

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 486

BY SENATORS WALTERS AND GAUNCH

[Introduced February 3, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §64-5-2, relating to reauthorizing, with amendment, as one rule, the legislative
 3 rules contained in title sixty-four, series eleven and series seventy-four of the Code of
 4 State Rules relating to licensure of behavioral health centers (64 CSR 11) and behavioral
 5 health consumer rights (64 CSR 74).

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 section, designated §64-5-2, to read as follows:

**ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES
 TO PROMULGATE LEGISLATIVE RULES.**

§64-5-2. Department Of Health And Human Resources rules reauthorization.

1 The legislative rules contained in title sixty-four, series eleven and series seventy-four of
 2 the code of state rules relating to licensure of behavioral health centers (64 CSR 11) and
 3 behavioral health consumer rights, (64 CSR 74) and both filed in the State Register on April 13,
 4 2000, are reauthorized as one rule to read as follows:

TITLE 64

LEGISLATIVE RULE

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 11

MINIMUM LICENSING REQUIREMENTS FOR PROVIDERS OF BEHAVIORAL

HEALTH SERVICES AND SUPPORTS IN WEST VIRGINIA

§64-11-1. General.

12 1.1 Scope. -- This rule establishes standards and procedures for the licensure of
 13 providers of behavioral health services and supports under the provisions of W.Va. Code 27-1A-
 14 7 and related federal and state codes. The W.Va. Code is available in public libraries and on the
 15 Legislature’s web page <http://www.legis.state.wv.us/>.

16 1.2. Authority. -- W. Va. Code §§27-1A-7, 27-1A-6(6), 27-1A-4(g), 27-17 (et. seq.) and
17 27-9-1.

18 1.3 Filing Date:

19 1.4. Effective Date:

20 1.5. Repeal and Replacement of Former Rule: This legislative rule repeals and replaces
21 “Licensure of Behavioral Health Centers”, 64 CSR 11, effective July 1, 2000, and “Behavioral
22 Health Consumer Rights”, 64 CSR 74.

23 1.6. Purpose: -- These standards are the basis for the licensing and approval of
24 behavioral health services and supports in West Virginia. Licenses are issued if the standards
25 and applicable rules and regulations are met. The purpose is to protect the health, safety, and
26 well-being of consumers receiving care from providers of behavioral health services and supports
27 and to regulate the provision of such services through the formulation, application and
28 enforcement of licensing requirements.

29 **§64-11-2. Application and enforcement.**

30 2.1. These apply to all providers of behavioral health services and supports, both public
31 and private. Each provider included in this rule shall comply with these requirements.

32 2.2. This rule contains the requirements to obtain a license to provide behavioral health
33 services and supports for consumers in West Virginia.

34 2.3. This rule applies equally to profit, nonprofit, publicly funded and privately funded
35 facilities.

36 2.4. Enforcement: -- This rule is enforced by the Secretary of the Department of Health
37 and Human Resources.

38 2.5. Exemptions:

39 2.5.a. The following programs or services are exempt from the requirements of this rule:

40 2.5.a.1 A program exempted by state or federal statute;

41 2.5.a.2 Adult emergency shelters and homeless outreach programs serving adults and

42 accompanying minors

43 2.5.a.3 Fellowship homes and halfway houses for support of individuals with addictions;

44 2.5.a.4 Hospitals operating within the scope of their license under Chapter 16 of the West

45 Virginia Code;

46 2.5.a.5 Individuals or groups of behavioral health or health practitioners functioning within

47 the scope of their license under Chapter 30 of West Virginia Code;

48 2.5.a.6. Specialized family care providers providing only services to individuals in

49 specialized family care settings;

50 2.5.a.7. Legally unlicensed health care homes as defined in 64 CSR 50;

51 2.5.a.8. Case management services as defined in this rule.

52 2.5.b. The secretary shall deem the license of all facilities operating as intermediate care

53 facilities for the intellectually disabled (ICF/ID) determined to be in compliance with federal

54 certification standards and of residential children's programs functioning within the scope of their

55 license as described in 78 CSR 3.

56 **§64-11-3. Definitions.**

57 3.1 Abuse: Any act on the part of a provider which directly results in death, significant

58 physical or emotional harm, verbal, sexual and/or financial maltreatment or exploitation; an act

59 committed by the provider which presents imminent serious harm.

60 3.2. Addiction: A disease characterized by the individual's pursuing reward and/or relief

61 by substance use and/or other behaviors. Addiction is characterized by impairment in behavioral

62 control, craving, inability to consistently abstain, and diminished recognition of significant

63 problems with one's behaviors and interpersonal relationships; likely to involve cycles of relapse

64 and remission.

65 3.3. Adult basic skills coaching: Unstructured coaching or prompting of individuals in their

66 home or group home environment in areas including, but not limited to, money management,

67 safety, housekeeping, personal care, nutrition, cooking, and medication education. This is

68 considered to be a supportive service.

69 3.4. Alteration: A change to a provider location that affects the usability of the building or
70 facility or any part thereof. Alterations include, but are not limited to, remodeling, renovation,
71 rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or
72 elements, and changes or rearrangement in the plan configuration of walls and full-height
73 partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or
74 changes to mechanical and electrical systems are not alterations unless they affect the usability
75 of the building or facility.

76 3.5. Behavioral Health Service: A direct service provided to an individual with mental
77 health, addictive, behavioral and/or adaptive challenges that is intended to improve or maintain
78 functioning in the community. The service is designed to provide treatment, habilitation, and/or
79 rehabilitation.

80 3.6. Behavioral Intervention: A behavior support approved by the service planning team.
81 A behavioral intervention must be based on a functional assessment of the targeted behavior and
82 must be specific and measurable.

83 3.7. Case management: A non-clinical service that helps the consumer arrange for
84 appropriate services and supports. This service may involve, but is not limited to, assistance with
85 completion of applications and forms, transportation, assistance in making appointments for
86 medical or other care and telephone calls but is not a direct clinical service provided to a
87 consumer. Case management is not considered to be a service unique to a health care setting
88 and is therefore not a behavioral health or supportive service.

89 3.8. Chemical restraint: An anti-psychotic medication used to control behavior or to restrict
90 the consumer's freedom of movement when the medication is not a standard treatment for the
91 consumer's medical or psychological condition. Doses of any medication prescribed at levels
92 beyond that recommended for normal clinical use shall also be evaluated for inclusion as a
93 chemical restraint.

94 3.9. Chief executive officer: The individual designated by the governing body to be
95 responsible for the provider's daily operations. The chief executive officer may also be referred to
96 as the provider's president, executive director, or chief administrative officer.

97 3.10. Clinic behavioral health service: An episodic outpatient treatment service usually
98 but not invariably provided in a clinic setting by mental health professionals who are licensed or
99 under supervision to obtain licensure. Clinic behavioral health services may also be provided in
100 alternative locations by a licensed provider through contract or memorandum of understanding or
101 in a consumer's home to children, parents, adults and families. A consumer may receive more
102 than one clinic behavioral health service.

103 3.11. Multi-agency Comprehensive plans of services: A written description of the
104 behavioral health services and supports provided to the consumer with measureable goals
105 accompanied by a description of the supports the consumer is receiving. These services are
106 usually provided by several agencies acting in coordination. The comprehensive plan is utilized
107 for consumers receiving both behavioral health services and supports.

108 3.12. Comprehensive mental health center (CMHC): A provider designated by the
109 secretary to provide mandatory specific mental health services to an identified target population
110 in a designated region of the State of West Virginia.

111 3.13. Consumer: An individual who receives services and/or supports from a provider
112 licensed under this rule.

113 3.14. Critical incident: An unusual and unexpected event that does not meet the definition
114 of abuse or neglect however there is reasonable cause to believe that a consumer is of imminent
115 risk of serious harm.

116 3.15. Critical treatment juncture: The occurrence of an unusual or significant event which
117 may have an impact on the process of treatment. A critical treatment juncture will result in a
118 documented meeting between the provider and the consumer and/or DLR and may cause a
119 revision of the plan of services.

120 3.16. Crisis services: Twenty-four hour availability of certification screenings for
121 commitment; telephone answering for behavioral health crises, with clinician follow up as
122 necessary within 30 minutes; and personalized screening as necessary and appropriate by
123 trained staff on 24-hour basis.

124 3.17. Designated legal representative (DLR): Parent of a minor child, conservator, legal
125 guardian (full or limited), health care surrogate, medical power of attorney, power of attorney,
126 representative payee, or other individual authorized to make certain decisions on behalf of a
127 consumer and operating within the scope of his/her authority.

128 3.18. Disaster relief: Provision of community-based behavioral health services to
129 individuals who are the victims of a natural or other disaster. Disaster relief may include
130 emergency interventions with first responders experiencing distress due to their participation in
131 recovery activities subsequent to a disaster.

132 3.19. Emergency: A situation or set of circumstances which presents a substantial and
133 immediate risk of death or serious injury to a consumer.

134 3.20. Expanded plan of service: A description of the treatment, habilitation or rehabilitation
135 goal(s) of the behavioral health services provided to the consumer stated in measureable terms,
136 accompanied by a brief description of any supportive services to be provided. The expanded plan
137 of service is developed at the conclusion of the assessment process and may be preceded by an
138 initial plan of service.

139 3.21. Governing body: A clearly identified group of people (or person or partnership when
140 applicable) which exercises authority over and has responsibility for the provider's operation,
141 policies and practices. The provider will designate the governing body at the time of licensure. If
142 an entity is a corporation with an out of state ownership or management structure, the provider
143 will identify the governing body in conjunction with the secretary.

144 3.22. Habilitation: A direct service promoting the acquisition of skills or emotional or
145 behavioral self-management abilities that the person did not develop at an appropriate

146 developmental phase.

147 3.23. Inappropriate behavior: A behavior which is hazardous to a consumer or individuals
148 in his environment; a maladaptive behavior which interferes in the ability of the consumer to lead
149 an integrated life in the community to an optimally independent degree.

150 3.24. Incapacitated adult: Any person who by reason of physical, mental, or other infirmity
151 is unable to independently carry on the daily activities of life necessary to sustaining life and
152 reasonable health;

153 3.25. Initial plan of service: The plan developed at the conclusion of the admissions
154 process that describes the services and/or supports the consumer is to receive until the
155 assessment process is complete and the expanded plan of service is developed.

156 3.26. Intensive community-based stabilization and maintenance programs: Multi-
157 disciplinary programs for in-home habilitation/rehabilitation, stabilization, and maintenance of
158 individuals with behavioral health challenges.

159 3.27. Linkage and aftercare: Establishment of a relationship between a CMHC and a
160 committed individual while the consumer is still in the hospital; subsequent case management
161 and provision of services designed to prevent rehospitalization and promote stabilization and
162 maintenance of function.

163 3.28. Locked behavioral health program: a program authorized by the secretary to be
164 locked when consumers are present in order to protect consumers or other members of the
165 general public.

166 3.29. Neglect: A lack of appropriate and reasonable action on the part of a provider that
167 results in death, serious physical or emotional harm, sexual abuse or exploitation; Non-critical
168 incident: Any unusual event occurring to a consumer that needs to be recorded and investigated
169 for risk management or quality improvement purposes but does not meet the definition of abuse,
170 neglect, or critical incident.

171 3.30. Non-methadone medication-assisted programs for addictions and co-occurring

172 disorders: A program that provides medications other than methadone to assist consumers to
173 deal with withdrawal symptoms and on-going cravings for substances of misuse, typically opioids;
174 not to include programs utilizing medications for the purpose of short term detoxification.

175 3.31. Personal attendant: A supportive service that provides assistance in activities of
176 daily living for the consumer that may include prompting. The service may assist the individual to
177 maintain his or her skills and abilities but does not carry the expectation of habilitation or
178 rehabilitation as the result of the receipt of the service.)

179 3.32. Physician extender: A medical professional including an advanced practice
180 registered nurse or a physician's assistant functioning within their legal scope of practice.

181 3.33. Plan of service: A written description of the behavioral health services and/or
182 supports that the consumer is to receive.

183 3.34. Programs requiring twenty-four hour medical monitoring: Any program providing
184 around the clock supervision in a community-based location/site for the purpose of physical and/or
185 psychiatric medical stabilization of mental, behavioral or addictions disorders.

186 3.35. Provider: An entity (including staff and individuals employed or contracted to provide
187 consumer services on behalf of the entity) that provides behavioral health and/or supportive
188 services under this regulation.

