

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5248

FISCAL
NOTE

By Delegates Summers and Tully

[Introduced January 26, 2024; Referred to the
Committee on Health and Human Resources]

1 A BILL to amend the Code of West Virginia, 1931, by adding thereto a new article, designated §16-
2 5EE-1, §16-5EE-2, §16-5EE-3, §16-5EE-4, §16-5EE-5, §16-5EE-6, §16-5EE-7, §16-5EE-
3 8, §16-5EE-9, §16-5EE-10, §16-5EE-11, §16-5EE-12, and §16-5EE-13, and to repeal §27-
4 9-1 and §27-9-2 of said code; and to repeal §27-17-1, §27-17-2, §27-17-3, and §27-17-4 of
5 said code, all relating to the regulation of behavioral health centers; providing definitions;
6 creating licenses for residential behavioral health centers and non-residential behavioral
7 health centers; setting license fees for residential behavioral health centers and non-
8 residential behavioral health centers; providing for the regulation and oversight of all
9 behavioral health centers by the Office of Health Facility Licensure and Certification;
10 designating the necessity for a governing body and administrator and prescribing duties
11 and responsibilities; setting certain minimum standards in any behavioral health center;
12 setting certain minimum standards for behavioral health centers; restricting the location of
13 specific treatment settings for behavioral health centers; allowing for variances or waivers
14 from licensure standards; providing for inspections and inspection warrants; designating
15 license limitations; providing a procedure for denial, suspension, or revocation of a license;
16 allowing civil money penalties; providing for administrative review and appeal rights;
17 prescribing advertisement disclosure; and permitting the Inspector General to promulgate
18 rules, including emergency rules.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5EE. BEHAVIORAL HEALTH CENTER LICENSURE ACT.

§16-5EE-1. Purpose.

1 The purpose of this act is to establish licensing requirements for behavioral health centers
2 that treat clients who are at risk of, or suffering from, mental, behavioral, or addictive disorders to
3 ensure that clients may be lawfully treated so as to provide a treatment environment that does not

4 jeopardize the health, safety, welfare, and clinical treatment of the clients and comply with
5 oversight requirements developed by the Office of the Inspector General. The Legislature
6 recognizes the importance for mental health treatment and to ensure that services and supports
7 provided by behavioral health centers in the state of West Virginia are individualized and person-
8 centered to best serve the client and are in compliance with licensing standards.

§16-5EE-2. Definitions.

1 "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or
2 punishment with resulting physical harm, pain, or mental anguish. Abuse also includes the
3 deprivation by an individual, including a caretaker, of goods and services that are necessary to
4 attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all
5 residents, irrespective of any mental or physical condition, cause physical harm, pain, or mental
6 anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse, including
7 abuse facilitated or enabled through the use of technology. Willful, as used in this definition of
8 abuse, means the individual must have acted deliberately, not that the individual must have
9 intended to inflict injury or harm.

10 "Addiction" means a disease characterized by the individual's pursuing reward, relief, or
11 both, by substance use or other behaviors. Addiction is characterized by impairment in behavioral
12 control, craving, inability to consistently abstain, and diminished recognition of significant
13 problems with one's behaviors and interpersonal relationships; likely to involve cycles of relapse
14 and remission.

15 "Advocate" means a person or agency that acts on behalf of a client to establish, expand,
16 protect, and enforce his or her human, legal, and civil rights in a client's best interest.

17 "Behavioral disability" means a disability of a person which: (1) is attributable to severe or
18 persistent mental illness, emotional disorder, or chemical dependency; and (2) results in
19 substantial functional limitations in self-direction, capacity for independent living, or economic self-
20 sufficiency.

21 "Behavioral health center" means a provider, entity, or facility that provides behavioral
22 health services, supports, or both. As used in this article and any rules promulgated pursuant to
23 this article, behavioral health center means both residential behavioral health centers and non-
24 residential behavioral health centers.

25 "Behavioral health service" means a direct service provided as an inpatient, residential, or
26 outpatient service to an individual with mental health, addictive, behavioral, or adaptive challenges
27 that is intended to improve or maintain functioning in the community. The service is designed to
28 provide treatment, habilitation, or rehabilitation.

29 "Chief executive officer" means the individual designated by the governing body to be
30 responsible for the provider's daily operations. The chief executive officer may also be referred to
31 as the provider's president, executive director, or chief administrative officer. The chief executive
32 officer may delegate requirements within this rule but will retain responsibility that the delegated
33 requirements are met.

34 "Client" means an individual who receives services, supports, or both, from a behavioral
35 health center licensed under this rule.

36 "Developmental disability" means a chronic disability of a person which: (1) is attributable
37 to a mental or physical impairment or combination of mental and physical impairments; (2) is likely
38 to continue indefinitely; (3) results in substantial functional limitations in self-direction, capacity for
39 independent living, or economic self-sufficiency; and (4) reflects the person's need for a
40 combination and sequence of special, interdisciplinary or generic care, treatment, or other
41 services which are of lifelong or extended duration and are individually planned and coordinated.

42 "Director" means the director of the Office of Health Facility Licensure and Certification, or
43 his or her designee.

44 "Forensic group home" means a facility which is owned, leased, or operated by a
45 behavioral health center and which provides behavioral health services or supportive services and
46 supervision to criminal offenders who have been adjudicated as incompetent to stand trial – in

47 need of restoration, incompetent to stand trial – unable to be restored, or not guilty by reason of
48 mental illness.

49 "Governing body" means a clearly identified group of persons or partnership, when
50 applicable, which ensures accountability, exercises authority over, and has responsibility for the
51 provider's operation and approval and review of policies and practices. The provider shall
52 designate the governing body at the time of licensure. If an entity is a corporation with an out-of-
53 state ownership or management structure, the provider shall identify the governing body in
54 conjunction with the Inspector General.

