in plain and understandable language of all aspects of his or her condition, assessment and treatment by an appropriate member of the interdisciplinary team.

7.12. Interdisciplinary Team. Representatives of each discipline relevant to the client's needs and the client shall participate in the process of planning the client's program. The makeup of the interdisciplinary team shall be sufficiently broad so that each and every habilitation and treatment need of a client can be professionally assessed and appropriate remedial recommendations made. The client's case manager shall be a professional member of the treatment team. The list of possible participants could include the client's physician, representatives of the social worker, nursing, psychology, and activity staffs, psychiatric aides, rehabilitation counselors, and community representatives. Signatures, titles and dates of all staff and family participating in the program planning process shall be recorded. Treatment plans shall be signed and dated by the client.

7.13. Evidence of Treatment. Evidence that some of the recognized procedures applicable to treatment of mental illness have been administered to the client 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 client's record by the appropriate member of the interdisciplinary team.

7.14. Accepted Standards. Every client admitted to a behavioral health facility 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 client, then the reasons for the restriction of the specific right shall be specified in the client's treatment plan in the client's clinical record.

§64-59-7. §64-59-8. Medical and Dental Care, Other Therapies and Informed Consent.

8.1. Physical Examination. All clients in a behavioral health facility shall have a physical health examination at least every six (6) months, and have the right to receive prompt and adequate treatment for episodes of physical illness.

8.2. Freedom from Unnecessary or Excessive Medication. All clients of a behavioral health facilities have a right to be free of unnecessary or excessive medication.

8.3. Limits on Use of Medication. A medication shall not be used as punishment, for the convenience of staff, or as a substitute for a program of treatment, or in quantities that interfere with the client's treatment program.

8.4. Medication Explained to Client. The use of medication shall be fully explained to clients, and documentation of these explanations made part of the treatment team member's documentation and progress notes.

8.5. Dental Care. Dental care including screening and treatment shall be provided for all

long-term clients in residential settings, and when identified as a need by the treatment team.

8.6. Speech Pathology, Audiology, Language Therapy. Speech, language and audiology screening, evaluation and therapy services shall be conducted and provided by qualified clinicians when identified as needed by the treatment team.

8.7. Physical and Occupational Therapy. Physical and occupational therapy screening, evaluation and therapy services shall be conducted and provided by qualified clinicians when identified as needed by the treatment team.

~~7.8. Voluntary Clients and Non-Committed Clients' Consent to Treatment. No treatment may be given to any voluntary client who has not been formally committed by final proceedings pursuant to W. Va. Code §27-5-4, §27-6A-2(b) or §27-6A-3 without his or her written consent. The consents shall be obtained as a part of the admission package. If no informed consent is documented in the chart, the physician or person prescribing treatment shall provide information before treatment is begun.~~

~~7.9. Consent to Treatment When Admitted for Examination. Except with respect to psychiatric emergencies, an individual has a right to refuse treatment. Individuals are sometimes admitted to a behavioral health facility under "custody for examination" procedures for whom treatment could be provided with minimal risk, but who, because of their mental condition do not refuse treatment but are not able to give informed consent to the 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.~~

~~7.9.1. 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 provided 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 judgment to consent or refuse treatment.~~

~~7.9.2. When an individual is admitted to a behavioral health facility under "custody for examination," the individual shall be evaluated without the use of medication. If, as the result of examination, it is determined that the individual does exhibit signs and symptoms of psychiatric or other illnesses for which a recognized, commonly accepted course of treatment can be prescribed, the staff performing the evaluation shall follow the following procedures:~~

~~7.9.2.a. 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. Both the examining physician and the client advocate, at a minimum, shall agree to the individual's competence.~~

~~7.9.2.b. 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.~~

~~7.9.2.e. If it is determined that the individual is not capable of giving informed consent to treatment, the 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.~~

~~7.9.2.d. If the physician determines that there is risk of serious deterioration in the absence of treatment and that the proposed treatment carries relatively little risk to the client, the physician shall present to the clinical director the facts upon which these conclusions were based.~~

~~7.9.2.e. If the clinical director agrees with the recommendations, an independent evaluation by another physician qualified in psychiatry or other appropriate medical specialty shall be provided.~~

~~7.9.2.f. 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.~~

~~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, heart disease), who have been taking the 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.~~

8.8. Informed Consent. Consent is not valid unless it is informed consent. To assure informed consent, ~~the admitting physician~~ an appropriate behavioral health professional shall explain and discuss the following with each client:

8.8.a. The nature of the client's mental condition;

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

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

~~8.8.4. The reasonable alternative treatments available, if any;~~

8.8.d. 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;

8.8.e. The probable side effects to the proposed medication known to occur commonly, and any particular side effects likely to occur with the particular client;

8.8.f. Possible additional side effects of the proposed medications which may occur to clients taking the medication beyond three (3) months. The client shall be advised that the side effects may include persistent involuntary movement of the face or mouth and might at times include similar movement of the hands and feet, and that these symptoms of tardive dyskinesia are potentially irreversible and may appear after medication has been discontinued; and

8.8.g. His or her rights under this rule.

8.8.h. This explanation and discussion shall be documented and signed by ~~physician and client~~ the appropriate behavioral health professional and the client.

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

8.9.a. Consent shall be considered to be informed only after the client has been provided with the information specified in ~~subsection 7.10~~ Section 8.11 of this rule by the physician prescribing the medication.

8.9.b. The client shall be asked to sign the consent form utilized in obtaining informed consent from voluntary clients, and this signed consent form shall be included in ~~the legal section of~~ his or her chart. In the event that the client has been shown the form and communicates consent but does not wish to sign the written consent form, ~~it is sufficient for the physician~~ an additional appropriate behavioral health professional shall be consulted and apprized of the facts surrounding the client's unwillingness to sign the written consent form. It is then sufficient to place the unsigned form in the client's record together with the notation signed and dated by both behavioral health professionals that while the client understands the nature and effect of antipsychotic medication and consents to the administration of the medication, the client does not want to sign a written consent form.

8.9.c. Consent is effective for ~~the duration of the client's stay in the facility, unless it is revoked by the client ninety (90) days, or until the client consents to a new or revised, as appropriate, treatment plan, or until the client revokes the consent.~~

8.10. Revocation of Consent. A client who has consented to ~~medication treatment~~ medication treatment may refuse a specific ~~medication treatment~~ medication treatment at any time, by stating or writing that he or she does not wish to ~~take the medication that treatment. Medication~~ The treatment which the client has refused may not then be ~~given provided~~ provided to the client, ~~orally or by injection,~~ except as authorized in a psychiatric emergency. A revocation of consent shall be documented on the consent form ~~by the treating physician~~ and renders the previously given consent void.

8.11. 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.

8.11.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 provided 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.

8.11.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:

8.11.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.

8.11.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.

8.11.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.

8.11.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.

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

8.11.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.

8.12. 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.

~~§64-59-8.~~ §64-59-9. Right to Refuse Treatment.

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

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

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

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

9.5. Last Resort Procedure When Client Refuses Treatment. In those instances when an involuntarily committed client rejects any proposed treatment and all attempts at negotiating an acceptable alternative have failed, then the most conservative, least intrusive treatment approach which is recognized as usual and customary for the diagnosed condition and which produces minimal potential side effects may be imposed over the objections of the client if all the following conditions are documented in the record:

9.5.1. The client's refusal is a product of his or her illness;

9.5.2. The proposed treatment is recognized as appropriate, effective and within accepted standards of practice;

9.5.3. The proposed treatment is approved by the clinical director;

9.5.4. The opinion of a second qualified practitioner concurs with the proposed treatment; and

9.5.5. The client advocate is provided an opportunity to raise legitimate concerns on the part of the client.

~~§64-59-9: §64-59-10. Research and Experimental Treatment.~~

All research, studies, and investigations conducted in behavioral health facilities to which this rule is applicable, which use facility staff, records or clients shall be approved in writing in advance by the research committee of the department of health and human resources. This advance approval is required whether the research, study or investigation is conducted by department of health and human resources staff or by others. The federal regulations Protection of Human Subjects, 45 C.F.R. Part 46 (Oct. 1, 1997), are hereby adopted by reference, and all research, studies, or investigations conducted in behavioral health facilities shall comply with this rule.

