WEST VIRGINIA CODE CHAPTER 27 ARTICLE 1A

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§27-1A-1. Statement of policy.

The purpose of this article is to improve the administration of the state hospitals, raise the standards of treatment of the mentally ill and intellectually disabled in the state hospitals, encourage the further development of outpatient and diagnostic clinics, establish better research and training programs, and promote the development of mental health.

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§27-1A-2. Creation; composition; control of state hospitals.

There shall be a state department of mental health, to be known as the department of mental health. It shall be a corporation and, as such, shall have a seal and may contract and be contracted with. The department shall consist of a director of mental health, supervisors of divisions of the department, and such other employees as are needed to carry out its functions. The department shall supervise and control the state hospitals.

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§27-1A-3. Appointment of commissioner; qualifications; term; oath; bond; salary and expenses.

The Governor shall appoint the Commissioner of the Department of Mental Health by and with the consent of the Senate; he shall be known as the Commissioner of Mental Health. Before entering upon the duties of his office, the commissioner shall take and subscribe the oath of office prescribed by section five, article four of the Constitution of this state, the certificate whereof shall be filed in the office of the Secretary of State, and he shall give bond in the penalty of $10,000, conditioned as required by law. The commissioner shall serve at the will and pleasure of the Governor. The salary of the commissioner shall be the salary specified in section two-a, article seven, chapter six of this code and in addition thereto he shall be reimbursed for all necessary travel and other expenses incurred in the performance of his duties. The commissioner shall be either a qualified psychiatrist or physician with both clinical and administrative experience, or, a qualified administrator who has at least a master's degree in business administration, hospital administration, or a related field, and not less than four years' experience in health services administration or hospital administration, and with general knowledge of accounting, purchasing and personnel practices as related to the rendition of health and health related services: Provided, That if the commissioner is other than a psychiatrist or physician there shall be appointed by the commissioner a deputy commissioner for clinical services who shall be a psychiatrist.

Notwithstanding any other provision of this code to the contrary, whenever in this code there is a reference to the director of the department of mental health, it shall be construed to mean and shall be a reference to the commissioner of the department of mental health.

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§27-1A-4. Powers and duties of the secretary.

In addition to the powers and duties set forth in any other provision of this code, the Secretary of the Department of Health Facilities has the following powers and duties:

(a) To develop and maintain a state plan which sets forth needs of the state in the areas of mental health and intellectual disability; goals and objectives for meeting those needs; plan of operation for achieving the stated goals and objectives, including organizational structure; and statement of requirements in personnel funds and authority for achieving the goals and objectives.

(b) To appoint deputies and assistants to supervise the departmental programs, including hospital and residential services, and such other assistants and employees as may be necessary for the efficient operation of the department and all its programs.

(c) To promulgate rules clearly specifying the respective duties and responsibilities of program directors and fiscal administrators, making a clear distinction between the respective functions of these officials.

(d) To delegate to any of his or her appointees, assistants or employees all powers and duties vested in the commissioner, including the power to execute contracts and agreements in the name of the department as provided in this article, but the commissioner shall be responsible for the acts of such appointees, assistants and employees.

(e) To supervise and coordinate the operation of the state hospitals named in article two of this chapter and any other state hospitals, centers or institutions hereafter created for the care and treatment of the mentally ill or intellectually disabled, or both.

(f) To transfer a patient from any state hospital to any other state hospital or clinic under his or her control and, by agreement with the state Division of Corrections, transfer a patient from a state hospital to an institution, other than correctional, under the supervision of the state Division of Corrections.

(g) To make periodic reports to the Governor and to the Legislature on the condition of the state hospitals, centers and institutions or on other matters within his or her authority, which shall include recommendations for improvement of any mental health facility and any other matters affecting the mental health of the people of the state.

The Secretary of the Department of Health Facilities has all of the authority vested in the divisions of the former Department of Mental Health, as hereinafter provided.

