

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF HEALTH CARE QUALITY**

Statutory Authority: 16 Delaware Code, Section 1102(4)b.9. and 29 Delaware Code, Section 7971(d)(1) (16 **Del.C.** §1102(4)b.9. & 29 **Del.C.** §7971(d)(1))  
16 **DE Admin. Code** 3320

**FINAL**

**ORDER**

**3320 Intensive Behavioral Support and Educational Residence**

**NATURE OF THE PROCEEDINGS:**

The Department of Health and Social Services ("Department") / Division of Health Care Quality (DHCQ) initiated proceedings to establish Regulation 3320 Intensive Behavioral Support and Educational Residence in the April 1, 2019 Delaware *Register of Regulations* on page 839 (22 **DE Reg.** 839 (04/01/19)).

The Department's proceedings to establish the regulation were initiated pursuant to 16 **Del.C.** §1102(4)b.9.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 7971(d) in the April 1, 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 1, 2019, at which time the Department would receive information, factual evidence and public comment to the said proposed regulations.

**Statutory Authority**

16 **Del.C.** §1102(4)b.9.

29 **Del.C.** §7971(d)(1) Subchapter VI "Department of Health And Social Services, Division of Health Care Quality."

**Background**

DHCQ is revising these regulations pursuant to 16 **Del.C.** §1102(4)b.9., 29 **Del.C.** §7971(d)(1). These regulations are being revised to be more concise, readable, and to assist with clarification in all sections.

**Summary of Evidence**

The proposal establishes regulations related to the IBSER regulations.

The following **comments and/or suggestions** were received by the Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD). DHCQ responses are below with comments.

**Comment 1:** Subsection 2.1.1.3.1 mentions "...substantial compliance..." Council queries the meaning of this term.

**Response 1:** The DHCQ disagrees. Substantial compliance is a term used consistently in the regulations of health care facilities. Substantial compliance is determined by the number and severity of deficient practices identified by the regulatory agency. Substantial compliance means a level of compliance with State law and regulatory requirements such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm. Substantial compliance constitutes compliance with State law and regulatory requirements.

**Comment 2:** Subsection 2.1.2.2 regarding Suspension or Revocation of License, and subsection 2.1.3 Imposition of Disciplinary Action list two different timeframes for actions to be taken (10 days vs. 20 days). Council considers suspension or revocation of licenses to be disciplinary actions and questions the use of two different timeframes. Are there other disciplinary actions besides suspending or revoking licenses?

**Response 2:** The DHCQ disagrees. There are other disciplinary actions, including but not limited to: requirement for a plan of correction, directed in-service and civil monetary penalties. Disciplinary actions are addressed in 16 **Del.C.** §§1109-1113.

**Comment 3:** Subsection 2.1.7, what is meant by the phrase "...readily available...?"

**Response 3:** The DHCQ is stating that the license must be kept on the premises for which it was issued and not in a corporate location.

**Comment 4:** In subsection 2.3.3, Council notes that the list of items to be submitted for an initial license does not include a listing of all owners, funding sources or proof of background checks. Can this information be found in a different location?

**Response 4:** The DHCQ disagrees. Background checks are as required by statute, not by regulation. Financial requirements are included in the financial capability regulations. Application requirements are addressed in 16 **Del.C.** §1104 License and renewal application.

**Comment 5:** In subsection 3.2.10, Council would suggest a definition for "funds" as the proposed wording might be too broad. It is not clear on the types of funds (cash on hand, bank accounts, etc.) or if there are any limits.

**Response 5:** The DHCQ disagrees. Rather than listing all types of funds; funds would include all funds, thus the reason for the generalization.

**Comment 6:** Subsections 4.5.4 and 4.7 discuss plumbing and electrical code requirements. Plumbing has to meet the requirements of municipal or county codes, unless there are no local codes, then it must meet the state Sanitary Plumbing Code (subsection 4.5.4) but electric has to meet all municipal, county and State requirements. Council would suggest adding State in the plumbing requirements for consistency.

**Response 6:** The DHCQ disagrees. Subsection 4.3 requires that the IBSER shall comply with all local and state building codes and ordinances as pertain to this occupancy.

**Comment 7:** Subsection 4.10.8 states that bedrooms must have "...adequate electrical outlets which are conveniently located." The number of outlets is dictated by Electrical Code and should be the standard.

**Response 7:** DHCQ agrees and subsection 4.3 would require that.

**Comment 8:** In subsection 5.8, Council suggests adding "...or discovery" after "...occurrence..."

**Response 8:** The DHCQ disagrees. This language is consistent with federal requirements.

**Comment 9:** Council questions who performs the physical examination in subsection 8.6.9.11.

**Response 9:** The DHCQ clarifies that this would be included by any staff in attendance. Physical examinations would be performed by a licensed independent medical practitioner. See subsection 8.6.4.2.1.

**Comment 10:** In subsection 8.8, no description is provided on the membership of the Behavior Management Committee (BMC) unlike the list of participants on the Human Rights Committee (HRC) in subsection 8.7. Council would suggest more information on the BMC for consistency.

**Response 10:** DHCQ disagrees. As established by definition, "Behavior Management Committee" or "BMC" means the group that establishes and reviews each resident's Specialized Behavior Support Plan (SBS Plan). Also subsection 8.8.1 establishes that the BMC is also known as the professional interdisciplinary treatment team.

**Comment 11:** Finally, in subsection 9.5 the proposed regulations increase the minimum number of hours of orientation training for new hires and volunteers from 15 hours found in subsection 14.1 in existing regulations to 40 hours. This makes sense given the challenges presented in the provision of individualized services in this type of setting. The proposed regulation also sets a uniform requirement for 40 hours of additional training annually regardless of an employee's position, whereas currently there are different requirements for staff based on how many hours they are working per week. While generally more training for staff is a positive, it is possible that part-time staff could find these training requirements burdensome, and staff retention is always a major concern.

**Response 11:** The DHCQ disagrees. While we understand that staff retention is always a major concern; knowledge of behavior issues with these type of residents, the care and safety of our residents, is not only of major concern, but also primary concern.

### **Decision to Adopt the Regulation**

The Division's proposed regulatory amendments, as initially published in the April 1, 2019 Delaware *Register of Regulations*, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory amendments, which shall go into effect on July 11, 2019 after publication in the July 1, 2019 issue of the Delaware *Register of Regulations*; and

The Division shall submit the proposed amendments to Regulation 3320 Intensive Behavioral Support and Educational Residence Amendments as final, pursuant to 16 **Del.C.** §1102(4)b.9. and 29 **Del.C.** §7971(d)(1) Subchapter VI "Department of Health And Social Services, Division of Health Care Quality." to the Delaware Registrar of Regulations for publication in the July 1, 2019 issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

### **Finding of Facts:**

Based on the research by the Division's experts and the comments received, I find that the proposed regulatory amendments to Regulation 3320 Intensive Behavioral Support and Educational Residence, are well-supported. Therefore, the proposed Amendments shall be promulgated as final. I further find that the Division's experts fully support adoption of these Amendments.

In conclusion, the Division:

Has the statutory basis and legal authority to act with regard to the proposed Amendments pursuant to 16 **Del.C.** §1102(4)b.9.; 29 **Del.C.** §7971(d)(1) Subchapter VI "Department of Health And Social Services, Division of Health Care Quality."

The Division provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed Amendments, including at the time of the public comment held on April 1, 2019, and during the 30 days subsequent to the comments ending on May 1, 2019 before making any final decision.

Promulgation of the proposed Amendments to Regulation 3320 Intensive Behavioral Support and Educational Residence, pursuant to 16 **Del.C.** §1102(4)b.9. and 29 **Del.C.** §7971(d)(1) Subchapter VI "Department of Health And Social

Services, Division of Health Care Quality," will enable the Division to further regulate this entity in a more clear and concise manner.

**THIS ORDER IS EFFECTIVE this 11<sup>th</sup> day of July, 2019.**

Kara Odom Walker, MD, MPH, MSHS  
Secretary, DHSS

6/13/19  
Date

### **3320 Intensive Behavioral Support and Educational Residence**

#### **1.0 Purpose**

The purpose of these regulations is to provide minimum standards for the operation of Intensive Behavioral Support and Educational Residence (IBSER) and ensure accountability to the Department of Health and Social Services (DHSS.)

#### **2.0 Authority.**

These regulations are promulgated in accordance with 16 ~~Del.C.~~ §1102(4). IBSER regulations apply to all residents except those under the age of 18 who are subject to Delaware Requirements for Residential Child Care Facilities and Day Treatment Programs, Title 9, §100 of the Delaware Administrative Code (Delacare). IBSER regulations establish the minimal acceptable level of living and programmatic conditions and services for residents of an IBSER.

#### **3.0 Glossary of Terms**

~~"AWSAM"~~ means assistance with medications as defined in 24 ~~Del.C.~~ §1902(c).

~~"Behavior Management Committee"~~ (BMC) is the committee that establishes and reviews each resident's Specialized Behavior Support Plan (SBS Plan) as described in §18.0 of these regulations.

~~"Chemical Restraint"~~ means the use of any medication that is used for discipline or convenience to effect control over a resident's behavior, is not part of the resident's usual medication regimen, and is not required to treat a medical symptom, i.e. a physical or psychological condition. The usual medication regimen does not include any PRN use of psychoactive medications.

~~"Director"~~ means the Chief Operating Officer of the IBSER.

~~"Division"~~ means the Division of Long Term Care Residents Protection, Department of Health and Social Services.

~~"Funding Agency"~~ — means a governmental or private agency that provides funding for the support and treatment of residents in the IBSER's care.

~~"Human Rights Committee"~~ (HRC) means an advisory committee established as a mechanism for the protection of rights and welfare of persons receiving services from the facility.

~~"Incident"~~ means an occurrence or event, a record of which must be maintained in facility files, which includes all reportable incidents and the additional occurrences or events listed in section 24.0 of these regulations.

~~"Intensive Behavioral Support Residence"~~ (IBSER) means a residential facility which provides services to residents with autism, and/or developmental disabilities, and/or severe mental or emotional disturbances and who also have specialized behavioral needs.

~~"Legal Representative"~~ means the resident or agent legally authorized to act on behalf of the resident.

~~"Medical Protective Equipment"~~ means health-related protective devices prescribed by a physician or dentist for use only during and after specific medical or surgical procedures, or for use as protection in response to an existing medical condition. Medical Protective Equipment includes: physical equipment or orthopedic appliances or other restraints necessary for medical treatment, routine physical examinations, or medical tests; devices used to support functional body position or proper balance, or to prevent a person from falling out of bed, falling from a wheelchair; or equipment used for safety such as seat belts, helmets, mittens, wheelchair tie-downs or other types of devices.

~~"PRN"~~ is an abbreviation of the Latin *pro re nata*. In these regulations it means "as needed."

~~"Reportable Incident"~~ means an occurrence or event which must be reported immediately to the Division and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation or misappropriation of their property as those terms are defined in 16 ~~Del.C.~~ §1131. Reportable incident also includes an occurrence or event listed in §24.4 of these regulations.

~~"Resident"~~ is the individual residing in or attending a day program at the IBSER.

**"Restraint"** includes both mechanical devices and physical procedures. A mechanical restraint is a mechanical device, material, or equipment attached or adjacent to a client's body that he or she cannot easily remove or that restricts freedom of movement or normal access to one's body. Mechanical restraint does not include adaptive or protective devices recommended by a physician or by a physical or occupational therapist when used as recommended by the physician or by a physical or occupational therapist to promote normative body position and physical functioning, and/or to prevent self-injurious behavior. The term also does not include seat belts and other safety equipment when used to secure clients during transportation. A physical restraint procedure restricts a resident's freedom of movement or normal access to his or her body, including the forcible moving of a resident against the person's will. No physical restraint shall be used that restricts the free movement of the resident's diaphragm or chest or that restricts the airway so as to interrupt normal breathing or speech.

**"Seclusion"** means the involuntary confinement of a resident alone in a room or area from which the resident is physically prevented from leaving.

**"Specialized Behavior Support Plan"** (SBS Plan) is a written document which describes the resident's care plan. It also identifies the types of restraints which may be employed if necessary to protect the resident from self or to protect others.

#### **4.0 Licensing Requirements and Procedures**

- 4.1 A licensed facility that intends to construct, extensively remodel or convert any building must submit one (1) copy of properly prepared plans and specifications for the entire facility to the Division. An approval in writing is to be obtained before such work is begun. After the work is completed, in accordance with the plans and specifications, a new license to operate will be issued.
- 4.2 Separate licenses are required for facilities at separate locations, even though operated under the same management. A separate license is not required for separate buildings maintained at the same location by the same management. A change in ownership necessitates a new application and a new license.
- 4.3 Inspections
  - 4.3.1 Every residence for which a license has been issued under this chapter shall be periodically inspected by a representative of the Division. Inspections shall include the review of current facility policies and procedures. Inspections must be unannounced.
  - 4.3.2 Each Licensed facility must submit to the Division quarterly reports on each of its residents. The quarterly reports prepared for the funding agency supporting each resident meets this reporting requirement unless otherwise informed by the Division that additional information is required.
- 4.4 Licenses shall be issued in the following categories:
  - 4.4.1 Annual License. An annual license (12 months) may be renewed yearly if the holder is in full compliance with the provisions of 16 Del.C. Ch. 11 and the rules and regulations of the Department of Health and Social Services.
  - 4.4.2 Provisional License. A provisional license shall be granted for a term of ninety (90) days only, and shall be granted to a facility during its first 90 days of operation. A provisional license may also be granted to a facility whenever the Division deems it appropriate. The Division shall provide an explanation for the issuance of a provisional license instead of an annual license.

