

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #7

Do Not Mark In This Box  
Filing Date

71170

JAN 29 3 45 PM '99

OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

**NOTICE OF AN EMERGENCY RULE**

Division of Health

AGENCY: Department. of Health & Human Resources TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code §27-5-9(g)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

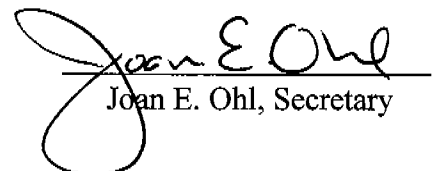
IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 74

TITLE OF RULE BEING FILED AS AN EMERGENCY: Behavioral Health Consumer Rights

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

This proposed rule is being filed as emergency to meet the requirements set forth in Code §29A-3-15(f), "to comply with a time limitation established by this code or by a federal statute or regulation." The 1999 Legislature, in SB 305, directed the Department to file this proposed rule as an emergency rule on or before July 1, 1999.

  
Joan E. Ohl, Secretary

\$5.00

## **BEHAVIORAL HEALTH CONSUMER RIGHTS, 64CSR74**

### **BRIEF SUMMARY OF THE RULE**

This proposed rule defines the rights of individuals with behavioral health needs. It provides for procedures for informing consumers of their rights and outlines grievance procedures when an individual believes his or her rights have been violated.

The rule was developed by a task group composed of providers, family members, consumers, and Department personnel, which was formed through a Memorandum of Agreement. The task group obtained and reviewed the highest standards for rights of persons with mental illness, mental retardation or addiction and prepared this proposed Rule based on those standards.

**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** Series 74 — Behavioral Health Consumer Rights

**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
<b>Estimated Total Cost</b>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
<b>Personal Services</b>					
<b>Current Expense</b>					
<b>Repairs &amp; Alterations</b>					
<b>Equipment</b>					
<b>Other</b>					
<b>Revenue</b>	0	0	0	0	0

**2. Explanation of above estimates.**

This rule describes in detail the rights afforded to people with behavioral health needs. Most of the rule is a reiteration of the rights listed in § 27-5 et seq. The rule is also a response to the requirement that the Secretary promulgate rules [§ 27-5-9(g)]. Individuals with behavioral health needs who believe their rights have been violated currently have an opportunity to submit a grievance to the Secretary of the Department of Health and Human Resources, as provided for this rule. There will be no additional costs to implementing this rule.

**3. Objectives of this rule:**

- (1) Promulgate a rule as required by WV Code § 27-5-9(g).
- (2) Meet a requirement in the *Hartley* Consent Decree.

**4. Explanation of Overall Economic Impact of Proposed Rule.**

N/A

**A. Economic Impact on State Government.**

N/A

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

An individual with behavioral health needs who wins a judgement against a behavioral health provider for violating one or more rights specified in § 27-5-9 may be awarded damages, payable by the provider. This may have an economic impact on the provider. The potential for such damage awards already exists; this rule does not create this possibility.

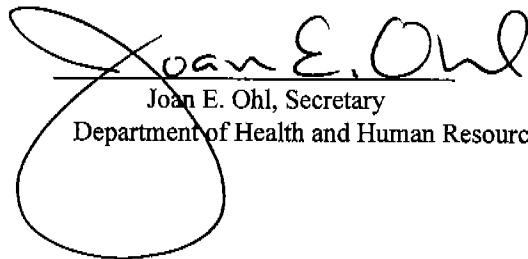
**C. Economic Impact on Citizens/Public at Large.**

N/A

Date:

6/29/99

Signature of Agency Head or Authorized Representative

A handwritten signature in black ink that reads "Joan E. Ohl". The signature is written in a cursive style with a large loop at the end.

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

## 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: June 29, 1999

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) 558-5598

LEGISLATIVE RULE TITLE: Behavioral Health Consumer Rights, 64CSR 74

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, 1999

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

Notice of the proposed rule is provided to all licensed providers, hospitals with psychiatric inpatient programs, provider and consumer representative organizations, and family member representatives.