The Secretary of the Department of Health Facilities is authorized and empowered to accept and use for the benefit of a state hospital, center or institution, or for any other mental health purpose specified in this chapter, any gift or devise of any property or thing which lawfully may be given. If such a gift or devise is for a specific purpose or for a particular state hospital, center or institution, it shall be used as specified. Any gift or devise of any

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property or thing which lawfully may be given and whatever profit may arise from its use or investment shall be deposited in a special revenue fund with the State Treasurer, and shall be used only as specified by the donor or donors.

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§27-1A-5. Division of administration; deputy; deputy commissioner; deputy commissioner's qualifications, powers and duties.

There shall be a division of administration in the department of mental health. The chief executive of this division shall be the deputy commissioner for administration. The deputy commissioner shall be a college graduate with not less than two years' experience in business administration, health services administration or hospital administration, with broad knowledge of accounting, purchasing and personnel practices as related to the rendition of health and health related services. He shall have the following duties:

(a) To keep the records in the department.

(b) To receive and disburse funds for the department as the agent of the commissioner of the department.

(c) To assemble and analyze departmental budget estimates, review requests for transfer of funds and maintain departmental appropriation and fiscal records.

(d) To make rules and regulations governing the administration and business management of the state hospitals, formulate standard fiscal procedures, and make recommendations for improvement; to make regulations concerning any superintendent's trustee funds heretofore established by authority of section three-a, article one, chapter twenty-five of the Code of West Virginia, 1931, as amended.

(e) To have the responsibility for the maintenance of the land, buildings and equipment of state hospitals.

(f) To review requisitions for supplies and equipment, and cooperate with the division of purchases in development and drafting of specifications.

(g) To handle the personnel records of the department and to process payrolls.

(h) To enter into contracts for the department consistent with his assigned duties.

(i) To develop job classifications and standards for employees of the department.

(j) To perform any other duties assigned to the division by the commissioner.

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§27-1A-6. Division of professional services; powers and duties of supervisor; liaison with other state agencies.

There is a Division of Professional Services established in the Department of Health Facilities. The supervisor of this division shall assist the director in the operation of the programs or services of the department and shall be a qualified psychiatrist.

The supervisor of this division has the following powers and duties:

(1) To develop professional standards, provide supervision of state hospitals, analyze hospital programs and inspect individual hospitals.

(2) To assist in recruiting professional staff.

(3) To take primary responsibility for the education and training of professional and subprofessional personnel.

(4) To carry on or stimulate research activities related to medical and psychiatric facilities of the department, and render specialized assistance to hospital superintendents.

(5) To establish liaison with appropriate state agencies and with private groups interested in mental health, including the state Bureau for Public Health, Division of Corrections, the Department of Education, the Board of Governors of West Virginia University, and the West Virginia Association for Mental Health, Incorporated.

(6) To license, supervise and inspect any hospital, center or institution, or part of any hospital, center or institution, maintained and operated by any political subdivision or by any person, persons, association or corporation to provide inpatient care and treatment for the mentally ill, or individuals with an intellectual disability, or both.

To perform any other duties assigned to the division by the Secretary of the Department of Health Facilities.

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§27-1A-7. Division of community services; powers and duties of supervisor.

There shall be a division of community services in the Department of Human Services. This division shall administer all funds made available to the State of West Virginia and any political subdivision thereof under the National Mental Health Act, and all other funds made available for use by this division. The director shall establish standards and criteria for reimbursing sponsoring groups for a portion of the cost of local mental health services which they may provide.

The supervisor of this division shall also have the following powers and duties:

(1) To establish standards for and supervise the operation of community mental health clinics for adults and children and to develop new community facilities and community service programs for the overall improvement of the regional mental health facilities.

(2) To develop a comprehensive and practical program of mental health education of the public, especially at the local level.

(3) To work with county mental hygiene commissions and circuit courts.

(4) To determine and approve schedules of reasonable cost for reimbursement by the patient or responsible relative for mental health services rendered.