#### **5.0 General Requirements**

- 5.1 All required records maintained by the residence must be open to inspection by the authorized representatives of the Division.
- 5.2 The term "Intensive Behavioral Support and Educational Residence" must not be used as part of the name of any facility in this State, unless it has been so classified and licensed by the Department of Health and Social Services.
- 5.3 No rules may be adopted by the licensee or administrators which are in conflict with these regulations.
- 5.4 The Division must be notified, in writing, within 10 days of any change in the Director.
- 5.5 The residence must establish and follow written policies and procedures regarding the rights and responsibilities of the residents. These policies and procedures are to be made available to sponsoring agencies, and authorized representatives of the Division.
- 5.6 The facility must provide safe storage for residents' valuables.
- 5.7 The provider must assure emergency transportation and care through use of appropriate transfer agreements with local medical facilities.
- 5.8 All residents must be afforded all protections and privileges contained in the Delaware Patient's Bill of Rights.

5.9 The facility must cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1107.

## **6.0 Physical Plant**

### **6.1 Premises and Equipment**

- 6.1.1 A licensee must ensure that the facility's or program's premises and equipment accessible to or used by residents are free from any danger to their health, safety and well-being.
- 6.1.2 A licensee must maintain on file written documentation that the buildings and premises of the facility or program conform to all applicable federal, state and local zoning fire, health, education, accessibility and construction laws, ordinances and regulations.
- 6.1.3 A licensee must ensure that porches, elevated walkways and elevated areas of more than two feet in height have barriers that meet all regulatory standards to prevent falls.
- 6.1.4 A licensee must ensure that all indoor and outdoor areas, toilets, wash basins, tubs, sinks, and showers are maintained in an operable, safe and sanitary manner. Showers and tubs must have a handrail or a handgrip.
- 6.1.5 A licensee must utilize approved products and procedures in accordance with labeled instructions to ensure that the premises are protected from insect infestation.
- 6.1.6 A licensee must ensure that all premises used by residents are rodent free.

### **6.2 Living Unit Space**

- 6.2.1 IBSER facilities operating prior to the adoption of these regulations may continue to operate based on the DelaCare regulations related to living unit space then applicable. IBSER facilities licensed subsequent to the adoption of these regulations may house no more than 10 residents—regardless of whether the residents are subject to IBSER or Delacare regulations.
- 6.2.2 A facility must ensure that the living unit(s) have designated space for daily living activities, including dining, recreation, indoor activities and areas where residents may visit privately with their parent(s), legal representative, relatives and friends.
- 6.2.3 A facility must ensure that a dining area is provided which must be maintained in a clean manner, be well-lighted and ventilated. The licensee must ensure that dining room tables and chairs or benches are sturdy and appropriate for the sizes and ages and capabilities of the residents.

### **6.3 Furnishings and Maintenance**

- 6.3.1 A licensee must ensure that buildings are furnished with comfortable, clean furniture in good repair and appropriate to the age, size and capabilities of the residents.
- 6.3.2 A licensee must ensure that the premises are maintained and cleaned in a scheduled or routine manner.
- 6.3.3 A licensee must ensure that all cleaning equipment, including mops and buckets, are cleaned and stored in an area separate and distinct from the kitchen and food preparation, serving and storage areas. Kitchen and bathroom sinks must not be utilized for cleaning mops, emptying mop buckets. Kitchen sinks must not be used for any purpose not connected with food preparation or the cleaning of dishes, pots, pans and utensils.
- 6.3.4 A facility housing 13 or more residents (see 6.2.1) must have a service sink.

### **6.4 Storage**

- 6.4.1 A licensee must provide areas with sufficient space for storing all supplies and equipment in a safe and sanitary manner.
- 6.4.2 A licensee must ensure that all poisonous and toxic materials are stored in accordance with the following:
  - 6.4.2.1 All poisonous and toxic materials must be prominently and distinctly labeled for easy identification as to contents;
  - 6.4.2.2 All poisonous and toxic materials must be stored so as to not contaminate food or constitute a hazard to residents, employees and volunteers; and
  - 6.4.2.3 All poisonous and toxic materials must be stored in a secure and locked room with access only by authorized employees.
- 6.4.3 Flammable liquids, gasoline, or kerosene may not be stored on the premises except in a manner and place that has been authorized in writing by the Office of the Fire Marshall.

### **6.5 Toilet and Bathing**

- 6.5.1 A facility must ensure that there are toilet and bathing accommodations that meet the following specifications:
  - 6.5.1.1 For every eight residents, there must be at least one flush toilet, wash basin, and bathtub or shower;

- 6.5.1.2 These toileting and bathing facilities must not be located more than one floor from any bedroom; and
- 6.5.1.3 Bathrooms must have at least one unbreakable mirror fastened to the wall at an age-appropriate height.
- 6.5.1.4 A licensee must ensure that toilets, showers, sinks, and bathing facilities and other are provided for residents and:
- 6.5.1.5 Allow for privacy unless this privacy is in conflict with toilet training or needed supervision; and
- 6.5.1.6 Are maintained in a safe and sanitary manner.
- 6.5.2 A licensee must ensure that bathroom surfaces subject to splash are cleanable and impervious to water.
- 6.5.3 A licensee must ensure that bathroom floors, showers, and bathtubs have slip-proof surfaces. Shower doors must be made of resilient (impact resistant) material such as safety glass, wire glass, tempered glass or plastic that resists breaking and creates no dangerous cutting edges when broken.
- 6.5.4 A licensee must ensure that bathrooms are equipped with operable windows or mechanical ventilation systems to the outside.

## 6.6 Bedroom Accommodations

- 6.6.1 ~~IBSER facilities operating prior to the adoption of these regulations may continue to operate based on the DelaCare regulations related to bedroom accommodations then applicable.~~
- 6.6.2 ~~Facilities licensed subsequent to the adoption of these regulations shall provide only single-occupancy and double-occupancy rooms. A single-occupancy bedroom shall provide a floor area of at least 80 square feet, excluding closet space and a double-occupancy bedroom shall provide a floor area of at least 130 square feet, excluding closet space.~~
- 6.6.3 A facility must ensure that any bedroom used by residents includes:
  - 6.6.3.1 A designated area for sleeping;
  - 6.6.3.2 A door that may be closed;
  - 6.6.3.3 A direct source of natural light;
  - 6.6.3.4 A window covering to ensure privacy; and
  - 6.6.3.5 Lights with safety covers or shields.
- 6.6.4 A facility must ensure that each resident is provided with:
  - 6.6.4.1 A bed;
  - 6.6.4.2 A cleanable, fire retarding mattress with mattress cover;
  - 6.6.4.3 Clean bed linens at least every seven calendar days or more often if needed;
  - 6.6.4.4 A pillow; and
  - 6.6.4.5 Blanket(s) appropriate for season and weather.
- 6.6.5 A facility may use cots or portable beds in an emergency only and for no longer than a period of 72 hours.
- 6.6.6 A facility must ensure that there are no more than two tiers when bunk beds are used. In addition, the facility must ensure that the distance between the top bunk mattress and ceiling is of sufficient height to enable the resident to sit upright in bed without his or her head touching the ceiling.
- 6.6.7 ~~Unless clinically contraindicated, a facility must provide and locate in the bedroom for each resident a chest of drawers, a bureau, or other bedroom furniture for the storage of clothing and other personal belongings.~~
- 6.6.8 A facility may not permit a resident to share the same bed with any other resident.
- 6.6.9 A facility must ensure that residents occupy a bedroom only with members of the same sex.
- 6.6.10 No child shall be placed in the same room as an adult.

## 6.7 Water Supply and Sewage Disposal

- 6.7.1 ~~A licensee must maintain on file written documentation that the building's water supply and sewage disposal system are in compliance with applicable State laws and regulations of the Delaware Division of Public Health and the Delaware Department of Natural Resources and Environmental Control, respectively.~~
- 6.7.2 ~~A licensee must ensure that hot tap water does not exceed 115 degrees Fahrenheit at all outlets accessible to residents, and that cold or tempered water is also provided.~~

## 6.8 Garbage and Refuse

- 6.8.1 A licensee must ensure that:
  - 6.8.1.1 ~~Garbage is stored outside in watertight containers with tight-fitting covers that are insect and rodent proof;~~

- 6.8.1.2 Garbage and refuse are removed from the premises at intervals of at least once a week; and
- 6.8.1.3 Garbage and refuse are contained in an area that is separate from any outdoor recreation areas.

## 6.9 Lighting

- 6.9.1 A licensee must ensure that kitchens and all rooms used by residents, including bedrooms, dining rooms, recreation rooms and classrooms, are suitably lighted for safety and comfort, with a minimum of 30 footcandles of light. All other areas must have a minimum of 10 footcandles of light.
- 6.9.2 A licensee must ensure that all lights located over, by or within food preparation, serving and storage areas have safety shields or light covers.
- 6.9.3 A licensee must ensure that all corridors are illuminated during night-time hours.
- 6.9.4 During night-time hours, a licensee must provide for exterior lighting of the building(s), parking areas, pedestrian walkways or other premises subject to use by residents, visitors, employees and volunteers.

## 6.10 Heating

- 6.10.1 A licensee must ensure that a minimum temperature of 68 degrees Fahrenheit is maintained at floor level in all rooms occupied by residents.
- 6.10.2 A licensee must ensure that all working fireplaces, pipes, and electric space heaters accessible to residents are protected by screens, guards, insulation or any other suitable, non-combustible protective device. All radiators accessible to residents must be protected by screens, guards, insulation or any other suitable, non-combustible protective device.
- 6.10.3 Portable fuel burning or wood burning heating appliances are prohibited.

## 6.11 Ventilation

- 6.11.1 A licensee must ensure that each habitable room has direct outside ventilation by means of windows, louvers, air conditioning or mechanical ventilation.
- 6.11.2 A licensee must ensure that:
  - 6.11.2.1 Each door, operable window and other opening to the outside is equipped with insect screening in good repair and not less than 16 mesh to the inch, unless the facility is air conditioned and provided that it does not conflict with applicable fire safety requirements; and
  - 6.11.2.2 This screening can be readily removed in emergencies.
- 6.11.3 A licensee must ensure that ventilation outlets are maintained in a clean and sanitary manner, and kept free from obstructions.
- 6.11.4 A licensee must ensure that all floor or window fans accessible to residents have a protective grill, screen or other protective covering.

## 6.12 Access to Telephone

- 6.12.1 A licensee must ensure that each building used by residents has at least one working telephone that is directly available for immediate access or that is connected to an operating central telephone system.
- 6.12.2 A licensee must ensure that the licensee's telephone number is clearly posted and available to residents, their parent(s) or legal guardian, and the general public.
- 6.12.3 A licensee must post a notice near the telephone which says that complaints can be made by calling the Division of Long Term Care Residents Protection and providing the telephone number. The same information shall be provided to the resident or legal representative upon admission.
- 6.12.4 A licensee must provide residents reasonable access to a free telephone that has statewide access and must have a process in place for free calls to other states.
- 6.12.5 A licensee must provide residents reasonable privacy for telephone use.

## 6.13 Laundry

- 6.13.1 For on-site laundry processing, the facility shall:
  - 6.13.1.1 If hot water is used for destroying micro-organisms, washers must be supplied with water heated to a minimum of 160° F.
  - 6.13.1.2 If low temperature laundry cycles are used, a total available chlorine residual of 50-150 ppm must be present and monitored during the wash cycle.

## 7.0 Kitchen and Food Storage

- 7.1 A licensee must ensure that kitchens are provided with the necessary operable equipment for the preparation, storage, serving and clean up of all meals for all of the residents and employees regularly served by such kitchens. A licensee that does not prepare food on the premises and that utilizes single-service (disposable) dishes, pots, pans and utensils is not governed by this Requirement.

- 7.2 A licensee must ensure that a kitchen or food preparation area has a hand washing sink within the food preparation area and separate from the sink used for food preparation and dish washing.
- 7.3 A licensee must ensure that:
- 7.3.1 A mechanical dishwasher is used for the cleaning and sanitizing of all dishes, pots, pans and utensils after each meal; and
  - 7.3.2 The dishwasher is capable of sanitizing at the proper time, temperature and pressure ratio, and those dishes, pots, pans and utensils are washed in accordance with the manufacturer's instructions. Dishwasher temperatures must be checked periodically and documented.
- 7.4 A licensee must ensure that all food service equipment and utensils are constructed of material that is nontoxic, easily cleanable and maintained in good repair.
- 7.5 A licensee must ensure that all food services equipment, eating and drinking utensils, counter tops and other food contact areas are thoroughly cleaned and sanitized after each use.
- 7.6 A licensee must ensure that the floor, walls and counter top surfaces of the kitchen are made of cleanable materials and impervious to water to the level of splash.
- 7.7 A licensee must ensure that the kitchen has a cook stove and oven with an appropriately vented hood that is maintained in a safe and operable condition in accordance with fire and safety regulations.
- 7.8 A licensee must ensure that the kitchen is so constructed or supervised as to limit access by residents when necessary.
- 7.9 A licensee must ensure that food preparation areas and appliances, dishes, pots, pans, and utensils in which food was prepared or served are cleaned following each meal.
- 7.10 A licensee must ensure that all foods subject to spoilage are stored at temperatures that will protect against spoilage. This means that:
- 7.10.1 All refrigerated foods are to be kept cold at 41 degrees Fahrenheit or below.
  - 7.10.2 All frozen foods are to be kept at 0 degrees Fahrenheit or below.
  - 7.10.3 All hot foods are to be kept at 140 degrees Fahrenheit or above, except during periods that are necessary for preparation and serving. Refrigerators and freezers must be equipped with accurate, easily readable thermometers located in the warmest part of the refrigerator or freezer.
  - 7.10.4 There must be three days' supply of food in each facility at all times as posted on the menus.
  - 7.10.5 Opened foods that are to be stored must immediately be dated with the date that the foods were opened.
- 7.11 A licensee must ensure that:
- 7.11.1 All food storage areas are clean, dry and free of food particles, dust and dirt;
  - 7.11.2 All packaged food items and can goods are stored at least six inches above the floor in sealed or closed containers that are labeled;
  - 7.11.3 All dishes, pots, pans and utensils are stored in a clean and dry place; and
  - 7.11.4 All paper goods are stored at least six inches above the floor.