~~§64-59-10: §64-59-11. Seclusion and Restraints.~~

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

11.2. Seclusion Prohibited for Developmentally Disabled Clients. Seclusion for developmentally disabled clients is strictly prohibited. Only the "time-out" procedure developed specifically for each client 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 client.

11.3. 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 client or others, and that has not responded to less restrictive measures. It may be used only as long as is necessary for the client to regain self-control. Under no circumstances may it be used as a preventive measure or for punishment.

11.4. Psychiatric Emergency. Seclusion is a severely restrictive form of intervention. The steps and procedures outlined under psychiatric emergencies set forth in this section shall be followed prior to its use.

11.5. Examination by Physician. No client may be placed in seclusion until he or she is examined by the attending physician, and a discussion is held with available interdisciplinary team members which shall include the client's case manager, if the case manager is on duty. In the event that an attending physician is not immediately available, the registered nurse in charge 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.

11.6. Telephone Orders. A telephone order for seclusion is valid for a maximum of sixty (60) minutes. If the physician has not examined the client within sixty (60) minutes, the client shall be released from the seclusion room. It is the responsibility of the registered nurse in charge to see that a client not examined by a physician is released at the appropriate time.

11.7. Time. The time spent in seclusion shall be the shortest time required for the client to

regain his or her self-control.

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

11.9. **Seclusion Orders Valid Only for Three (3) Hours.** No seclusion order is valid for more than three (3) hours. Any client 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 client's crisis. If the three (3) hour period ends during an evening or night shift, available staff may make a temporary plan until the treatment team can meet the next day. Continued seclusion requires an examination and written order by a physician after every three (3) hour period, in addition to the treatment team conference and plan. PRN (as needed) orders for seclusion are not permissible.

11.10. **Items Entitled During Seclusion.** A client who is placed in seclusion is entitled to clothing, a bed, a mattress, bedding, reading matter, stationery, and similar items. Only when it is determined that a specific item may be harmful to the client may the item be withheld. The order for seclusion shall specify those items which are to be removed and the reasons for their removal.

11.11. **Supervision of Seclusion Room.** Any room used for seclusion shall be in an area that permits constant supervision by staff.

11.12. **Seclusion Room Supervision.** The registered nurse in charge of the unit or shift is responsible for assuring that the following seclusion room checks and procedures are carried out:

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

11.12.b. The client shall have access to fluids and to the toilet hourly. Meals shall be delivered at regular meal times. Compliance with these requirements shall be documented on the check sheet; and

11.12.c. The case manager, when available, or the registered nurse in charge of the unit or shift shall talk directly with the secluded client and assess the need for continued seclusion at least once every hour.

11.13. **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 client or others and that has not responded to less restrictive measures.

11.14. ~~Mechanical Restraints Prohibited for Developmentally Disabled Clients with Developmental Disabilities. In no case may mechanical restraints as defined in this rule be used for the developmentally disabled client.~~ Only procedures developed in accordance with standards of

the Accreditation Council on Services for People with Disabilities ~~such as "time-out"~~ may be used for the ~~developmentally disabled client~~ clients with developmental disabilities.

11.15. Examination by Physician. No client 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. In the event of an emergency situation in which the attending physician is not immediately available, the registered nurse in charge shall confer with the treatment team members and secure a telephone order for mechanical restraint from the attending physician if the attending physician concurs that this is required.

11.16. Mechanical Restraint Order Valid Only for Three (3) Hours. No mechanical restraint order is valid for more than three (3) hours. Any client 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 client's crisis. If the three (3) hour period ends during an evening or night shift, available staff may draw up a temporary plan until the treatment team can meet the next day. 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. PRN (as needed) orders for mechanical restraint are not permissible.

11.17. Supervision of Mechanical Restraints. Supervision of clients in mechanical restraints shall be on a one-to-one basis for the duration of the time the restraints are in place. 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 client. 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.

11.18. Metal Handcuffs Unacceptable. Metal handcuffs are not considered an acceptable form of restraint for clients and shall not be used for that purpose. Handcuffs may be used when necessary in transporting clients to and from a forensic unit upon written authorization of the attending physician. Under no circumstances is their use for any other purpose acceptable or permitted.

11.19. Continued Hourly Assessment. The case manager, when available, or the registered nurse in charge of the unit or shift shall talk directly with the restrained client and assess the need for continued restraint at least once every hour.

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

11.21. 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 in the absence of a psychiatric emergency.

11.22. Documentation. In every instance in which emergency control measures are used

for any length of time and each time the client 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.

11.23. Copies. Copies of the attending physician's report shall be sent to the clinical director and the client advocate, and shall be attached to the client's medical record.

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

11.24.a. The attending physician's written order for shall be placed on the doctor's order sheet in the client's ward chart. The registered nurse who secures a verbal order shall document the date and time the attending physician was called and the reason for the order;

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

11.24.c. A full report by the unit 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 registered nurse responsible for the unit or shift shall see that this report is completed and sent to appropriate parties, including the clinical director and the client advocate, and attached to the client's medical record;

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

11.24.e. An incident report;

11.24.f. A note on the twenty-four (24) hour report;

11.24.g. The five (5) minute check sheet for use of seclusion;

11.24.h. Progress notes from other disciplines if applicable; and

11.24.i. Hourly assessment of the continued need for seclusion or restraints by the case manager or RN supervisor of the unit or shift.

11.25. Trial Release Procedure for Seclusion and Restraint. Seclusion and restraint are intended to provide external controls for the protection of the client or to prevent the client 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 nurse on duty to assure that the seclusion or restraint measures are stopped when the behavior of the client makes their continued use unnecessary.

11.25.a. When it is clear that the client has regained self-control, the registered nurse

on duty 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 client. Should it be necessary to place the client in seclusion or restraint as the result of further dangerous behavior, the behavior, circumstances and time shall be fully documented in the ward chart. This procedure shall in no way permit holding the client in seclusion or restraint after the expiration of the attending physician's original order, unless the client has been re-examined by the attending physician and a new order has been written. Nursing staff shall record in the nursing notes the time the trial release was started, and, if it is necessary to restrain the client, the time that this was done and the behavior of the client which made it necessary.

~~§64-59-11.~~ §64-59-12. Confidentiality and Records.

12.1. Confidential Information

12.1.a. Communications and information obtained in the course of treatment or evaluation of any client is considered to be confidential information, including: the fact that a person is or has been a client; information transmitted by a client 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 client'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 client, information from which a person acquainted with a client would not recognize the client, and encoded information from which there is no possible means to identify a client.

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

12.2. Disclosure of Confidential Information

12.2.a. Confidential information may be disclosed:

12.2.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;

12.2.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;

12.2.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;

12.2.a.4. To protect against a clear and substantial danger of imminent injury by a client to himself or herself ~~another~~ or to an identified other individual; and

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

12.2.b. Clients 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.

12.3. Authorization for Disclosure

12.3.a. All consents for the transmission or disclosure of confidential information shall be in writing and signed by the client or by his or her legal guardian. Every person signing an authorization shall be given a copy.