(5) To perform any other duties assigned to the division by the director of the department.

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§27-1A-8. Superintendents to pay money to State Treasury through department of mental health; appropriations; deficiency; how met.

All moneys and funds belonging to the state which shall come into the possession or under the control of the superintendent or other officer of a state hospital under the control of the department of mental health shall be paid to the director of mental health monthly, on or before the tenth day of the month following the month in which such moneys or funds were received, under such rules and regulations as the director shall prescribe. The director shall pay such moneys and funds into the state Treasury immediately in the manner provided in article two, chapter twelve, of this code.

All moneys appropriated for the department of mental health and state hospitals may be expended on proper requisitions issued by the director of mental health or his duly authorized agent. Whenever the appropriations by the Legislature for the state hospitals are insufficient to pay the expenses of conducting such institutions, the director of mental health shall certify the deficiency to the Governor. The certificate shall state the name of the state hospital and the items and amount in detail needed, and the Governor may direct payment of the same or any part thereof out of any appropriation available for that purpose.

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§27-1A-9. Transfer of control, records and property from board of control to department of mental health.

The control of the financial, business and all other affairs of state hospitals is hereby transferred from the state board of control to the department of mental health, and, as its chief executive officer, the director shall, in respect to the control, management and property of such state hospitals, have the same rights and powers and shall perform the same duties and functions as were heretofore exercised or performed by the state board of control. The title to all property of such state hospitals is hereby transferred to and vested in the department of mental health.

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§27-1A-10. Transfer of records and personnel from department of health to division of community services.

The state Department of Health shall transfer to the Division of Community Services of the Department of Mental Health all of the records of the bureau of mental health and all records pertaining to the state hospitals. Persons employed by the state department of health in that bureau may also be transferred to this division. All persons now employed by the various guidance clinics in the state shall be under the supervision of this division.

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§27-1A-11. Division on alcoholism and drug abuse; powers and duties; definitions.

(a) The division on alcoholism, heretofore established in the department of health, shall continue and be known as the division on alcoholism and drug abuse.

(1) The supervisor and personnel of this division shall assist the director of the department of health in the establishment of a program for the care, treatment and rehabilitation of alcoholics and drug abusers; for research into the causes, prevention, and treatment of alcoholism and drug abuse; for the training of personnel to provide the requisite rehabilitation of alcoholics and drug abusers; and for the education of the public concerning alcoholism and drug abuse.

(2) The department's program for the care, treatment, and rehabilitation of alcoholics and drug abusers may include, when intended for such purposes, the establishment of special clinics or wards within, attached to, or upon the grounds of one or more of the state hospitals under the control of the department of health; the acquisition in the name of the department of real and personal property and the construction of buildings and other facilities; the leasing of suitable clinics, hospitals or other facilities; and the utilization, through contracts or otherwise, of the available services and assistance of any professional or nonprofessional persons, groups, organizations or institutions in the development, promotion and conduct of the department's program.

(3) Neither the department of health nor the division on alcoholism and drug abuse shall be required to accept any alcoholic or drug abuser voluntarily seeking hospitalization for clinical or hospital care, treatment or rehabilitation; but the department may accept, pursuant to its adopted and promulgated rules and regulations, responsibility for clinical or hospital care, treatment or rehabilitation of any alcoholic or drug abuser through arrangements made voluntarily with the department by him or some person acting in his behalf: Provided, That any such person accepted by the department on a voluntary basis shall be charged a minimum fee unless he shows, to the satisfaction of the department, that he is unable to pay the fee: Provided, however, That the department shall accept all alcoholics and drug abusers committed by a mental hygiene commissioner or judicial officer in accordance with the procedures established by article six-a of this chapter: Provided further, That notwithstanding any provision in article five of this chapter which may be to the contrary, the supervisor of the division on alcoholism and drug abuse may specify the clinic or hospital to which the alcoholic or drug abuser shall be committed after a final commitment hearing provided in section four, article five of this chapter.