## **8.0 Emergencies and Disasters**

- 8.1 Fire safety in Facilities must comply with the rules and regulations of the State Fire Prevention Commission or the appropriate local jurisdiction. All applications for a license or renewal of a license must include a letter certifying compliance by the Fire Marshall with jurisdiction. Notification of noncompliance with the applicable rules and regulations must be grounds for revocation of a license.
- 8.2 The facility must have a minimum of two means of egress.
- 8.3 The facility must have an adequate number of UL approved smoke/carbon monoxide detectors in working order.
- 8.3.1 In a single level facility, a minimum of one smoke/carbon monoxide detector must be placed between the bedroom area and the remainder of the facility.
  - 8.3.2 In a multi-story facility, a minimum of one smoke/carbon monoxide detector must be on each level. On levels which have bedrooms, the detector must be placed between the bedroom area and the remainder of the facility.
- 8.4 There must be at least one functional two and one-half to five pound ABC fire extinguisher on each floor of living space in the facility that is readily accessible to staff. Inspections shall be completed by the service company or as regulated by the Fire Marshall. Each extinguisher must be checked annually.
- 8.5 Evacuation Drills
- 8.5.1 A licensee must conduct at least four emergency evacuation drills annually and maintain on file a record of each drill. Two of these drills must include evacuations, unless the Division, in writing, has determined that

~~an evacuation is clinically contraindicated. Where a licensee utilizes two or more employee shifts, there must be at least four emergency evacuation drills conducted annually for each shift.~~

~~8.5.2 Emergency evacuation drills must include all persons on the premises, including employees, volunteers, residents and visitors.~~

~~8.5.3 The location of egress during these evacuation drills must be varied, with window evacuation procedures discussed as an alternative, if not practiced.~~

~~8.5.4 During drills, persons must be evacuated with staff assistance to the designated safe area outside of the facility.~~

~~8.5.5 As evidenced by evacuation drill reports that are maintained by the Facility, drills must assure that all persons and staff are familiar with the evacuation requirements and procedures. Any problems persons have evacuating a building during a drill must result in a written plan of specific corrective action(s) to be taken.~~

~~8.5.6 Persons who are unable to achieve the exit schedule prescribed by the Life/Safety Code with available assistance must be either relocated or provided with additional assistance.~~

## **8.6 Emergency Procedures**

~~8.6.1 A licensee must develop, adopt, follow and maintain on file written policies and procedures governing the handling of emergencies, including:~~

~~8.6.1.1 Accident;~~

~~8.6.1.2 Bomb threat;~~

~~8.6.1.3 Fire;~~

~~8.6.1.4 Flooding;~~

~~8.6.1.5 Medical;~~

~~8.6.1.6 Missing resident, including referral to Gold Alert Program;~~

~~8.6.1.7 Power outage;~~

~~8.6.1.8 Severe weather conditions;~~

~~8.6.1.9 Radiation, if within a 10-mile radius of a nuclear reactor.~~

~~8.6.2 The policies and procedures must include:~~

~~8.6.2.1 An emergency evacuation plan;~~

~~8.6.2.2 Instructions and telephone numbers for contacting ambulance, emergency medical response team, fire, hospital, poison control center, police, and other emergency services;~~

~~8.6.2.3 Location and use of first aid kits; and~~

~~8.6.2.4 Roster and telephone numbers of employees to be contacted during an emergency.~~

~~8.6.3 A licensee must ensure that each newly admitted resident is provided an orientation regarding emergency procedures and the location of all exits within 48 hours of admission.~~

~~8.6.4 The procedures must contain instructions related to the use of alarm and signal systems. Provisions must be made to alert persons living in the facility according to their abilities, and these provisions must be included in the procedures.~~

~~8.6.5 Evacuation routes and the location of fire fighting equipment must be posted in areas used by the public as required by the applicable fire safety regulations. The number and placement of postings are otherwise dictated by building use and configuration and by the needs of persons and staff.~~

~~8.6.6 The provider must maintain an adequate communication system to ensure that on and off duty personnel and local fire and safety authorities are notified promptly in the event of an emergency or disaster.~~

~~8.6.7 The telephone numbers of the nearest poison control center and the nearest source of emergency medical services must be posted.~~

~~8.6.8 Provisions must be made for emergency auxiliary heat and lighting by means of alternate sources of electric power, alternate fuels, and stand-by equipment, or arrangements with neighbors, other agencies or community resources.~~

~~8.6.9 A licensee must prohibit the storage or use of any firearms or other weapons on the grounds of the facility or program or in any building used by residents.~~

## **9.0 Administration**

### **9.1 Division Notification**

~~9.1.1 A licensee must notify the Division in writing at least 90 consecutive calendar days before any of the following changes occur:~~

- 9.1.1.1 A change of ownership or sponsorship;
- 9.1.1.2 A change of location;
- 9.1.1.3 A change in the name of the facility or program;
- 9.1.1.4 A change in the applicable type of regulated service being provided;
- 9.1.1.5 A change in population capacity; or
- 9.1.1.6 The anticipated closing of the facility or program.

## 9.2 Governing Body

- 9.2.1 A licensee must have an identifiable functioning governing body. The governing body must designate a Director.

## 9.3 Director Responsibilities

- 9.3.1 A licensee must delineate in writing the job responsibilities and functions of the Director. The Director must adopt and implement a chain of command that ensures the proper and effective supervision and monitoring of employees and volunteers.

## 10.0 Facility or Program Description of Services

- 10.1 A licensee must develop, adopt, follow and maintain on file a current written description of the facility's or program's:
  - 10.1.1 Admission policies governing the specific characteristics, and treatment or service needs of residents accepted for care; and
  - 10.1.2 Services provided to residents, including those provided directly by the licensee or arranged through another source.
- 10.2 A licensee must make available to the public a brochure or other generic written description of its mission, policies and the types of services offered by the facility or program. If the licensee maintains a website, the same information shall be included on the site.

## 11.0 Maintenance of Resident's Records

- 11.1 A licensee must develop, adopt, follow and maintain on file on the premises written procedures governing the maintenance and security of resident records in care. These procedures must:
  - 11.1.1 Assure that records are stored in a secure manner; and
  - 11.1.2 Assure confidentiality of and prevent unauthorized access to such records.
  - 11.1.3 Retain residents' records for 5 years after discharge or 3 years after death.
- 11.2 Administrative Records
  - 11.2.1 A licensee must develop, adopt, follow and maintain on file on the premises up-to-date administrative records containing the following:
    - 11.2.1.1 Organizational chart;
    - 11.2.1.2 Name and position of persons authorized to sign agreements and to submit official documentation to the appropriate government agency; and
    - 11.2.1.3 Written standard operating procedures.
- 11.3 All records maintained by the facility must at all times be open to inspection and copying by authorized representatives of the Division as well as all other agencies as required by state and federal laws and regulations. Such records must be made available in accordance with 16 **Del.C.** Ch. 11, Subchapter I, Licensing by the State.

## 12.0 Insurance Coverage

A licensee must secure and maintain on file written documentation of motor vehicle insurance as required by state law as well as fire and comprehensive general liability insurance.

## 13.0 Personnel Policies and Procedures

- 13.1 A licensee must develop, adopt, follow and maintain on file written personnel policies and procedures governing the recruitment, screening, hiring, supervision, training, evaluation, promotion, and disciplining of employees and volunteers.
- 13.2 Personnel; Qualifications
  - 13.2.1 Director Qualifications

13.2.1.1 A Director, at the time of appointment, must be at least 21 years of age and must possess one of the following:

13.2.1.1.1A master's degree in social work, sociology, psychology, guidance and counseling, education, business administration, a human behavioral science, public administration or a related field from an accredited college, and three years of full-time work experience in human services or a related field, at least two years of which must have been in an administrative or supervisory capacity; or

13.2.1.1.2A bachelor's degree in social work, sociology, psychology, guidance and counseling, education, business administration, a human behavioral science, public administration or a related field from an accredited college, and four years of post-bachelor's degree full-time work experience in human services or a related field, at least two years of which must have been in an administrative or supervisory capacity.

### 13.2.2 Direct Care Supervisor Qualifications

13.2.2.1 A direct care supervisor, at the time of appointment, must be at least 21 years of age and must possess at least one of the following:

13.2.2.1.1A bachelor's degree from an accredited college and one year of full-time work experience in a residential care facility or program;

13.2.2.1.2An associate degree or a minimum of 48 credit hours from an accredited college and two years of full-time work experience in a residential care facility or program; or

13.2.2.1.3A high school diploma or equivalent and three years of full-time work experience in a residential care facility or program.

### 13.2.3 Direct Care Worker Qualifications

13.2.3.1 A direct care worker, at the time of appointment, must be at least 21 years of age and must possess a high school diploma or an equivalent.

### 13.2.4 Service Supervisor Qualifications

13.2.4.1 A service supervisor, at the time of appointment, must be at least 21 years of age and must possess at least one of the following:

13.2.4.1.1A master's degree in social work, sociology, psychology, education, guidance and counseling, human behavioral science or a related field from an accredited college and at least two years of full-time work experience in social work, human services, teaching, counseling or a related field, at least one year of which must have been in a supervisory capacity; or

13.2.4.1.2A bachelor's degree in social work, sociology, psychology, education, guidance and counseling, human behavioral science or a related field from an accredited college and at least four years of full-time work experience in social work, human services, teaching, counseling or a related field, at least two years of which must have been in a supervisory capacity.

### 13.2.5 Service Worker Qualifications

13.2.5.1 A service worker, at the time of appointment, must be at least 21 years of age and must possess a bachelor's degree from an accredited college in social work, sociology, psychology, education, guidance and counseling, a human behavioral science or a related field and at least two years of full-time work experience in human services, teaching, counseling or a related field.

### 13.3 Administrative Oversight and Supervisor-to-Staff Ratios

13.3.1 The Director must ensure that there is a sufficient number of administrative, supervisory, social service, educational, recreational, direct care, and support employees or volunteers to perform the functions prescribed by these requirements and to provide for the care, needs, protection and supervision of residents. The ratio of direct care workers to residents during off-grounds activities or excursions must be the same as the ratios of direct care workers to residents that are required during on-grounds activities.

### 13.4 A licensee must have either:

13.4.1 A full-time Director; or

13.4.2 If its licensed capacity is less than 13 residents before January 1, 2015 or ten residents on January 1, 2015, a part-time Director and a full-time service supervisor.

13.4.3 A licensee must ensure that a designated employee is in charge on the premises at all times when residents are present.

13.4.4 A licensee must have a ratio of one service supervisor for every ten service workers or fraction thereof. A full-time Director may also serve as the service supervisor when there are three or fewer service workers.

### 13.5 Minimum Staffing at all times

- 13.5.1 A minimum of one (1) direct care worker who meets the training requirements of Section 14.0 below must be on duty and on site whenever (1) to five (5) residents are present in the home.
- 13.5.2 A minimum of two (2) staff members who meet the training requirements of Section 14.0 below must be on duty and on site whenever six (6) or more residents are present in the home.
- 13.5.3 At all times, at least one (1) service worker must be available on call.

#### **14.0 Orientation and Training of Employees and Volunteers**

- 14.1 A licensee must ensure that all employees and volunteers participate in an orientation of at least 15 hours, before commencing work, which includes:
  - 14.1.1 The purpose, policies and procedures of the facility;
  - 14.1.2 Their role and responsibilities for the protection of residents; and
  - 14.1.3 The State's requirements to report allegations of abuse, neglect, mistreatment and financial exploitation, and
  - 14.1.4 Emergency procedures and the location of emergency exits and emergency equipment, including first aid kits;
  - 14.1.5 Confidentiality requirements, including Health Insurance Portability and Accountability Act (HIPAA);
  - 14.1.6 Crisis management and safety.
- 14.2 A licensee must ensure that any employee or volunteer whose primary role or function requires interaction with residents and who works fewer than 24 hours a week, receives at least 20 hours of training annually, including the 15 hours of training provided pursuant to subsection 14.1. This training must cover subject matters designed to maintain, improve or enhance the employee's knowledge of or skills in carrying out his or her job responsibilities, including:
  - 14.2.1 Instruction in administering cardiopulmonary resuscitation (CPR) and first aid;
  - 14.2.2 Cultural sensitivity; and
  - 14.2.3 Behavior management policies and procedures, and safe and effective techniques.
- 14.3 A licensee must ensure that each employee and volunteer whose primary role or function requires interaction with residents and who works 24 or more hours a week receives at least 40 hours of training annually, including the 15 hours of training provided pursuant to subsection 14.1. This training must cover subject matters designed to maintain, improve or enhance the employee's knowledge of or skills in carrying out his or her job responsibilities, including:
  - 14.3.1 Instruction in administering cardiopulmonary resuscitation (CPR);
  - 14.3.2 Cultural sensitivity; and
  - 14.3.3 Behavior management policies and procedures, and safe and effective techniques.
- 14.4 The requirements of 14.1, 14.2 and 14.3 do not apply to licensed professionals under contract with the licensee.
- 14.5 In addition to 14.2 and 14.3, a licensee must ensure that all persons who may be required to participate in the utilization of a restraint:
  - 14.5.1 Be trained and able to demonstrate competency in the application of restraints, monitoring, assessment and providing care for a patient in a restraint (i) as part of orientation; (ii) before participating in the implementation of a restraint; and (iii) subsequently on a periodic basis consistent with facility policy.
  - 14.5.2 Have education, training, and demonstrated knowledge based on the specific needs of the resident population in techniques to identify staff and resident behaviors, events, and environmental factors that may trigger circumstances that require the use of a restraint in order to diffuse, prevent or reduce a problem before it evolves into a significant event that places the resident or others at risk.
- 14.6 A licensee must maintain on file written materials documenting the delivery of orientation and training for all employees and volunteers.