12.3.b. Every person requesting an authorization shall inform the client 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 client or for the substantiation of a claim for payment from a person other than the client.

12.4. Clinical Records

12.4.a. A clinical record shall be maintained at a behavioral health facility for each client treated by the facility. The record shall contain all matters relating to the admission, legal status, treatment of the client and all pertinent documents relating to the client, including detailed results of: (1) periodic examinations; (2) individualized treatment programs, including the written, dated, individualized plan of care stating the specific outcome of treatment goals and the progress made towards realizing those goals, and dated notations of any change of outcome, treatment goals or plan of care; (3) evaluations and re-evaluations; (4) orders for treatment; and (5) orders for application of mechanical or chemical restraints or seclusion.

12.4.b. Records. A facility shall maintain a written client record on each client, which shall include the following:

12.4.b.1. All information contained in the pre-admission data package, the post-admission data base, and the discharge records, plus the client's sex, race, ethnic origin, next of kin, and type and place of employment;

12.4.b.2. A description of the client's physical and mental status at the time of admission, a record of each physical examination, psychological report, or any other evaluations, including all those required by this rule, reports of laboratory, roentgenographic, or other diagnostic procedures, and reports of medical and surgical services when performed;

12.4.b.3. Physical and emotional diagnoses that have been made using a recognized diagnostic system;

12.4.b.4. A copy of the client's individualized program plan and any modifications and evaluations of the plan, with an appropriate summary to guide direct care staff in implementing the plan;

12.4.b.5. The findings made in periodic (at least quarterly) review of the client's response to his or her individualized program plan, with directions as to modifications, prepared by a professional involved in the client's program;

12.4.b.6. A copy of the post-discharge plan and any modifications to the plan, a summary of the steps that have been taken to implement that plan, and all social service reports;

12.4.b.7. A medication history and status, as required by this rule;

12.4.b.8. A signed order by authorized personnel for every occasion on which seclusion, mechanical restraints, or chemical restraints were used;

12.4.b.9. A description in a progress note of any extraordinary incident or accident involving the client, to be entered by a staff member noting personal knowledge of the incident or accident ~~or other source of information, including all reports of investigations of client mistreatment, as required by this rule;~~

12.4.b.10. Documentation of the consent of the client or an appropriate legal representative for admission or treatment;

12.4.b.11. Correspondence concerning the client's treatment or habilitation, and signed and dated notations of telephone calls concerning the client's treatment or habilitation;

12.4.b.12. Documentation of the client's and, as appropriate, family members' involvement in the client's individualized program plan;

12.4.b.13. A summary of the extent and nature of any work activities and the effect of the activity upon the client's progress;

12.4.b.14. Documentation of the interdisciplinary team meeting relating to the client;

12.4.b.15. All other orders and certifications specifically required by this rule;

12.4.b.16. A discharge summary, which shall be entered in the client's record within a reasonable period of time, not to exceed thirty (30) days, following discharge; and

12.4.b.17. A plan for aftercare.

12.4.c. If for any reason a client's rights are restricted as permitted within this rule, the restriction, the time limits of the restriction, the reason for the restriction and any other information relevant for the restriction shall be made a part of the client's fiscal or clinical record, as applicable. The entry of the restriction in the record shall be signed by the client's treating physician.

12.4.d. Each client's records shall be readily available to all professional staff. Appropriate records shall be maintained on a residential unit, and direct care staff involved with a particular client shall have access to those portions of a client's records relevant to treatment and habilitation.

12.4.e. When a client dies, a summation statement shall be entered in the record in the form of a discharge summary.

12.4.e.1. The summation statement shall include the circumstances leading to death and shall be signed by a physician;

12.4.e.2. An autopsy shall be performed whenever possible.

12.4.f. The client records department shall maintain, control, and supervise the client records, and is responsible for maintaining their quality.

12.4.f.1. A qualified medical records individual who is employed on at least a part-time basis, consistent with the needs of the facility and the professional staff, shall be responsible for the client records department;

12.4.f.2. When it can be demonstrated that the size, location, or needs of the facility do not justify employment of a qualified individual, the facility shall secure consultation by a qualified records administrator or accredited records technician on at least an annual basis to assure that the client record department is adequate to meet the needs of the facility.

12.4.g. Written policies and procedures shall govern the compilation, storage, dissemination, and accessibility of client records. The policies and procedures shall be designed to assure that the facility fulfills its responsibility to safeguard and protect the client records against loss, unauthorized alteration, or disclosure of information. The policies and procedures shall require entries in client records to be dated and signed.

12.4.h. The facility shall provide adequate facilities for the storage, processing, and handling of client records, including suitably locked and secured rooms and files. When a facility stores client data on magnetic tape, computer files, or other types of automated information systems, it shall implement adequate security measures to prevent inadvertent or unauthorized access to the data.

12.4.i. A written policy shall govern the disposal of client records and shall be

designed to assure the confidentiality of information in records. Client records shall be maintained as required by State law and rules.

12.4.j. Client records shall comply with all applicable federal, state and local laws, rules and regulations.

12.5. Disclosure of Records.

12.5.a. Records shall only be disclosed:

12.5.a.1. Upon written consent of the client pursuant to Section 11.3 of this rule to any person or entity;

12.5.a.2. Upon the grounds set forth in section 11.2 of this rule;

12.5.a.3. To the attorney of the client whether or not in conjunction with pending proceedings. In the interests of economy, the client's attorney may be requested, but not required, to review the record to determine what portions of the record he or she wishes to have copied. If the attorney does not agree to the request, however, the entire record shall be provided. The facility is entitled to charge for the actual cost of copying any voluminous documents required where the client has funds to pay;

12.5.a.4. To providers of health, social, or welfare services involved in caring for or rehabilitating the client. The information shall be kept confidential and used solely for the benefit of the client. No written consent is necessary for employees of the department, comprehensive behavioral health centers serving the client, or advocates under contract with the department; or

12.5.a.5. With the consent of the client or a person authorized to act for the client, and the consent of the secretary of the department of health and human resources, to:

12.5.a.5.A. Persons or agencies which require the information in order to provide continuing service to the client; and

12.5.a.5.B. Insurers or other third-party payers, only information as is necessary to permit payment.

12.5.b. There is an obligation on the part of the facility staff to assure that a client is provided access to the record in a clinically responsible manner. For those clients currently in treatment who ask to see records, a qualified clinical staff member should review the record with the client providing interpretation and clarification as may be needed to assure that the client has an accurate understanding of the content. Copies of any part of the record may be provided to the client if requested and if, in the judgment of the interdisciplinary team and the physician, it would not be clinically inadvisable. Any discussion with the client regarding the clinical record shall be documented in the record. When a former client demands access to records, the same process shall be followed as described in this subdivision. If the request is made by mail and the client indicates

an inability to visit the facility for records review, arrangements shall be made through the behavioral health center serving the county of the client's residence for review of the record with a clinical staff member of the behavioral health center, following the process outlined in this subsection.

~~§64-59-12.~~ §64-59-13. Right to Unrestricted Communication.

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

13.2. Written Correspondence.

13.2.a. Every client is entitled to communicate by sealed mail, or otherwise, with any persons, including official agencies inside, or outside, the facility. This right may not be denied, restricted, or infringed in any manner, except as specified in subsection 12.4 of this rule.

13.2.b. The facility shall provide a return address to clients that does not identify the facility. Unless the client requests that the return address be withheld, it is the responsibility of the facility to ensure that the name and return address are inscribed legibly on all outgoing client mail without identification of the nature of the facility.