55 "Group residential facility" means a facility which is owned, leased, or operated by a
56 behavioral health center and which provides residential services and supervision for individuals
57 who are developmentally disabled or behaviorally disabled and is occupied as a residence by
58 individuals who are developmentally disabled.

59 "Group residential home" means a residence owned or leased by a developmentally
60 disabled or behaviorally disabled persons for the purpose of establishing a personal residence. A
61 behavioral health center shall not lease a residence to such persons if the behavioral health center
62 is providing behavioral health services to those persons. A behavioral health center providing
63 behavioral health services in a group residential home must be licensed, but the individuals with a
64 developmental or behavioral disability that own or lease the residence do not need to be licensed.

65 "Inspector General" means the Inspector General of the Office of the Inspector General as
66 described in §16-1-22 of this code, or his or her designee.

67 "Intermediate care facility" means a facility, or distinct part of a facility that is primarily for
68 the diagnosis, treatment, or rehabilitation of the intellectually disabled or persons with related
69 conditions; and provides, in a protected residential setting, ongoing evaluation, planning, 24-hour
70 supervision, coordination, and integration of health or rehabilitative services to help each
71 individual function at his or her greatest ability.

72 "Intensively supported setting" means a private residence with no more than three clients

73 receiving behavioral health services or supportive services who lease, own, or rent the residence.
74 Behavioral health services or supportive services, or both, are provided by direct support
75 professionals from a behavioral health center and do not live in the residence with the client. A
76 behavioral health center shall not lease the residence to such clients, if the behavioral health
77 center is providing behavioral health services.

78 "Neglect" means the failure of the behavioral health center, its employees, or service
79 providers to provide goods and services to a resident that are necessary to avoid physical harm,
80 pain, mental anguish, or emotional distress.

81 "Non-residential behavioral health center" means a behavioral health center that does not
82 provide behavioral health services in a residential treatment model, including, but not limited to,
83 outpatient behavioral health centers.

84 "Office of Health Facility Licensure and Certification" means the West Virginia Office of
85 Health Facility Licensure and Certification within the Office of the Inspector General.

86 "Owner" means any person, partnership, association, or corporation listed as the owner of
87 a behavioral health center on the application and licensing forms required by this article.

88 "Residential behavioral health center" means a behavioral health center that provides
89 behavioral health services in a residential treatment model, including, but not limited to, forensic
90 group home, group residential facility, group residential home, intermediate care facility,
91 intensively supported setting, crisis residential unit, detox services, or public inebriate shelter, or a
92 combination thereof.

93 "Substantial compliance" means a level of compliance with the minimum standards set
94 forth in this article and any applicable rules promulgated pursuant to this article so as not to impose
95 a risk to the rights, health, and safety of a client.

96 "Supportive service" means a service provided exclusively to individuals with intellectual
97 disabilities, developmental disabilities, ongoing mental health, or addictive challenged, or
98 traumatic brain injury. This service is designed to assist the individual to live in the community in a

99 manner that is socially inclusive, optimally independent, and self-directed while preserving his or
 100 her health, safety, and quality of life. These services are not designed to change behavior or
 101 emotional functioning to support the individual in his or her community-based settings. Supportive
 102 services may include coaching or prompting of age-appropriate living skills.

103 "Telehealth" means the mode of delivering health care services and public health via
 104 information and communication technologies to facilitate the diagnosis, consultation, treatment,
 105 education, care management, and self-management of a patient's health care while the patient is
 106 at the originating site and the health care provider is at a distant sight.

107 "Variance" means written permission granted by the Inspector General to a behavioral
 108 health center than a requirements of this article or rules promulgated pursuant to this article may
 109 be accomplished in a manner different from the manner set forth in this article or associated rules.

110 "Waiver" means a formal, time-limited agreement between a designated oversight agency
 111 and the behavioral health center that suspends a rule, policy, or standard for a specific situation so
 112 long as the health, safety, welfare, and clinical treatment of the client is better served in the
 113 situation by suspension of the rule, policy, and standard than by enforcement.

§16-5EE-3. Residential behavioral health centers to obtain license; applications; fees and inspections.

1 (a) The Inspector General designates the director of the Office of Health Facility Licensure
 2 and Certification to enforce the provisions of this article for residential behavioral health centers,
 3 except where otherwise stated.

4 (b) No person, partnership, association, or corporation may operate a residential
 5 behavioral health center without first obtaining a license from the director in accordance with the
 6 provisions of this article and the rules lawfully promulgated pursuant to this article.

7 (c) Any person, partnership, association, or corporation desiring a license to operate a
 8 residential behavioral health center in this state shall file with the Office of Health Facility Licensure
 9 and Certification an application in such form and with such information as the director shall

10 prescribe and furnish accompanied by an application fee.

11 (d) The Office of Health Facility Licensure and Certification shall inspect each residential
12 behavioral health center and review all documentation submitted with the application. The Office
13 of Health Facility Licensure and Certification shall issue a license if the residential behavioral
14 health center is in substantial compliance with the provisions of this article and with the rules
15 lawfully promulgated pursuant to this article.

16 (e) A license shall be issued in one of three categories:

17 (1) An initial 12-month license shall be issued to a residential behavioral health center
18 establishing a new residential behavioral health center for which there is insufficient client
19 participation to demonstrate substantial compliance with this article and with all rules promulgated
20 pursuant to this article;

21 (2) A provisional license shall be issued when a residential behavioral health center seeks
22 a renewal license and the residential behavioral health center is not in substantial compliance with
23 this article and with all rules promulgated pursuant to this article, but does not pose a significant
24 risk to the health, safety, welfare, or clinical treatment of a client. It shall expire not more than six
25 months from the date of issuance, and may not be consecutively reissued; or

26 (3) A renewal license shall be issued when a residential behavioral health center is in
27 substantial compliance with this article and with all rules promulgated pursuant to this article. A
28 renewal license shall expire not more than two years from the date of issuance.