189 3.36. Psychosocial rehabilitation: A habilitation and/or rehabilitation service that seeks to
190 effect changes in a person's environment and the ability of the person to deal with his/her
191 environment so as to facilitate improvement in symptoms or personal distress. Psychosocial
192 rehabilitation focuses on helping individuals develop skills and access resources needed to
193 increase their capacity to be successful and satisfied in the community environment.

194 3.37. Rehabilitation: A direct service that promotes re-acquisition of skills or emotional or
195 behavioral self-management abilities that the person has lost due to mental illness, traumatic
196 brain injury, institutionalization or long-term addiction.

197 3.38. Residential treatment program for addictions and/or co-occurring disorders: A

198 program conducted twenty-four hours per day to stabilize, educate and treat individuals with
199 addictions and co-occurring disorders. The program is usually time limited or the length of the
200 program is dependent upon consumer progress toward the goal of stability and/or sobriety. The
201 consumer does not consider the program to be a place of temporary or permanent residence.

202 3.39. Respite: A supportive service designed to provide temporary substitute care for an
203 individual whose primary care is normally provided by the family of a consumer. The services are
204 to be used on a short-term basis due to the absence of or need for relief of the primary care-giver.
205 Respite consists of temporary care services and supervision for an individual who cannot provide
206 for all of his/her own needs and may be provided in the consumer's home location, in the
207 community, or in a location owned, rented or leased by the respite provider.

208 3.40. Restraint: Any manual method, physical or mechanical device, material, or
209 equipment that immobilizes or reduces the ability of a consumer to move his or her arms, legs,
210 body, or head freely. A restraint does not include devices such as orthopedically prescribed
211 devices, surgical dressings or bandages, protective helmets, lap belts on wheel chairs utilized for
212 support, or other methods that involve the physical holding of a consumer for the purpose of
213 conducting routine physical examinations or tests, or to protect the consumer from falling out of
214 bed, or to permit the consumer to participate in activities without the risk of physical harm.
215 Redirection through physical prompting and/or hand over hand instruction is not to be considered
216 a restraint.

217 3.41. Screening: The act of evaluating an individual to determine if he or she meets the
218 definitional requirements of the target population and is in need of a behavioral health service.

219 3.42. Seclusion: The involuntary confinement of a consumer alone in a room or area from
220 which the consumer is physically prevented from leaving.

221 3.43. Secretary: The Secretary of the Department of Health and Human Resources or his
222 or her designee.

223 3.44. Service coordination: A skilled service in which the professionally trained worker

224 assesses the needs of the client and the client's family, when appropriate, and arranges,
225 coordinates, monitors, evaluates, and advocates for a package of multiple services to meet the
226 specific client's complex healthcare needs. This service typically involves the preparation of a
227 detailed plan of services with specified objectives and time frames and when offered exclusively
228 to a population of individuals with behavioral healthcare needs, is considered to be a behavioral
229 health service.

230 3.45. Special program: A program with additional standards of operation beyond the
231 general standards described in this rule.

232 3.46. Student: A student of a high school, community or technical college, college or
233 university, health services intern, or medical resident.

234 3.47. Supportive service: This service is designed to assist the individual to live in the
235 community in a manner that is socially inclusive, optimally independent and self-directed while
236 preserving his/her health, safety and quality of life. These services are not designed to change
237 behavior or emotional functioning but serve to support the individual in his or her community-
238 based settings. Supportive services may include unstructured coaching or prompting of age
239 appropriate living skills.

240 3.48. Treatment: A direct medical, behavioral, or psychotherapeutic service designed to
241 ameliorate the effects of a mental illness, addiction or behavioral disorder and/or sustain the
242 positive effects of interventions.

243 3.49. Twenty-four hour program accepting mothers with children: Any twenty-four hour
244 program conducted for the purpose of behavioral health treatment or rehabilitation of mothers
245 accompanied by children.

246 3.50. Variance: A declaration that a rule may be accomplished in a manner different from
247 the manner set forth in the rule.

248 3.51. Volunteer: An individual who offers to provide assistance and support for consumers
249 without pay. Natural support systems such as friends, neighbors and family members are not to

250 be considered volunteers.

251 3.52. Waiver: A declaration that a certain rule is inapplicable in a particular circumstance.

252 **§64-11-4. State administrative processes.**

253 4-1. General licensure provisions.

254 4.1.a. Before establishing, operating, maintaining or advertising as a provider of
255 behavioral health services and supports as defined in this rule within the State of West Virginia,
256 a provider shall first obtain from the secretary a license authorizing the operation.

257 4.1.b. A license is valid for the provider named in the application and is not transferable.

258 4.1.c. The provider shall surrender an invalid license to the secretary on written demand.

259 4.1.d. Applications for licenses or approvals are made on forms prescribed by the
260 secretary.

261 4.1.e. The provider shall notify the secretary prior to the sale or merger of the entity if the
262 ownership of a provider changes. The secretary shall require that a new license be obtained.

263 4.1.f. A provider shall demonstrate a need for the proposed service by obtaining a current
264 certificate of need or a determination of non-reviewability from the Health Care Authority, unless
265 otherwise exempted from review.

266 4.1.g. The secretary shall make a decision on each application within sixty days of its
267 receipt and shall provide to unsuccessful applicants written reasons for the decision.

268 4.1.h. The secretary shall perform an on-site inspection prior to issuing initial, renewal or
269 provisional licenses. Such inspection shall be performed within 60 days of receipt of a complete
270 application.

271 4.2. License application.

272 4.2.a. The provider shall submit an application for license when establishing a new
273 location for service provision, initiating or relocating a special program as defined by this rule, or
274 renewing an expiring license. Providers shall submit an application at least 60 days in advance
275 of the need for licensure.

276 4.2.b. Additionally, the provider shall notify the secretary 60 days in advance of the
277 following:

278 4.2.b.1. A change in location of administrative offices;

279 4.2.b.2. A change in ownership;

280 4.2.b.3. A significant change in the population served or intensity of service provided;

281 and/or

282 4.2.b.4. Termination of operation.

283 4.2.c. The secretary may require submission of a new or amended application for
284 licensure at his/her discretion.

285 4.2.d. The provider shall submit all required information or the application is invalid.

286 4.2.e. The application shall be accompanied by supporting documentation.

287 4.2.f. A member of the governing body and/or the chief executive officer shall sign the
288 application.

289 4.2.g. Prior to the issuance of a license, the chief executive officer and/or governing body
290 shall ensure adequate resources to support the provider's services. If a new provider, the
291 governing body and/or chief executive officer shall demonstrate sufficient operating funds for at
292 least six months. Sufficient operating funds shall consist of cash or other liquid capital or an
293 irrevocable letter of credit as required by a policy to be made available by the secretary.

294 4.3. Types of licenses.

295 4.3.a. Following application and review, the secretary shall issue a license in one of two
296 categories.

297 4.3.a.1. Initial License: The secretary shall issue an initial license to providers establishing
298 a new service found to be in compliance with regard to policy, procedure, provider, record keeping
299 and service environment rules. It expires not more than six months from date of issuance and
300 shall not be re-issued. After a complete application for a regular license with required fee has
301 been received, the existing initial license shall not expire until the regular license has been issued

302 or denied.

303 4.3.a.2. Regular license: The secretary shall issue a regular license to providers
304 complying with this rule. It expires not more than three years from the date of issuance. The
305 secretary may issue a regular license of shorter duration than three years to a provider with a
306 level of service not in substantial compliance with this rule.

307 4.3.a.3. A regular license may be amended at any time during the cycle to reflect changes
308 in the provider's service classification, programs, structure or population.

309 4.3.b. A valid initial or regular license shall be considered in effect until the secretary
310 temporarily extends or denies in writing renewal of the license or until the secretary initiates formal
311 action to terminate or otherwise modify the license and all due process actions have been
312 resolved.

313 4.3.c. Provisional licensure status: The secretary may place a program, classification of
314 service or agency on provisional status if the provider is not in substantial compliance with this
315 rule, but does not pose a significant risk to the rights or health and safety of a consumer.

316 4.3.d. Such status shall expire not more than six months from date of issuance, and shall
317 not be consecutively re-issued unless the provisional recommendation is that of the state fire
318 marshal.

319 4.3.e. A provisional status shall apply only to the particular program or service being
320 reviewed unless a determination is made based on credible information that the same violations
321 occur at other sites or within other programs of the same service classification.

322 4.3.f. If a program or service is issued provisional licensure status, notification of that
323 provisional status shall be publicly posted in the location of the program or service receiving
324 provisional status for the duration of the provisional status.

325 4.3.g. The secretary shall re-evaluate a program or service operating under a provisional
326 status before or near the end of the six month provisional period.

327 4.3.h. Once the program or service is deemed to be in substantial compliance with this

328 rule, the provisional status of the program or service shall be lifted.

329 4.3.i. If the program or service does not regain substantial compliance with this rule within
330 six months, the license for the program or service will be terminated provided that if the review
331 has not yet been completed by the secretary within the designated time frame, the program or
332 service may continue to operate until such time as the review has been completed and due
333 process alternatives, if any, pursued to completion.

334 4.4. Deemed status. The secretary shall accept an accreditation review from an
335 accreditation commission for a provider instead of an inspection by the department for renewal of
336 a license under 64 CSR 11, but only if:

337 4.4.a. The provider is accredited by the Commission on Accreditation of Rehabilitation
338 Facilities (CARF), the Joint Commission, The Council on Accreditation (COA) or another national
339 accreditation organization recognized by the department;

340 4.4.b. The accreditation commission maintains and updates an inspection or review
341 program that, for each treatment facility, meets the department's applicable minimum standards;

342 4.4.c. The accreditation commission conducts a regular on-site inspection or review of
343 provider according to the accreditation commission's guidelines; and

344 4.4.d. The provider submits to the department a copy of its most recent accreditation
345 review from the accreditation commission in addition to the application, fee, and any report or
346 other document required for renewal of a license.

347 **§64-11-5. Construction and alteration.**

348 5.1. Before new construction begins, a provider shall submit to the secretary for approval
349 a copy of the site drawings and specifications for the architectural structure and mechanical work.

350 5.2. Before an alteration begins, the provider shall consult with the secretary regarding
351 construction objectives. If the alteration does not affect consumer care and/or does not have an
352 effect upon areas of the building(s) in which consumer care is provided, the alteration shall not be
353 reviewable.

354 5.3. The secretary may require site drawings or other materials depending on the extent
355 and type of alteration, provided that normal maintenance, reroofing, painting or wallpapering,
356 asbestos removal, or changes to mechanical and electrical systems are not alterations unless
357 they affect the usability of the building or facility to provide consumer care. Plans and blueprints
358 may not be required in alterations with a construction budget of less than \$100,000, adjusted
359 upward annually according to the formula of the West Virginia Health Care Authority.

360 5.4. All altered and new structures owned or leased by the provider shall conform to the
361 Americans with Disabilities Act (ADA) as amended.

362 5.5. The secretary shall provide consultation and technical assistance in obtaining
363 compliance with this rule.

364 **§64-11-6. Inspections and records.**

365 6.1 The provider shall comply with any reasonable requests from the secretary to have
366 access to the service, staff, consumers and relevant records of the agency. Consumers and/or
367 their DLR may decline to be interviewed by the secretary at any time.

368 6.2 The provider may maintain files in an electronic medium.

369 6.3 The secretary shall review files in the location in which they are maintained, unless
370 the provider agrees to a modified location.

371 6.4 The secretary may conduct announced and unannounced inspections of all aspects
372 of the provider's clinical operation and premises unless services or supports are provided in a
373 location owned, rented or leased by a consumer. A consumer may deny access to his or her place
374 of residence unless there is evidence of a clear and immediate danger to the health of a
375 consumer.

376 6.5 A provider shall permit review of a provider's medical records, employment records,
377 and other relevant records as requested by the secretary. The secretary shall ensure the
378 confidentiality of such information, including consumer or employee protected health information.

379 6.6 The secretary shall inspect a licensed provider thirty to ninety days prior to the

380 expiration of its license.

381 6.7 An initial or regular license shall be considered valid until the secretary issues or
382 denies in writing renewal of the license or until the secretary initiates formal action to terminate or
383 otherwise modify the license.

384 6.8 The secretary shall issue a report within ten working days of completion of an
385 inspection. The report may contain two types of findings, as appropriate:

386 6.8.a. Citations: The secretary shall describe the provider's non-compliance with the
387 standard in detail and the provider shall be expected to supply the secretary with a plan of
388 correction as described in the section "Corrective Action Plans".

389 6.8.b. Recommendations: If the provider's lack of compliance is with internal policy rather
390 than with the rule itself, the secretary may elect to make note of this noncompliance and any minor
391 infractions of the rule through a discussion with the provider and an informal note to the file.