13.2.c. Written correspondence shall not be opened or read by staff. Mail returned by recipients to a client marked "REFUSED" shall be returned, unopened, to the client.

13.2.d. Indigent clients shall be provided letter writing materials, including stamps.

13.2.e. There shall be no delay in transmission of outgoing or incoming mail.

13.3. Telephone

13.3.a. Clients shall have the unimpeded and uncensored right to access to a public telephone for the purpose of calling whomever they wish, except as specified in subsection 13.4 of this rule. If it is necessary for a client to be accompanied to the public telephone by a staff member, or the assistance of a staff member is needed in making a call, the necessary arrangements shall be made by the staff and the confidentiality of the client's conversation shall be fully protected by the staff member assisting the client.

13.3.b. Regular coin phones affording privacy shall be available on all residential units. Collect-only phones are prohibited. In addition, clients shall have access to a free phone for local phone calls, and involuntary clients not having resources shall have reasonable access to long distance calls. Phones shall be available for clients to receive regular incoming calls.

13.3.c. Phone areas shall afford reasonable privacy and comfort.

13.4. Restrictions. Any deviation from the telephone and mail rights afforded by subsections 13.2 and 13.3 of this rule can only be authorized by the interdisciplinary team or the

physician for a time specified by the team. A complete report relative to the restriction of telephone or mail rights and the reasons therefor shall be made a part of the client's medical record, signed and dated by the client's attending physician, and reflected in the client's nursing care plan. Restrictions of mail and telephone rights shall expire in three (3) days unless reviewed.

13.5. Visitors.

13.5.a. Every client has the unimpeded right to refuse or receive (during all reasonable hours) visitors, except as specified in subsection 13.5.b of this rule. Visitation shall accommodate the working schedules of visitors. The facility shall provide privacy for these visits. Visitors may take clients off grounds.

13.5.b. The right to visitation can only be limited by the treatment team, for critical clinical reasons. A complete report relative to the restriction of visitation rights and the reasons for the restriction shall be made a part of the client's medical record, signed and dated by the client's attending physician, and reflected in the client's nursing care plan. The restriction expires in three (3) days unless reviewed.

13.5.c. All visits shall be contact visits and facilities shall be provided for privacy with no monitoring of conversations.

~~§64-59-13.~~ **§64-59-14. Personal Clothing and Possessions.**

14.1. Every client is entitled to possess and wear his or her own personal clothing, dentures, eyeglasses, hearing aid, and orthopedic appliances.

14.2. Every client is entitled to constant access to personal possessions such as diaries, Bibles, or other books, not withheld for safekeeping by the behavioral health facility or the client's family.

14.3. The client's attending physician or behavioral health care professional shall justify, in writing in the client's medical or behavioral health care record the withholding of personal clothing, or other possessions such as those listed in subsections 14.1 and 14.2 of this rule. The statement shall be dated, signed, and reviewed monthly, showing dates and signatures of the reviews, and shall show that possession of the personal effects would be harmful to the client or others.

~~§64-59-14.~~ **§64-59-15. Outdoor Exercise and Other Recreational Programming.**

15.1. Outdoor Exercise. Every client in an inpatient or residential facility has the right to the opportunity for a minimum of one (1) hour of outdoor access and exercise on a daily basis seven (7) days per week. This shall be scheduled and afforded at the time during the day when the weather and temperature are most appropriate, depending on the season.

15.2. Outdoor activity and exercise shall be a part of every inpatient's treatment plan.

15.3. Activity and Recreational Programs

15.3.a. Individual programs shall provide a balance of active and passive activities, as well as opportunities for daily exercise and outdoor activities to the extent that the client is clinically and medically able to participate.

15.3.b. While individual activities are scheduled to meet specific therapeutic goals, each client should have an opportunity to participate in social recreation programs of choice.

15.3.c. Social activities should be planned at several levels: (1) small, unit group activities such as games, music and exercises; (2) individual activities such as magazines, puzzles, books and drawing materials; (3) larger off-unit programs such as dances, walks and sports; and (4) community-based activities utilizing existing community resources such as movies, sightseeing, entertainment, sports, bowling, camping, hiking, picnics, etc.

15.3.d. The range of social activities can be divided into passive, moderate, and vigorous categories. Passive activities include activities which are predominantly social rather than physical, e.g., games (such as cards, bingo, puzzles, checkers, domino) and spectator events (such as musical plays, sporting events, circuses, festivals, carnivals, movies, and trips to historic, amusement and commercial sites). Moderate activities include activities requiring less arduous but active participation, such as sports (including shuffleboard, horseshoes, croquet, pocket billiards or pool, archery, fishing, and ring toss), the arts (vocal music, instrumental music, talent shows, skits, festivals), camping (nature trails, tent camping), picnics, and parties (client birthdays, church and service-club sponsored parties, facility-sponsored parties for holidays - Christmas, Thanksgiving, Easter, etc.). Vigorous activities include activities which improve circulatory, respiratory and muscular functioning, e.g., physical fitness (President's Council on Physical Fitness Program, weight training, bicycling, including stationary, rowing machine, tumbling, balance beam, chinning bar, rope climb, punching bag), and individual and team sports (relays, hiking, dodge ball, tug-of-war, swimming, tag games, square and social dancing, roller skating, circle games, volley ball, soft ball, basketball, tetherball, whiffle ball, table tennis-ping pong, bowling, hockey - floor and box, ring toss). There should be ample opportunity for each client to participate at his or her level of ability and experience in both facility and community programs as well as to select from a variety of activities which he or she finds interesting. Those activities designed to meet specific treatment goals should be planned and scheduled with the client's agreement and understanding of their purpose.

15.4. Community Integration. Unless specifically contraindicated by a client's individualized program plan or physician, each client, other than acute psychiatric and out-of-contact geriatric clients, shall be provided the opportunity to:

15.4.a. Shop in the community at least monthly;

15.4.b. Eat in a public place in the community at least monthly;

15.4.c. Participate in a major recreational activity in the community at least monthly;

15.4.d. Attend a public event in the community at least four (4) times annually;

15.4.e. Worship in the community on a regular basis; and

15.4.f. Visit the local public library on a regular basis.

15.5. Individualized program plan (IPP).

15.5.a. Activity staff shall serve as members of each client's interdisciplinary team when appropriate. Activity staff are responsible for a recreational and activity assessment for each client. The recreational and activity assessment shall indicate the level of appropriate recreational and social activities for the client, the client's areas of strengths, and the limitations of the client. Based on the assessment, the activity staff shall work with the client and other members of the interdisciplinary team to develop a recreational and activity program that meets the identified needs of each client. Activity staff shall provide ongoing documentation of the client's response to the implementation of the program.

15.5.b. Implementation of community integration as described in subsection 14.3.3 of this rule and participation in recreational activities as described in subsection 14.3.2 of this rule shall be documented in each client's record.

~~§64-59-15.~~ §64-59-16. Physical Environment.

16.1. Behavioral Health Facilities Generally

16.1.a. Facilities shall provide an environment that respects the human dignity of the clients. The grounds of the facilities shall have adequate space for the facility to carry out its stated goals. All facilities shall be accessible to handicapped individuals. When planning and maintaining the physical environment of each facility, client input shall be solicited and followed whenever possible.

16.1.b. Behavioral health facilities shall provide facilities which afford clients privacy, dignity, comfort, safety, and sanitation.

16.1.c. There shall be appropriate and sufficient lighting in each facility, and whenever possible, the lighting shall be controlled by clients.

16.1.d. Whenever possible, the environment shall provide views of the outdoors.