29 (f) At least 60 days prior to the license expiration date, an application for renewal shall be
30 submitted by the residential behavioral health center to the director on forms furnished by the
31 director. A license shall be renewed if the director determines that the applicant is in substantial
32 compliance with this article and with all rules promulgated pursuant to this article.

33 (g) Any behavioral health center licensed prior to the effective date of this article which is a
34 residential behavioral health center, as defined herein, shall submit a renewal application as a
35 residential behavioral health center at least 60 days prior to the license expiration date to the

36 director on forms furnished by the director. A license shall be renewed if the director determines
37 that the applicant is in substantial compliance with this article and with all rules promulgated
38 pursuant to this article.

39 (h) A license issued to one residential behavioral health center pursuant to this article is
40 not transferrable or assignable. Each residential behavioral health center license may encompass
41 multiple locations within the residential behavioral health center's designated service area.

42 (i) Any change of ownership of a licensed residential behavioral health center requires
43 submission of a new application. The residential behavioral health center shall notify the director
44 of any change in ownership within 10 days of the change of ownership and must submit a new
45 application within the time frame prescribed by the director.

46 (j) Any person, partnership, association, or corporation that seeks to obtain or renew a
47 license for a residential behavioral health center in this state must submit to the director the
48 following information and documentation:

49 (1) Full operating name of the residential behavioral health center as advertised, as well as
50 the full operating name of each location within the designated service area of the residential
51 behavioral health center;

52 (2) Legal name of the residential behavioral health center as registered with the West
53 Virginia Secretary of State;

54 (3) Physical address of the residential behavioral health center for the administrative
55 office;

56 (4) Mailing address for the residential behavioral health center for the administrative office;

57 (5) Email address to be used as the primary contact for the residential behavioral health
58 center;

59 (6) Federal Employer Identification Number assigned to the residential behavioral health
60 center;

61 (7) All business licenses issued to the residential behavioral health center by this state, the

62 state Tax Department, the Secretary of State, and all other applicable business entities;

63 (8) Brief description of all services provided by the residential behavioral health center;

64 (9) Description of designated service area which shall not encompass the entire state in
65 one license;

66 (10) For each residential behavioral health center location:

67 (A) Name of location or building;

68 (B) Physical address;

69 (C) Telephone number;

70 (D) Ownership of the building;

71 (E) Type of construction, square footage, number of stories, whether sprinkled; and if all
72 clients are capable of self-preservation;

73 (F) Disability served;

74 (G) Age range of clients served;

75 (H) Type of services provided and type of residential services provided; and

76 (I) Total number of clients served;

77 (11) Hours of operation for the administrative office;

78 (12) Legal Registered Owner Name – name of the person registered as the legal owner of
79 the residential behavioral health center. If more than one legal owner (i.e., partnership,
80 corporation, etc.), list each legal owner separately, indicating the percentage of ownership, for
81 those with a proprietary interest greater than five percent;

82 (13) Names and addresses of officer, with titles, and members of the governing body;

83 (14) Administrator's full name, and a list of all current certifications or professional licenses;

84 (15) Name and location address of all residential and non-residential behavioral health
85 centers owned or operated by the applicant;

86 (16) Notarized signature of the applicant;

87 (17) Check or money order for licensing fee and inspection fee; and

88 (18) If applicable, a copy of a valid Certificate of Need or a letter of exemption from the
89 West Virginia Health Care Authority.

90 (k) Upon satisfaction that an applicant has met all of the requirements of this article, the
91 director shall issue a license to operate a residential behavioral health center.

92 (l) The residential behavioral health center shall display the current license in a prominent
93 location in each location included in its license and in clear view of all clients.

94 (m) The schedule of fees for a residential behavioral health center is as follows:

95 (1) Initial licensure fee is \$250;

96 (2) First Renewal Licensure fee is \$250;

97 (3) Second and any subsequent renewal licensure fee is \$500; and

98 (4) Change of ownership licensure fee is \$500.

99 (n) In addition to the set fee, the annual renewal fee shall be adjusted on the first day of
100 June of each year to correspond with increases in the consumer price index. The Office of Health
101 Facility Licensure and Certification shall post the consumer price index increases, immediately
102 after those increases are released annually, on its website located at: <http://ohflac.wvdhhr.org/>.

103 (o) An application for licensure is not considered complete until the applicant pays the
104 licensing and inspection fee. The fee shall accompany the application form.

105 (p) License fees paid by an applicant are non-refundable.

§16-5EE-4. Non-residential behavioral health centers to obtain license; applications; fees and inspections.

1 (a) The Inspector General designates the director of the Office of Health Facility Licensure
2 and Certification to enforce the provisions of this article for non-residential behavioral health
3 centers, except where otherwise stated.

4 (b) No person, partnership, association, or corporation may operate a non-residential
5 behavioral health center without first obtaining a license from the director in accordance with the
6 provisions of this article and the rules lawfully promulgated pursuant to this article.

7 (c) Any person, partnership, association, or corporation desiring a registration to operate a
8 non-residential behavioral health center in this state shall file with the Office Health Facility
9 Licensure and Certification an application in such form and with such information as the director
10 shall prescribe and furnish accompanied by an application fee.

11 (d) The Office of Health Facility Licensure and Certification shall inspect each non-
12 residential behavioral health center and review all documentation submitted with the application.
13 The Office of Health Facility Licensure and Certification shall issue a license if the non-residential
14 behavioral health center is in substantial compliance with the provisions of this article and with the
15 rules lawfully promulgated pursuant to this article.