(4) The department's program of research into the causes, prevention and treatment of alcoholism and drug abuse may include the utilization, through contracts or otherwise, of the available services and assistance of any private and public professional or nonprofessional persons, groups, organizations or institutions, as well as cooperation with private and public agencies engaged in research in alcoholism or drug abuse or rehabilitation of alcoholics or drug abusers.

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(5)(A) The department's programs shall also provide for the training of personnel to work with alcoholics and drug abusers and the informing of the public as well as interested groups and persons concerning alcoholism and drug abuse and the prevention and treatment thereof.

(B) The department shall train counselors who shall be responsible for working with youth and developing community programs for youth with drug and alcohol problems. Personnel shall be available to work with these youth in their community and school settings.

(C) The department shall provide at least two comprehensive outpatient programs for youth whose drug or alcohol problems make them a candidate for such programs as determined by qualified mental health professionals. At least one program shall serve a rural area. These programs shall include, at minimum: Educational lectures; codependency, peer group, individual and family counseling; services for at risk population; and relapse, prevention and after care programs. One such program shall be established by January 1, 1987, and a second program by July 1, 1987.

(6) The department may employ such medical, psychiatric, psychological, secretarial and other assistance as may be necessary to carry out the provisions of this section.

(b) As used in this chapter or in section ten, article one, chapter sixteen of the code:

(1) "Alcoholic" means a person who suffers from alcoholism as defined in subdivision (2) of this subsection.

(2) "Alcoholism" means a disease or illness characterized by psychological or physiological addiction to alcoholic beverages as manifested by: (A) The inability to control one's consumption of alcoholic beverages except through total abstinence or (B) the inability to control one's behavior when consuming alcoholic beverages, or (C) both.

(3) "Alcohol abuser" means a person whose use of alcohol has produced any of the effects described in subdivision (4) of this subsection.

(4) "Alcohol abuse" means the periodic, frequent or constant consumption of alcoholic beverages to the extent that one's health is substantially impaired or endangered or one's social or economic functioning is substantially disrupted.

(5) "Drug abuser" means a person who is in a state of psychic or physical dependence, or both, arising from the administration of any controlled substance, as that term is defined in chapter sixty-a of this code, on a continuous basis.

(6) "Drug abuse" means the use of any controlled substance as that term is defined in said chapter sixty-a, until such time as the user has become dependent upon or addicted to the same.

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§27-1A-12. Independent Informal Dispute Resolution.

(a) A behavioral health provider licensed by the Office of Health Facility Licensure and Certification adversely affected by an order or citation of a deficient practice issued pursuant to this article or pursuant to federal law may request to use the independent informal dispute resolution process established by this section. A licensee may contest a cited deficiency as contrary to rule, regulation or law or unwarranted by the facts, or any combination thereof.

(b) The independent informal dispute resolution process is not a formal evidentiary proceeding and utilization of the independent informal dispute resolution process does not waive the right of the licensee to request a formal hearing with the secretary.

(c) The independent informal dispute resolution process shall consist of the following:

(1) The secretary shall transmit to the licensee a statement of deficiencies attributed to the licensee and request that the licensee submit a plan of correction addressing the cited deficiencies no later than ten working days following the last day of the survey or inspection, or no later than ten working days following the last day of a complaint investigation. Notification of the availability of the independent informal dispute resolution process and an explanation of the independent informal dispute resolution process shall be included in the transmittal.

(2) When the licensee returns its plan of correction to the secretary, the licensee may request, in writing, to participate in the independent informal dispute resolution process to protest or refute all or part of the cited deficiencies within ten working days. The secretary may not release the final report until all dispute processes are resolved.