392 **§64-11-7. Complaint investigation.**

393 7.1. Any person may file a complaint with the secretary alleging violation of applicable
394 laws or rules by a provider. Incidents reported to the secretary may be considered complaints at
395 the discretion of the secretary, but are not required to be considered complaints. A complaint shall
396 state the nature of the complaint and the provider by name;

397 7.2. The secretary shall conduct unannounced inspections of providers involved in a
398 complaint and any other investigations necessary to determine the validity of a complaint.

399 7.3. At the time of the investigation, the investigator shall notify the administrator and the
400 person in charge of the location involved in the complaint as to the general reason for the
401 complaint.

402 7.4. The secretary shall provide to the provider a written report of the results of the
403 investigation along with specific findings, detailed analysis of licensure regulations implicated, a
404 report of any violations, and a notice describing the provider's due process rights. The written
405 report shall be issued by the secretary within 10 working days of completing the investigation.

406 The complaint investigation may result in a citation and/or recommendation or neither outcome.

407 7.5. The secretary shall inform the complainant that an investigation was conducted and
408 whether it was substantiated. The secretary shall keep the names of a complainant and of any
409 consumer or DLR involved in the complaint or investigation and any information that could
410 reasonably lead to the identification of the complainant confidential, but shall disclose the general
411 nature of the complaint to the provider upon determining that a violation has occurred.

412 7.6. If a complaint becomes the subject of a judicial proceeding, nothing in this rule
413 prohibits the disclosure of information contained within the complaint that would otherwise be
414 disclosed in judicial proceedings.

415 7.7. The provider shall not discharge or discriminate in any way against any individual or
416 group of individuals who has been a complainant, on whose behalf a complaint has been
417 submitted, or who has participated in an investigation process by reason of that complaint.

418 **§64-11-8. Reports of investigations and inspections.**

419 8.1. All investigations and inspections shall result in a written report by the secretary, even
420 if no violation has been identified.

421 8.2. The report shall specify the areas of noncompliance with the rule it violates, if any,
422 and describe the precise data, observation or interview to support the deficiency.

423 8.3. Information in reports or records is available to the public except:

424 8.3.a. As specified in this section regarding complaint investigations;

425 8.3.b. Information of a protected nature from a consumer or staff's file; and

426 8.3.c. Information required to be kept confidential by state or federal law.

427 8.4. The secretary shall not make a report or complaint public until the provider has the
428 opportunity to review the report and obtain an approved Corrective Action Plan, if necessary. No
429 report may be released until due process rights of appeal have been pursued to conclusion.

430 8.5. The Provider shall make reasonable efforts to secure the necessary resources for
431 the delivery of services. However, the secretary shall not cite the provider nor require services

432 that are not reimbursable.

433 **§64-11-9. Corrective action plans.**

434 9.1. Within ten working days after receipt of the licensing report, the provider shall submit
435 to the secretary for approval a written plan to correct all areas of noncompliances that are in
436 violation of this rule and described by citation, unless a variance or waiver is requested by the
437 provider and granted by the secretary or the provider is appealing a citation through identified
438 methods of due process. The plan shall specify:

439 9.1.a. Any action taken or procedures proposed to correct the areas of non-compliance
440 and prevent their reoccurrence;

441 9.1.b. The date or projected date of completion of each action taken or to be taken; and

442 9.1.c. The signature of the chief executive officer or his or her designee.

443 9.2. The secretary shall approve, modify or reject the proposed Corrective Action Plan in
444 writing within 10 working days of receipt. The provider shall make modifications to the plan as
445 requested by the secretary.

446 9.3. The secretary shall state the reasons for rejection or modification of any Corrective
447 Action Plan.

448 9.4. The provider shall submit a revised Corrective Action Plan within ten working days
449 whenever the secretary rejects a Corrective Action Plan. If the secretary cannot approve the
450 second submitted plan of correction, he or she may supply a directed plan of correction.

451 9.5. The secretary may release a report to the public within ten days of an approved Plan
452 of Correction or a directed Plan of Correction unless the provider has elected to pursue due
453 process appeals and has notified the secretary of intent to do so.

454 9.6. The provider shall immediately correct an area of noncompliance that clearly results
455 in an immediate risk to the health or safety of a consumer or other persons unless the area of
456 noncompliance relates to an environmental or other condition over which the provider has no
457 control, such as a home owned or leased by the consumer or DLR.

458 **§64-11-10. Waivers and variances.**

459 10.1. A provider shall comply with all relevant requirements unless a waiver or variance
460 for a specific requirement has been granted through a prior written agreement. This agreement
461 shall specify the specific requirement to be waived, the duration of the waiver, and the terms under
462 which the waiver is granted.

463 10.2. Waiver of specific requirements shall be granted only when the provider has
464 documented and demonstrated that it complies with the intent of the particular requirement in a
465 manner not permitted by the requirement.

466 10.3. The waiver shall contain provisions for a review of the waiver if necessary.

467 10.4. When a provider fails to comply with the waiver agreement, the agreement is subject
468 to immediate cancellation, provided that such cancellation shall allow sufficient time to make
469 alternative arrangements for consumers. The secretary shall immediately inform the provider in
470 writing of cancellation of a waiver.

471 **§64-11-11. Penalties.**

472 11.1. The secretary may deny the provider's application for licensure or licensure renewal;
473 modify or revoke a license; and/or prohibit admissions or reduce consumer census for one or
474 more of the following reasons:

475 11.1.a. The provider fails to submit an adequate Plan of Correction without formally
476 notifying the secretary that the agency intends to exercise due process rights of appeal;

477 11.1.b. The secretary makes a determination that fraud or other illegal action has been
478 committed;

479 11.1.c. The provider violates federal, state, or local law relating to building, health, fire
480 protection, safety, sanitation or zoning, or payment of worker's compensation or employment
481 security taxes, and fails to remedy such violation given sufficient notice;

482 11.1.d. The provider conducts practices that clearly and seriously jeopardize the health
483 or safety of consumers;

484 11.1.e. The provider fails or refuses to make medical or employment records reasonably
485 related to compliance with this rule available within a reasonable period of time as requested by
486 the secretary; or

487 11.1.f. The provider refuses to provide access to its service locations within a reasonable
488 period of time as requested by the secretary.

489 11.2. Where the operation of a behavioral health or supportive service clearly constitutes
490 an immediate danger of serious harm to consumers served by the program, the secretary may
491 issue an order of closure terminating operation of the specific segment of the provider's program
492 array clearly giving rise to the immediate danger of serious harm. A provider appealing such a
493 closure order may continue to operate the specified service(s) pending exhaustion of
494 administrative and/or judicial appeals.

495 11.3. Where a violation of this rule shall clearly result in an immediate danger of serious
496 harm to consumers receiving services, the secretary may seek injunctive relief against any
497 person, corporation, provider or government official through proceedings instituted by the attorney
498 general, or the appropriate county prosecuting attorney, in the circuit court of Kanawha County,
499 or in the circuit court of any county where the consumer is residing or shall be found.

500 11.4. The secretary will assist the provider, consumer and DLR to develop alternative
501 service arrangements should closure of a program or service result.

502 **§64-11-12. Administrative and judicial review.**

503 12.1. Any provider aggrieved by a decision of the secretary made pursuant to this rule
504 shall contest the decision upon making a request for an Informal Dispute Resolution within ten
505 working days of receipt of notice of the decision.

506 12.2. Administrative and judicial review may be made in accordance with the provisions
507 of article five, chapter twenty-nine-a of the State Code of West Virginia. Any decision issued by
508 the secretary shall be made effective from the date of issuance.

509 12.3. Immediate relief may be obtained by the provider upon a showing of good cause

510 made by a verified petition to the circuit court of Kanawha County or the circuit court of any county
511 where the affected provider shall be located.

512 12.4. The pendency of administrative or judicial review shall not prevent the secretary or
513 a provider from obtaining injunctive relief as provided for in this rule.

514 **§64-11-13. Access and eligibility.**

515 13.1. The provider shall define its service population and the eligibility criteria for each of
516 its services.

517 13.2. Provider policy shall state that the provider does not discriminate by race, religion,
518 color, age, national origin or disability.

519 **§64-11-14. Confidentiality and privacy protections.**

520 14.1. The provider shall conform to all federal and state requirements with regards to the
521 confidentiality of consumers served.

522 14.2. The provider shall have clearly stated procedures regarding the disclosure of
523 information about consumers served that are in compliance with state and federal code. The
524 provider shall assure that a release of information is completed in full, prior to signature, for it to
525 be valid. A copy of the signed form shall be placed in the case record.

526 14.3. The provider shall prohibit use of photographs, videotapes, audio-taped interviews,
527 artwork or creative writing for public relations or fund raising purposes without the informed
528 consent of the consumer and/or DLR.

529 **§64-11-15. Access to case records and information management.**

530 15.1. Consumers and/or their DLR shall have access to their case records to the extent
531 permitted by state and federal law.

532 15.2. The provider may require that sensitive psychological, psychiatric or other
533 information be reviewed with the support of clinical staffs. The provider shall document the reason
534 for the requirement.

535 15.3. The provider shall have policy and procedures that protect electronically maintained

536 data in compliance with federal standards.

537 **§64-11-16. Research protections.**

538 16.1. The provider shall have written policies regarding the participation of consumers in
539 research projects if the provider engages in research activities.

540 16.2. Provider policy shall clearly state whether or not the provider conducts, participates
541 in, or permits research involving persons served.

542 16.3. If a provider does research, it shall have a human subjects committee or an internal
543 review board that reports to the chief executive officer or a designated authority with policymaking
544 functions; and

545 16.3.a. Reviews research proposals that involve persons served;

546 16.3.b. Makes recommendations regarding the ethics of proposed or existing research;

547 16.3.c. Makes recommendations as to whether or not to approve research proposals; and

548 16.3.d. Establishes a minimum frequency for monitoring of ongoing research activities.

549 16.4. Each research participant or when appropriate his or her parent or DLR shall sign
550 a consent form that includes:

551 16.4.a. A statement that he or she voluntarily agrees to participate;

552 16.4.b. A statement that the provider will continue to provide services whether or not he
553 or she agrees to participate;

554 16.4.c. An explanation of the nature and purpose of the research;

555 16.4.d. A clear description of possible risks or discomfort;

556 16.4.e. A guarantee of confidentiality; and,

557 16.4.f. The signature of the consumer, parent or DLR.

558 16.5. The provider shall safeguard the identity and privacy of persons served in all phases
559 of research conducted by or with the cooperation of the provider.

560 **§64-11-17. Grievance procedures.**

561 17.1. Written policy and procedures shall provide consumers and their parent or DLR, if

562 appropriate, with a formal mechanism for expressing and resolving complaints and grievances.
563 The policy shall contain timelines for resolution not to exceed 60 days from the filing of the
564 grievance.

565 17.2. These procedures shall be available to consumers and their parent or DLR via paper
566 or electronic means (such as posted on the provider's website).

567 17.3. The procedures shall:

568 17.3.a. Be given to consumers, and their parent or DLR if appropriate, upon request;

569 17.3.b. Include an internal appeal procedure and options for external appeal as provided
570 by the secretary, to include any appropriate and relevant state and federal agencies;

571 17.3.c. Provide for a timely resolution of the matter and require a written response to the
572 aggrieved that includes documentation of the response in the case record and administrative file;
573 and

574 17.3.d. Indicate that grievances shall be filed either orally or in writing and that all staff
575 (with the exception of the target of the grievance) of the provider are responsible for assisting any
576 person who wishes to file a grievance.

577 **§64-11-18. Consumer rights and responsibilities.**

578 18.1. The provider shall inform all consumers and/or DLRs of their rights and
579 responsibilities as specified in Chapter 27 of the West Virginia Code.

580 18.2. Information on rights and responsibilities shall be appropriate to each of the
581 provider's services.

582 18.3. Notification shall reflect the consequences of noncompliance with programmatic
583 rules, as well as limitation on individual rights occasioned by involuntary placement or court
584 orders.

585 18.4. Providers shall inform all consumers of their rights and their responsibilities as
586 consumers of services in a format that can be utilized and understood by the person and, as
587 appropriate, his or her Designated Legal Representative (DLR).

588 18.5. All consumers and/or their DLRs, upon request, shall receive information about their
589 rights and responsibilities that is:

590 18.5.a. Posted in a public area (as appropriate);

591 18.5.b. Provided in writing; and

592 18.5.c. Distributed during their initial contact with the provider during admission.

593 18.6. Each consumer's record shall contain documentation that the individual received an
594 explanation of his or her rights and responsibilities as described in this rule, initialed by the
595 consumer and/or DLR.