16 (e) A license shall be issued in one of three categories:

17 (1) An initial 12-month license shall be issued to a non-residential behavioral health center
18 establishing a new non-residential behavioral health center for which there is insufficient client
19 participation to demonstrate substantial compliance with this article and with all rules and
20 promulgated pursuant to this article;

21 (2) A provisional license shall be issued when a non-residential behavioral health center
22 seeks a renewal license, and the non-residential behavioral health center is not in substantial
23 compliance with this article and with all rules promulgated pursuant to this article, but does not
24 pose a significant risk to the health, safety, welfare, or clinical treatment of a client. It shall expire
25 not more than six months from the date of issuance, and may not be consecutively reissued; or

26 (3) A renewal license shall be issued when a non-residential behavioral health center is in
27 substantial compliance with this article and with all rules promulgated pursuant to this article. A
28 renewal licenses shall expire not more than two years from the date of issuance.

29 (f) At least 60 days prior to the license expiration date, an application for renewal shall be
30 submitted by the non-residential behavioral health center to the director on forms furnished by the
31 director. A license shall be renewed if the director determines that the applicant is in compliance
32 with this article and with all rules promulgated pursuant to this article.

33 (g) Any behavioral health center licensed prior to the effective date of this article which is a
34 non-residential behavioral health center, as defined herein, shall submit a renewal application as a
35 non-residential behavioral health center at least 60 days prior to the license expiration date to the
36 director on forms furnished by the director. A license shall be renewed if the director determines
37 that the applicant is in substantial compliance with this article and with all rules promulgated
38 pursuant to this article.

39 (h) A license issued to one non-residential behavioral health center pursuant to this article.
40 Each non-residential behavioral health center license may encompass multiple locations within
41 the non-residential behavioral health center’s designated service area.

42 (i) Any change of ownership of a licensed non-residential behavioral health center requires
43 submission of a new application. The non-residential behavioral health center shall notify the
44 director of any change in ownership within 10 days of the change of ownership and must submit a
45 new application within the time frame prescribed by the director.

46 (j) Any person, partnership, association, or corporation that seeks to obtain or renew a
47 license for a non-residential behavioral health center in this state must submit to the director the
48 following information and documentation:

49 (1) Full operating name of the non-residential behavioral health center as advertised, as
50 well as the full operating name of each location within the designated service area of the non-
51 residential behavioral health center;

52 (2) Legal name of the non-residential behavioral health center as registered with the West
53 Virginia Secretary of State;

54 (3) Physical address of the non-residential behavioral health center for the administrative
55 office;

56 (4) Mailing address for the non-residential behavioral health center for the administrative
57 office;

58 (5) Email address to be used as the primary contact for the non-residential behavioral

59 health center;

60 (6) Federal Employer Identification Number assigned to the non-residential behavioral

61 health center;

62 (7) All business licenses issued to the non-residential behavioral health center by this

63 state, the state Tax Department, the Secretary of State, and all other applicable business entities;

64 (8) Brief description of all services provided by the non-residential behavioral health

65 center;

66 (9) Description of designated service area which shall not encompass the entire state in

67 one license;

68 (10) For each non-residential behavioral health center location;

69 (A) Name of location or building;

70 (B) Physical address;

71 (C) Telephone number;

72 (D) Ownership of the building;

73 (E) Disability served;

74 (F) Age range of clients served;

75 (G) Type of services provided and type of non-residential services provided;

76 (H) Total number of clients served; and

77 (I) Hours of operation;

78 (11) Hours of operation for the administrative office;

79 (12) Legal Registered Owner Name – name of the person registered as the legal owner of

80 the non-residential behavioral health center. If more than one legal owner (i.e., partnership,

81 corporation, etc.) list each legal owner separately, indicating the percentage of ownership, for

82 those with a proprietary interest greater than five percent;

83 (13) Names and addresses of officers, with titles, and members of the governing body;

84 (14) Administrator's full name, and a list of all current certifications or professional licenses;

85 (15) Name and location address of all other residential and non-residential behavioral
86 health centers owned or operated by the applicant;

87 (16) Notarized signature of the applicant;

88 (17) Check or money order for licensing fee and inspection fee; and

89 (18) If applicable, a copy of a valid Certificate of Need or a letter of exemption from the
90 West Virginia Health Care Authority.

91 (k) Upon satisfaction that an applicant has met all of the requirements of this article, the
92 director shall issue a license to operate a non-residential behavioral health center.

93 (l) The non-residential behavioral health center shall display the current license in a
94 prominent location in each location included in its license and in clear view of all clients.

95 (m) The schedule of fees for a non-residential behavioral health center is as follows:

96 (1) Initial licensure fee is \$250;

97 (2) First Renewal Licensure fee is \$250;

98 (3) Second and any subsequent renewal licensure fee is \$500; and

99 (4) Change of ownership licensure fee is \$500.

100 (n) In addition to the set fee, the annual renewal fee shall be adjusted on the first day of
101 June of each year to correspond with increases in the consumer price index. The Office of Health
102 Facility Licensure and Certification shall post the consumer price index increases, immediately
103 after those increases are released annually, on its website located at: <http://ohflac.wvdhhr.org/>.

104 (o) An application for licensure is not considered complete until the applicant pays the
105 licensing and inspection fee. The fee shall accompany the application form.

106 (p) License fees paid by an applicant are non-refundable.

§16-5EE-5. Operational requirements.

1 (a) The behavioral health center shall be licensed and registered in this state with the
2 director, the Secretary of State, the State Tax Department, and all other applicable business or
3 licensing entities.

4 (b) Each behavioral health center shall designate an administrator who will be responsible
5 for the operation of the behavioral health center and all locations within the designated service
6 area. Within 10 days after termination of an administrator, the behavioral health center shall notify
7 the director of the identity of another administrator for that behavioral health center. The
8 administrator shall be responsible for complying with all requirements related to the licensing and
9 operation of the behavioral health center.