#### **15.0 Personnel Records**

- 15.1 A licensee must develop, adopt and maintain on file a personnel record for every employee and volunteer.
- 15.2 The personnel record must contain the following:
  - 15.2.1 Employment application;
  - 15.2.2 Name, current address and phone number of the employee;
  - 15.2.3 Verification of education where specified by these requirements;
  - 15.2.4 Documentation of training received prior to and during employment at the facility or program;

- 15.2.5 Work history;
  - 15.2.6 Three references from persons who are unrelated to the employee or volunteer, one of which must be from any previous employer;
  - 15.2.7 Any health verification including meeting the minimum requirements for pre-employment tuberculosis (TB) testing which requires all employees to have a base line two-step tuberculin skin test (TST) or single Interferon Gamma Release Assay (IGRA or TB blood test) such as QuantiFERon. Any required subsequent testing according to risk category shall be in accordance with the recommendations of the Centers for Disease Control and Prevention (CDC) of the U. S. Department of Health and Human Services. Should the category of risk change, which is determined by the Division of Public Health, the facility must comply with the recommendations of the CDC for the appropriate risk category.
  - 15.2.8 Verification of completed criminal history record information check and abuse registry information check;
  - 15.2.9 Verification of receipt by the employee or volunteer of his or her current job description;
  - 15.2.10 A valid Driver's License if required to transport residents;
  - 15.2.11 An annual employee performance evaluation;
  - 15.2.12 Employee disciplinary actions and history; and
  - 15.2.13 All other reports required by statute or regulation.
- 15.3 Job Descriptions for Employees
- 15.3.1 A licensee must maintain on file a current written job description for every employee and for every volunteer who works more than 24 hours a week.
  - 15.3.2 A licensee must ensure that an employee's and volunteer's permanent or temporary assignment and functions must be consistent with his or her respective current written job description.

## 16.0 Use of Volunteers

- 16.1 A licensee must develop, adopt, follow and maintain on file policies and procedures governing the qualifications and use of volunteers. The qualifications must be appropriate to the duties they perform.
- 16.2 A licensee must assign designated employees to supervise volunteers.
- 16.3 Any volunteer who provides services or assistance on a routine basis is subject to the same background check as employees, unless the volunteer is limited to less than 3 visits in a calendar year.

## 17.0 Human Rights

- 17.1 Human Rights Committee
  - 17.1.1 Membership:
    - 17.1.1.1 At least five adult individuals of high professional standing, two of whom must be professionally knowledgeable or experienced in the theory and ethical application of various treatment techniques used to address behavioral problems.
    - 17.1.1.2 A majority of Committee members must be external to the licensee or its parent organization. One member must be a member of the community or parent of a resident. One member must be a licensed mental health professional, a licensed physician, a licensed clinical psychologist, or a clinical social worker.
    - 17.1.1.3 The Committee must meet at least monthly.
  - 17.1.2 The Human Rights Committee is responsible for:
    - 17.1.2.1 Determining that residents in care are receiving humane and proper treatment;
    - 17.1.2.2 Reviewing and making recommendations regarding the licensee's policies and procedures governing the use of restraint;
    - 17.1.2.3 Reviewing the restraint records, and reviewing incident reports required by these regulations related to the use of restraints, and advising the Director accordingly;
    - 17.1.2.4 Recording and maintaining on file written minutes of all of its meetings, and providing the Director with a copy of these minutes;
    - 17.1.2.5 Making inquiries into any allegations of abusive techniques or the misuse of restraint procedures. A report of the inquiry must be provided by the Committee to the Director and sent to the Division;
    - 17.1.2.6 Monitoring the qualifications and training of employees who have been given responsibility for administering restraint procedures and to make recommendations to the Director accordingly; and
    - 17.1.2.7 Reviewing and making recommendations on all SBS Plans. See Section 20.5.

## **18.0 Behavior Management Committee (BMC)-**

- 18.1 ~~The BMC must be comprised of all clinicians whose expertise meets the needs of the resident. It must establish a SBS Plan upon admission of a resident and must conduct SBS Plan reviews on each resident on at least a monthly basis.~~
- 18.2 ~~With regard to each SBS Plan, the BMC review must provide input as to the presumed clinical efficacy and ethical acceptability of the plan.~~
  - 18.2.1 ~~Each SBS Plan author must present the following to the BMC:~~
    - 18.2.1.1 ~~A description of the results of the most recent functional assessment to identify environmental factors that correlate with the occurrence of dangerous target behaviors;~~
    - 18.2.1.2 ~~A description of the individual and his or her clinical/educational/vocational progress;~~
    - 18.2.1.3 ~~A description of positive reinforcement components that are designed to teach and strengthen appropriate behaviors;~~
    - 18.2.1.4 ~~A description of the most recent mental health review and recent changes in medication or other psychiatric interventions;~~
    - 18.2.1.5 ~~A description of any medical conditions that might be expected to impact on the occurrence of dangerous behaviors;~~
    - 18.2.1.6 ~~A description of any familial or other emotional variables that might be expected to impact on the occurrence of dangerous behaviors;~~
    - 18.2.1.7 ~~A summary of the risk benefit analysis for each proposed intervention; and~~
    - 18.2.1.8 ~~A summary statement as to the general effectiveness of the SBS Plan including presentation of the data to the BMC and a recommendation for future use.~~
- 18.3 ~~Following approval by the BMC, the HRC must review the SBS Plan as soon as practicable thereafter.~~
- 18.4 ~~Each SBS Plan that has been approved and implemented must be reviewed at least monthly by the BMC for the first 90 days following implementation and quarterly thereafter.~~

## **19.0 Abuse and Neglect**

- 19.1 ~~A licensee must provide each employee or volunteer who has contact with residents written information governing the reporting provisions of the Delaware abuse, neglect, mistreatment and financial exploitation law(s) and regulations, and must maintain on file written documentation of their receipt of this information.~~
- 19.2 ~~A licensee must not discourage, inhibit, penalize or otherwise impede any employee, volunteer, contractor or resident reporting any suspected or alleged incident of abuse, neglect, mistreatment or financial exploitation.~~
- 19.3 ~~A licensee must develop, adopt, follow and maintain on file written policies and procedures for handling any incident of suspected abuse, neglect, mistreatment or financial exploitation. The policies and procedures must contain provisions specifying that:~~
  - 19.3.1 ~~The licensee immediately must take appropriate remedial action to protect residents from harm;~~
  - 19.3.2 ~~The licensee must take appropriate long-term corrective action to eliminate the factors or circumstances that may have caused or may have otherwise resulted in a continuing risk of abuse or neglect to residents;~~
  - 19.3.3 ~~Any employee or volunteer involved in an incident of alleged abuse or neglect must be removed or suspended from having direct contact with any residents, or must be reassigned to other duties that do not involve having contact with residents until the investigation of the incident has been completed;~~
  - 19.3.4 ~~The licensee must take appropriate disciplinary action against any employee or volunteer who committed an act of abuse or neglect, mistreatment or financial exploitation.~~
  - 19.3.5 ~~All incidents must be reported to the Division pursuant to Section 24.0 below, and to the police if criminal conduct is suspected.~~

## **20.0 Use of Restraints**

- 20.1 ~~These regulations describe the procedures to be followed whenever the use of restraints is required. All residents have the right to be free from physical or mental abuse, discipline and corporal punishment. All residents have the right to be free from restraints of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Facility staff must review restraint protocols with each resident and his or her legal representative upon admission and document the review.~~
- 20.2 ~~Restraint procedures may be employed only when:~~
  - 20.2.1 ~~The resident is exhibiting a problem behavior that is so severe that it poses an imminent risk of serious bodily injury to self or others.~~
  - 20.2.2 ~~It is part of a SBS Plan that incorporates all of the elements cited below:~~

- 20.2.2.1 An initial medical evaluation to assess and address medical conditions that may be contributing to the problem behavior;
  - 20.2.2.2 A physician, nurse practitioner or other qualified and licensed medical professional has determined that there are no contraindications to the use of the intervention;
  - 20.2.2.3 It has been determined that less restrictive alternative interventions are not safe, feasible or effective; and
  - 20.2.3.4 A functional behavioral assessment has been conducted to identify the situations and conditions that trigger and/or maintain the severe problem behavior, and means taken to address and correct those conditions.
- 20.3 The SBS Plan must be developed by the resident, his or her family or legal representative, and his or her education, habilitation or treatment team. The team must include: (1) a properly credentialed professional with documented training and experience in behavioral treatment of severe behavior disorders, and (2) a nurse practitioner or other relevant medical professional.
- 20.4 The SBS Plan must include:
- 20.4.1 Informed consent rendered voluntarily and in writing by the resident or legal representative after they have been provided with complete, accurate, and understandable information about all aspects of the intervention techniques that may be utilized with the resident; and
  - 20.4.2 Safeguards to minimize risks of harm and insure the resident's safety at all times, including during restraint.
  - 20.4.3 The SBS Plan must conform to current best practices and ethical standards pertaining to the behavioral treatment of severe problem behavior.
- 20.5 The SBS Plan must be reviewed by the HRC to ensure that it conforms to current best practices and to ethical standards.
- 20.6 Implementation must be by personnel with documented training and experience in behavioral treatment of severe behavior disorders to insure that it is done competently, safely and ethically.
- 20.7 The SBS Plan must be adjusted as needed based on frequent review by the SPTeam of data representing objectively measured occurrences of the problem behavior, and the impact of the intervention procedures.
- 20.8 Upon initiation of the restraint procedure the following must occur:
- 20.8.1 As soon as practicable the on-site supervisor must be notified.
  - 20.8.2 Trained staff must continuously monitor the resident during the restraint procedure. If the resident is observed to be in medical distress, e.g., exhibiting labored breathing, or there is evidence of physical injury, the resident must immediately be released from restraint, and medical attention provided applied.
  - 20.8.3 The restraint procedure must be terminated when there is no imminent risk to either the resident or others.
  - 20.8.4 At the termination of the intervention the resident must be observed by both the staff terminating the procedure and a second staff person to evaluate the resident's medical and emotional condition.
  - 20.8.5 If any signs of medical or emotional distress are observed, a medical and/or behavioral clinical professional must be contacted and decisions made about the next steps to resolve the situation.
  - 20.8.6 Following the conclusion of each incident of restraint, the client, staff, and any witnesses, shall participate in debriefing(s). Debriefing for the client shall occur as soon as possible, or within 24 hours of the incident unless the client is unavailable or there is a documented clinical contraindication. Staff should also debrief as soon as possible, or within 24 hours to conduct a thorough review and analysis of each incident in an effort to use the knowledge gained from the debriefing to inform policy, procedures and practices to avoid repeated use in the future, and to improve treatment outcomes.
- 20.9 Episodes of restraint utilization must be documented as follows:
- 20.9.1 Date and time, staff involved, location, activity, antecedent conditions, specific behaviors observed, interventions implemented, duration of intervention, well being checks, clinical review and approval by the Director or designee for interventions longer than 15 minutes, physical examination for possible injury after the termination of the restraint utilization, treatment provided, supervisor signature; and
  - 20.9.2 Review by the Director or designee within one business day of an intervention when a restraint utilization event is less than 15 minutes.
  - 20.9.3 A report of all episodes of restraint utilization must be provided to the Division on the fifth day of each month for the previous month in a manner prescribed by the Division.
  - 20.9.4 Individual and aggregate clinical data on restraint interventions for each resident must be provided to the BMC and the HRC.
- 20.10 If a resident experiences the use of a restraint six or more times in a 30 day period, that resident's SBS Plan must be reviewed and modified, if indicated.