(3) The Secretary of the West Virginia Department of Health (hereinafter "secretary") shall approve and establish a panel of at least three independent review providers: *Provided*, That in lieu of establishing a panel, the secretary may use an existing panel of approved independent review providers. The secretary shall contract with the independent review providers to conduct the independent informal dispute resolution processes. Each independent review provider shall be accredited by the Utilization Review Accreditation Commission. When a licensee requests an independent informal dispute resolution process, the secretary shall choose one independent review provider from the approved panel to conduct the process.

(4) The secretary shall refer the request to an independent review provider from the panel of certified independent review providers approved by the department within five working days of receipt of the written request for the independent informal dispute resolution process made by a licensee. The secretary shall vary the selection of the independent review providers on a rotating basis. The secretary shall acknowledge in writing to the licensee that the request for independent review has been received and forwarded to the independent review provider. The notice shall include the name and professional address of the

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independent review provider.

(5) The independent review provider shall hold an independent informal dispute resolution conference, unless additional time is requested by either the licensee, the Office of Health Facility Licensure and Certification or the independent review provider and approved by the secretary, within ten working days of receipt of the written request for the independent informal dispute resolution process made by a licensee. The licensee or the Office of Health Facility Licensure and Certification may submit additional information before the independent informal dispute resolution conference.

(6) Neither the secretary nor the licensee may be accompanied by counsel during the independent informal dispute resolution conference. The manner in which the independent informal dispute resolution conference is held is at the discretion of the licensee, but is limited to:

(A) A review of written information submitted by the licensee;

(B) A telephonic conference; or

(C) A face-to-face conference held at a mutually agreed upon location.

(7) If the independent review provider determines the need for additional information, clarification or discussion at the conclusion of the independent informal dispute resolution conference, the secretary and the licensee shall present the requested information.

(8) The independent review provider shall make a determination within ten working days of receipt of any additional information as provided in subdivision (7) of this section or the conclusion of the independent informal dispute resolution conference, based upon the facts and findings presented, and shall transmit a written decision containing the rationale for its determination to the secretary.

(9) If the secretary disagrees with the determination, the secretary may reject the determination made by the independent review provider and shall issue an order setting forth the rationale for the reversal of the independent review provider's decision to the licensee within ten working days of receiving the independent review provider's determination.

(10) If the secretary accepts the determination, the secretary shall issue an order affirming the independent review provider's determination within ten working days of receiving the independent review provider's determination.

(11) If the independent review provider determines that the original statement of deficiencies should be changed as a result of the independent informal dispute resolution process and the secretary accepts the determination, the secretary shall transmit a revised statement of deficiencies to the licensee within ten working days of the independent review provider's determination.

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(12) The licensee shall submit a revised plan to correct any remaining deficiencies to the secretary within ten working days of receipt of the secretary's order and the revised statement of deficiencies.

(d) Under the following circumstances, the licensee is responsible for certain costs of the independent informal dispute resolution review, which shall be remitted to the secretary within sixty days of the informal conference order:

(1) If the licensee requests a face-to-face conference, the licensee shall pay any costs incurred by the independent review provider that exceed the cost of a telephonic conference, regardless of which party ultimately prevails;

(2) If the independent review provider's decision supports the entirety of the originally written contested deficiency or adverse action taken by the secretary, the licensee shall reimburse the secretary for the cost charged by the independent review provider; or

(3) If the independent review provider's decision supports some of the originally written contested deficiencies, but not all of them, the licensee shall reimburse the secretary for the cost charged by the independent review provider on a pro-rata basis as determined by the secretary.

(e) Establishment of the independent informal dispute resolution process does not preclude licensees from utilizing other informal dispute resolution processes provided by statute or rule in lieu of the independent informal dispute resolution process.

(f) Administrative and judicial review of a decision rendered through the independent informal dispute resolution process may be made in accordance with article five, chapter twenty-nine-a of this code.

(g) Any decision issued by the secretary as a result of the independent informal dispute resolution process shall be made effective from the date of issuance.

(h) The pendency of administrative or judicial review does not prevent the secretary or a licensee from obtaining injunctive relief as provided by statute or rule.

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