10 (c) The behavioral health center shall be eligible for, and not prohibited from, enrollment
11 with West Virginia Medicaid and other private insurance.

12 (d) All persons employed by the behavioral health center shall comply with the
13 requirements for the operation of a behavioral health center established within this article and by
14 any rule adopted pursuant to this article.

15 (e) All employees of a behavioral health center shall furnish fingerprints for a state and
16 federal criminal record check by the Criminal Identification Bureau and the Federal Bureau of
17 Investigation. The behavioral health center shall be subject to the provisions of §16-49-1 et seq. of
18 this code and subsequent rules promulgated thereunder.

19 (f) The behavioral health center shall immediately notify the director, or his or her designee,
20 in writing of any changes to its operations that affect the behavioral health center's continued
21 compliance with the certification and licensure requirements.

22 (g) A practitioner providing behavioral health services may perform certain aspects of
23 telehealth if permitted under his or her scope of practice. A practitioner shall be in compliance with
24 all other requirements related to providing behavioral health services by telehealth within the state
25 of West Virginia. If a behavioral health center is practicing solely by telehealth in this state, the
26 behavioral health center shall utilize an electronic record keeping system accessible for oversight
27 by the Office of Health Facility Licensure and Certification and otherwise be able to comply with
28 the _____ inspection _____ process _____ remotely.

§16-5EE-6. Restrictions; variances and waivers; exemptions.

1 (a) A forensic group home shall not be located within one mile of a residential area; a public
2 or private day care center; or a public or private K-12 school, learning pod, or micro-school. The
3 director may grant a variance to a forensic group home in existence prior to March 6, 2023, if the
4 forensic group home demonstrates that it has adequate patient population controls and that
5 otherwise meets the requirements set forth in this rule.

6 (b) Behavioral health centers shall not have procedures for offering a bounty, monetary,
7 equipment, merchandise reward, free services, or other incentive for individuals in exchange for
8 recruitment of new clients into the behavioral health center.

9 (c) The director may grant a waiver or a variance from any licensure standard, or portion
10 thereof, for the period during which the license is in effect.

11 (d) Requests for waivers or variances of licensure standards shall be in writing to the
12 director and shall include:

13 (1) The specific section of this article or rules promulgated pursuant to this article for which
14 a waiver or variance is sought;

15 (2) The rationale for requesting the waiver or variance;

16 (3) Documentation by the behavioral health center's administrator to the director that
17 describes how the behavioral health center will maintain the quality of services and patient safety
18 and welfare if the waiver or variance is granted; and

19 (4) The consequences of not receiving approval of the requested waiver or variance.

20 (e) The director, in consultation with the Inspector General, shall issue a written statement
21 to the behavioral health center granting or denying a request for a waiver or variance of behavioral
22 health center licensure standards only when the behavioral health center has documented and
23 demonstrated that it complies with the intent of the particular requirement in a manner not
24 permitted by the requirement.

25 (f) The behavioral health center shall maintain a file copy of all requests for waivers or
26 variances and the approval or denial of the requests for the period during which the license is in

27 effect.

28 (g) The Office of Health Facility Licensure and Certification may inspect each behavioral
29 health center prior to a waiver or variance being granted, including a review of client records, to
30 ensure and verify that any waiver or variance request meets the spirit and purpose of this article
31 and the rules promulgated pursuant to this article. The Office of Health Facility Licensure and
32 Certification may verify, by unannounced inspection, that the behavioral health center is in
33 compliance with any waiver or variance granted by the director for the duration of such waiver or
34 variance.

§16-5EE-7. Inspection; inspection warrant.

1 (a) The Office of Health Facility Licensure and Certification shall inspect each behavioral
2 health center every two years, including a review of client records, to ensure that the behavioral
3 health center complies with this article and the applicable rules.

4 (b) The Office of Health Facility Licensure and Certification shall perform unannounced
5 complaint and verification inspections at behavioral health centers, including a review of client
6 records, to ensure that the behavioral health center complies with this article and the applicable
7 rules.

8 (c) Any action taken to correct a violation shall be documented in writing by the
9 administrator, or his or her designee, of the behavioral health center and may be verified by follow-
10 up visits by the Office of Health Facility Licensure and Certification.

11 (d) Notwithstanding the existence or pursuit of any other remedy, the Inspector General
12 may, in the manner provided by law, maintain an action in the name of the state for an inspection
13 warrant against any person, partnership, association, or corporation to allow any inspection or
14 seizure of records in order to complete any inspection allowed by this article or the rules
15 promulgated pursuant to this article, or to meet any other purpose of this article or the rules
16 promulgated pursuant to this article.

§16-5EE-8. Informal dispute resolution.

1 (a) A behavioral health center adversely affected by a citation of a deficient practice issued
2 pursuant to this article or any rules promulgated pursuant to this article may request the informal
3 dispute resolution process. A behavioral health center may contest a cited deficiency as contrary
4 to law or unwarranted by the facts, or both. A behavioral health center may choose to have the
5 review completed by an independent review organization. The informal dispute resolution process
6 is only available to contest a citation of a deficient practice issue.

7 (b) The director shall contract with the independent review organizations to conduct an
8 independent informal dispute resolution process. The independent review organization shall be
9 accredited by the Utilization Review Accreditation Commission.

10 (c) The informal dispute resolution process is not a formal evidentiary proceeding and
11 utilizing the informal dispute resolution process does not waive the behavioral health center's right
12 to a formal administrative hearing.