20.11 The following are prohibited:

- 20.11.1 A prone (face down) restraint of any kind;
- 20.11.2 A seated basket hold;
- 20.11.3 Restraint procedures that employ painful stimuli;
- 20.11.4 Restraint of a resident's hands, with or without a mechanical device, behind his or her back;
- 20.11.5 Physical holds relying on the inducement of pain for behavioral control;
- 20.11.6 Movement that results in hyperextension or twisting of body parts;
- 20.11.7 Any restraint procedure in which a pillow, blanket, or other item is used to cover the resident's face as part of the restraint process;
- 20.11.8 Any restraint procedure that may exacerbate a known medical or physical condition;
- 20.11.9 Use of any restraint technique medically contraindicated for a resident;
- 20.11.10 Restraint without continuous monitoring;
- 20.11.11 All forms of chemical restraint; and
- 20.11.12 Electroconvulsive Therapy
- 20.11.13 Consistent with 34 C.F.R. §§300.2 (c) and 300.146, use of restraint or forms of aversive techniques on adult IDEA-funded residents or students that violate applicable law or regulation of the public IDEA funding agency.
- 20.11.14 Seclusion

## **21.0 Health**

21.1 Employee and Volunteer Health

- 21.1.1 ~~Prior to employing any person or accepting any volunteer, a licensee must secure and maintain on file written documentation certifying and verifying that the prospective employee and volunteer has had a general physical examination within 12 months prior to the date of employment. The examination must include a medically accepted procedure for screening for tuberculosis.~~
- 21.1.2 ~~Minimum requirements for pre-employment and tuberculosis (TB) testing are those currently recommended by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.~~
- 21.1.3 ~~To be eligible to work in the facility or program, an employee or volunteer must be free from active tuberculosis; and~~
- 21.1.4 ~~If a licensee determines that the prospective employee or volunteer has not had a general physical examination within 12 consecutive calendar months prior to the anticipated date of employment or volunteer work, or if a licensee is unable to document that such an examination was completed, a licensee must require the prospective employee or volunteer, as a condition of employment, to have such a general physical examination within three consecutive calendar months of the date of employment or volunteer work.~~

## **22.0 Administration or Assistance with Self-Administration of Medication**

- 22.1 ~~A licensee must develop, adopt, follow and maintain on file written policies and procedures governing the use, administration or assistance with administration of medications, prescription and nonprescription medications to residents.~~
- 22.2 ~~The facility must establish and adhere to written medication policies and procedures which must address:~~
  - 22.2.1 ~~Obtaining and refilling medications;~~
  - 22.2.2 ~~Storing and controlling medications;~~
  - 22.2.3 ~~Disposing of medications;~~
  - 22.2.4 ~~Administration of medication and self-administration of medication; and~~
- 22.3 ~~Each facility must have a drug reference guide, with a copyright date no older than 2 years, available and accessible for use by employees.~~
- 22.4 ~~Medication must be stored and controlled as follows:~~
  - 22.4.1 ~~Medication must be stored in a locked container, cabinet, refrigerator or area that is only accessible to authorized personnel;~~
  - 22.4.2 ~~Medication that is not in locked storage may not be left unattended and may not be accessible to unauthorized personnel; and~~
  - 22.4.3 ~~Medication must be stored in the original labeled container.~~

- 22.4.4 A bathroom or laundry room may not be used for medication storage.
- 22.4.5 All expired or discontinued medication must be disposed of according to the facility's medication policies and procedures.
- 22.5 A separate medication log must be maintained for each resident documenting the administration of the medication by licensed staff member or staff assistance with self-administration by the resident (AWSAM). The log is either preprinted by the pharmacy or created by the facility. Instructions must appear as on the prescription container label. When a resident refuses a medication or is unavailable, the incident must be documented on the medication log or according to facility policy.
- 22.6 Psychotropic medications are prohibited for disciplinary purposes, for the convenience of staff or as a substitute for appropriate treatment service. An informed, written consent of the legal representative is secured and maintained in the resident's file prior to the administration of any psychotropic medication.
- 22.7 A minimum of a five (5) day supply of each resident's medication must be available at all times.
- 22.8 The facility admitting residents on prescribed psychotropic medication and/or residents on prescribed medication for chronic illness, such as diabetes or asthma, must ensure that each of these residents receives a minimum of one hour per month of Medical Consultant services. The Medical Consultant services must include:
  - 22.8.1 Review of administration of the resident's medication, including determination of problems in adherence or administration and development of corrective action plans;
  - 22.8.2 Assessment and monitoring of the resident with regard to the impact of their medication, including whether the medication is having its desired effects and whether the resident is suffering from undesired side effects;
  - 22.8.3 Serving as liaison between the licensee and the resident's physician(s); and
  - 22.8.4 Provision of instruction of employees regarding the expected outcomes from each resident's medication regime and the possible side effects of that medication regime.
- 22.9 Residents receiving medication must be trained to take their own medication, where possible. Staff who have successfully completed a Board of Nursing approved AWSAM training program may assist residents in the taking of medication provided that the medication is in the original container and properly labeled. The medication must be taken exactly as indicated on the label.
- 22.10 No person other than a physician or licensed nurse may administer medication by injection.
- 22.11 Records must be kept on file at the facility identifying AWSAM trained staff.
- 22.12 Each facility must complete an annual AWSAM report on the form provided by the Board of Nursing. The report must be submitted pursuant to the Delaware Nurse Practice Act, 24 **Del.C.** Ch. 19.

### **23.0 Universal Precautions**

A licensee must employ universal precautions for protection from disease and infection in accordance with the most current guidelines of the Centers for Disease Control and Prevention.

### **24.0 Incident Reports to the Division**

- 24.1 Incident reports, with adequate documentation, must be completed for each incident. Adequate documentation includes the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident's guardian or surrogate, attending physician and licensing or law enforcement authorities, when appropriate.
- 24.2 All incident reports whether or not required to be reported must be retained in facility files for four years. Reportable incidents must be communicated immediately, which means within eight hours of the occurrence of the incident, to the Division. The method of reporting shall be as directed by the Division.
- 24.3 Incident reports which must be retained in facility files are as follows:
  - 24.3.1 All reportable incidents as detailed below;
  - 24.3.2 Falls without injury and falls with minor injuries that do not require transfer to an acute care facility or neurological reassessment of the resident;
  - 24.3.3 Errors or omissions in treatment or medication;
  - 24.3.4 Injuries of unknown source;
  - 24.3.5 Lost items which are not subject to financial exploitation;
  - 24.3.6 Skin tears; and
  - 24.3.7 Bruises of unknown origin.

24.4 Reportable incidents are as follows:

- 24.4.1 Abuse as defined in 16 ~~Del.C.~~ §1131;
  - 24.4.2 Physical abuse with injury if resident to resident and physical abuse with or without injury if staff to resident or any other person to resident;
  - 24.4.3 Any sexual act between staff and a resident and any non-consensual sexual act between residents or between a resident and any other person such as a visitor;
  - 24.4.4 Emotional abuse whether staff to resident, resident to resident or any other person to resident;
  - 24.4.5 Neglect, mistreatment or financial exploitation as defined in 16 ~~Del.C.~~ §1131; and
  - 24.4.6 Resident elopement under the following circumstances:
    - 24.4.6.1 A resident's whereabouts on or off the premises are unknown to staff and the resident suffers harm;
    - 24.4.6.2 A cognitively impaired resident's whereabouts are unknown to staff and the resident leaves the facility premises; and
    - 24.4.6.3 A resident cannot be found inside or outside a facility and the police are summoned.
  - 24.4.7 Significant injuries;
  - 24.4.8 Injury from an incident of unknown source in which the initial investigation or evaluation supports the conclusion that the injury is suspicious. Circumstances which may cause an injury to be suspicious are: the extent of the injury; the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma); the number of injuries observed at one particular point in time; or the incidence of injuries over time;
  - 24.4.9 Injury which results in transfer to an acute care facility for treatment or evaluation or which requires periodic neurological reassessment of the resident's clinical status by professional staff for up to 24 hours;
  - 24.4.10 Areas of contusions or bruises caused by staff to a dependent resident during ambulation, transport, transfer or bathing;
  - 24.4.11 An error or omission in medication/treatment, including drug diversion, which causes the resident discomfort, jeopardizes the resident's health and safety or requires periodic monitoring for up to 48 hours;
  - 24.4.12 A burn greater than first degree;
  - 24.4.13 Any serious unusual and/or life-threatening injury;
  - 24.4.14 Entrapment which causes the resident injury or immobility of body or limb or which requires assistance from another person for the resident to secure release;
  - 24.4.15 Death from any cause including suicide;
  - 24.4.16 Attempted suicide;
  - 24.4.17 Poisoning;
  - 24.4.18 Fire within a facility;
  - 24.4.19 Utility interruption lasting more than eight hours in one or more major service including electricity, water supply, plumbing, heating or air conditioning, fire alarm, sprinkler system or telephones;
  - 24.4.20 Structural damage or unsafe structural conditions; and
  - 24.4.21 Water damage which impacts resident health, safety or comfort.
- 24.5 The facility must maintain and follow written policies and procedures, in accordance with 16 ~~Del.C.~~ Ch. 25, regarding health care decisions including advance directives. The facility must provide written information to all residents explaining such policies and procedures.

## 25.0 Facility Closure

25.1 In the event of the closing of a facility, the facility shall:

- 25.1.1 Notify the Division, and the Ombudsman, at least 90 days before the planned closure;
- 25.1.2 Notify each resident directly and his/her attending physician and, if applicable, his/her legal representative by telephone and in writing at least 90 days before the planned closure;
- 25.1.3 Give the resident or the resident's legal representative an opportunity to designate a preference for relocation to a specific facility or for other arrangements;
- 25.1.4 Arrange for relocation to other facilities in accordance with the resident's preference, if possible;
- 25.1.5 Ensure that all resident records, medications, and personal belongings are transferred with the resident and, if to another facility, accompanied by an interagency transfer form;

- 25.1.6 Provide an accounting of resident trust fund accounts which must be transferred to each resident's possession or to the facility to which the resident relocates. A record of the accounting of the funds must be maintained by the closing facility for audit purposes; and
- 25.1.7 Advise any applicant for admission to a facility which has a planned closure date in writing of the planned closure date prior to admission.

## **26.0 Waivers and Severability**

- 26.1 Waivers may be granted by the Division for good cause.
- 26.2 Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

## **1.0 Definitions**

The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

**"Authorized Representative"** means the person, on behalf of a resident without decision-making capacity, who has the highest priority to act for the resident under law, and who has the authority to make decisions on behalf of the resident. The resident's authorized representative could be a person designated by a resident under an advance health-care directive, an agent under a medical durable power of attorney for health-care decisions or financial decisions, a guardian of the person appointed pursuant to 12 **Del.C.** Chs. 39 and 39A, in accordance with the authority granted by the appointing court, a surrogate appointed under 16 **Del.C.** Ch. 25, a person designated by a resident pursuant to 16 **Del.C.** Ch. 94A, or an individual who is otherwise authorized under applicable law to make the decisions on the resident's behalf, if the resident lacks decision-making capacity.

**"Behavior Management Committee"** or **"BMC"** means the group that establishes and reviews each resident's Specialized Behavior Support Plan (SBS Plan).

**"Chemical Restraint"** means the use of any medication that is used for discipline or convenience to effect control over a resident's behavior, and is not required to treat a medical symptom. Chemical restraint is prohibited.

**"Department"** means the Department of Health and Social Services.

**"Director"** means the individual employed by the IBSER and responsible for oversight of the Delaware facilities.

**"Human Rights Committee"** or **"HRC"** means an advisory group established to monitor the rights and welfare of persons receiving services from an IBSER.

**"Incident"** means an unexpected and usually unpleasant occurrence that interrupts normal procedure or functioning.

**"Intensive Behavioral Support and Educational Residence"** or **"IBSER"** means a residential dwelling for no more than ten residents which provides services to residents 18 years and over with autism and/or intellectual/developmental disabilities and who also have specialized behavioral needs. These homes offer 24 hour supports to residents with intellectual/developmental disabilities with specialized behavioral needs.

**"Intervention Tracking Sheet"** means a form, approved by the Department, which documents types of physical interventions used when residents are not able to control their own behavior.

**"Licensed Independent Practitioner"** means a person currently licensed as an advanced practice nurse pursuant to 24 **Del.C.** Ch. 17 of the Delaware Code, a person currently licensed as a physician's assistant pursuant to 24 **Del.C.** Ch. 19 of the Delaware Code, or a person currently licensed as a physician pursuant to 24 **Del.C.** Ch. 19 of the Delaware Code.

**"Limited Lay Administration of Medication"** means the administration of medication by unlicensed assistive personnel as defined in 24 **Del.C.** §1932.

**"Physical Intervention"** means use of manual holding to suppress challenging behavior. Physical restraint by means of a device is prohibited.

**"Reportable Incident"** means an occurrence, event or suspicion of same which must be reported immediately to the Director and within 8 hours to the Department. An allegation of abuse must be reported to the Department within 2 hours of the occurrence.

**"Resident"** means the individual residing in an IBSER.

**"Specialized Behavior Support Plan"** or **"SBS Plan"** means a written document which describes the resident's plan of care. The SBS is developed in conjunction with the resident and authorized representative.