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

July 29, 1999

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

Attached N/A No comments received N/A

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

N/A

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

Beth Marquart, Director, Office of Regulatory Development

Department of Health and Human Resources

Building 3, Room 265, Capitol Complex

Charleston, West Virginia 25305

(304) 558-5598 FAX: (304) 558-6051 bethmarquart@wvdhhr.org

- 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 Johnson, Director

Division of Mental Health and Community Rehabilitation

Office of Behavioral Health Services

Building 6, Room 717 - Capitol Complex

Charleston, West Virginia 25305 (304) 558-8994

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

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b. Date of hearing or comment period:

N/A

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

N/A

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d. Attach findings and determinations and reasons:

Attached N/A

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

**SERIES 74  
BEHAVIORAL HEALTH CONSUMER RIGHTS**

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**EMERGENCY RULE**

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

**SERIES 74  
BEHAVIORAL HEALTH CONSUMER RIGHTS**

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64CSR74

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

**SERIES 74  
BEHAVIORAL HEALTH CONSUMER RIGHTS**

OFFICE OF THE ATTORNEY GENERAL  
SECRET

JUN 23 3 45 PM '99

**§ 64-74-1. General.**

1.1. Scope. -- This emergency rule establishes personal rights of individuals with behavioral health needs.

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 constructed to effectuate the rehabilitative goals of Chapter 27 of the West Virginia Code, consistent with the protection of consumer rights and dignity.

1.6. Applicability. -- This rule applies to individuals with behavioral health needs.

**§ 64-74-2. Definitions.**

2.1. Abuse. --

2.1.a. Physical Abuse. -- Any act or failure to act by an employee of a behavioral health service that was knowingly, recklessly, or intentionally performed, or that was failed to be performed, and that caused, or may have caused, injury or death to an individual, including, but not limited to:

2.1.a.1. The rape or sexual assault of an individual;

2.1.a.2. The striking of an individual;

2.1.a.3. The use of excessive force when placing an individual in bodily restraints; and

2.1.a.4. The use of physical or chemical restraints that is not in compliance with federal or State law.

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

2.2. Advance Psychiatric Directive. -- Any instruction written and signed by a consumer, describing preferences in health care written when the consumer is competent and psychiatrically stable and implemented when the consumer is not able to make informed decisions in the absence of an advance psychiatric directive.

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

2.4. Behavioral Health Service. -- An inpatient, residential or outpatient service for the care and treatment of individuals with mental illness, developmental disabilities or substance abuse.

2.5. Consumer. -- An individual receiving treatment or services in or from a behavioral health service.

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

2.7. Legal Representative<sup>1</sup>. -- A person or agency with legal authority to exercise some degree of control over a consumer's affairs; namely, one of the following that is the most appropriate to the decision to be made:

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

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

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<sup>1</sup> Behavioral health services 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 that shall require action by a legal representative. For example, a conservator has responsibility for financial affairs, but not personal affairs, such as medical care.

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

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

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

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

2.7.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;

2.7.h. An individual identified pursuant to W. Va. Code §16-3C-4 to grant consent for HIV-related testing and for the authorization of the release of test results;

2.7.i. A parent or guardian of a minor; or

2.7.j. An individual lawfully appointed in a similar or like relationship of responsibility for a consumer under the laws of this State, or another legal jurisdiction, within the limits of the applicable law.

2.8. Mechanical Supports. -- Devices used to support an individual's proper body position or alignment.

2.9. Neglect. -- A negligent act or an omission that caused or may have caused injury or death to a consumer, or that placed a consumer at risk of injury or death, that was committed or omitted by an individual responsible for providing services in a behavioral health service. Neglect includes, but is not limited to:

2.9.a. Failure to establish or carry out a consumer's individualized program plan or treatment plan;

2.9.b. Failure to provide adequate nutrition, clothing, or health care;

2.9.c. Failure to provide a safe environment; and

2.9.d. Failure to maintain sufficient, appropriately trained staff.

2.10. Restraint. -- A temporary behavior control intervention.

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2.10.a. Chemical Restraint. -- The use of medication as a behavior control mechanism to substitute for seclusion or other restraint.

2.10.b. Physical Restraint. -- Any manual method or physical or mechanical device that the individual cannot remove easily, and that restricts the free movement of, normal functioning of, or normal access to a portion or portions of a consumer's body. Examples of manual methods include therapeutic or basket holds and prone or supine containment. Examples of mechanical devices include arm splints, posey mittens, helmets and straight jackets. Excluded are physical guidance, prompting techniques of brief duration, and mechanical supports.

2.11. Seclusion. -- The placement of a consumer alone in a room or enclosed space with closed doors that a consumer cannot open from inside.