13 (d) The informal dispute resolution process consists of the following:

14 (1) No later than 10 working days following the last day of the survey or inspection, the
15 director shall transmit to the behavioral health center a statement of deficiencies committed by the
16 behavioral health center. Notification of the availability of the informal dispute resolution process,
17 including the option of an independent review organization, and an explanation of the informal
18 dispute resolution process shall be included in the transmittal;

19 (2) Within 10 working days of receipt of the statement of deficiencies, the behavioral health
20 center shall return its plan of correction for the cited deficiencies to the director and may request in
21 writing the informal dispute resolution process to refute the cited deficiencies. The behavioral
22 health center must submit its supporting documentation and indicate its request for the informal
23 process at the time of submission. No plan of correction is required for citations under appeal. The
24 report shall not be release to the public until appealed citations are resolved;

25 (3) Within five working days of receipt of the written request for the informal dispute
26 resolution process made by a behavioral health center, the director, dependent upon the

27 behavioral health center's request, will refer the request to an internal team not associated with the
28 survey event or to an independent review organization from the list of certified independent review
29 organizations approved by the state. The director shall vary the selection of the independent
30 review organization on a rotating basis.

31 (4) Within 10 working days of receipt of the written request for the informal dispute
32 resolution process made by a behavioral health center, the informal dispute resolution conference
33 shall be scheduled unless additional time is requested by the behavioral health center. Before the
34 informal dispute resolution conference, the behavioral health center may submit additional
35 information.

36 (5) The behavioral health center and the Office of Health Facility Licensure and
37 Certification may not be accompanied by counsel during the informal dispute resolution
38 conference. The manner in which the information dispute resolution conference is held is at the
39 discretion of the behavioral health center, but is limited to:

40 (A) A desk review of written information submitted by the behavioral health center;

41 (B) A telephonic conference; or

42 (C) A face-to-face conference held at the behavioral health center or a mutually agreed
43 upon location.

44 (6) If the independent committee determines the need for additional information,
45 clarification, or discussion after conclusion of the informal dispute resolution conference, the
46 director or the behavioral health center, or both, shall present the requested information.

47 (7) Within 10 calendar days of the informal dispute resolution conference, the review
48 committee shall make a determination, based upon the facts and findings presented, and shall
49 transmit a written decision containing the rationale for its determination to the director.

50 (8) If the director disagrees with the determination, the director may reject the
51 determination made by the independent review organization and shall issue an order setting forth
52 the rationale for the reversal of the independent review committee's decision to the behavioral

53 health center within 10 business days of receiving the determination.

54 (9) If the director accepts the determination, the director shall issue an order affirming the
55 independent review organization's determination within 10 business days of receiving the
56 independent reviewer's determination.

57 (10) If the independent review committee determines that the original statement of
58 deficiencies should be changed as a result of the informal dispute resolution process and the
59 director accepts the determination, the director shall transmit a revised statement of deficiencies
60 to the behavioral health center within 10 business days of receipt of the determination.

61 (11) Within 10 business days of receipt of the director's order and the revised statement of
62 deficiencies, the behavioral health center shall submit a revised plan to correct any remaining
63 deficiencies to the director.

64 (e) Under the following circumstances, the behavioral health center is responsible for
65 certain costs of the independent informal dispute resolution review, which shall be remitted to the
66 director within 60 days of the informal dispute resolution order;

67 (1) If the behavioral health center requests a face-to-face conference, the behavioral
68 health center shall pay any costs incurred by the independent review organization that exceed the
69 cost of a telephonic conference regardless of which party ultimately prevails.

70 (2) If the independent review organization's decision supports the originally written
71 contested deficiency or adverse action taken by the director, the behavioral health center shall
72 reimburse the director for the cost charged by the independent review organization. If the
73 independent review organization's decision supports some of the originally written contested
74 deficiencies, but not all of them, the independent reviewer will rule as to approximate portions of
75 the expense of the hearing to be paid by each party.

§16-5EE-9. License limitation; denial; suspension; revocation.

1 (a) The director, in consultation with the Inspector General, may, by order, impose a ban on
2 the admission of clients or reduce the client capacity or census of the behavioral health center, or

3 any combination thereof, when he or she finds upon inspection of the behavioral health center that
4 the licensee is not providing adequate care under the behavioral health center's existing client
5 census, and that a reduction in client capacity or census or imposition of a ban on admissions, or
6 any combination thereof, would place the licensee in a position render adequate care. Any notice
7 to a licensee of reduction in client census or ban on admissions shall include the terms of the order,
8 the reasons therefor, and the date set for compliance. A reduction in client census or ban on
9 admissions may be ordered at a specific location on a behavioral health center license or the
10 entire license based upon violations being cited and past violations of all behavioral health center
11 locations on a license.

12 (b) The director, in consultation with the Inspector General, may deny, suspend, or revoke
13 a license issued pursuant to this article if the provisions of this article or of the rules promulgated
14 pursuant to this article are violated. The director, in consultation with the Inspector General, may
15 revoke a behavioral health center's license and prohibit all professionally licensed providers
16 associated with that behavioral health center from practicing at the behavioral health center
17 location based upon an annual, periodic, complaint, verification, or other inspection and
18 evaluation. Any notice to an applicant or licensee of a denial, suspension, or revocation shall
19 include the terms of denial, suspension, or revocation; the reasons therefor; and the date set for
20 compliance. A denial, suspension, or revocation may be applied at a specific location on a
21 behavioral health center license, or the entire license based upon violations being cited and past
22 violations of all behavioral health center locations on a license.

23 (c) The notice will be sent by certified mail and electronically transmitted to the behavioral
24 health center at the addresses where the behavioral health center location concerned is located
25 and the electronic mail address that was provided by the behavioral health center at the time of
26 licensing.

27 (d) If a license is denied or revoked as herein provided, a new application for a license
28 shall be considered by the director if, when and after the conditions upon which the denial or

29 revocation was based have been corrected and evidence of this fact has been furnished by the
30 applicant or licensee. A new license shall then be granted after proper inspection, if applicable,
31 has been made and all provisions of this article and any rules promulgated pursuant to this article
32 have been satisfied.