596 **§64-11-19. Continuous quality improvement.**

597 19-1. Each provider shall have a Continuous Quality Improvement process which shall
598 be coordinated by a designated staff person.

599 **§64-11-20. Safety review process.**

600 20.1. Each provider shall implement a process to be utilized by the provider to oversee
601 maintenance, repair and safety of all properties owned or leased by the provider. The entity
602 responsible for safety shall evaluate the physical condition of the provider properties, identify any
603 maintenance needs. Each provider location shall be reviewed at least annually.

604 **§64-11-21. Case review process.**

605 21.1. Each provider shall develop a process for reviewing the quality and adequacy of
606 documentation of services in the consumer record. The provider shall apply a sampling method
607 that does not regard funding source, and shall record the results of each review.

608 **§64-11-22. Governing body.**

609 22.1. The provider shall have a clearly identified group of people (or person or partnership
610 when applicable) which exercises authority over and has responsibility for its operation, policies
611 and practices.

612 22.2. The governing body shall be one of the following:

613 22-2-a. A Board of Directors in the case of a non-profit or for-profit corporation;

- 614 22-2-b. A proprietor in case of a sole proprietorship;
- 615 22-2-c. Partners, in case of a partnership; or,
- 616 22-2-d. Any other entity as agreed by the secretary at time of licensure.
- 617 22.3. If the governing body is a board, all members of the board shall be provided:
- 618 22.3.a. A formal orientation to the provider and responsibilities of membership of the
- 619 governing body, which shall be documented;
- 620 22.3.b. Annual reports of the programmatic and fiscal activities of the provider; and
- 621 22.3.c. Results of accreditation and/or licensure surveys.
- 622 22.4. If the Governing Body is a Board, it shall:
- 623 22.4.a. Identify in writing the mission of the provider and ensure the operation of programs
- 624 and services to further the mission;
- 625 22.4.b. Review and approve the provider's annual budget;
- 626 22.4.c. Designate a chief executive officer and/or leadership staff and delegate authority
- 627 to that entity to manage day-to-day operation of the provider;
- 628 22.4.d. Develop a policy regarding retention of minutes and records generated from all
- 629 meetings, including members who were present or absent; and
- 630 22.4.e. Meet at least four times annually.
- 631 **§64-11-23. Chief executive officer.**
- 632 23.1. The chief executive officer shall:
- 633 23.1.a. Coordinate the development and implementation of policies governing the
- 634 provider's program of services;
- 635 23.1.b. Coordinate the development and implementation of programs and services which
- 636 further the mission of the provider;
- 637 23.1.c. Ensure that a written report is provided to the governing body at least annually
- 638 regarding the provider's operations as they relate to the mission of the entity; and
- 639 23.1.d. Ensure a written report on the provider's financial condition and the results of case

640 review, safety and CQI processes is submitted to the governing body at least annually.

641 **§64-11-24. Administrative file for the provider.**

642 24.1. A provider shall make available upon request of the appropriate governmental
643 reviewer. The following information and documents:

644 24.1.a. The governing structure including the charter and articles of incorporation as
645 appropriate;

646 24.1.b. A mission statement;

647 24.1.c. The most recent audit or financial statement;

648 24.1.d. The provider's current organizational chart;

649 24.1.e. The name and position of persons authorized to sign agreements for the provider;

650 24.1.f. The governing body structure and its composition with names and addresses and
651 terms of membership;

652 24.1.g. Existing purchase of consumer service agreements, if any;

653 24.1.h. Insurance coverage (all types) including bonding documents if appropriate; and

654 24.1.i. A copy of any Memoranda of Understanding with other service-related agencies
655 or entities.

656 **§64-11-25. Risk management.**

657 25.1. The provider shall purchase or self-fund appropriate types of insurance including as
658 appropriate, but not limited to: General liability, fire and theft, professional liability, officer's or
659 director's liability, and automobile liability for provider owned or leased vehicles.

660 25.2. The provider shall ensure that all staff who handle or manage consumer funds, are
661 bonded at the provider's expense or that the provider maintains appropriate insurance coverage
662 to cover potential losses, unless the aggregate amount of consumer funds is less than \$2500.

663 25.3. Parents acting in their legal capacity as conservators for their children or protected
664 adults, even if employed by the provider, are not included in the requirement for bonding.

665 25.4. The provider may elect to self-insure but must guarantee replacement of losses of

666 consumer funds.

667 25.5. All bonding policies shall be adequate to replace the aggregate of consumer funds
668 managed by the provider or if the provider elects to self-insure, there must be evidence of
669 sufficient financial capacity to replace consumer funds.

670 **§64-11-26. Transportation.**

671 26.1. A provider that provides transportation in vehicles owned or leased by the provider
672 for use with consumers as part of a service shall have procedures for ensuring:

673 26.1.a. The use of age-appropriate passenger restraint systems;

674 26.1.b. Adequate passenger supervision relative to the ages, sexes, behavioral
675 challenges and disabilities of the consumers being transported;

676 26.1.c. Proper and timely licensure and inspection of the vehicles;

677 26.1.d. First aid kits in each provider vehicle;

678 26.1.e. Proper and timely maintenance of vehicles;

679 26.1.f. That the number of persons in any vehicle used to transport consumers shall not
680 exceed the number of available safety restraint systems;

681 26.1.g. Sufficient liability insurance;

682 26.1.h. Secure anchoring for wheelchairs except in automobiles; and

683 26.1.i. Annual validation of driver licenses of individuals driving vehicles that transport
684 consumers.

685 26.2. The provider shall maintain evidence, annually, that staff transporting consumers in
686 their own vehicles as part of their duties are properly insured either personally or through the
687 provider's insurance in case of automobile accident.

688 **§64-11-27. Legal compliance.**

689 27.1. The provider shall comply with all applicable federal, state, and local laws, rules and
690 regulations associated with all aspects of service delivery and operations and shall possess all
691 necessary licenses.

692 27.2. Current licenses or certificates shall be prominently displayed in an area visible to
693 the public.

694 **§64-11-28. Security of information and consumer records.**

695 28.1. The provider shall have policies and procedures regulating access to records of
696 staff and consumers that are in compliance with all federal and state requirements. Regulatory
697 agencies shall be allowed access to relevant service and employment information as necessary
698 to fulfill their statutory duties.

699 28.2. The provider shall ensure that service and employment records, whether paper or
700 electronic, are made available for inspection within normal business hours except in unusual or
701 emergency circumstances.

702 28.3. The provider shall have procedures to protect service and employment records,
703 whether in electronic or paper form, from destruction by fire, water, loss or other damage and
704 from unauthorized access.

705 28.4. Written procedures shall govern the retention, maintenance and destruction of
706 consumer records.

707 28.5. At a minimum, the provider shall retain consumer records for a minimum of five
708 years from date of last service and for five years following a child's eighteenth birthday if service
709 ends prior to that time. Conversion of paper records to an electronic copy and destruction of paper
710 is acceptable.

711 28.6. The provider shall have a policy regarding disposal of records which respects
712 confidentiality and security of consumer information.

713 28.7. The format of electronically transmitted data shall comply with legal standards and
714 requirements.

715 **§64-11-29. Contractual relationships.**

716 29.1. If the provider arranges externally or contractually for the provision of consumer
717 services, the provider shall have a written agreement which specifies:

718 29.1.a. Roles and responsibilities of the provider and the subordinate service provider;
719 29.1.b. A guarantee that the subcontracting provider shall obtain and provide copies of
720 information regarding employees to demonstrate that the employee is in compliance with the
721 regulatory and/or risk management needs of the provider.

722 29.1.c. Clinical documentation required of the subordinate service provider(s) with time
723 lines for provision of the documentation;

724 29.1.d. Services to be provided;

725 29.1.e. Provision of appropriate liability or malpractice insurance either by the contractor
726 or subordinate provider;

727 29.1.f. A general definition of the consumers to be served; and

728 29.1.g. That the subordinate provider shall adhere to state and federal requirements of
729 confidentiality.

730 29.2. The provider shall maintain a file on each contracted subordinate provider, including:

731 29.2.a. Evidence of appropriate training, licensure or certification; and

732 29.2.b. Evidence of malpractice or liability insurance as specified in the contract.

733 **§64-11-30. Financial management system.**

734 30.1. The provider shall have a written budget, approved by the governing body if there
735 is one, that shall serve as a plan for managing its financial resources for the fiscal year.

736 30.2. The provider shall have established financial management policies and procedures
737 that follow generally accepted accounting principles (GAAP).

738 **§64-11-31. Financial accountability for consumer funds.**

739 31.1. A provider that assumes fiduciary responsibility for client funds shall have written
740 operational procedures that ensure:

741 31.1.a. Separate individual accounting of funds with quarterly statements to the consumer
742 and his or her DLR, if any. Funds managed on behalf of clients shall not be commingled with
743 provider funds;

744 31.1.a. Compliance with applicable legislative, judicial and governmental requirements,
745 including those applying to payment of benefits allotted by the state or federal government.

746 **§64-11-32. Management of human resources.**

747 32.1. Deployment and supervision of staff.

748 31.1.a. The provider shall have a system of staff supervision that is tailored to the
749 provider's model of service delivery and uses individual and/or group supervision on a regularly
750 scheduled basis.

751 31.1.b. The provider shall identify an individual responsible for overall administration of
752 the program for each site.

753 31.1.c. The provider shall develop a process that ensures appropriate supervision of
754 direct service staff. Each staff person on duty shall have access to a supervisory staff person by
755 telephone or face to face contact within thirty minutes of an initial attempt at supervisory contact.

756 32.2. Personnel practices.

757 32.2.a. Upon employment, the provider shall train employees with regard to written
758 policies and procedures pertaining to their employment and job responsibilities.

759 32.2.b. The provider shall have policies which shall comply with federal and state statutes,
760 rules and regulations regarding employment practices.

761 32.2.c. The provider shall review with the applicant a written job description at the time of
762 the interview and provide a copy of a written job description upon employment and upon
763 significant changes in job assignment or responsibilities, provide a modified job description.

764 32.2.d. The provider shall submit a request for a Criminal Identification Bureau (CIB)
765 records check and a Protective Services records check in the manner required by the secretary
766 on each potential employee prior to working with consumers.

767 32.2.e. The provider may use applicants for employment prior to receiving the result of
768 the records check under the following conditions:

769 32.2.e.1. The applicant's information has been submitted for clearance; and

770 32.2.e.2. The employee is informed in writing that final approval for employment is
771 contingent upon the receipt of an acceptable CIB and/or other check as mandated by the
772 secretary.

773 32.2.f. Provider policy shall prohibit employment of staff or utilization of volunteers or
774 contractors with responsibility for care and supervision of consumers who have a history of
775 convictions for or substantiation through the Protective Service or Office of the Inspector General
776 systems of;

777 32.2.f.1. Abduction;

778 32.2.f.2. Any violent felony crime including, but not limited to, rape, sexual assault,
779 homicide, felonious physical assault or felonious battery;

780 32.2.f.3. Child or protected adult abuse or neglect;

781 32.2.f.4. Crimes which involve the financial or other exploitation of a child or an
782 incapacitated adult;

783 32.2.f.5. Felony arson;

784 32.2.f.6. Felony drug related offenses within the last ten years;

785 32.2.f.7. Felony DUI within the last ten years;

786 32.2.f.8. Hate crimes;

787 32.2.f.9. Neglect or abuse by a caregiver;

788 32.2.f.10. Pornography related crimes involving children or incapacitated adults;

789 32.2.f.11. Purchase or sale of a child; or

790 32.2.f.12. Sexual offenses including, but not limited to, incest, sexual abuse, or indecent
791 exposure.

792 32.2.g. The provider may apply to the secretary for a written waiver of employment
793 restrictions on a case by case basis depending on the particulars of the conviction or
794 substantiation.

795 32.2.h. The provider shall have a policy and required training process for all employees

796 with regard to mandatory reporting of allegations of consumer abuse or neglect.

797 32.2.i. The provider shall have a written job description and selection criteria for each
798 position or group of similar positions that includes the position's qualifications, and responsibilities
799 and the title of the position's supervisor.

800 32.2.j. The provider shall designate a supervisor for each separate service or program. A
801 supervisor may be responsible for more than one program.

802 32.2.k. The provider shall employ persons who are qualified according to the job
803 description and selection criteria for the positions they occupy. A provider employing any person
804 who does not possess the qualifications noted in the position's job description shall have a written
805 statement justifying the individual's employment.