2.12. Secretary. -- The Secretary of the West Virginia Department of Health and Human Resources or his or her designee.

2.13. Treatment Plan. -- A written, behavioral health plan based on a consumer's needs, including a complete review of a consumer's strengths, problems, response to initial interventions and prognosis for resolution of acute and other symptoms.

### **§ 64-74-3. Applicability to Other Standards.**

When an individual receives care or treatment from a behavioral health service, state and federal requirements, accreditation standards applicable to the behavioral health service and the standards set forth in this rule apply. If there is a conflict between those requirements, accreditation standards and the standards specified in this rule, the more stringent standard applies, unless the federal standard must be met for the purposes of Medicare or Medicaid participation, then the federal standard prevails. Behavioral health service providers accredited by a national accreditation agency are deemed to be in compliance with this rule.

### **§ 64-74-4. Consumers' Bill of Rights.**

4.1. A consumer with behavioral health needs has the following general rights:

4.1.a. The right not to be discriminated against because of race, creed, color, gender, age, national origin, physical or mental disability, or duration of residence;

4.1.b. The right to exercise his or her civil rights, except as abrogated by court order or for the reasons provided in this rule;

4.1.c. The right to be informed of these rules and, if an inpatient in a behavioral health service, the right to be given a copy of them;

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4.1.d. The right of a consumer, who resides in congregate living arranged for by a behavioral health service provider, to be housed with other consumers of similar age and need unless otherwise specified in the consumer's individualized program plan or treatment plan;

4.1.e. The right to privacy and the right to move about freely, unless his or her safety or the safety of others is threatened;

4.1.f. The right not to be deprived of any right as punishment or for clinical reasons, except when an incident occurs related to the exercise of a right, the right may be deprived for clinical reasons, but only for as long as is necessary to permit correction of a situation; and

4.1.g. The right of a consumer receiving care and treatment to receive it in accordance with accepted behavioral health and medical practice standards.

### **§ 64-74-5. Advance Psychiatric Directive Right.**

5.1. A consumer with psychiatric or mental health needs has a right to an advance psychiatric directive prepared at a time when the individual has not been adjudged to be incompetent. Any advance psychiatric directive written and signed by a consumer may be withdrawn at any time verbally or in writing.

5.2. A consumer has the right to be informed by a behavioral health service of the availability and applicability of an advance psychiatric directive and to receive education and assistance from the behavioral health service in preparing such a document.

5.3. A consumer has the right to refuse to create an advance psychiatric directive.

5.4. A consumer with an advance psychiatric directive has the right to have it entered into his or her clinical record at the behavioral health service at which he or she is receiving or may receive care or treatment;

5.5. An advance psychiatric directive shall be honored unless:

5.5.a. It is withdrawn verbally or in writing by a consumer;

5.5.b. The behavioral health service lacks sufficient resources;

5.5.c. A professional staff member of the behavioral health service believes that the directive would endanger the consumer's life or be dangerous to others.

5.6. A consumer has the right to be informed of the behavioral health service's reason for not honoring his or her advance psychiatric directive.

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5.7. Nothing in this section should be interpreted to prevent any individual with behavioral health needs from entering into an advance directive related to preferences in health care or conduct of business.

### **§ 64-74-6. Informed Consent Right.**

6.1. In order for a consumer to give informed consent for care or treatment, a behavioral health service shall inform him or her of the following:

6.1.a. The rights provided under this rule;

6.1.b. The nature of his or her condition and the treatment proposed;

6.1.c. Any reasonable alternative treatments available;

6.1.d. That consent for any part of treatment may be withdrawn at any time in writing or verbally to a member of the treatment staff. Revocation of consent shall be documented on the consent form, and further treatment shall not be provided except as authorized in an emergency;

6.1.e. The reason for taking a proposed medication, including the likelihood of the consumer's condition improving or not improving without the proposed medication;

6.1.f. The type, dosage, including the use of PRN (as needed) orders, the method of administration (oral or injection), and the duration of taking the proposed medication; and

6.1.g. The common side effects, any side effects probable with the particular consumer, and additional side effects that may occur when taking the proposed medication longer than three (3) months.

6.2. In the absence of written consent, if treatment is provided to a consumer, he or she has the right to documentation of the precipitating causes for providing the treatment.