33 (e) Upon the effective date of the denial, suspension, or revocation, the administrator of the
34 behavioral health center shall advise, in writing, the director and the Board of Pharmacy of the
35 disposition of all medications located on the premises of the behavioral health center. The
36 disposition is subject to the supervision and approval of the director. Medications that are
37 purchased or held by a behavioral health center that is not licensed may be deemed adulterated.

38 (f) If the license of a behavioral health center is suspended or revoked, any person named
39 in the licensing documents of the behavioral health center, including persons owning or operating
40 the behavioral health center, may not, as an individual or as part of a group, apply to operate
41 another, new behavioral health center for up to five years after the date of suspension or
42 revocation. The director, in consultation with the Inspector General, may grant a variance pursuant
43 to §16-5EE-6 of this code to the prohibition of this subsection.

44 (g) If the license of a behavioral health center is denied, suspended, or revoked, the
45 behavioral health center, any owner of the behavioral health center, or lessor of the behavioral
46 health center property shall cease to operate the premises as a behavioral health center as of the
47 effective date of the denial, suspension, or revocation. The owner or lessor of the behavioral
48 health center property is responsible for removing all signs and symbols identifying the premises
49 as a behavioral health center within 30 days.

50 (h) The period of suspension for the license of a behavioral health center shall be
51 prescribed by the director but may not exceed one year.

§16-5EE-10. Violations; civil money penalties.

1 (a) Any person, partnership, association, or corporation which establishes, conducts,
2 manages, or operates a behavioral health center without first obtaining a license as herein

3 provided, or who commits a violation as described in this subsection may be assessed a civil
4 money penalty by the director, in consultation with the Inspector General, in accordance with this
5 subsection. Each day of continuing violation after conviction shall be considered a separate
6 violation:

7 (1) If a behavioral health center is found to be in violation of any provision of this rule,
8 unless otherwise noted herein, the director, in consultation with the Inspector General, may limit,
9 suspend, or revoke the behavioral health center's license, if the licensee commits a violation which
10 endangers the health, safety, or welfare of a client;

11 (2) If the behavioral health center fails to take action to correct a violation after being cited
12 for the violation, the director, in consultation with the Inspector General, may impose a civil money
13 penalty not to exceed \$10,000 and, in the case of an owner-operator behavioral health center, limit
14 or revoke the behavioral health center's license;

15 (3) If the behavioral health center conducts practices which jeopardize the health, safety,
16 welfare, or clinical treatment of clients when such practices clearly give rise to imminent danger or
17 serious harm or the immediate risk of imminent danger of serious harm, the director, in
18 consultation with the Inspector General, may impose a civil money penalty not to exceed \$10,000;

19 (4) If the behavioral health center conducts practices which jeopardize the health, safety,
20 welfare, or clinical treatment of clients when such practices result in hospitalization, serious bodily
21 injury, or death of a client, the director, in consultation with the Inspector General, may impose a
22 civil money penalty not to exceed \$50,000;

23 (5) If an owner of a behavioral health center concurrently operates an unlicensed
24 behavioral health center, the director, in consultation with the Inspector General, may impose a
25 civil money penalty upon the owner not to exceed \$5,000 per day;

26 (6) If the owner of a behavioral health center that requires a license under this rule fails to
27 apply for a new license for the behavioral health center upon a change of ownership and operates
28 the behavioral health center under new ownership, the director, in consultation with the Inspector

29 General, may impose a civil money penalty upon the owner, not to exceed \$5,000; or

30 (7) If an owner knowingly operates, owns, or manages an unlicensed behavioral health
31 center that is required to be licensed pursuant to this rule; obtains a license to operate a behavioral
32 health center through misrepresentation or fraud; or procures or attempts to procure a license for a
33 behavioral health center for any other person by making or causing to be made any false
34 representation, the director, in consultation with the Inspector General, may assess a civil money
35 penalty of not more than \$20,000. Any penalty may be in addition to or in lieu of any other action
36 that may be taken by the director or any other board, court, or entity.

37 (b) In determining whether a civil money penalty is to be imposed and in fixing the amount
38 of the penalty, the director shall consider the following factors:

39 (1) The gravity of the violation, including the probability that death or serious physical or
40 emotional harm to a client has resulted, or could have resulted, from the behavioral health center's
41 actions or actions of the owner or any staff employed by or associated with the behavioral health
42 center, the severity of the action or potential harm, and the extent to which the provisions of the
43 applicable laws or rules were violated;

44 (2) What actions, if any, the owner or staff took to correct the violations;

45 (3) Whether there were any previous violations at the behavioral health center; and

46 (4) The financial benefits that the behavioral health center derived from committing or
47 continuing to commit the violation.

48 (c) Upon finding that a registered or licensed professional has violated the provisions of
49 this rule, the director will provide notice of the violation to the applicable professional licensing
50 board.

51 (d) When any behavioral health center is issued a civil money penalty, written notice will be
52 given to the owner or owners of the behavioral health center, stating the grounds of the civil money
53 penalty and the date due for any civil money penalty. The notice will be sent by certified mail and
54 electronically transmitted to the owner or owners at the addresses where the behavioral health

55 center location concerned is located and the electronic mail address that was provided by the
56 behavioral health center at the time of licensing.

§16-5EE-11. Due process; injunction.

1 (a) Within 10 days of receipt of the notice required in §16-5EE-9 or §16-5EE-10 of this
2 code, or both, of this article, the owner or owners may submit a request for an administrative
3 hearing before the Board of Review or an informal meeting to address the subject of the notice;

4 (b) The behavioral health center and its owner or owners and the Office of Health Facility
5 Licensure and Certification will be entitled to be represented by legal counsel at the informal
6 meeting and at the administrative hearing at their own expense, respectively.