16.1.e. All rooms shall provide adequate ventilation and comfortable temperatures. ~~Direct outside air ventilation shall be provided to each client's room or the room shall have operable windows. Ventilation shall be sufficient to remove all undesirable odors.~~

16.1.f. Every room shall be kept clean, odorless, and insect free.

16.1.g. Areas with the following characteristics shall be available to meet the needs

of clients:

16.1.g.1. Areas that accommodate a full range of social activities, from two (2) person conversations to group activities;

16.1.g.2. Attractively furnished areas with a supply of comfortable chairs adequate to meet client requests and needs for seating, and areas in which a client can be alone, when appropriate; and

16.1.g.3. Attractively furnished areas for private conversations with other clients, family, or friends.

16.1.h. Residential life shall be structured so that it is possible for clients to wear and use glasses, hearing aids, crutches, braces, rolling walkers, and similar aids in their living units.

16.1.i. The use and location of noise-producing equipment and appliances, such as televisions, radios, and record players shall not interfere with other therapeutic activities.

16.1.j. A place and equipment shall be provided for table games and individual hobbies. Equipment and games shall be stored on shelves that are accessible to clients as appropriate. An adequate budget for the materials and equipment shall be maintained so that items which are lost, broken, or stolen can be replaced.

16.1.k. Unless contraindicated by the client's IPP, male and female clients shall be housed on the same residential units and in a manner that allows interaction and as closely resembles noninstitutional living as possible.

16.1.l. Facilities that routinely serve non-ambulatory clients or medically fragile clients shall also comply with the following requirements:

16.1.l.1. Each client's bed shall have a call signal that registers at the nursing station;

16.1.l.2. Beds shall be placed so that clients are not exposed to temperatures outside of normal comfort range; and

16.1.l.3. The facility shall establish a program for identifying, investigating, preventing, and controlling infections; monitoring the health status of employees; and providing aseptic procedures and isolation techniques.

16.2. Bedrooms in Inpatient and Residential Facilities.

16.2.a. Each facility shall provide furnishings and equipment which are clean and in good condition, and appropriate to the age and physical conditions of the clients. Every client shall be provided with a normalized, comfortable and attractive living space.

16.2.b. An individual bed shall be provided for each client.

16.2.c. No person shall be housed in a bedroom with more than one (1) other person. Sleeping areas shall be assigned based on the client's need for group support, privacy and independence.

16.2.d. Each bedroom shall provide a minimum of one hundred (100) square feet per client, excluding closets.

16.2.e. All bedrooms shall have outside windows, be above ground level, and provide adequate space for client privacy.

16.2.f. Ample closet and drawer space shall be provided for storing clothes, personal hygiene articles, and other personal property or property provided for clients' use.

16.2.g. Bathrooms and bedrooms shall have doors and other barriers suitable to provide privacy.

16.2.h. Unless impracticable for structural or safety reasons, the walls of bedrooms shall extend from floor to ceiling, and where this is impracticable, walls shall be at least six and one-half ($6\frac{1}{2}$) feet ($6\frac{1}{2}$) high. All newly constructed walls shall be of a permanent nature (studded and insulated, concrete stock or comparable construction).

16.2.i. All mattresses shall be fire and urine resistant and without appreciable sag. All reasonable requests by clients for new mattresses shall be honored.

16.2.j. Blankets with holes or stains shall be cleaned and repaired or replaced.

16.2.k. Clients shall be allowed to keep and display personal belongings and to add personal touches to the decoration of their rooms.

16.2.l. Articles for grooming and personal hygiene shall be readily available in a space reserved near the clients' sleeping area.

16.2.m. Clients shall have ready access to the grounds and to their bedrooms unless contraindicated by their individualized program plan or attending physician.

16.2.n. All windows in bedrooms shall have curtains or blinds and all beds shall have bedspreads.

16.3. Bathrooms, etc. in Inpatient and Residential Facilities.

16.3.a. The facility shall have toilets, water fountains, bathing and hand washing facilities which are accessible, private and easily usable, including special equipment for the handicapped. All toilets shall have toilet seats and all toilet stalls shall have doors or promote privacy.

16.3.b. There shall be easily accessible and adequate toilet paper, bath towels, soap, linen, bedding, etc. Clean towels and bed linens shall be provided at least twice weekly.

16.3.c. All sinks, showers, and bathtubs used by clients shall dispense hot and cold water and be provided with hot and cold water at all times. All showers shall have doors or curtains and all bathtubs shall be screened for privacy.

16.4. Other Areas

16.4.a. Bathrooms are to be cleaned as often as necessary every day, and bathtubs shall be cleaned after the bath of each client. The smell of harsh disinfectants shall be eliminated.

16.4.b. There shall be separate clean and dirty linen storage areas.

16.4.c. Clients' personal laundry shall be done at least two (2) times per week. Clients' rooms and common areas shall be thoroughly cleaned at least two (2) times per week.

16.4.d. Living areas shall have comfortable chairs appropriate for clients in numbers sufficient to seat every client desiring to sit in a chair.

16.4.e. ~~An Adequate number of lamps~~ lighting shall be provided in every living area.

16.4.f. Clocks and calendars shall be provided in at least major use areas.

16.4.g. Mirrors shall be placed at reasonable heights in appropriate places to aid in clients' grooming.

16.4.h. Books, magazines, and arts and crafts materials shall be available in accordance with clients' backgrounds and needs. An adequate library shall be maintained at each facility.

16.4.i. Living, program, and working areas shall be quiet, appropriately designed and conducive to programs. Acoustical ceiling tiles shall be installed wherever noise levels remain high.

~~§64-59-16.~~ §64-59-17. **Food.**

17.1. Meals Generally

17.1.a. Food shall be served in an appetizing and attractive manner, at planned, realistic mealtimes, and in a congenial, leisurely, attractive, and relaxed atmosphere.

17.1.b. Meals shall be adapted to meet the demands of the varieties of client eating habits, including cultural, religious, and ethnic factors. Appropriate foods shall be available for clients with special or limited dietary needs.

17.1.c. Clients shall have access to nutritional snacks.

17.1.d. Clients who require extra food shall be provided with it.

17.1.e. The menus shall be responsive to client food preferences.

17.1.f. There shall be sufficient dishes and standard eating utensils for all clients, which shall be thoroughly cleaned between uses. Plastic eating utensils shall not be used except on outings, or if the facility is temporarily low on supplies and is in the process of acquiring dishes or standard utensils.

17.2. Meal Schedules

17.2.a. Meal schedules shall correspond to normal community standards, with no less than thirty (30) minutes allowed for each client's meal and with no more than thirteen (13) hours between the end of the evening meal and the beginning of breakfast.

17.3. Nutrition

17.3.a. The current Recommended Dietary Allowances of the Food and Nutrition Board, National Academy of Sciences - National Research Council shall be used as the standard for ensuring that clients receive a well-balanced and nutritional diet.

17.3.b. At least one (1) serving of fresh or frozen fruit plus one (1) serving of a fresh or frozen vegetable shall be provided to each client each day. Every effort shall be made to provide fresh fruits and vegetables on a daily basis.

17.3.c. Clients shall be offered at least one (1) glass of one hundred percent (100%) fruit juice or milk at each meal.

17.3.d. Food shall be prepared by methods that preserve nutritive value, flavor and appearance, and shall be served at normal temperatures.

17.3.e. Denials of a nutritionally adequate diet shall not be used as punishment or as part of a behavior modification program.

17.4. Dining Areas

17.4.a. Dining areas shall be comfortable, attractive and conducive to pleasant living.

17.4.b. Dining tables should seat small groups of clients, unless other arrangements are justified on the basis of individual client needs. Meals should be served family style except for clients whose individualized program plan suggests this style would not be appropriate.