**"Timeout"** means voluntary confinement of the resident in an area removed from other residents.

## **2.0 Licensing and General Requirement**

- 2.1 No person shall establish, conduct or maintain in this State any IBSER without first obtaining a license from the Department.
- 2.1.1 Issuance of Licenses
- 2.1.1.1 Initial License
- 2.1.1.1.1 An initial license approval will be granted to those applicants who meet the requirements for licensure.
- 2.1.1.1.2 Once an initial license approval has been issued, the applicant may accept residents.
- 2.1.1.1.3 An initial license shall be issued when the first residents move in and shall be for a term of six (6) months, during which a follow-up inspection will be conducted.
- 2.1.1.1.3.1 If the applicant meets the licensing requirement at the end of the six (6) month period, an annual license for the remainder of the licensure year will be issued.
- 2.1.1.1.3.2 If the applicant does not meet the requirements but shows the ability to meet the requirements, a provisional license may be issued for a period of 90 days pending the implementation of corrective actions.
- 2.1.1.2 Provisional License
- 2.1.1.2.1 A provisional license may be granted for a period of 90 days to an IBSER that, after inspection by the Department, is not in substantial compliance with these rules and regulations but has demonstrated the ability and willingness to comply within the 90-day period.
- 2.1.1.2.2 The Department shall designate the conditions and the time period under which a provisional license is issued.
- 2.1.1.2.3 A provisional license may not be renewed.
- 2.1.1.2.4 A license will not be granted pursuant to subsection 2.1.1.3 after the provisional licensure period to any IBSER that is not in substantial compliance with these rules and regulations.
- 2.1.1.3 Annual License
- 2.1.1.3.1 A license shall be granted, for a period of one year (12 months), to all IBSERs which are and remain in substantial compliance with these rules and regulations.
- 2.1.1.3.2 A license shall be effective for a twelve-month period following date of issue and shall expire one year following such date, unless it is: modified to a provisional license, suspended, revoked, or surrendered prior to the expiration date.
- 2.1.1.3.3 All applications for renewal of licenses shall be filed with the Department at least 45 days prior to expiration.
- 2.1.1.3.4 A license will not be issued to an IBSER which is not in substantial compliance with these regulations and/or whose deficient practices present an immediate threat to the health and safety of its residents.
- 2.1.2 Suspension or Revocation of Licenses
- 2.1.2.1 The Department may suspend or revoke a license issued under this Section for good cause, including but not limited to the following:
- 2.1.2.1.1 Violation of any of the provisions of these rules and regulations or 16 Del.C. Ch. 11.
- 2.1.2.1.2 Deficiencies which present a threat to the health and safety of residents.
- 2.1.2.1.3 Permitting, aiding, or abetting the commission of any illegal act in the IBSER.
- 2.1.2.1.4 Conduct or practices which the Department determines pose a serious threat to the health and safety of a resident or residents.
- 2.1.2.1.5 Refusal to allow the Department access to the IBSER to conduct surveys/investigations as deemed necessary by the Department.
- 2.1.2.2 Before any license issued under this Section is suspended or revoked, the Department shall give 10 calendar days written notice to the holder of the license, during which the holder may appeal, in writing, for a hearing before the Secretary of the Department or her/his designee.
- 2.1.3 Imposition of Disciplinary Action
- 2.1.3.1 Before any other enforcement action is taken under this Section, the Department shall give 20 calendar days written notice to the holder of the license, during which the holder may appeal, in writing, for a hearing before the Secretary of the Department or her/his designee.
- 2.1.3.2 The due process protections of notice and opportunity to be heard shall be provided to facilities and the hearing process shall be consistent with the Administrative Procedures Act, 29 Del.C. Ch. 101.
- 2.1.4 Fees

- 2.1.4.1 Fees shall be in accordance with 16 Del.C. Ch. 11.
  - 2.1.5 A license is not transferable from one IBSER to another or from one location to another.
  - 2.1.6 A new license shall be required in the event of a change in the IBSER management company, building owner or controlling person.
  - 2.1.7 The license shall be readily available in the IBSER for which it was issued.
- 2.2 Inspection
- 2.2.1 Every IBSER for which a license has been issued under this Section shall be inspected regularly and as determined necessary by the Department.
- 2.3 Application Process
- 2.3.1 All persons or entities applying for a license shall request a licensure application from the Department.
  - 2.3.2 The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the Department.
  - 2.3.3 IBSERs applying for an initial license, must submit:
    - 2.3.3.1 Evidence of a satisfactory compliance history, as appropriate, during the preceding five years.
    - 2.3.3.2 A list of all facilities managed, owned or controlled by the applicant or associated entity in any jurisdiction during the preceding five years.
    - 2.3.3.3 Financial information as required by the Department.
      - 2.3.3.3.1 Financial information disclosed to the Department shall not be subject to Freedom of Information Act requests.
- 2.4 Separate licenses are required for separate homes maintained in separate locations, regardless of their proximity, even though operated by the same IBSER.
- 2.5 The term "IBSER" shall not be used as part of the name of any program in this State unless the home is licensed under these regulations.
- 2.6 No IBSER shall adopt rules that conflict with these regulations.
- 2.7 The Department shall be notified in writing at least 90 days before any changes in the ownership or management of an IBSER.
- 2.8 Each IBSER shall provide, to all residents and authorized representatives, a complete statement listing all charges for services, materials and equipment that shall (or may be) furnished to the resident during the period of residency as part of the admission agreement.
- 2.9 Each IBSER shall provide a written statement at the time of admission that includes the refund and prepayment policy; and clarifies responsibility in the event of a retroactive denial in the case of a third party payment.
- 2.10 All required records maintained by the residence must be open to inspection by authorized representatives of the Department.
- 2.11 No rules may be adopted by the licensee or administrators which are in conflict with these regulations.
- 2.12 The Department must be notified, in writing, within 10 calendar days of any change in the Director.
- 2.13 The IBSER must provide safe storage for residents' valuables.
- 2.14 Each IBSER shall cooperate fully with the Medicaid Fraud Control Unit and the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by 16 Del.C. Ch. 11.
- 2.15 Each facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors a sign, prescribed by the Department, that specifies complaint and abuse reporting procedures and provides the "1-800" hotline number to receive complaints 24 hours a day, 7 days a week.

### **3.0 Policies and Procedures**

- 3.1 The IBSER shall maintain and comply with a written policy and procedure manual.
  - 3.1.1 The manual must be updated as necessary to comply with changes in state and/or federal laws and regulations.
  - 3.1.2 The manual must be reviewed at least annually.
  - 3.1.3 Staff must be notified promptly of changes and provided necessary education.
- 3.2 The IBSER shall establish written policies and procedures regarding:
  - 3.2.1 Transfer, discharge and readmission.
  - 3.2.2 Behavior support that uses person-centered positive behavior support techniques that are consistent with the policies/standards and that are monitored by the Human Rights Committee.

- 3.2.3 The utilization of reportable incident data to track trends in and help prevent further incidents.
- 3.2.4 The system for reporting and processing of reportable incidents.
- 3.2.5 Open communication with persons of the community in which the IBSER is located in order to facilitate the resident's community integration.
- 3.2.6 Criminal background check and drug testing laws as required under 16 Del.C. Ch. 11.
- 3.2.7 The implementation and documentation of the person-centered plan.
- 3.2.8 Employment/Personnel which shall include:
  - 3.2.8.1 Qualifications, responsibilities and requirements for each job classification;
  - 3.2.8.2 Pre-employment requirements;
  - 3.2.8.3 Position descriptions;
  - 3.2.8.4 Supervision, promotion and discipline;
  - 3.2.8.5 Orientation for all employees and contractors including any guidelines for specialized training;
  - 3.2.8.6 In-service education policy; and
  - 3.2.8.7 Annual performance review and competency testing.
- 3.2.9 The rights of residents.
- 3.2.10 The safeguarding of the residents' funds while still allowing access to the residents' funds at all times.
- 3.2.11 The safeguarding of the residents' personal information.
- 3.2.12 Infection prevention and control.
- 3.2.13 Administration, limited lay administration (LLAM) and self-administration of medication.
- 3.2.14 Maintenance (including electrical maintenance) and cleaning procedures, storage of cleaning materials and/or pesticides and other toxic materials.
- 3.2.15 The prohibition of firearms on the premises of the IBSER.
- 3.2.16 Abuse, neglect, mistreatment and financial exploitation.
- 3.2.17 Health care decisions in accordance with 16 Del.C. Ch. 25.
  - 3.2.17.1 Verification that this information was given to the resident/authorized representative must be filed in the resident's record.
- 3.2.18 All hazards emergency procedures.

#### **4.0 Environment**

- 4.1 Site Provisions
  - 4.1.1 Each IBSER shall be located on a site which is considered suitable by the Department.
  - 4.1.2 The site must be safe, easily drained, must be suitable for disposal of sewage and furnishing a potable water supply.
  - 4.1.3 The exterior of the site shall be free from hazards and also from the accumulation of waste materials, obsolete and unnecessary articles, tin cans, rubbish, and other litter.
- 4.2 The IBSER must have a safe and sanitary environment, properly constructed, equipped, and maintained to protect the health and safety of residents.
- 4.3 The IBSER shall comply with all local and state building codes and ordinances as pertain to this occupancy.
- 4.4 Physical Plant
  - 4.4.1 All construction - new, renovations, or remodeling - must conform to the local building codes, current at the time of construction.
  - 4.4.2 When an IBSER plans to construct or extensively remodel a licensed home or convert a building to a licensed home, it shall submit one copy of properly prepared plans and specifications for the entire home to the Department.
    - 4.4.2.1 An approval, in writing, shall be obtained before such work is begun.
    - 4.4.2.2 All completed construction, extensive remodeling or conversions shall remain in accordance with the plans and specifications, as approved by the Department.
    - 4.4.2.3 The Department must visit the site upon completion of the work to ensure that the work was completed according to plans submitted.
  - 4.4.3 Windows
    - 4.4.3.1 Window space shall not be less than one tenth (1/10) of the floor space.
      - 4.4.3.1.1 Up to 25% reduction may be allowed when approved mechanical ventilation is utilized in multi-bed rooms.

- 4.4.3.2 All windows in rooms to be used by residents are to be constructed to eliminate drafts and to provide adequate light and ventilation.
- 4.4.3.3 All windows designed to open and shut must be functional.
- 4.4.4 The building shall be constructed and maintained to prevent the entrance, and control the existence, of rodents and insects.
  - 4.4.4.1 All exterior openings shall be effectively screened.
  - 4.4.4.2 Screen doors shall open outward and shall be equipped with self-closing devices.
  - 4.4.4.3 All screening shall have at least 16 mesh per inch.
- 4.4.5 Resident bedrooms shall open directly into a corridor.
- 4.4.6 IBSERs accommodating individuals who regularly require wheelchairs shall be equipped with ramps.
  - 4.4.6.1 Egress ramps must be located at the primary means of egress.
    - 4.4.6.1.1 A secondary means of egress that is independent and remotely located from the primary means of egress must be provided to the outside of the dwelling at street/ground level or open to an exterior balcony.
    - 4.4.6.2 Ramps must be compliant with the standards outlined in Americans with Disabilities Act (ADA).
- 4.4.7 The physical dimensions of the home will provide, as a minimum, 150 square feet of common living space for the first occupant and 100 square feet of living space for each additional occupant.
- 4.4.8 The roof, exterior walls, doors, skylights and windows shall be weather tight and watertight and shall be kept in sound condition and good repair.
- 4.5 Water supply and sewage disposal
  - 4.5.1 Non-public water systems must be approved by the Department.
    - 4.5.1.1 Providers must sample non-public water annually and have it tested by the Department.
      - 4.5.1.1.1 A copy of all water testing results must be kept on site at the IBSER.
  - 4.5.2 Non-public sewage disposal systems must be approved by the Department of Natural Resources and Environmental Control.
  - 4.5.3 The water system must supply adequate hot and cold water, under pressure, at all times.
  - 4.5.4 The plumbing shall meet the requirements of all municipal or county codes. Where there are no local codes, the provisions of the Department Sanitary Plumbing Code shall prevail.
  - 4.5.5 Hot water at shower, bathing and hand washing facilities shall not exceed 115°F (46°C).
- 4.6 A licensee must ensure that the home's premises and equipment accessible to or used by residents are free from any danger to their health, safety and well-being.
- 4.7 Electric shall meet all municipal, county and State requirements and laws.
- 4.8 Each room and access way shall be suitably lighted at all times for maximum safety, comfort, sanitation and efficiency of operation particularly in areas that present safety hazards. Careful attention shall be given to avoid glare.
- 4.9 Safety equipment
  - 4.9.1 Stairways shall have non-slip surfaces and sturdy handrails to prevent slipping. Stairways over six (6) feet in width shall have handrails on both sides.
  - 4.9.2 Working electric switches shall be located at the top and the bottom of stairways.
  - 4.9.3 Hallways shall be equipped with working night-lights.
  - 4.9.4 Floor surfaces shall be durable, yet non-abrasive and slip-resistant. Floor surfaces shall be kept in good repair. Area rugs on hard finished floors shall have a non-skid backing. Carpeting shall be maintained in a clean condition.
  - 4.9.5 All interior doors in areas used by residents shall be capable of being opened from either side at all times.
  - 4.9.6 Cameras or monitoring devices are not permitted in resident bedrooms or bathrooms unless written permission by resident(s) or authorized representative(s) is on file.
- 4.10 Bedrooms
  - 4.10.1 Each bedroom shall be well-ventilated.
  - 4.10.2 Each bedroom shall be an outside room with at least one (1) window opening directly to the outside.
  - 4.10.3 A one (1) person bedrooms shall be at least 100 square feet.
  - 4.10.4 Multi-bed bedrooms shall:
    - 4.10.4.1 Provide at least eighty (80) square feet of floor space per person.
    - 4.10.4.2 Be adequately spaced for comfort.

4.10.4.3 Have the beds spaced at least three (3) feet apart. Bunk beds are prohibited.

4.10.5 The ceiling height shall be not less than seven (7) feet from the floor on average. Areas where the height of the ceiling is less than five (5) feet shall not be counted in the determination of the room size.

4.10.6 Walls must extend from the floor to the ceiling.

4.10.7 Doors must be closable and lockable.

4.10.8 Each bedroom must have adequate electrical outlets which are conveniently located.

4.10.9 At least one (1) light fixture shall be switched at the entrance to each bedroom.

4.10.10 Walls shall be cleanable.

4.10.11 Each bedroom shall ensure adequate privacy.

4.10.12 No more than two (2) residents may share a bedroom.

4.10.13 Residents may furnish and decorate their own bedrooms.

4.10.14 Mattresses shall be covered or protected with non-porous material.

4.10.15 Each bedroom shall provide storage space for clothing and storage space for personal items to include, minimally, closet space.

4.10.16 Bedrooms shall contain space, as needed, for bedside assistance and to accommodate the use and storage of mobility devices and prosthetic equipment.