6.3. The procedures outlined in this section shall not apply to those individuals who:

6.3.a. Need life-saving medication for chronic medical conditions, such as diabetes or heart disease; or

6.3.b. Have been taking medications prior to admission and have not refused to continue the medication, even though they may not be able to give informed consent.

### **§ 64-74-7. Right to Treatment.**

7.1. A consumer has the right to treatment in the least restrictive setting possible.

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7.2. A consumer has the right to treatment that is provided humanely in an environment that affords them full protection of their rights.

7.3. A consumer has the right to treatment by trained and competent personnel capable of implementing the consumer's individualized program plan or treatment plan.

7.4. A consumer has the right to periodic evaluations related to his or her needs no less frequently than every one hundred eighty (180) days while an active consumer of a behavioral health service.

7.5. A consumer has the right to treatment based on diagnosis and assessment of their needs.

7.6. A consumer has the right to treatment based on a treatment plan that identifies immediate needs and interventions and responsibility for implementing the plan.

7.7. A consumer has the right to have treatment plans updated every ninety (90) days or as his or her needs change.

7.8. A consumer has the right to participate in the development of his or her individualized program plan or treatment plan and any revisions.

7.9. A consumer has the right to have a copy of his or her individualized program plan or treatment plan.

7.10. A consumer has the right to have present at any treatment planning or discharge planning meeting representatives of all disciplines providing treatment to the consumer and any other individual, including the consumer's case manager and family members.

7.11. A consumer has the right to have recorded all treatments administered in accordance with his or her treatment plan.

7.12. A consumer who resides in an inpatient behavioral health service for more than fourteen (14) days has the right to outdoor exercise and activity programming conforming with the Division of Health rule, "Behavioral Health Client Rights," 64CSR59, §§14.1-14.3.

### **§ 64-74-8. Right to Refuse Treatment.**

8.1. As a participant in the program planning process, a consumer has the right to object to or refuse any aspect of the individualized program plan or treatment plan.

8.2. If informal discussion and negotiation do not resolve differences, a consumer's right to object to or refuse treatment shall be recognized as legitimate, and shall be responded to in accordance with the provisions of the behavioral health service's consumer grievance procedure.

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8.3. A consumer who has refused psychotropic medications or other recommended therapy has the right to have an agreed-upon effective alternative treatment offered, and it shall be provided if the consumer consents and if within the scope of the behavioral health service's practice.

8.4. A consumer has the right to orally refuse medication or other treatment that overrides prior written consent, except in emergency situations in which it is documented that the absence of medication or other treatment would be harmful to the consumer or others.

### **§ 64-74-9. Right to Refuse Research and Experimental Treatment.**

9.1. A consumer has the right to refuse to participate in or be subjected to research or experimental treatment. Participation by a consumer shall require voluntary, informed and written consent, and an opportunity for consultation with independent specialists and with his or her legal representative.

### **§ 54-74-10. Rights Regarding Seclusion and Restraints.**

10.1. A consumer has the right to freedom from seclusion and restraints unless the restraints are documented as clinically necessary and all other less restrictive measures have been exhausted.

10.2. A consumer with a single diagnosis of mental retardation or another developmental disability has the right not to be secluded or restrained, but time-out procedures may be used when they have been developed specifically for the consumer and described in the consumer's treatment plan.

10.3. A consumer has the right to not have seclusion used as punishment. Seclusion may be used only as an emergency measure to control imminent destructive behavior that is a threat to a consumer or to others.

10.4. A consumer has the right to not have physical restraints used as punishment or as a convenience of staff.

10.5. A consumer has the right for drugs or medications to not be used as punishment, as a convenience of staff, as a substitute for adequate staffing, or as a substitute for an individualized program plan or treatment plan.

### **§ 64-74-11. Right of Confidentiality.**

11.1. A consumer has the right to have all information about his or her diagnosis and treatment kept confidential.

11.1.a. Confidential information includes, but is not limited to:

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11.1.a.1. Information obtained during diagnosis or treatment, including the fact that an individual is or has been a consumer;

11.1.a.2. Information provided by a consumer or his or her family for purposes related to diagnosis or treatment;

11.1.a.3. Information provided by the treatment staff;

11.1.a.4. Diagnoses, opinions or remarks made by treatment staff that relate to a consumer's treatment;

11.1.a.5. Advice, instructions, or prescriptions issued in the course of diagnosis or treatment; and

11.1.a.6. Any record of a consumer's treatment.