17.4.c. When staff members do not eat with the clients, the dining rooms shall be adequate supervised and staffed to provide assistance to clients when needed and to assure that each

client receives an adequate amount and variety of food.

17.4.d. Clients who need assistance with washing before and after meals shall be assisted as needed or desired.

17.5. Supervision

17.5.a. A full-time dietetic service supervisor shall supervise the overall operation of food service. If this person is not a qualified dietitian, he or she shall receive consultation from a qualified dietitian for at least sixteen (16) hours a month.

17.5.b. The dietitian has the responsibility to assure that his or her dietetic instructions are carried out and, on occasion, to supervise the serving of meals.

17.5.c. Dietetic personnel shall conduct periodic food acceptance surveys among clients and should encourage them to participate in menu planning. These results shall be reflected in future menus.

17.5.d. The supervisor shall prepare facility menus at least one (1) week in advance and menus shall not repeat in less than three (3) week intervals. All menus shall be approved by a qualified dietitian.

17.5.e. Dietetic service personnel shall be trained in the behavioral and therapeutic needs of clients and in the effects of psychotherapeutic drugs on nutritional requirements, and in the effect of various foods on behavioral conditions.

17.5.f. The dietetic service shall have policies governing the sanitary handling and preparing of foods provided by the supervisor. Dining areas and food storage, preparation, and distribution areas shall be in compliance with sanitation requirements of the United States Public Health Service and the State of West Virginia.

~~§64-59-17.~~ **§64-59-18. Clients' Labor, Earnings and Funds.**

18.1. Client Labor Generally

18.1.a. No client may be required to perform labor which involves the operation and maintenance of the behavioral health facility. Privileges or release from the facility shall not be conditional upon the performance of labor governed by this rule.

18.1.b. Clients may voluntarily engage in labor which involves the operation and maintenance of the behavioral health facility, if the labor is compensated in accordance with the requirements of relevant State and federal law and regulations.

18.1.b.1. Clients who are employed to perform work of economic benefit to the facility shall be paid wages which are commensurate with those paid non-handicapped workers for essentially the same type, quality and quantity of work.

18.1.b.2. The facility shall maintain for each client who is employed by the facility, and have available for inspection, records of: the prevailing wages paid non-handicapped workers in similar jobs; production standards for average non-handicapped workers performing similar jobs; and the productivity of each client. These records shall be reviewed at least quarterly.

18.1.b.3. Clients may not be regularly involved in the care, feeding, clothing, training or supervision of other clients.

18.2. Vocational Training. Clients may be required to perform vocational training tasks which do not involve the operation and maintenance of the facility, so long as an assignment:

18.2.a. Lasts no longer than four (4) months;

18.2.b. Is an integrated part of the client's individualized program plan;

18.2.c. Has been approved as a program activity by the professional responsible for the vocational training program;

18.2.d. Is supervised by a staff member.

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

18.4. Work Training or Industrial Therapy Program.

18.4.a. Before a client begins any work training or industrial therapy program, there shall be a written plan outlining goals, activities and job responsibilities within the program.

18.4.a.1. Work Activity Center. The entire facility, or any part thereof, may be designated a work activities center if no client participating in work activities is capable of more than twenty-five percent (25%) of the productivity of non-handicapped workers performing the same or comparable type work. Every client involved in the program shall be evaluated in terms of his or her level of productivity, and the evaluation shall be reviewed and documented no less than every three (3) months. An exception may be made when an individual client is unable to meet the productivity level of the rest of the group. For these clients, minimum wages below those paid to other workers may be permitted.

18.4.a.2. Sheltered Workshops. Approval for a sheltered workshop may be obtained for a specific workshop program. Sheltered workshops operated by a facility are required to be in compliance with applicable State and federal laws, rules and regulations.

18.4.a.3. Training and Evaluation Program. A certificate can be obtained for programs which provide competent instruction and supervision and are designed to determine a working client'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 institution, 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 client who has been involved in any work situation within the facility for more than twelve (12) months in a work and training evaluation program without pay.

18.5. Access to Personal Funds.

18.5.a. There shall be procedures, in writing, to ensure a client's reasonable access to his or her personal funds.

18.5.b. Clients not adjudicated incompetent shall have access to their funds whenever and in any amount they wish unless their use of funds proves detrimental to their course of treatment. In these cases, the client's treatment team shall document in the client's medical record the withholding of funds for a limited period of time.

18.5.c. Clients adjudicated incompetent and appointed a conservator or other with financial authority shall have the same access to their funds as set forth in subdivision 17.5.2 of this rule, subject to reasonable limitations by their conservator. In these cases, the client's medical record shall document the withholding of the client's funds or the limitations set for the client's access to his or her funds.

18.5.d. A client or relative may be required to pay for care and treatment in a behavioral health facility according to the ability to pay; however, no client shall be denied treatment because they are not able to pay.

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

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

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

18.6.c. Efforts shall be made to notify all clients orally by group meeting or other direct oral notice.

~~§64-59-18.~~ **§64-59-19. Employee Responsibilities.**

19.1. Duty of All Employees. Every employee has the responsibility to assure that all rights afforded to clients by applicable State and federal laws, rules and regulations, including this rule, are protected and afforded to clients.

19.2. Abuse and Neglect. No employee shall verbally or physically abuse, or neglect any client.

19.3. Sexual Harassment. Employees shall not engage in sexual harassment of clients.

19.4. 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.

19.5. 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.

19.6. Staff shall be aware of W. Va. Code §27-12-3 which reads as follows: "If any person shall entice any patient from any state hospital who has been legally committed thereto, or attempt to do so; or shall counsel, cause, influence or assist, or attempt to do so, any such patient to escape or attempt to escape therefrom or harbor or conceal any such patient who has escaped therefrom; or shall, without the permission of the superintendent of any such hospital, give or sell to any such patient, whether on the premises thereof or elsewhere, any money, firearms, drugs, cigarettes, tobacco, or any other article whatsoever; or shall receive from the hands of any such patient anything of value, whether belonging to the state or not; or shall cause or influence or attempt to cause or influence any such patient to violate any rule or to rebel against the government or discipline of such hospital; or shall tease, pester, annoy, or molest any such patient, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than ten nor more than one hundred dollars, or imprisoned not exceeding six months, or, in the discretion of the court, both fined and imprisoned. If any person shall aid or abet the commission of any of the foregoing offenses, or aid or abet an attempt to commit the same, he shall be guilty of the same as if he were the principal, and be punished as above provided. In the trial of an indictment for committing any of the above-named offenses, the accused may be found guilty of an attempt to commit the same, or of aiding or abetting another in committing or in an attempt to commit the same. If any person, not her husband, shall have sexual intercourse with any female patient who is a patient of any of said state hospitals, he shall be guilty of a felony, and, on conviction thereof, shall be confined in the penitentiary not less than ten nor more than fifteen years; and if such female patient be under sixteen years of age, he shall be imprisoned not less than ten nor more than twenty years."

~~§64-59-19.~~ §64-59-20. Juveniles' Additional Rights.

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

20.2. Education. A client under eighteen (18) years of age who has not completed high school shall be provided an individual education program in conformity with applicable portions of P.L. 101-476, Individuals with Disabilities Education Act of 1990; P.L. 94-142, The Education for All Handicapped Children of 1975; W. Va. Code §18-20-1 et seq., Education of Exceptional Children; and any other applicable State or federal law.

20.2.a. No client under the age of eighteen (18) shall be deprived of the right to attend school in the regular public school system, unless the interdisciplinary team determines that the client is incapable of coping with the public school situation (including the special education classes offered in the locality) and the chief medical officer concurs with the determination. The

determination shall be entered upon the client's clinical record and shall be valid for a period of ninety (90) days.