806 32.2.l. The provider shall verify the credentials of all employees and contractors providing
807 client care, including:

808 32.2.l.1. Education and training;

809 32.2.l.2. Applicants without a high school diploma or GED must demonstrate
810 competencies required of the job. The provider will have and follow a policy for these employees;

811 32.2.l.3. Relevant experience; and

812 32.2.l. 4. State licensing or certification for their respective disciplines, if any.

813 32.2.m. If the job description requires professional licensure or certification, but an
814 employee under supervision for licensure or certification is employed in the position, the provider
815 shall demonstrate that:

816 32.2.m.1. A person with requisite credentials provides supervision to the staff; and

817 32.2.m.2. The staff is actively working toward licensure and/or certification.

818 32.2.n. This requirement shall not be construed to apply to individuals performing job
819 duties that would not normally require licensure or certification.

820 32.3. Volunteers.

821 32.3.a. The provider shall have a policy which specifies the roles and responsibilities that

822 volunteers shall assume.

823 32.3.b. The provider shall ensure that volunteers receive regular supervision to provide
824 assistance, directions for activity and support.

825 32.3.c. Any documentation provided by volunteers to be placed in a clinical record shall
826 include the date and signature of the volunteer's on-site supervisor prior to being placed in the
827 record.

828 32.3.d. The provider shall train volunteers concerning the responsibilities of the position
829 and the time commitments required prior to formal assignment.

830 32.3.e. The provider shall formally train volunteers in confidentiality prior to beginning
831 their duties and shall maintain documentation of the training.

832 32.3.f. The provider shall have a policy requiring volunteer screening, which shall include
833 criminal and protective services background checks on all volunteers with responsibility for care
834 and supervision of consumers, as required by Department policy. Department policy shall address
835 the background clearance of volunteers, including a clarification of those volunteers who should
836 receive clearance and the process for doing so.

837 32.4. Students.

838 32.4.a. Students serving less than thirty hours per quarter shall be continually supervised
839 by staff and shall not work alone with consumers.

840 32.4.b. The provider shall have a policy which specifies the roles and responsibilities that
841 students may assume.

842 32.4.c. Students serving an academic placement of more than thirty hours on site per
843 three month quarter may work with consumers independently as defined by provider policy
844 however the provider shall ensure that students receive regular documented supervision in order
845 to provide assistance, directions for activity and support.

846 32.4.d. Students of this type shall receive training in abuse, neglect, and mandatory
847 reporting.

848 32.4.e. Any documentation provided by students to be placed in a clinical record shall
849 include the date and signature of the student's on-site supervisor prior to being placed in the
850 record.

851 32.4.f. The provider shall formally train all students in confidentiality prior to beginning
852 their duties and shall maintain documentation of the training.

853 32.5. Employee, Volunteer, and Student Records.

854 32.5.a. The provider shall maintain current records for all employees and for students and
855 volunteers working directly with consumers and spending regularly scheduled time in the
856 provider's or consumer's locations. These records shall contain, as appropriate:

857 32.5.a.1. Identifying information and emergency contacts;

858 32.5.a.2. An application for employment or resume (for employees only);

859 32.5.a.3. A job description or contract;

860 32.5.a.4. Reference verification (for employees);

861 32.5.a.5. Documentation of education and/or licensure or certification (for employees);

862 32.5.a.6. Documentation of relevant education or experience as appropriate;

863 32.5.a.7. Documentation of orientation and required trainings;

864 32.5.a.8. Documentation of criminal and protective services background checks for
865 employees and volunteers and students as required by the secretary; and

866 32.5.a.9. Documentation relating to performance, including disciplinary actions and
867 termination summaries.

868 32.5.b. Each employee shall have a record, stored separately, containing the employee's
869 results of random drug screens if required by provider policy.

870 32.5.c. The files shall be secured in a confidential manner with limited access.

871 32.5.d. Students touring, observing or on site less than thirty hours per three month
872 quarter are not included in the requirements of this section.

873 32.6. Disciplinary Reviews and Termination. The provider shall have a policy which

874 delineates procedures governing disciplinary actions and nonvoluntary termination of staff.

875 32.7. Orientation of New Staff.

876 32.7.a. The provider shall ensure that all new clinical staff receive an orientation within
877 the first ten days of employment and shall document that orientation in the individual's personnel
878 record. The orientation shall include an introduction to the staff person's primary job
879 responsibilities and requirements.

880 32.7.b. Within the first thirty days of employment or initiation, the provider shall also train
881 all new staff in:

882 32.7.b.1. Its mission, philosophy and goals;

883 32.7.b.2. Its services, policies and procedures pertaining to the employee, contract
884 clinician, student, or volunteer's job responsibilities;

885 32.7.b.3. An organizational chart that delineates lines of accountability and authority
886 pertaining to the employee, contract clinician, student, or volunteer's job responsibilities;

887 32.7.b.4. The provider's policies and procedures on consumer confidentiality and
888 disclosure of information, including penalties for violation of these policies and procedures and an
889 orientation to federal confidentiality requirements as they apply to the provider;

890 32.7.b.5. Consumer rights;

891 32.7.b.6. Universal precautions;

892 32.7.b.7. Training on identification of abuse and neglect and mandatory reporting
893 procedures;

894 32.7.b.8. Appropriate identification and documentation of incidents;

895 32.7.b.9. Sensitivity to differences in cultural norms and values;

896 32.7.b.10. Proper documentation procedures;

897 32.7.b.11. CPR, the abdominal thrust and First Aid; updated as required;

898 32.7.b.12. Fire drills and evacuation procedures (if applicable); and

899 32.7.b.13. Procedures regarding medical or other emergencies (if applicable).

900 32.7.c. Additionally, except for outpatient clinical staff providing only clinic behavioral
901 health services, program staff with direct care responsibilities in-home or site-based programs
902 shall be trained within thirty days upon:

903 32.7.c.1. Psychiatric emergency procedures and management including systematic de-
904 escalation:

905 32.7.c.2. Blood borne pathogens; and

906 32.7.c.3. Infection control.

907 32.8. Until the training is completed, the staff person shall not work unless accompanied
908 at all times by a staff member who is experienced and knowledgeable in these areas.

909 32.9. The provider shall document all training provided to staff.

910 **§64-11-33. Service environment.**

911 33-1. Safety and Environmental Quality.

912 33-1.a. The provider shall provide services in an environment (buildings, grounds and
913 equipment) that meets all applicable federal, state and local health, building, safety and fire codes
914 unless the location for provision of service is the consumer's home or another community based
915 location not owned or leased by the provider.

916 33-1.b. All structures and equipment owned or leased by the provider shall be maintained
917 free from danger to health and safety.

918 33-1.c. Facilities and buildings owned, leased or rented by the provider for use with
919 consumers shall be clean, safe, accessible, and appropriate for the needs of the consumer.

920 33-1.d. The provider shall post by the telephone in all provider owned or leased direct
921 care and residential service locations emergency telephone numbers for the fire department,
922 poison control hotline, and local police.

923 33-1.e. Buildings owned or leased by the provider shall be in compliance with Title III of
924 the Americans with Disabilities Act unless otherwise exempted.

925 33-1.f. All buildings owned, leased, or rented by the provider for consumer use shall

926 conform to the current Life Safety Code of the National Fire Protection Association, unless
927 exempted by the State Fire Marshal.

928 33-1.g. The provider shall have documentation that the facilities owned or leased by the
929 provider and used for services are in substantial compliance with the State Fire Code. That
930 evidence shall be renewed as required by the State Fire Marshal.

931 33-1.h. The provider shall have fire extinguishers reviewed by a qualified professional
932 annually.

933 33-1.i. All power driven equipment used by a facility shall be kept in safe and good repair.
934 The equipment shall be used by consumers only under the supervision of a staff member.

935 33.2. Food Services

936 33.2.a. If food services are provided or if food is managed by the provider in a consumer
937 residence owned or leased by the provider, food shall be stored, prepared and served in a sanitary
938 manner.

939 33.2.b. Where applicable, The provider shall conform to the requirements for food service
940 as specified by the Department's rule, "Food Establishments", 64CSR17.

941 **§64-11-34. Compliance with legal, health and regulatory requirements.**

942 34.1. Emergency planning and response.

943 34.1.a. The provider shall have procedures in place for responding to accidents, serious
944 illness, fire, medical emergencies, floods, natural disasters and other life threatening situations
945 that:

946 34.1.a.1. Address the needs of any special population served by the provider;

947 34.1.a.2. Specify evacuation procedures including an evacuation site, parties to notify,
948 and emergency items to take when evacuating;

949 34.1.a.3. Describe relocation plans for the service and/or program if it becomes
950 necessary; and

951 34.1.a.4. Specify appropriate responses to medical emergencies.

952 34.1.b. The provider shall have procedures in place for dealing with consumers or other
953 individuals who threaten violence or harm to themselves or others including staff and other
954 consumers.

955 34.2. Medication control and administration.

956 34.2.a. Prescription Medication shall be prescribed and monitored by a licensed
957 physician, dentist or physician's assistant or nurse practitioner. Contracted medical staff
958 functioning on the provider's premises is responsible for complying with provider policies and
959 procedures. The physicians and other staff shall have files containing the materials or information
960 specified in this rule.

961 34.2.b. Providers that administer medication using approved medication assistive
962 personnel shall comply with the Department's rule, "Medication Administration by Unlicensed
963 Personnel", 64 CSR 60.

964 34.2.c. When medication is administered by the provider, the organization shall ensure
965 that there is an individual record for those consumers who receive medications to include:

966 34.2.c.1. Medications administered;

967 34.2.c.2. The date medications were administered;

968 34.2.c.3. The time of administration (medications are to be administered within one hour
969 of the prescribed time unless otherwise allowed by physician's order); and

970 34.2.c.4. The individual administering the medication; and

971 34.2.d. A record of missed medications and the reason. Prescription medications
972 administered by the provider shall be properly labeled and packaged and include:

973 34.2.d.1. The name of the person served;

974 34.2.d.2. The route of administration;

975 34.2.d.3. The dosage and the name of the medication;

976 34.2.d.4. The name of the prescribing physician; and

977 34.2.d.5. An expiration date.

978 34.2.e. The provider shall have written procedures that govern:

979 34.2.e.1. The safe disposal of discontinued, out-of-date or unused medications, syringes,
980 medical waste or medication; and

981 34.2.e.2. Provision for locked, supervised storage of medications with access limited to
982 authorized staff.

983 34.2.f. Medication samples are considered to be the property of the provider. Samples
984 shall be stored in a systematic fashion in a locked area with limited access to unauthorized staff
985 or consumers. The provider shall document distribution of sample medications in the consumer
986 medical record.

987 34.2.g. If a provider both prescribes and administers medications, only licensed nursing
988 staff shall accept verbal orders for changes in medication regimens. These shall be signed by
989 the prescribing physician within one week.

990 34.2.h. A registered or practical nurse shall be responsible for:

991 34.2.h.1. Generating and reviewing monthly Medication Administration Records;

992 34.2.h.2. Matching physician's orders or prescriptions to the medication administration
993 records;

994 34.2.h.3. Assisting interdisciplinary teams to develop educational goals for consumers
995 taking regularly prescribed medications and participating in a supervised self-administration
996 protocol as identified in the consumer's plan for services;

997 34.2.h.4. Instructing staff in dietary or medication administration issues as necessary; and

998 34.2.h.5. Responding to emergency calls from staff on medical issues.

999 34.2.i. Medications shall be self-administered under supervision of staff under the
1000 following conditions:

1001 34.2.i.1. As part of the consumer's plan of care, he or she is taught to identify his or her
1002 medications, recognize possible side effects, describe the purpose for the medication and indicate
1003 the time of day and frequency of which he or she is to take the medications;

1004 34.2.i.2. The consumer is assessed by either a registered nurse, physician or licensed
1005 psychologist as being cognitively capable of learning these skills;

1006 34.2.i.3. Medication is kept in a secure location with access limited to staff only except at
1007 dosage times;

1008 34.2.i.4. Staff is fully trained as to the purpose, most common side effects and dangers
1009 of each medication prescribed for consumers in the facility or home, and can identify each
1010 medication on sight or have access to mechanism for which to identify; and

1011 34.2.i.5. Staff is trained in emergency procedures for overdose or adverse reactions.