#### 4.11 Bathrooms

4.11.1 Floor and wall surfaces shall be constructed and maintained to be impervious to water and to permit the floor and walls to be easily kept in a clean condition.

4.11.2 At least one (1) window or mechanical ventilation to the outside shall be provided.

4.11.3 Floor surfaces shall be durable, yet non-abrasive and slip-resistant. Floor surfaces shall be kept in good repair.

4.11.4 There shall be at least one (1) bathtub or shower for every four (4) residents.

4.11.4.1 Each bathtub or shower shall be in an individual room or enclosure which provides private space for bathing, drying and dressing.

4.11.4.2 Each bathtub or shower shall be equipped with substantial grab bars and slip-resistant surfaces.

4.11.5 There shall be at least one (1) toilet of appropriate size for each four (4) residents which shall be located on the same level as the residents' bedrooms.

4.11.5.1 When more than one (1) toilet is located in the same room, provisions for private use shall be made.

4.11.5.2 Each toilet shall be equipped with a substantial grab bar.

4.11.5.3 Each toilet shall be equipped with a toilet seat and toilet tissue.

4.11.6 There shall be at least one (1) hand washing sink for every four (4) residents which shall be located on the same level as the residents' bedrooms.

4.11.6.1 The hand washing sink shall have hot and cold water.

4.11.6.2 Hand washing sinks shall be available in or immediately adjacent to bathrooms and/or toilet rooms.

4.11.7 Unbreakable mirrors, fastened to the wall, shall be furnished in bathrooms, including mirrors that are accessible by residents who use wheelchairs.

#### 4.12 Kitchen

4.12.1 Floor, wall and counter surfaces shall be constructed and maintained to be impervious to water (to the level of splash) and to permit the floor and walls to be easily kept in a clean condition.

4.12.2 There shall be:

4.12.2.1 At least one (1) refrigerator and one (1) freezing unit, in proper working order and capable of maintaining frozen foods in the frozen state and refrigerated foods at 41 degrees Fahrenheit or below, as determined in the warmest part of the refrigerator.

4.12.2.1.1 Each refrigerator shall be equipped with a refrigerator thermometer.

4.12.2.2 At least one (1) four-burner range and one (1) oven (or combination thereof) which is in proper working order.

4.12.2.3 A commercial dishwasher or the home must use a dishwasher detergent with sanitizer.

4.12.2.4 At least one (1) clean trash receptacle.

4.12.2.5 At least one (1) operable window or suitable exhaust system for removal of smoke, odors and fumes.

4.12.2.6 Adequate cleaning/disinfecting agents and supplies.

4.12.2.7 Storage areas with separate storage for:

4.12.2.7.1 Food, which must be stored off of the floor.

4.12.2.7.1.1 Dry or staple food items shall be stored at least six (6) inches above the floor in a ventilated room that is not subject to waste water back flow or to contamination by condensation or leakage.

4.12.2.7.2 Cleaning agents, disinfectants and polishes.

4.12.2.7.3 Poisons, pesticides or other toxic chemicals which must be stored in locked cabinets/storage areas.

4.12.2.7.3.1 Safety Data Sheets (SDS) must be available for any poisons, pesticides or toxic chemicals stored on-site.

4.12.2.7.4 Eating and serving utensils, pots, pans and cooking utensils which must be stored off of the floor.

4.12.3 All food items shall be stored in closed or sealed containers or wrapping.

4.12.4 Food storage areas shall be free of food particles, dust and dirt.

4.12.5 Food preparation areas, utensils and appliances shall be cleaned following each meal prepared.

4.12.6 Opened foods that are to be stored shall immediately be dated with the date that the foods were opened.

4.12.7 Prepared and leftover foods requiring refrigeration must be kept for no more than three (3) days.

4.13 Dining and dayroom area

4.13.1 There shall be provided one (1) or more areas that are adequate in size and furnished for resident dining, recreational and social activities.

4.13.2 The furniture shall be of such condition so as not to pose a safety hazard and arranged and located as to provide convenient access to the residents.

4.13.3 When a multi-purpose room is used, it shall have sufficient space to accommodate activities in order to prevent interference of one (1) activity with another.

4.14 Sanitation and housekeeping

4.14.1 All rooms and every part of the building shall be kept clean, orderly, in good repair and free of offensive odors.

4.14.2 Waste material, obsolete and unnecessary articles, tin cans, rubbish and other litter shall not be permitted to accumulate in the home.

4.14.3 Sharps shall be stored in sanitary containers and disposed of in a medical and disposable sharps container.

4.14.4 When a separate sink is not provided for janitorial or laundry duties, the sink shall be sanitized after each use.

4.14.5 No laundry may be done in the food service area during the preparation or serving of food.

4.14.6 Premise must be free of pests, insects and rodents.

4.14.7 Laundry

4.14.7.1 Bed linens and towels must be changed at least weekly or more often as necessary.

4.14.7.2 If linen chutes are used, they will be maintained in a sanitary condition.

4.14.7.3 If the clothes washing machine is in the kitchen, soiled laundry shall not be taken into the kitchen until it is ready to be washed.

4.14.7.4 The authorized provider will complete laundry for residents who are incapable of doing so on their own.

4.15 Providers shall ensure a home-like environment for each licensed home. Functional arrangement of rooms, furnishings, and decor shall be compatible with the need for accessibility.

4.16 Furniture and furnishings shall be safe, comfortable, cleanable and in good repair and shall resemble those in homes in the local community, to the extent compatible with residents' choice and the physical needs of the residents living in the home. To the extent possible, personal furniture shall be chosen by residents.

4.17 Heating apparatus shall not constitute a burn, smoke or carbon monoxide hazard to residents served or their support staff.

4.18 Temperature, humidity, ventilation, and light in all living and sleeping quarters shall be maintained to provide a comfortable atmosphere.

4.19 Basement space may be used for activities for people in the home if there is a minimum of two (2) fire exits.

**5.0 Records and Reports**

- 5.1 There shall be a separate record maintained on each resident as per acceptable standards of practice.
- 5.2 There shall be a medication administration record (MAR) including medications, dosages, frequency, route of administration, and initials of the person administering each dose. The record shall include the identity of each person administering medication.
- 5.3 Confidentiality of residents' records shall be maintained in accordance with the federal Health Insurance Portability and Accountability Act (HIPAA) and 16 Del.C. §1121(6).
- 5.4 Records shall be retained for 6 years after discharge.
- 5.5 Incident reporting
  - 5.5.1 All incidents shall be adequately documented. Adequate documentation shall include:
    - 5.5.1.1 The name of the resident(s) involved and whether they are able to provide information regarding the incident;
    - 5.5.1.2 The date, time and place of the incident;
    - 5.5.1.3 A detailed description of the incident;
    - 5.5.1.4 A list of other parties involved, including witnesses;
    - 5.5.1.5 Witness statements;
    - 5.5.1.6 The nature of any injuries sustained;
    - 5.5.1.7 Resident(s) outcome(s); and
    - 5.5.1.8 Follow-up action:
      - 5.5.1.8.1 Notification of the resident(s) authorized representative(s), attending physician and licensing or law enforcement authorities, when appropriate;
      - 5.5.1.8.2 The corrective action taken immediately for each resident or area impacted;
      - 5.5.1.8.3 How the staff will act to protect residents in a similar situation;
      - 5.5.1.8.4 What measures will be taken or what systems will be changed to ensure that the incident does not recur;
      - 5.5.1.8.5 How the staff will measure the success of the interventions put in place.
- 5.6 All reports of incidents, whether or not required to be reported, shall be retained for three years.
- 5.7 Reportable incidents are as follows:
  - 5.7.1 Abuse, neglect, mistreatment or exploitation as defined in 16 Del.C. Ch. 11, Subch. III, or reasonable suspicion of same.
  - 5.7.2 Individual elopement under the following circumstances:
    - 5.7.2.1 An individual's whereabouts on or off the premises is unknown to staff and the individual suffers harm.
    - 5.7.2.2 A cognitively impaired individual's whereabouts are unknown to staff and the individual leaves the neighborhood home premises.
    - 5.7.2.3 An individual cannot be found inside or outside the neighborhood home and the police are summoned.
  - 5.7.3 Significant injuries:
    - 5.7.3.1 Injury from an incident of unknown source in which the initial evaluation supports the conclusion that the injury is suspicious.
      - 5.7.3.1.1 Circumstances which may cause an injury to be suspicious are:
        - 5.7.3.1.1.1 The extent of the injury;
        - 5.7.3.1.1.2 The location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma);
        - 5.7.3.1.1.3 The number of injuries observed at one particular point in time; or
        - 5.7.3.1.1.4 The incidence of injuries over time.
    - 5.7.3.2 Injury that results in transfer to an acute care facility for treatment or evaluation;
    - 5.7.3.3 Injury that requires periodic neurologic reassessment as ordered by a licensed independent practitioner up to 24 hours;
    - 5.7.3.4 Areas of contusions or bruises caused by staff to a dependent individual;
    - 5.7.3.5 Injury sustained by a totally dependent individual;
    - 5.7.3.6 A burn greater than first degree;
    - 5.7.3.7 Any serious unusual and/or life-threatening injury.

- 5.7.4 Entrapment which causes the individual injury or immobility of body or limb or which requires assistance from another person for the individual to secure release.
- 5.7.5 Suicide or attempted suicide.
- 5.7.6 Poisoning.
- 5.7.7 Any drug overdose including a drug overdose from illegal drugs.
- 5.7.8 Medication/treatment error or omission when:
  - 5.7.8.1 It results in discomfort for the individual;
  - 5.7.8.2 It jeopardizes the individual's health or safety; or
  - 5.7.8.3 It requires monitoring as ordered by a licensed independent practitioner for up to 48 hours
- 5.7.9 Fire within an IBSER home.
- 5.7.10 Utility interruption lasting more than eight hours in one or more major service(s) including electricity, water supply, plumbing, heating or air conditioning, fire alarm, sprinkler system or telephones.
- 5.7.11 Structural damage or unsafe structural conditions.
- 5.7.12 Water damage that impacts individual health, safety or comfort.
- 5.7.13 Unexpected deaths.
- 5.7.14 An epidemic outbreak or illness requiring social distancing.
- 5.8 Incidents of alleged abuse, neglect or mistreatment must be reported to the Department within 2 hours of occurrence. Other reportable incidents shall be communicated to the Department within 8 hours of occurrence.
- 5.9 All reportable incidents must be thoroughly investigated by the IBSER and a written report provided to the Department within 5 business days of the incident. The written report must include all information as outlined in subsection 5.5.
- 5.10 The authorized provider shall maintain records and reports of fire safety, health, sanitation, and environmental inspections required by local and state laws and regulations.
  - 5.10.1 The provider shall document actions taken to correct deficiencies noted in these reports. Corrective actions shall include:
    - 5.10.1.1 The corrective action taken immediately for each resident or area impacted;
    - 5.10.1.2 How the staff will act to protect residents in a similar situation;
    - 5.10.1.3 What measures will be taken or what systems will be changed to ensure that the incident does not recur; and
    - 5.10.1.4 How the staff will measure the success of the interventions put in place.
  - 5.10.2 All corrective action plans must be sent to the Department for approval within 10 business days of the receipt of the report.
- 5.11 Personnel Records:
  - 5.11.1 A licensee must develop, adopt and maintain on file a personnel record for every employee and volunteer.
  - 5.11.2 The personnel record must contain the following:
    - 5.11.2.1 Employment application;
    - 5.11.2.2 Name, current address and phone number of the employee;
    - 5.11.2.3 Verification of education where specified by these requirements;
    - 5.11.2.4 Documentation of training received prior to and during employment at the IBSER or program, including titles and hours of in-service training;
    - 5.11.2.5 Work history;
    - 5.11.2.6 Three references from persons who are unrelated to the employee or volunteer, one of which must be from any previous employer;
    - 5.11.2.7 Results of tuberculosis screening
    - 5.11.2.8 Documentation of annual influenza vaccination or refusal.
    - 5.11.2.9 Verification of completed criminal history record information check and abuse registry information check;
    - 5.11.2.10 Verification of drug screening;
    - 5.11.2.11 Employee job description;
    - 5.11.2.12 Verification of receipt by the employee or volunteer of his or her current job description;
    - 5.11.2.13 A copy of a valid Driver's License if required to transport residents;
    - 5.11.2.14 An annual employee performance evaluation;
    - 5.11.2.15 Annual competency evaluation for LLAM trained employees;

- 5.11.2.16 Employee disciplinary actions and history;
- 5.11.2.17 If applicable, license/certification number and expiration date; and
- 5.11.2.18 All other reports required by statute or regulation.