20.3. Family Contact. Arrangements for weekly contact between the facility and the family of a client under the age of eighteen (18) shall be made and recorded in the client's clinical record.

20.4. Discipline

20.4.a. No client under the age of eighteen (18) shall be subjected to cruel, harsh, humiliating, petty, severe, or provocative treatment, or punishment inflicted in any manner upon the client's body.

20.4.b. No client under the age of eighteen (18) shall be subjected to verbal abuse, or threats or derogatory remarks about him or her or his or her family.

20.4.c. No client under the age of eighteen (18) shall be deprived of meals as punishment.

20.4.d. The facility shall establish simple and understandable rules for both clients under the age of eighteen (18) and staff which set the limits of behavior required for the protection of a group and individual clients within the group.

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

~~§64-59-20.~~ §64-59-21. Client Advocacy and Grievance Procedure.

21.1. Client Advocacy. There shall be persons designated as client (or patient or resident) advocates who are independent of the facility management in every behavioral health facility.

21.2. Right to File A Grievance. A grievance may be initiated by a client, a client or patient advocate, a member of a client's family, a facility employee or other individual on behalf of any client of a behavioral health facility. A grievance may involve any aspect of a client's care, treatment, housing, services, accommodations, etc. and is not restricted to alleged violations of a client's rights or abuse of the client.

21.2.a. Filing of A Grievance. A grievance may be registered by a client or someone on behalf of the client, orally or in writing, to any facility staff member or to the client advocate.

21.2.b. Oral Grievance. When a grievance is orally registered by a client to a staff member or a client or patient advocate, the staff member or the client or patient advocate shall promptly assist the client in reducing the grievance to writing on the standard grievance form.

21.2.c. A supply of grievance forms shall be maintained in the administrative offices and on all units or offices of the facility at all times for continuous access by clients. Each facility shall make clients aware of their rights and ensure access to this grievance procedure.

21.2.d. Filing The Grievance. All grievances shall be reduced to writing as specified in subsection 20.2.2 of this rule and promptly delivered by the staff to the facility administrator or the administrator's designee and the client advocate.

21.2.e. Response of The Administrator. The administrator or his or her designee, after reviewing the grievance, shall respond to the complaining party by the next work day following receipt of the grievance, unless indicating the planned nature of the investigation and the expected completion date. If the grievance involves abuse or neglect, in which case the grievance shall be referred to a client or patient advocate for investigation within one (1) hour of receipt by the administrator or his or her designee if the advocate was not involved in the preparation of the abuse or neglect grievance. In that case, the grievance shall be answered the next work day following receipt of the report of the client advocate.

21.2.f. The response by the administrator or his or her designee shall be in writing on the grievance form and a copy of the response shall be delivered to the complainant and the patient advocate. The client advocate is responsible for keeping an accurate record of all grievances, of actions taken, and their resolution.

21.2.g. The facility shall seek to resolve grievances as expeditiously as possible either by providing the relief requested or utilizing internal administrative mechanisms, treatment teams, etc. Living units operated by the facility shall have mechanisms in place to facilitate communication and resolution of problems such as environmental problems and interpersonal conflicts experienced by clients.

21.2.h. Action on Grievances. The administrator shall immediately initiate appropriate action to correct meritorious grievances.

21.2.i. Abuse/Neglect Investigation. All grievances of abuse and/or neglect shall be investigated by the facility client or patient advocate or an outside advocate as appropriate. Upon receipt of an abuse/neglect grievance, the advocate shall immediately interview the client and review the situation. Within the next eight (8) regular working hours, the advocate shall make a written report to the facility administrator. As part of the investigative process the advocate shall have access to all staff members, pertinent records and documents and shall interview witnesses and take statements as appropriate. The advocate shall not have access to employee personnel records; all investigations shall be based on evidence related to the grievance under investigation only.

21.2.j. Reporting Abuse And/Or Neglect. W. Va. Code §9-6-9, the West Virginia Adult Protective Services Act, requires that any and all behavioral health professionals shall immediately report all actual or suspected cases of abuse or neglect of incapacitated adults to the department of health and human resources local adult protective services office. If the report is made by telephone, the adult protective services requires a written report from the individual reporting the incident within forty-eight (48) hours.

21.2.k. When a facility employee or the client or patient advocate becomes aware or is notified of a grievance of abuse or neglect, he or she shall immediately notify the advocate, the local adult protective services agency directly or by phone, his or her supervisor, and the administra-

tor, and document the incident. Initiation of this procedure in no way abrogates the duty of the facility to respond to the grievance filed in the manner set forth in this rule.

21.2.1. Initiating an Appeal of A Grievance Determination. In the event that the complaining party is not satisfied with the determination by the administrator, the complaining party may appeal the determination by submitting a copy of the original grievance form and determination to the Director of the Office of Behavioral Health Services, and may submit an additional request or explanation.

21.2.m. Response of The Director of The Office of Behavioral Health Services. The director of the Office of Behavioral Health shall respond to the grievance appeal within seventy-two (72) hours of receipt. After review, the Director shall affirm, modify or refer the appeal. If determined necessary for resolution, the Director may appoint a committee, which may consist of staff from other behavioral health facilities and the Office of Behavioral Health Services, and the client or patient advocate, to conduct any further inquiry and investigation considered necessary by the committee. The committee shall conclude its work, and make a recommendation to the Director within ten (10) working days of receipt of the appeal.

21.2.n. No Waiver. Nothing in this rule is intended to serve as a precondition to or supplant any other remedial initiatives that a client may wish to pursue relative to a claim. Nothing in this rule nor any action by the administrator interferes with or supplants a state employee's rights pursuant to W. Va. Code §29-6A-1 et seq. or application of the grievance procedure for state employees, nor should it be considered to change or waive the employee grievance timelines for filing a grievance.

21.2.o. Confidentiality/Protection. Procedures and investigations conducted under this rule shall be conducted with due regard for the confidentiality, rights and dignity of all parties. The facility may not discharge or in any manner discriminate against any client, employee or other party because of involvement in the grievance or appeal process.

21.2.p. Responsibilities of Parties. The responsibilities of the parties are set forth below:

21.2.q. Employees shall be aware of client rights, know the facility's procedures for reporting and filing grievances, report infractions of client rights, assist clients to access the facility advocate, to resolve grievances and assist in investigations of infractions of client rights.

21.2.q.1 Client or patient advocates shall assist clients in registering and filing grievances, acknowledge grievances, conduct investigations of grievances, notify the administrator of results of grievance investigations, assure that abuse/neglect grievances have been reported to Adult Protective Services, educate staff regarding client rights and maintain accurate documentation of all grievances and investigations.

21.2.q.2. The administrator and his or her designates shall file responses within established time frames, assure client protection by appropriate staff disciplinary actions, to deal promptly and effectively with acts of discrimination or reprisal against staff or clients regarding

client rights and supporting staff development efforts toward educating all staff regarding client rights.

21.2.q.3. Staff Development Officers shall assure that all staff are made aware of client rights, facility procedures for reporting and resolving grievances, grievance procedures, personnel policies regarding reporting of violations of client rights, staff grievance procedures and facility policies to protect staff from harassment and retaliation and threats for reporting rights violations.

21.2.q.4. The Director of the Office of Behavioral Health Services shall render decisions on appeals, and act on recommendations within established time frames.

~~§64-59-21.~~ §64-59-22. Severability.

The provisions of this rule are severable. If any portion of this rule is held invalid, the remaining provisions remain in effect.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Behavioral Health Client Rights Rule, 64 CSR 59

Type of Rule: Legislative Interpretive Procedural

Agency: 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				0	0

2. Explanation of above estimates.

The proposed amendments will have no fiscal impact on the Department.