11.1.b. Confidential information does not include: information which does not identify a consumer; information from which a person acquainted with a consumer would not recognize the consumer; and encoded information from which there is no possible means to identify a consumer.

11.2. A consumer has the right to have information relating to his or her treatment disclosed only:

11.2.a. 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 -3;

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

11.2.c. Pursuant to a court order;

11.2.d. To protect against a clear and substantial danger of imminent injury by a consumer to self or another; and

11.2.e. For internal review purposes of the behavioral health service, to the treatment staff, to other health professionals involved in a consumer's treatment, on the consumer's request to anyone designated, or in compliance with applicable federal law.

11.3. A consumer has the right to be informed about the limits of confidentiality in this rule.

11.4. Consent for Disclosure.

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11.4.a. A consent for the disclosure of confidential information shall be in writing and signed by the consumer, or by his or her legal representative. A consumer who signs a consent has the right to a copy of the consent.

11.4.b. A consumer shall not be denied treatment on the basis of refusing to provide consent to disclose confidential information, except when and to the extent disclosure is necessary for treatment, or for the substantiation of a claim for payment for treatment from a source other than the consumer.

### **§ 64-74-12. Right to Unrestricted Communication.**

12.1. A consumer has the right to unimpeded and private communication by any means with whomever a consumer chooses, except as specified in this rule.

12.2. A consumer's right to communication, except for that with his or her legal representative, may be restricted or denied if authorized by the treatment staff or the attending physician for a specified time not to exceed thirty (30) days, after which time the restriction may be reviewed and reinstated.

### **§ 64-74-13. Rights Regarding Labor, Earnings, and Funds.**

13.1. A consumer has the right not to be required to perform uncompensated labor that involves the operation and maintenance of a behavioral health service, but may voluntarily perform it with compensation in accordance with the requirements of relevant State and federal requirements.

13.2. A consumer shall not suffer consequences for refusing to perform uncompensated labor for a behavioral health service.

13.3. A consumer may perform vocational training tasks that do not involve the operation and maintenance of the behavioral health service when the assignment:

13.3.a. Is an integrated part of a consumer's individualized program plan or treatment plan;

13.3.b. Has been approved as a program activity by the treatment staff; and

13.3.c. Is supervised by a staff member.

13.4. A consumer has unlimited access to his or her funds except as provided by West Virginia law, or by regulations promulgated by the Social Security Administration.

### **§ 64-74-14. Juveniles' Additional Rights.**

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14.1. A consumer under the age of eighteen (18) has the right to be housed separately from emancipated consumers over the age of eighteen (18).

14.2. A consumer under the age of eighteen (18) has the right to an education.

14.3. A consumer under the age of eighteen (18) has the right to appropriate contact and communication with his or her family members and legal representative.

14.4. A consumer under the age of eighteen (18) has the right to be informed about behavior expectations for the protection of others.

14.5. All other rights under this rule apply to consumers under the age of eighteen (18).

### **§ 64-74-15. Right of Advocacy and Grievance Procedure.**

15.1. A consumer has the right to be informed of and receive a written copy of the behavioral health service grievance procedure.

15.2. A consumer, or another person acting on a consumer's behalf, has the right to file a grievance with the behavioral health service concerning any alleged violation of the rights afforded by this rule.

15.3. A consumer has the right to discuss a grievance with their professional behavioral health care provider or with an advocate of his or her choosing.

15.4. A consumer has the right to receive a reasonable and timely written decision from the behavioral health service.

15.5. A consumer may, after receipt of the decision or lack of a timely decision on his or her grievance, request a hearing by the Secretary or bring action in circuit court against the behavioral health service.

15.6. A consumer has the right to withdraw his or her grievance at any time.

15.7. The final order by the Secretary after a hearing shall be binding upon the parties, unless appealed in accordance with W. Va. Code §§ 29A-5 and -6.

15.8. A consumer has the right to pursue other relief even if he or she does not file a grievance.

15.9. A consumer has the right to report any reasonable suspicion of abuse or neglect to civil and criminal authorities in accordance with the applicable adult protective services act (W. Va. Code § 9-6-1 et seq.) or child protective services act (W. Va. Code § 49-6A-1 et seq.), in addition to using the grievance procedure of the behavioral health service.