1012 34.2.j. Delivering and monitoring medications in a consumer's place of residence:

1013 If a provider delivers medications to a consumer on a regular basis, the provider must:

1014 34.2.i.1. Document delivery date, time, person receiving and name of medication
1015 delivered including amount delivered;

1016 34.2.i.2. Ensure that if there are children or other incapacitated adults in the home,
1017 medications are at least initially stored properly in secured containers;

1018 34.2.i.3. Provide medications in properly packaged format as required by Chapter 30,
1019 Article 5 of the West Virginia Code; and

1020 34.2.i.4. Develop a system of monitoring the consumer's compliance with consumption of
1021 medications that is created with the permission and participation of the consumer. This system
1022 may consist of the consumer logging consumption of his or her own medications. The consumer
1023 has the right to refuse participation in a monitoring system however the provider may then refuse
1024 to deliver medications to the consumer's residence and/or make alternative arrangements for the
1025 provision of medications.

1026 **§64-11-35. Services.**

1027 35.1. Admission.

1028 35.1.a. The program must be appropriate for the needs of the consumer.

1029 35.1.b. If after the consumer is admitted, the program is unable to meet his/her needs,

1030 the provider shall discharge the consumer and is responsible for referral of the consumer to an
1031 alternative level of care and/or provider.

1032 35.2. Assessments/intake procedures.

1033 35.2.a. Each consumer entering or re-entering a provider program shall have an
1034 assessment by an appropriately qualified staff person (as identified by the provider credentialing
1035 committee or officer) prior to or within 48 hours of admission.

1036 35.2.b. Assessments from other provider entities are acceptable if comprehensive and
1037 performed within the past 60 days.

1038 35.2.c. A consumer re-entering a program within a twelve month period may receive an
1039 abbreviated assessment. A consumer entering a program based on an assessment performed
1040 by another agency within the past 60 days may receive an abbreviated assessment. These
1041 assessments and updates must be available in the consumer record.

1042 35.2.d. The initial assessment shall review the consumer's psychiatric and psychosocial
1043 history, history of medical and psychiatric treatment, current mental status, current medical and
1044 psychiatric status with regard to health and medications prescribed, evaluation of suicidal or
1045 homicidal ideation, presenting problems as identified objectively and subjectively, and summarize
1046 the consumer's needs and preferences.

1047 35.2.e. An abbreviated assessment shall review the current mental status, presenting
1048 problems identified objectively and subjectively, current medical and psychiatric status with regard
1049 to health and medications prescribed, and a summary of consumer needs and preferences.

1050 35.2.f. The consumer's plan of services shall be based on the most recent assessment.

1051 35.2.g. The consumer's assessment must record any reported life-threatening medical
1052 conditions, allergies, or dietary restrictions. The plan for services must define the provider's
1053 responsibility in management of such conditions, if any, while the consumer is on the provider's
1054 site or under the provider's supervision. The notification must be posted in the record in a way
1055 that is accessible to all staff working with the consumer or there must be documentation that staff

1056 has been advised of such conditions.

1057 35.3. Planning for services.

1058 35.3.a. The provider shall ensure each consumer has a plan of service in a format
1059 consistent with the type of service the consumer receives. The plan of service shall be reviewed
1060 at intervals specified by provider policy and updated or modified as necessary.

1061 35.3.b. The consumer shall have the right and the responsibility to participate in the
1062 development of the plan of services to the extent that the consumer is willing and medically and
1063 behaviorally able.

1064 35.3.c. If the consumer has an advanced psychiatric directive, the provider shall honor
1065 the directions provided in the advanced directive to the best of the provider's ability.

1066 35.4. Participation of the DLR in planning for services.

1067 35.4.a. The provider must obtain permission from the DLR prior to initiating treatment
1068 except in emergent conditions.

1069 35.4.b. If the consumer has a DLR whose scope of responsibility appropriately includes
1070 assisting in and/or directing planning for services for the consumer, the provider is responsible for
1071 documenting that the DLR has been informed of all meetings and activities regarding planning.
1072 The provider must document a good faith effort to involve the DLR in the planning and review
1073 processes. The DLR is entitled to participate in the manner he or she chooses, including by
1074 telephone or video conference.

1075 35.4.c. If the provider has documented attempts to involve the DLR in the planning
1076 process without success, the provider may continue the current plan for service for up to 30 days
1077 past its expiration date while alternative plans are made to meet the needs of the consumer or to
1078 obtain DLR permission.

1079 35.5. Clinic behavioral health services.

1080 35.5.a. If the consumer is receiving only clinic behavioral health services from the
1081 provider, the provider shall ensure the health care professional responsible for the service has a

1082 treatment strategy that is reasonable and appropriate given the consumer's initial and on-going
1083 assessments.

1084 35.5.b. The strategy must be described in documentation of each consumer contact.

1085 35.5.c. Documentation of clinic behavioral health services shall include:

1086 35.c.1. A subjective and objective assessment of the consumer, including a description
1087 of any recent unusual events that may have an impact on the consumer's treatment;

1088 35.c.2. An assessment of the effectiveness of the treatment approach; and

1089 35.c.3. A plan to continue or modify the treatment approach as necessary.

1090 35.d. Each consumer receiving a service shall have a plan of services, except as
1091 described above.

1092 35.6. Initial plan of service.

1093 35.6.a. When the consumer is admitted to a provider agency, he or she shall have an
1094 initial plan of service at the conclusion of the admission process.

1095 35.6.b. This plan shall consist of the following at a minimum:

1096 35.6.b.1. Description of any further assessments or referrals that may need to be
1097 performed;

1098 35.6.b.2. A listing of immediate interventions to be provided along with some basic
1099 objectives for the interventions;

1100 35.6.b.3. A date for development of an expanded plan of services. The designated date
1101 must be appropriate for the planned length of service but at no time will that exceed 30 days from
1102 the date of the signing of the initial plan; and

1103 35.6.b.4. The signature of the consumer and/or DLR, intake worker, and other persons
1104 participating in the development of the initial plan. If a party is participating by phone, video or
1105 other means a notation on the plan is acceptable.

1106 35.7. Expanded plan of services.

1107 35.7.a. The expanded plan of services is developed when a consumer is receiving a

1108 variety of services from a single provider provided that if all services are clinic behavioral health
1109 services, no expanded plan is required.

1110 35.7.b. The expanded plan shall relate directly to the consumer's initial and/or any
1111 subsequent assessments or information regarding the consumer, shall include all services
1112 provided to the consumer by the provider developing the plan, and shall consist of the following:

1113 35.7.b.1. Date of development of the plan;

1114 35.7.b.2. Participants in the development of the plan;

1115 35.7.b.3. A statement or statements of the goal(s) of services in general terms;

1116 35.7.b.4. A listing of specific objectives relating to each goal unless the services are
1117 supportive in nature;

1118 35.7.b.5. The measures to be used in tracking progress toward achievement of an
1119 objective, unless the services to be provided are supportive services;

1120 35.7.b.6. The technique(s) and/or services to be used in achieving the objective unless
1121 the services are supportive;

1122 35.7.b.7. Identification of the individuals responsible for implementing the services relating
1123 to the statement(s) of objectives; and

1124 35.7.b.8. A date for review of the plan.

1125 35.7.c. The date for review shall be reasonable given the projected duration of treatment
1126 but at no time shall exceed 180 days.

1127 35.7.d. Selected objectives may be reviewed earlier than the scheduled plan review as
1128 desired by the consumer or provider.

1129 35.7.e. Plans for supportive services are incorporated into the expanded plan of service
1130 and shall include:

1131 35.7.e.1. Services to be provided;

1132 35.7.e.2. How often;

1133 35.7.e.3. By whom; and

- 1134 35.7.e.4. The objectives of the support.
- 1135 35.7.f. Objectives of supportive services may be stated in simple terms and outcomes
1136 need not be stated in measureable terms. Maintenance of health, daily living skills or functionality
1137 may be an objective for a supportive service.
- 1138 35.7.g. If the consumer is receiving only supportive services, the plan shall be reviewed
1139 at a minimum of each 180 days. Date of the planned review shall be recorded on the plan for
1140 services.
- 1141 35.8. Multi-provider comprehensive plans of service.
- 1142 35.8.a. If a consumer is receiving a combination of behavioral health and/or supports
1143 services from a team of provider agencies, the consumer shall have a comprehensive plan of
1144 services.
- 1145 35.8.b. All providers participating in the provision of service to the consumer shall be
1146 represented in the development of the comprehensive plan, as shall the consumer and/or DLR
1147 as appropriate. Representation shall be documented by signature of the parties involved in the
1148 development of the comprehensive plan.
- 1149 35.8.c. The team must be made aware of any advanced directives made by the consumer
1150 or any instructions for care imposed by the DLR. These directives must be included as an
1151 addendum to the plan.
- 1152 35.8.d. Unless the team decides otherwise, comprehensive plans are completed by a
1153 service coordination provider who is responsible for tracking the implementation of the plan and
1154 organizing the reviews of the plan and subsequent modifications. The service coordination
1155 provider must be identified in the plan.
- 1156 35.8.e. The comprehensive plan must clarify which provider agency is responsible for
1157 each aspect of the plan. Objectives for behavioral health treatment, habilitation and rehabilitation
1158 services must be specific and measured, as described in section.
- 1159 35.8.f. It is the responsibility of the service coordination provider to ensure that each

1160 member of the provider team including the consumer and/or DLR has a copy of the plan within
1161 seven working days of its completion.

1162 35.8.g. The comprehensive planning process shall culminate in an agreed date for review
1163 of progress in reaching the objectives described in the plan.

1164 35.9. Reviews of plans of service.

1165 35.9.a. The review shall be documented and shall consist of examination by the team or
1166 provider of progress toward achievement of an objective using the measurements described in
1167 the plan or in the case of supportive services, an evaluation of achievement of maintenance
1168 objectives.

1169 35.9.b. The consumer and DLR is expected to be present at the scheduled review. If the
1170 consumer and/or DLR are not present, the reason for holding the review in their absence shall be
1171 documented and for good cause.

1172 35.9.c. The provider shall modify objectives and/or goals if the planned interventions have
1173 not produced evidence of improvement or maintenance, if such is the stated goal, within an
1174 amount of time to be identified in advance by the clinical team.

1175 35.9.d. The goals or objectives on a plan may be modified if desired by the consumer or
1176 DLR.

1177 35.9.e. At the conclusion of the review, a date shall be set for the next review. Revisions
1178 to the behavioral health service plan shall be made if necessary or a new plan may be developed.

1179 35.10. Critical treatment junctures.

1180 35.10.a. The provider and consumer shall meet to review and modify the consumer's
1181 treatment or supports services at a critical treatment juncture.

1182 35.10.b. The team may decide to review all of the plan of services, or only a segment of
1183 the plan of services. Regardless of the extent of the review, it must be documented and a date
1184 identified for the subsequent review of the plan in its entirety, not to exceed 180 days from the
1185 last review of the entirety of the plan.

1186 35.10.c. The consumer and/or the DLR should be provided with a copy of the plan for
1187 services and any review documents.

1188 35.10.d. If a critical treatment juncture occurs for a consumer who has a comprehensive
1189 plan for services, the members of the team must be informed of the situation and participate in a
1190 decision regarding the need for the team to meet. Participation in this decision may be by
1191 telephone or other electronic or digital method.

1192 35.11. Discharge planning.

1193 35.11.a. Each provider shall have a policy and procedure regarding discharge of the
1194 consumer from services.

1195 35.11.b. Such policies shall promote an organized transition to another provider, level or
1196 type of care or to full independence from treatment/support.

1197 35.11.c. With consumer and/or DLR permission, the provider is responsible for ensuring
1198 that sufficient information is provided to an alternative provider to enable a smooth transition of
1199 care.

1200 35.11.d. The provider is responsible for offering transitional services within the financial
1201 and staff resources available. If the consumer is an incapacitated adult, the transitional services
1202 should be individualized and delivered in a manner that facilitates the individual's movement from
1203 one health care setting to another.

1204 35.12. Special services and populations. If a provider provides specialized services to a
1205 unique population the provider shall ensure that:

1206 35.12.a. The service and clinical model reflects knowledge and use of research based
1207 and theory guided practices;

1208 35.12.b. Clinical and professional staff are appropriately trained, certified and/or licensed
1209 in the area of service provided;

1210 35.12.c. Direct care staff are trained to understand issues in clinical treatment of the
1211 population and able to use suitable intervention techniques when necessary and appropriate;

1212 35.12.d. The environment and milieu of the treatment location is clinically, structurally and
1213 developmentally appropriate for the population served; and

1214 35.12.e. The facility is consistent with the consumer's treatment plan. In cases in which a
1215 staff ratio is not specified in the consumer's plan of care, the provider shall assure that sufficient
1216 staff is present to enable consumer safety.