3. Objectives of this rule:

This proposed legislative rule amends an existing rule. The proposed amendments add a new section regarding advanced directives for services and make changes in the provisions of the rule related to consent for and refusal of treatment. The purpose of the revisions is to make the rule more reflective of current practice and to be consistent with other Department rules.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None anticipated.

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

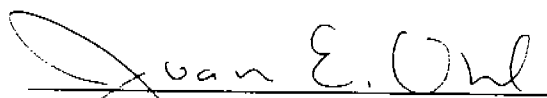
None anticipated.

C. Economic Impact on Citizens/Public at Large.

None anticipated.

Date: 6/29/98

Signature of Agency Head or Authorized Representative



Joan E. Ohl, Secretary
Department of Health and Human Resources

64CSR59

Behavioral Health Client Rights

Commenters

Carolyn J. Nelson, Executive Director, NAMI West Virginia

**Discussion of Public Comments Received
Concerning the Proposed Rule
Behavioral Health Client Rights 64CSR59**

Comment: Summary–Consistency. Reference is made to “advanced” directives; other references in the rules refer to “advance” directives.

- ✓ **Response:** The correct phrase is “advance directives.” The Summary will be revised to be consistent with the rules.

Comment: Fiscal Note–Consistency. See “Summary” – reference to “advanced” directives.

- ✓ **Response:** See above. Fiscal Note will be corrected to be consistent with proposed Rule.

Comment: 64-59-3.2 Consistency. Reference is made to “behavioral health care”; other references in the rules refer to “behavioral health care services”.

- ✓ **Response:** 64-59-3.2 will be revised to be consistent.

Comment: 64-59-6.1 Consistency. See above -- reference to “behavioral health care” rather than “behavioral health care services.”

- ✓ **Response:** See above. 64-59-6.1 will be revised to be consistent.

Comment: 64-59-6.3.1 Addition to language of rule. I would suggest that the following additions to language (as underlined) be made for further and more complete protection of clients’ rights:

Clients may not be coerced into writing or signing an advance directive, nor shall clients be coerced into not writing or signing an advance directive; nor shall the provision of service be conditioned on the existence or non-existence of an advance directive.

- ✓ **Response:** These recommended changes are appropriate and will be made to 64-59-6.3.1.

Comment: 64-59-8.9.b Change to language of rule. I would suggest that it is not appropriate for one “appropriate behavioral health professional” to witness and make notation that client has given consent after being duly informed but does not wish to sign the written consent form. It would seem reasonable that this event would not occur frequently but when it does there should be an additional safeguard for both the

behavioral health professional be brought into witness and to sign the notation that is entered into the client's file. I suggest that the following additions and corrections to language (as underlined and/or struck through) be made for further and more complete protection of clients' rights:

.....In the event that the client has been shown the form and communicates consent but does not wish to sign the written consent form, an additional appropriate behavioral health professional shall be consulted and apprized of the facts surrounding the client's unwillingness to sign the written consent form.~~it is sufficient for an appropriate behavioral health professional~~ It is then sufficient to place the unsigned form in the client's record together with the notation, signed and dated by both behavioral health professionals, that while the client understands the nature and effect of antipsychotic medication and consents to the administration of the medication, the client does not want to sign a written form.

✓ **Response:** This proposed language is acceptable; the rule will be revised accordingly.



NAMI West Virginia
Alliance for the Mentally Ill

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Date: July 27, 1998

To: Regulatory Development
Department of Health and Human Resources
Capitol Complex - Building 3, Room 265
Charleston, WV 25305

Attn: Marsha Dadisman

From: Carolyn J. Nelson, Executive Director *CJN*
NAMI West Virginia

Re: Comments - Title 64, Legislative Rules, Series 59: Behavioral Health Client Rights

- Summary** *Consistency.* Reference is made to "advanced" directives; other references in the rules refer to "advance" directives.
- Fiscal Note** *Consistency.* See "Summary" - reference to "advanced" directives.
- §64-59-3.2** *Consistency.* Reference is made to "behavioral health care"; other references in the rules refer to "behavioral health care services".
- §64-59-6.1** *Consistency.* See above - reference to "behavioral health care" rather than "behavioral health care services."
- §64-59-6.3.1** *Addition to language of rule.* I would suggest that the following additions to language (as underlined) be made for further and more complete protection of clients' rights:
- Clients may not be coerced into writing or signing an advance directive, nor shall clients be coerced into not writing or signing an advance directive; nor shall the provision of service be conditioned on the existence or non-existence of an advance directive.**
- §64-59-8.9.b** *Change to language of rule.* I would suggest that it is not appropriate for one "appropriate behavioral health professional" to witness and make notation that client has given consent after being duly informed but does not wish to sign the written consent form. It would seem reasonable that this event would not occur frequently but when it does there should be an additional safeguard for both the behavioral health professional and the client. I would suggest that an additional behavioral health professional be brought in to witness and to sign the notation that is entered into the client's file. I suggest that the following additions and corrections to language (as underlined and/or struck through) be made for further and more complete protection of clients' rights:

Dedicated to improving the lives of persons with brain disorders

.....In the event that the client has been shown the form and communicates consent but does not wish to sign the written consent form, an additional appropriate behavioral health professional shall be consulted and apprized of the facts surrounding the client's unwillingness to sign the written consent form. ~~it is sufficient for an appropriate behavioral health professional~~ It is then sufficient to place the unsigned form in the client's record together with the notation, signed and dated by both behavioral health professionals, that while the client understands the nature and effect of antipsychotic medication and consents to the administration of the medication, the client does not want to sign a written form.

\cjin

cc: Ted J. Johnson, Director, Division of Mental Health and Community Rehabilitation Services
Frankie Capocefalo, President, NAMI West Virginia

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Staff Counsel: Rita A. Pauley
Date: December 23, 1998
Agency: Division of Health
Subject: Behavioral Health Client Rights, 64 CSR 59

PERTINENT DATES

Filed for public comment: June 29, 1998
Public comment period ended: July 30, 1998
Filed following public comment period: August 3, 1998
Filed LRMRC: August 3, 1998
Filed as emergency: N/A

Fiscal Impact: None

ABSTRACT

This is a current legislative rule. It establishes the rights of clients of state operated behavioral health facilities. The rule provides for procedures for informing clients (patients) of their rights and outlines grievance procedures when an individual believes his or her rights have been violated. Counsel raised the same objections to this rule as to the agency's Behavioral Health Consumer Rights rule, 64 CSR 74. The rules are virtually identical. The titles of both rules are the same, the Code of State Rules numbers are different and the facilities covered are different. Overall the rule exceeds its very limited statutory authority, the following 15 sections out of 22 should be removed from the rule: 4,6,8,9,10,11,13,14,15,16,17,18,19,20 and 21. Sections 3,5,7 and 12 need to be revised to comply with statutory requirements.

Most of the sections that exceed statutory authority are facility requirements rather than patient rights. According to the agency all or most of them are contained in other rules.

The proposed new section on advanced directives and the provisions for consent for and refusal of treatment are beyond the scope of the agency's statutory authority. They would be more appropriate in facility licensure rules.

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

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AUTHORITY

Statutory authority: W.Va. Code, §27-5-9(g), which provides, in part, as follows:

(g) The board of health shall promulgate rules and regulations to protect the personal rights of patients not inconsistent with this section.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Yes.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

No.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No, it does not appear to conflict with other agency rules, however, it unnecessarily duplicates portions of other rules.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

No.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

No.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Yes.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has suggested technical modifications.