7 (c) All of the pertinent provisions of §29A-5-1 et seq., of this code and W. Va. Code of State
8 Rules §69-1-1 et seq., shall apply to and govern any formal hearing authorized by this article and
9 any rules promulgated pursuant thereto.

10 (d) If an owner fails to request a hearing within the time frame specified, he or she shall be
11 subject to the full limitation, enforcement action, or penalty, or any combination thereof, imposed
12 pursuant to §16-5EE-9 or §16-5EE-10 of this code.

13 (e) The filing of a request for an administrative hearing or an informal meeting does not
14 stay or supersede the enforcement of a limitation, enforcement action, or penalty, or any
15 combination thereof, imposed pursuant to §16-5EE-9 or §16-5EE-10 of this code.

16 (f) Any party who is dissatisfied with the decision of the Board of Review as a result of the
17 formal hearing provided in this section may, within 30 days after receiving notice of the decision,
18 petition the West Virginia Intermediate Court of Appeals, in term or in vacation, for judicial review
19 of the decision.

20 (g) The court may affirm, modify, or reverse the decision of the Board of Review and either
21 the applicant or the licensee, or the Inspector General may appeal from the court's decision to the
22 West Virginia Supreme Court of Appeals.

23 (h) Notwithstanding the existence or pursuit if any other remedy, the Inspector General

24 may, in the manner provided by law, maintain an action in the name of the state for an injunction
25 against any person, partnership, association, or corporation to restrain or prevent the
26 establishment, conduct, management, or operation of any behavioral health center or violation of
27 any provision of this article or any rule lawfully promulgated thereunder without first obtaining a
28 license in the manner herein provided.

§16-5EE-12. Advertisement disclosure.

1 Any advertisement made by or on behalf of a behavioral health center through public
2 media, such as a telephone directory, medical directory, newspaper or other periodical, outdoor
3 advertising, radio or television, or through written or recorded communication, concerning the
4 provision of behavioral health services as defined in §16-5EE-2 of this code, shall include the
5 name of, at a minimum, the person responsible for the content of the advertisement.

§16-5EE-13. Rules; minimum standards for behavioral health centers.

1 (a) The Inspector General shall promulgate rules in accordance with the provisions of
2 §29A-3-1 et seq. of this code, for the licensure of behavioral health centers to ensure adequate
3 care, treatment, health, safety, welfare, and comfort of clients at behavioral health centers. These
4 rules shall include, at a minimum:

5 (1) The process to be followed by applicants seeking a license, including, but not limited to,
6 the licensing fee for residential behavioral health centers and non-residential behavioral health
7 centers;

8 (2) The qualifications and supervision of licensed and non-licensed personnel at
9 behavioral health centers and training requirements for all behavioral health center practitioners
10 who are not regulated by another board;

11 (3) The provision and coordination of client care, including, but not limited to, the services
12 and program description; admission requirements and process; assessments and intake
13 procedures; planning for services; participation of a designated legal representative in planning for
14 services; initial plan of service; treatment plan or treatment strategy; reviews of treatment plan or

15 treatment strategy; critical treatment junctures; discharge planning; medication services, control,
16 and administration; special services and populations; abuse, neglect, and critical incidents; non-
17 critical incidents; quality assurance; injuries of unknown source; management of continued
18 inappropriate behavior; and emergency management of potentially dangerous behavior;

19 (4) The management, operation, staffing, and equipping of the behavioral health center;

20 (5) The clinical, medical, patient, and business records kept by the behavioral health
21 center;

22 (6) The procedures for inspections and for review of utilization and quality of client care;

23 (7) The standards and procedures for the general operation of a behavioral health center,
24 including, but not limited to, behavioral health center operations; physical operations; physical
25 facilities; infection control requirements; health and safety requirements; insurance, bonding, and
26 financial management; transportation; emergency planning and response; and quality assurance;

27 (8) The statement of client rights and provisions related to violation of client rights and a
28 human rights committee;

29 (9) The criteria used to identify a facility as residential behavioral health center and a non-
30 residential behavioral health center;

31 (10) The standards, duties, and procedures to be followed by an administrator and
32 governing body in providing supervision, direction, and control of individuals employed by or
33 associated with a behavioral health center;

34 (11) Data collection, privacy, and reporting requirements;

35 (12) The criteria and requirements related to required services and specific functions and
36 treatment environments of a behavioral health center;

37 (13) The provisions for requesting and responding to a written request for a variance or
38 waiver;

39 (14) The provisions for administrative due process; suspension, revocation, or denial of a
40 license; ban on admissions; reduction in census; and civil money penalties, and the time frames

41 for the same;

42 (15) Such other standards or requirements as the Inspector General determines are
43 appropriate.

44 (b) The Legislature finds that an emergency exists and, therefore, the Inspector General
45 shall file emergency rules to implement the provisions of this section pursuant to the provisions of
46 §29A-3-15 of this code.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 9. LICENSING OF HOSPITALS.

§27-9-1. License from Secretary of Health and Human Resources; regulations.

1 [Repealed.]

§27-9-2. Forensic group homes.

1 [Repealed.]

ARTICLE 17. GROUP RESIDENTIAL FACILITIES.

§27-17-1. Definitions.

1 [Repealed.]

§27-17-2. Permitted use of group residential facilities; restrictions.

1 [Repealed.]

§27-17-3. License from Secretary of Health and Human Resources; regulations; and penalties.

1 [Repealed.]

§27-17-4. Exclusion by private agreement void.

1 [Repealed.]

NOTE: The purpose of this bill is to consolidate and update the behavioral health center licensing provisions and requirements. This update would separate behavioral health centers based on treatment settings, residential or non-residential. This division would allow better regulation of the facilities based on the treatment setting. Modernization of licensing fees and civil money penalties are to address issues related to behavioral health centers.

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