1217 **§64-11-36. Abuse, neglect and critical incidents.**

1218 36.1. The provider shall report, investigate monitor and remediate consumer-related
1219 incidents in a manner consistent with minimum current guidelines, "Reporting and Investigation
1220 Guidelines for Incidents involving a Licensed Behavioral Health Services and Supports Provider",
1221 set forth by the secretary and made available by the secretary to providers and the public.

1222 36.2. These guidelines shall be amended as necessary through a participative process
1223 including consultation with providers and consumers and other stakeholders.

1224 36.3. The provider's policy regarding abuse and neglect may allow the provider a range
1225 of remediation alternatives with the employee depending upon the severity of the incident and the
1226 possibility of successful remediation.

1227 36.4. These guidelines represent a minimum standard of investigation and correction.
1228 Third party payers or providers may voluntarily require a more stringent level of correction.

1229 36.5. Incidents shall be evaluated by the provider's designated representative and
1230 classified as one of the following:

1231 36.5.a. An allegation of abuse and/or neglect;

1232 36.5.b. A critical incident; or

1233 36.5.c. An incident requiring provider monitoring and correction.

1234 **§64-11-37. Abuse and neglect.**

1235 37.1. WV Code 9-6-11(a) and WV Code 49-1-201 require that upon notification that an
1236 incident has occurred, the provider immediately report the neglect, abuse, and/or suspected
1237 neglect or abuse of an incapacitated adult or a child, or an emergency situation representing

1238 hazard to such an adult or a child to the secretary's local protective services agency.

1239 37.2. Additionally, a provider shall immediately report the neglect, abuse, and/or
1240 suspected neglect or abuse of any consumer who receives services from a provider licensed
1241 under the conditions of this rule. This requirement mandates self-reporting of neglect, abuse,
1242 and/or suspected neglect or abuse by the servicing provider.

1243 37.3. The initial report shall be made by telephone followed by a written report by the
1244 complainant or the receiving agency within forty-eight hours.

1245 37.4. All employees of a provider are considered to be mandatory reporters as defined in
1246 section 9-6-11.

1247 37.5. A consumer has the right to report any suspicion of abuse or neglect to civil and
1248 criminal authorities in accordance with the adult protective services act, in addition to using the
1249 grievance procedure of the provider.

1250 **§64-11-38. Critical incident.**

1251 38.1. The provider must keep a central file of critical incidents for review by the secretary
1252 upon request.

1253 38.2. The file shall contain a description of the incident, actions taken by the provider to
1254 mitigate the incident and, at minimum, a description of systemic corrective action taken by the
1255 provider, if any, as a result of the provider investigation, utilizing unique but confidential consumer
1256 identifiers.

1257 38.3. In the case of a critical incident involving an incapacitated adult, the provider shall
1258 follow Department policy with regard to reporting such events to the secretary.

1259 **§64-11-39. Noncritical incidents.**

1260 Noncritical incidents must be documented, reviewed by a supervisory staff person,
1261 investigated if necessary and filed in the central investigation file.

1262 **§64-11-40. Quality assurance.**

1263 The provider shall ensure that the central file of reports of abuse, neglect, critical and

1264 noncritical incidents is reviewed, collated by the Continuous Quality Improvement committee or
1265 staff person and reported to the governing body on an annual basis. The file should be
1266 representative of efforts by the provider to utilize information to improve provider policy,
1267 procedure, or performance.

1268 **§64-11-41. Injuries of unknown source.**

1269 41.1. An injury should be considered an “injury of unknown source” when:

1270 41.1.a. The source of the injury was not witnessed by any person and the source of the
1271 injury could not be explained by the consumer; and

1272 41.1.b. The injury raises suspicions of possible abuse or neglect because of the extent of
1273 the injury or the location of the injury (e.g., the injury is located in an area not generally vulnerable
1274 to trauma) or the number of injuries observed at one particular point in time or the incidence of
1275 injuries over time.

1276 41.2. Minor occurrences which are not of serious consequence to the individual and do
1277 not present as a suspicious or repetitive injury (as discussed above) should be recorded by the
1278 facility staff once they are aware of them and follow-up should be conducted as indicated.

1279 41.3. If, however, the injury meets both criteria listed above, the injury or injuries must be
1280 reported and investigated as required by the secretary.

1281 41.4. For injuries that do not rise to the level of reportable “injuries of unknown source”,
1282 the facility should follow its policies and procedures for monitoring and trending such occurrences.

1283 **§64-11-42. Management of continued inappropriate behavior.**

1284 42.1. The provider shall have a policy for management of regularly occurring inappropriate
1285 behavior on the part of incapacitated or minor consumers.

1286 42.2. The functional assessment may result in informal environmental alterations and/or
1287 in the development of a written plan for intervention.

1288 42.3. Only trained staff may be responsible for performing functional assessments of
1289 behavior and developing and monitoring plans for intervention.

1290 42.4. Implementing staff shall be oriented to and fully trained on all behavior management
1291 plans for consumers with whom they are working. Training shall include demonstration of the
1292 procedures to be utilized.

1293 42.5. Behavioral interventions shall:

1294 42.5.a. Be planned and approved by the service planning team;

1295 42.5.b. Be individualized, consumer-centered, capable of implementation within the
1296 resources available and applied consistently in all environments managed by the service team;

1297 42.5.c. Be based on a functional assessment of the inappropriate behavior;

1298 42.5.d. Utilize positive behavior techniques that focus on replacing inappropriate
1299 behaviors with more productive pro-social behaviors;

1300 42.5.e. Be based on fundamental principles of behavior;

1301 42.5.f. Be data-based and monitored on an on-going basis; and

1302 42.5.g. Be amended in a timely fashion if necessary.

1303 42.6. The following aversive consequences are not to be utilized by providers:

1304 42.6.a. Corporal punishment;

1305 42.6.b. Deprivation of basic human rights;

1306 42.6.c. Treatment of a demeaning nature;

1307 42.6.d. Noxious or painful stimuli; and

1308 42.6.e. Deprivation of nutrition or hydration, excluding dietary or fluid restrictions ordered
1309 by a physician.

1310 42.7. Restraint techniques shall only be incorporated into a behavioral intervention if it is
1311 used as an intervention of last resort and only when the targeted behavior is immediately
1312 dangerous to the consumer or others in the environment.

1313 **§64-11-43. Emergency management of potentially dangerous behavior.**

1314 43.1. The provider shall have in place policies and procedures regarding emergency
1315 management of potentially dangerous consumer behavior.

1316 43.2. Seclusion is not an intervention permitted in any licensed community-based
1317 program, with the exception of a Psychiatric Residential Treatment Facility for children and/or
1318 youth.

1319 43.3. Staff shall be trained and able to demonstrate competency in systematic de-
1320 escalation procedures as part of orientation. Training shall be renewed at intervals determined by
1321 provider policy.

1322 43.4. Staff must have education, training and demonstrated knowledge based upon the
1323 specific needs of consumers being served. Training will consist at a minimum of:

1324 43.4.a. Techniques to identify staff and consumer behaviors, events and environmental
1325 factors that may trigger potentially dangerous behavior;

1326 43.4.b. Use of nonphysical intervention skills;

1327 43.4.c. Selection of least restrictive/least intrusive intervention based on individualized
1328 assessment, and

1329 43.4. Safe application of restraint as a last resort if provider policy allows restraint as an
1330 intervention.

1331 43.5. Physical, mechanical or chemical restraints may be used only as a last resort for
1332 the management of dangerous, violent or self-destructive behavior that is an immediate threat to
1333 the consumer's physical safety or the safety of others in the immediate environment.

1334 43.6. A restraint does not include devices such as orthopedically prescribed devices,
1335 surgical dressings or bandages, protective helmets, lap belts on wheel chairs utilized for support,
1336 or other methods that involve the physical holding of a consumer for the purpose of conducting
1337 routine physical examinations or tests, or to protect the consumer from falling out of bed, or to
1338 permit the consumer to participate in activities without the risk of physical harm.

1339 43.7. All supportive or protective devices should be assessed by the team for safety and
1340 appropriateness at annual intervals or more frequently as determined by provider policy.

1341 43.8. Redirection through physical prompting and/or hand over hand instruction is not to

1342 be considered a restraint.

1343 43.9. Restraint may only be used when less intrusive interventions have been exercised
1344 and determined to be ineffective to protect the consumer or others from harm. No restraint may
1345 be utilized for more than a half hour without review of the consumer's condition by an agency
1346 designated staff.

1347 43.10. The use of restraint must be implemented in accordance with safe and appropriate
1348 techniques.

1349 43.11. The restraint must be discontinued at the earliest possible time.

1350 43.12. Documentation in the consumer's record must include the following:

1351 43.12.a. A description of the consumer's behavior and the danger it posed to self or
1352 others;

1353 43.12.b. A description of the alternatives or other less intrusive interventions that were
1354 attempted prior to the restraint;

1355 43.12.c. A description of the intervention used, including the duration of the restraint if
1356 physical or mechanical or dosage if chemical; and

1357 43.12.d. The consumer's response to all the intervention(s) used.

1358 43.13. Debriefing of the restraint is a required aspect of provider policy with regard to
1359 restraints.

1360 43.14. If a consumer receiving extended services exhibits a behavior which is immediately
1361 dangerous to him or herself and/or others at a rate of three or more times in a six month period,
1362 the provider shall consider convening the clinical team to develop a written plan for behavioral
1363 intervention.

1364 **§64-11-44. Medical/dental procedures for incapacitated adults and children with**
1365 **developmental disabilities.**

1366 44.1. Whenever possible, a desensitization procedure should be developed in advance
1367 to prepare incapacitated adults and children with developmental disabilities for a medical or dental

1368 procedure.;

1369 44.2. If the desensitization procedure is not successful in easing the consumer's agitation,
1370 anxiety or fear, medicinal interventions are to be used in preference to mechanical restraints
1371 unless otherwise agreed by the clinical team;

1372 44.3. All efforts to prepare and manage a consumer during a medical or dental procedure
1373 should be documented in the consumer's medical record.

1374 **§64-11-45. Special programs.**

1375 Special programs shall have additional standards of implementation as follows:

1376 **§64-11-46. Standards for respite and personal attendant services.**

1377 46.1. Staff providing respite and personal attendant services must receive the following
1378 training or orientation prior to assuming care of a consumer:

1379 46.1.a. Specific information pertaining to the needs, preferences and medical issues of
1380 the consumer for whom the staff is assuming care;

1381 46.1.b. List of tasks for which the personal attendant or respite provider is responsible,
1382 including any unusual circumstances that could reasonably be predicted in advance;

1383 46.1.c. List of emergency contacts including emergency contact number for primary
1384 caregiver and for staff supervisor;

1385 46.1.d. Training in any specific protocols contained within the consumer's plan for
1386 services as appropriate;

1387 46.1.e. Review of mandatory reporting obligations;

1388 46.1.f. Any emergency procedures unique to the consumer and his/her medical or
1389 behavioral needs;

1390 46.1.g. Orientation to the consumer's home or other service location; and

1391 46.1.h. Boundary definition with regards to the relationship of staff to primary caregiver,
1392 other family members, chain of supervisory responsibility, appropriate use of consumer resources
1393 such as food or equipment, other issues as necessary and appropriate.

1394 46.2. Supervision of the respite or personal attendant employee shall be the responsibility
1395 of the employing agency with regular input and consultation by the primary caregiver and/or
1396 consumer. The agency shall provide on-site supervision of staff on a regular schedule as
1397 described by agency policy with the permission of the consumer and/or primary caregiver.
1398 Supervision activities shall be documented by the agency.

1399 46.3. If the respite or personal attendant service is provided at a location away from the
1400 consumer's primary residence, the location must be safe and free from immediate threat of harm
1401 to the consumer. The location must consider the needs and preferences of the consumer and
1402 his/her primary caregiver.

1403 46.4. The respite and/or personal attendant provider is responsible for complying with
1404 applicable services or conditions outlined in the consumer's Plan for Services during the time in
1405 which the staff person is providing services for the consumer.

1406 46.5. Documentation must include:

1407 46.5.a. Any unusual incidents or events occurring during the period;

1408 46.5.b. A summary of the activities of the consumer during the period;

1409 46.5.c. Any health or behavioral issues which were of significance during the period; and

1410 46.5.d. Any medications that were taken by the consumer during the period.

1411 **§64-11-47. Standards for residential services.**

1412 47.1. The provider must ensure that in home staff has access to twenty-four hour
1413 emergency telephone contacts for supervisory staff and for parents/guardian.

1414 47.2. The provider shall ensure that in home staff has knowledge of mandatory reporting
1415 procedures and the reporting number must be easily available in the home.

1416 47.3. Staff must be trained in emergency evacuation procedures.

1417 47.4. The provider shall ensure availability in the home of commonly needed company
1418 policies and procedures for staff reference. The provider shall have a policy which identifies those
1419 sections of the provider staff manual that will be available in the homes.

- 1420 47.5. The provider is responsible for training staff to be supportive of consumer:
- 1421 47.5.a. Needs and preferences;
- 1422 47.5.b. Behavioral and health management issues; and
- 1423 47.5.c. Privacy.
- 1424 47.6. The provider shall have a process in place to address consideration of appropriate
- 1425 blending of consumer populations with regard to sex, developmental age, activity level and
- 1426 consumer preferences in congregate living situations.
- 1427 47.7. The service environment shall be appropriate to the physical and health needs of
- 1428 consumers and shall be safe from threat of immediate harm for consumers and staff.
- 1429 47.8. The provider will use reasonable efforts to monitor and facilitate the consumer's
- 1430 health within the resources available to the consumer.
- 1431 47.9. The provider is responsible for linkage and referral to address the consumer's acute
- 1432 medical and psychiatric health concerns.
- 1433 47.10. A referral must be made for basic primary care at least once per year.
- 1434 47.11. Health considerations should be incorporated into a residential consumer's plan of
- 1435 services and providers shall be responsible for advocating that unmet needs be addressed if
- 1436 possible. The service coordination agency shall be responsible for advocacy if the consumer has
- 1437 a service coordinator.
- 1438 47.12. If appropriate, the provider shall assist the consumers in the service environment
- 1439 to develop a homelike atmosphere that addresses the preferences of the individuals residing in
- 1440 the environment, taking into consideration the financial resources of the residents.
- 1441 47.13. The provider shall have a process in place for facilitating choices of activity and
- 1442 home management that respects the needs and preferences of the residents. The provider shall
- 1443 promote consumer choices and control within the household to the degree possible and clinically
- 1444 appropriate.
- 1445 47.14. The provider shall develop and maintain a process for communication from one

1446 shift of staff to the next that conveys information necessary to conduct business in the home.
1447 Additionally the provider shall supply a method of communicating information regarding
1448 consumers from one shift to the next in a confidential manner. Such communication shall include:

1449 47.14.a. Any unusual incidents or events occurring during the shift;

1450 47.14.b. Any health or behavioral issues which were of significance during the shift; and

1451 47.14.c. Any medications that were taken by the consumer(s) during the shift.

1452 47.15. If the home is owned or leased by a provider, it must have:

1453 47.15.a. Adequate bedroom and living space for the number of consumers living within
1454 the home;

1455 47.15.b. Private space for storing personal items for each consumer;

1456 47.15.c. Adequate heating and cooling;

1457 47.15.d. External windows in consumer bedrooms;

1458 47.15.e. Hinged doors in bedroom doorways; and

1459 47.15.f. Appropriate access for physically handicapped or challenged consumers.

1460 47.16. If the home is owned or leased by the consumer or DLR, the provider will respect
1461 the consumer's choice of living environment and resources while advocating for adequate housing
1462 and living conditions, provided that nothing obligates the provider to supply services in an unsafe
1463 environment. If the provider suspects that an incapacitated consumer is living in unsafe
1464 conditions, the provider is obligated to conform to statutes regarding mandatory reporting.

1465 **§64-11-48. Standards for clinic behavioral health service.**

1466 48.1. Staff providing clinic behavioral health services shall be credentialed by the
1467 provider's credentialing committee or officer.

1468 48.2. Each provider of clinic behavioral health services must develop and maintain a
1469 working credentialing committee composed of experienced licensed and/or certified staff
1470 representative of the disciplines or practitioners within the agency. A provider agency with few
1471 clinical staff may designate a credentialing officer. This committee or officer is responsible for

1472 overseeing and assuring the following activities:

1473 48.1.a. Written criteria shall be developed for each type of service provided.

1474 48.1.b. These criteria must identify the required education, licensure, certification, training
1475 and experience necessary for each staff person to perform each type of service. These criteria
1476 must be age and disability specific to populations served as well as ensuring that staff has
1477 demonstrated competency to provide the services rendered.

1478 48.1.c. All documented evidence of credentials such as educational transcripts, copies of
1479 professional licenses, certificates or documents relating to the completion of training, letters of
1480 reference and supervision, etc. shall be reviewed by the committee or officer. Based on this
1481 review, the committee or officer shall determine which services staff are qualified to provide.
1482 Documentation of the credentials review must be filed in each staff person's personnel file.

1483 48.1.d. All documented evidence of staff credentials (including university
1484 transcripts/copies of diplomas, copies of professional licenses, and certificates or documents
1485 relating to the completion of training) shall be maintained in staff personnel records.

1486 48.1.e. Staff must be assigned job responsibilities that are within the scope of practice
1487 delineated by the credentials committee or officer.

1488 48.1.f. Providers shall develop standards for staff training and continuing education,
1489 supervision, and compliance monitoring.

1490 48.1.g. All episodes of provision of clinic behavioral health services shall be documented.
1491 Documentation shall be sufficient to demonstrate:

1492 48.1.a.1. That treatment, habilitation or rehabilitation is based on the needs identified in
1493 the initial or on-going assessments;

1494 48.1.a.2. The response of the consumer to treatment, habilitation or rehabilitation
1495 activities (preferably provided in both subjective and objective terms and in the case of habilitation
1496 or rehabilitation activities, data); and

1497 48.1.a.3. Adjustments are being made to the treatment, habilitation or rehabilitation

1498 approach as necessary and appropriate.

1499 **§64-11-49. Standards for twenty-four hour programs requiring medical monitoring.**

1500 49.1. The provider must supply adequate staff monitoring of individuals in the program
1501 either through “eyes on” or technological methods. The initial plan of services will detail the
1502 necessary monitoring which may be modified on an on-going basis as treatment moves forward
1503 and the plan of services is revised.

1504 49.2. A medical staff person such as a physician extender, registered nurse or licensed
1505 practical nurse functioning within his or her scope of practice must evaluate each patient in the
1506 program each shift unless the physician documents no further need for medical monitoring,
1507 provided that no such order can occur until the consumer has been in the program for twenty-four
1508 hours.

1509 49.3. The provider must have a policy regarding the face to face or telemedicine
1510 availability of medical staff to directly observe the patient after hours within 30 minutes as
1511 necessary and appropriate unless an arrangement is made for alternative medical care.

1512 49.4. Programs providing medical stabilization must provide or arrange to obtain
1513 prescribed psychotropic and general medical medications after initial review by admitting medical
1514 staff with prescriptive authority.

1515 49.5. Programs providing medical stabilization must assist consumers in obtaining
1516 needed medications as part of discharge planning. The provider shall have a policy with
1517 associated procedures regarding the ability of consumers to retain personal medications if
1518 discharged against medical advice.

1519 **§64-11-50. Standards for nonmethadone medication assisted programs for**
1520 **addictions and co-occurring disorders.**

1521 50.1. The provider must ensure that the program format includes initial and random urine
1522 or saliva drug screening as part of the plan of service. Frequency of screening will be defined by
1523 provider policy and in the plan of service, however screens must be comprehensive (eight to

1524 twelve substances) and include the substance being prescribed by the program.

1525 50.2. Individual and group therapy must be an integral aspect of the program plan of
1526 service. The ratio of individual and group must be individually determined by the needs of the
1527 consumer.

1528 50.3. Prescription of benzodiazepine medications for individuals in medication assisted
1529 programs is strongly discouraged. Co-occurring use of benzodiazepines must be justified in the
1530 clinical record by a physician.

1531 50.4. Standards for Intensive community-based stabilization and maintenance programs:

1532 50.4.a. The multi-disciplinary team providing the services must include medical
1533 participation or regular consultation.

1534 50.4.b. Consumers must be provided the majority of their services in their own homes by
1535 appropriately trained and qualified staff in order to promote and sustain generalization of learning
1536 and independence.

1537 50.4.c. Consumers must be clearly informed of methods of contacting the team for
1538 emergency assistance.

1539 50.4.d. The program content must assist the consumer towards greater independence
1540 through prompting and training of adult living skills, promotion of medication compliance as
1541 appropriate and necessary, and offer development of advance directives.

1542 50.4.e. If medication delivery is a part of the service provided, the provider must comply
1543 with the rules detailed under the section entitled "Delivering and monitoring medications in a
1544 consumer's place of residence".

1545 **§64-11-51. Standards for residential treatment programs for addictions and/or co-**
1546 **occurring disorders.**

1547 51.1. The intake assessment for the program must include a review by a physician or
1548 physician extender of the physical health status of the consumer and the appropriateness of his
1549 or her prescribed medications. This review may have been conducted by a referring entity or other

1550 medical party.

1551 51.2. The provider shall have a policy regarding screening for common chronic diseases
1552 association with particular addictions. The policy must address infection control and universal
1553 precautions for staff and other consumers as necessary and appropriate.

1554 51.3. The provider is responsible for arranging the provision of medications deemed
1555 necessary by the intake medical staff.

1556 51.4. The provider must ensure that medications brought to the program by consumers
1557 are correctly identified and stored.

1558 51.5. The provider shall have a policy with associated procedures regarding the ability of
1559 consumers to retain personal medications if discharged against medical advice.

1560 51.6. Consumers participating in such programs may be required to contribute to program
1561 maintenance through performance of daily assigned chores. As such, they may have unrestricted
1562 access to cleaning and other supplies unless the team decides otherwise, provided potentially
1563 intoxicating substances are held in a secure location and utilized only under staff supervision.

1564 51.7. Co-educational programs must have sleeping areas clearly separated and
1565 monitored by staff. Consumers involved in co-educational activities must be monitored by staff
1566 during both structured and unstructured time.

1567 51.8. Programs need not be medically monitored however the provider must have a policy
1568 which ensures that medication taken by consumers is:

1569 51.8.a. Kept in a secure location;

1570 51.8.b. Taken only under supervision of staff; and

1571 51.8.c. Documented by the consumer with documentation to be initialed by staff
1572 observing.

1573 51.9. Aftercare arrangements must be detailed, supportive, and an integral aspect of the
1574 discharge planning process.

1575 51.10. Standards for twenty-four hour programs accepting mothers with children:

1576 51.10.a. Program content must include or arrange for the provision of the following, as
1577 necessary and appropriate:

1578 51.10.a.1. Parenting training;

1579 51.10.a.2. Trauma recovery;

1580 51.10.a.3. Assertiveness training;

1581 51.10.a.4. Basic household maintenance; and

1582 51.10.a.5. Budgeting and money management.

1583 51.10. b. The provider must have a policy ensuring and monitoring the health, safety and
1584 welfare of children in the program.

1585 51.10. c. School age children must be involved in an appropriate educational program
1586 that ensures educational credit towards graduation.

1587 51.10. d. Children must be properly supervised by parent or staff at all times.

1588 **§64-11-52. Standards for locked behavioral health programs.**

1589 52.1. The secretary may authorize locking the facility housing a behavioral health provider
1590 program under certain circumstances.

1591 52.2. The facility must meet the appropriate life safety standards of construction required
1592 by the secretary and State Fire Marshal.

1593 52.3. The facility must be locked for the safety of consumers or other members of the
1594 public and may not be locked solely for staff convenience.

1595 52.4. The clinical needs of the consumers must require specialized security measures for
1596 their safety.

1597 52.5. Staff must be readily able to unlock doors at all times.

1598 52.6. Unannounced fire drills must be conducted at least once per quarter.

1599 52.7. Evacuation plans must be available for review by the secretary and staff on every
1600 shift must be knowledgeable in their implementation.

1601 52.8. Staffing must be sufficient to provide for the safety of consumers twenty-four hours

1602 per day.

1603 52.9. The need for placement of a consumer in a locked facility must be re-evaluated by
1604 the clinical team at regularly specified intervals, never less than each 90 days. Review must be
1605 documented.

1606 52.10. Placement in a locked facility because of inappropriate behavior must result in a
1607 plan to mitigate or modify such behavior as described in “Management of continued inappropriate
1608 behavior”.

1609 **§64-11-53. Administrative due process.**

1610 Any person aggrieved by an order or other action by the secretary based on this rule may
1611 request in writing a hearing by the secretary in accordance with “Rules of Procedure for Contested
1612 Case Hearings and Declaratory Rulings” 64CSR1, a copy of which may be obtained from the
1613 secretary of State.

NOTE: The purpose of this bill is to reauthorize, with amendment, as one rule, the legislative rules contained in title sixty-four, series eleven and series seventy-four of the code of state rules relating to licensure of behavioral health centers (64 CSR 11) and behavioral health consumer rights, (64 CSR 74).

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.