## **6.0 Emergencies and Disaster Preparedness**

- 6.1 Fire safety in IBSER's must comply with the rules and regulations of the State Fire Prevention Commission or the appropriate local jurisdiction.
- 6.2 The IBSER must have a minimum of two means of egress.
- 6.3 The IBSER must have an adequate number of UL approved smoke/carbon monoxide detectors in working order.
  - 6.3.1 In a single level IBSER, a minimum of one smoke/carbon monoxide detector must be placed between the bedroom area and the remainder of the IBSER.
  - 6.3.2 In a multi-story IBSER, a minimum of one smoke/carbon monoxide detector must be on each level. On levels which have bedrooms, the detector must be placed between the bedroom area and the remainder of the IBSER.
- 6.4 There must be at least one functional two and one-half to five pound ABC fire extinguisher on each floor of living space in the IBSER that is readily accessible to staff. Each extinguisher must be checked annually.
- 6.5 Evacuation drills
  - 6.5.1 Drills shall be held quarterly on different days and at different times.
  - 6.5.2 Drills are not to be held at night, during individuals' sleep time, nor are they to be held in inclement weather.
  - 6.5.3 Emergency evacuation drills must include all persons on the premises, including employees, volunteers, residents and visitors.
  - 6.5.4 The location of egress during these evacuation drills must be varied, with window evacuation procedures discussed as an alternative, if not practiced.
  - 6.5.5 During drills, persons must be evacuated with staff assistance to the designated safe area outside of the IBSER.
  - 6.5.6 As evidenced by evacuation drill reports that are maintained by the IBSER, drills must assure that all persons and staff are familiar with the evacuation requirements and procedures.
    - 6.5.6.1 Any problems persons have evacuating a building during a drill must result in a written plan of specific corrective action(s) to be taken.
  - 6.5.7 Persons who are unable to achieve the exit schedule prescribed by the Life/Safety Code with available assistance must be provided with additional assistance.
- 6.6 A licensee must ensure that each newly admitted resident is provided an orientation regarding emergency procedures and the location of all exits within 48 hours of admission.
- 6.7 The IBSER must maintain an adequate communication system to ensure that on and off-duty personnel and local fire and safety authorities are notified promptly in the event of an emergency or disaster.
- 6.8 The telephone numbers of the nearest poison control center and the nearest source of emergency medical services must be posted.
- 6.9 Provisions must be made for emergency auxiliary heat and lighting by means of alternate sources of electric power, alternate fuels, and stand-by equipment, or arrangements with neighbors, other agencies or community resources.
- 6.10 Providers must identify an alternative relocation site in the event of an emergency requiring evacuation.
- 6.11 A licensee must prohibit the storage or use of any firearms or other weapons on the grounds of the IBSER or program or in any building used by residents.

## **7.0 Resident Rights**

IBSERs must comply with 16 Del.C. Ch. 11, Subch. II, regarding the rights of residents.

## **8.0 Resident Services**

- 8.1 The SBS Plan:
  - 8.1.1 Must be developed by the resident, or the authorized representative, and the BMC within 5 days of admission to the IBSER.
    - 8.1.1.1 The BMC must include:

8.1.1.1.1 A properly credentialed professional with documented training and experience in behavioral treatment of severe behavior disorders, and

8.1.1.1.2 A licensed independent practitioner.

8.1.2 Must conform to current best practices and ethical standards pertaining to the behavioral treatment of severe problem behavior.

8.1.3 Must be reviewed by the HRC to ensure that it conforms to current best practices and to ethical standards.

8.1.4 Must be adjusted as needed based on frequent review by the treatment team of data representing objectively measured occurrences of the problem behavior, and the impact of the intervention procedures.

8.1.5 Must be reviewed at least monthly for the first 90 days and then at least quarterly thereafter.

8.1.6 Must include informed consent rendered voluntarily and in writing by the resident or authorized representative after they have been provided with complete, accurate, and understandable information about all aspects of the intervention techniques that may be utilized with the resident.

8.1.7 Must include safeguards to minimize risks of harm and insure the resident's safety at all times, including during physical interventions.

## 8.2 Healthcare

8.2.1 The provider shall ensure that residents receive needed medical, dental, visual and behavioral care.

8.2.2 The provider shall ensure that necessary screenings/appointments are scheduled within five (5) business days of receipt of an order.

8.2.3 Providers shall assist individuals to carry out all health related orders as determined by the health care professionals.

8.2.4 Each resident shall have a physical/medical examination annually or more frequently as required by a licensed independent practitioner or the affiliated social agency/program.

8.2.5 The provider shall provide or assist to arrange for transportation for a resident's appointments.

## 8.3 Medications

8.3.1 Storing and controlling medications.

8.3.1.1 Storage must be in a locked container, cabinet, refrigerator or area that is only accessible to authorized personnel. A bathroom or laundry room may not be used for medication storage.

8.3.1.2 Medications must be attended at all times; may not be left unattended and may not be accessible to unauthorized personnel.

8.3.1.3 Medications must be stored in the original labeled container.

8.3.1.4 Medications requiring refrigeration shall be kept locked in a separate box within the refrigerator.

8.3.1.5 Medications must be stored at room temperature (59-86F), unless otherwise indicated by the labeling, in a manner that protects the product itself from deterioration or container breakage.

8.3.2 Medications shall be self-administered (as approved by the BMC based on an assessment of the resident's capabilities) or distributed directly to the resident from the prescription container in strict accordance with the prescription directions.

8.3.3 Administration of medications must be in accordance with the requirements in 24 Del.C. §1932.

8.3.3.1 LLAM trained personnel must have documentation on file that they have completed LLAM training as required by 24 Del.C. Ch. 19.

8.3.3.2 LLAM trained personnel must complete annual competencies and have documentation of same as required by 24 Del.C. Ch. 19.

8.3.3.3 Each IBSER must complete an annual LLAM report on the form provided by the Board of Nursing. The report must be submitted pursuant to 24 Del.C. Ch. 19.

8.3.4 The authorized provider shall ensure that prescription medication is not used by other than the resident for whom the medication was prescribed.

8.3.5 Topical (external) medications must be stored separately from oral (internal) medications.

8.3.6 Controlled substances must be under a double lock whether stored in a cupboard or refrigerator. A lock on an outside access door can be considered the first lock.

8.3.7 Medication must be stored at room temperature (59-86F) unless otherwise indicated by the labeling in a manner that protects the product itself from deterioration or container breakage.

8.3.8 Employees must observe for any changes in resident behavior or cognition and report same per policy requirements.

8.3.9 Documentation of medication administration.

8.3.9.1 A separate medication log must be maintained for each resident.

- 8.3.9.2 Each medication administered by a licensed or LLAM trained staff member must be documented.
- 8.3.9.3 The log must clearly document whether the medication was self-administered or administered by staff.
- 8.3.9.4 Staff members administering medications must legibly document their name and initials on the log.
- 8.3.9.5 Refused medication or resident unavailability must be documented.

8.3.10 Medications must be disposed of according to policy.

#### 8.3.11 Psychotropic medications

- 8.3.11.1 Are prohibited for disciplinary purposes, for the convenience of staff or as a substitute for appropriate treatment service.
  - 8.3.11.2 An informed, written consent of the resident or authorized representative must be secured and maintained in the resident's file prior to the administration of any psychotropic medication.
  - 8.3.11.3 Residents admitted or placed on a psychotropic medication must be seen and evaluated on a regular basis by a licensed independent practitioner with expertise in mental health treatment.
  - 8.3.11.4 Documentation of such evaluations must be maintained in the resident record.
- 8.3.12 Residents admitted or placed on medication for chronic illness must be seen and evaluated on a regular basis by a licensed independent practitioner.
- 8.3.12.1 Documentation of such evaluations should be maintained in the resident record.
- 8.3.13 No person other than a licensed healthcare professional approved by the Division of Professional Regulation may administer medication by injection.

#### 8.4 Communicable disease

- 8.4.1 A resident with an active communicable disease must receive prompt medical treatment and supervision.
- 8.4.2 The provider shall assume responsibility for seeing that necessary precautions are taken and that there is a minimum danger of transmission of a communicable disease to any occupant of the home.
- 8.4.3 Minimum requirements for tuberculosis (TB) testing require all residents to have a base line two step tuberculin skin test prior to admission.
- 8.4.4 All IBSEs shall have on file evidence of an annual vaccination against influenza for all residents unless refused or medically contraindicated.
  - 8.4.4.1 The provider must document and keep on file each resident's acceptance or refusal of the flu vaccine.

#### 8.5 Food service

- 8.5.1 A minimum of three (3) meals shall be available and/or served in each 24 hour period.
- 8.5.2 There shall not be more than a 14 hour span between the evening and breakfast meals unless suitable nourishment is provided in the interim.
- 8.5.3 Individuals shall have access to food at all times.
- 8.5.4 The food served shall be suitably prepared and of sufficient quantity and quality to meet the nutritional needs of the residents.
- 8.5.5 Special diets shall be served on the written prescription of the resident's licensed independent practitioner.
- 8.5.6 There shall be three day supply of food and water in each home at all times as posted on the menus.

#### 8.6 Physical Intervention

- 8.6.1 Physical intervention utilized must be from a training program approved by the Department.
- 8.6.2 All staff must be trained in the use of physical intervention techniques.
  - 8.6.2.1 Implementation must be by personnel with documented training and experience in behavioral treatment of severe behavior disorders to insure that it is done competently, safely and ethically.
- 8.6.3 Physical intervention may be employed only when:
  - 8.6.3.1 The resident is exhibiting a problem behavior that is so severe that it poses an imminent risk of serious bodily injury to self or others.
  - 8.6.3.2 It is part of a SBS Plan that incorporates all of the elements cited below:
    - 8.6.3.2.1 An initial medical evaluation to assess and address medical conditions that may be contributing to the problem behavior;
    - 8.6.3.2.2 A licensed independent practitioner has determined that there are no contraindications to the use of the intervention;
    - 8.6.3.2.3 It has been determined that less-restrictive alternative interventions are not safe, feasible or effective; and

8.6.3.2.4 A functional behavioral assessment has been conducted to identify the situations and conditions that trigger and/or maintain the severe problem behavior and means have been taken to address and correct those conditions.

8.6.4 Upon initiation of the physical intervention the following must occur:

8.6.4.1 Notification of the on-site supervisor.

8.6.4.2 Continuous monitoring of the resident during the physical intervention.

8.6.4.2.1 If the resident is observed to be in medical distress, e.g., exhibiting labored breathing, or there is evidence of physical injury, the resident must immediately be released from the physical intervention, and medical attention provided.

8.6.5 The physical intervention must be terminated when there is no imminent risk to either the resident or others.

8.6.6 At the termination of the intervention the resident must be observed by both the staff terminating the procedure and a second staff person to evaluate the resident's medical and emotional condition.

8.6.7 If any signs of medical or emotional distress are observed, a medical and/or behavioral clinical professional must be contacted and decisions made about the next steps to resolve the situation.

8.6.8 Following the conclusion of each incident of physical intervention, the resident, staff, and any witnesses, shall participate in debriefing(s).

8.6.8.1 Debriefing for the resident shall occur as soon as possible, or within 24 hours of the incident unless the resident is unavailable or there is a documented clinical contraindication.

8.6.8.2 Staff should also debrief as soon as possible, or within 24 hours to conduct a thorough review and analysis of each incident in an effort to use the knowledge gained from the debriefing to inform policy, procedures and practices to avoid repeated use in the future, and to improve treatment outcomes.

8.6.9 Documentation of physical intervention utilization must include:

8.6.9.1 Date and time;

8.6.9.2 Staff involved;

8.6.9.3 Location;

8.6.9.4 Activity;

8.6.9.5 Antecedent conditions;

8.6.9.6 Specific behaviors observed;

8.6.9.7 Interventions implemented;

8.6.9.8 Duration of intervention;

8.6.9.9 Well-being checks;

8.6.9.10 Clinical review and approval by the Director or designee for interventions longer than 15 minutes;

8.6.9.11 Physical examination for possible injury after the termination of the intervention utilization;

8.6.9.12 Treatment provided;

8.6.9.13 Supervisor signature; and

8.6.9.14 Review by the Director or designee within one business day of an intervention when a physical intervention utilization event is less than 15 minutes.

8.6.10 A report of all episodes of physical intervention utilization must be provided to the Department on the fifth day of each month for the previous month in a manner prescribed by the Department.

8.6.11 Individual and aggregate clinical data on physical interventions for each resident must be provided to the BMC and the HRC.

8.6.12 If a resident experiences the use of a physical intervention six or more times in a 30 day period, that resident's SBS Plan must be reviewed and, if necessary, modified.

8.6.13 Any physical intervention not in the approved physical intervention procedure and training manual is prohibited.

8.6.14 The use of any physical intervention technique that is medically contraindicated for a resident is prohibited.

8.6.15 The use of involuntary seclusion is prohibited.

8.7 Human Rights Committee (HRC)

8.7.1 Membership:

8.7.1.1 At least five licensed professionals (social worker, psychologist, registered nurse, licensed independent practitioner), two of whom must be professionally knowledgeable or experienced in

the theory and ethical application of various treatment techniques used to address behavioral problems.

8.7.1.2 One member from the community or parent of a resident.

8.7.1.3 One member a licensed mental health professional (a licensed independent practitioner, a licensed clinical psychologist, or a clinical social worker).

8.7.2 A majority of Committee members must be external to the licensee or its parent organization.

8.7.3 The Committee must meet at least bi-monthly.

8.7.4 The Human Rights Committee is responsible for:

8.7.4.1 Determining that residents are receiving humane and proper treatment;

8.7.4.2 Reviewing and making recommendations regarding the policies and procedures governing the use of physical intervention;

8.7.4.3 Reviewing the physical intervention records, and reviewing incident reports required by these regulations related to the use of physical intervention; ensuring that the appropriate intervention was utilized for the documented behavior according to the approved manual and the resident's SBS; and, advising the Director accordingly;

8.7.4.4 Recording and maintaining on file written minutes of all of its meetings, and providing the Director with a copy of these minutes;

8.7.4.5 Making inquiries into any allegations of abusive techniques or the misuse of physical intervention procedures. A report of the inquiry must be provided by the Committee to the Director and sent to the Department;

8.7.4.6 Monitoring the qualifications and training of employees who have been given responsibility for administering physical intervention procedures and to make recommendations to the Director accordingly; and

8.7.4.7 Reviewing and making recommendations on all SBS Plans.

**8.8 Behavior Management Committee (BMC)**

8.8.1 The BMC is also known as the professional interdisciplinary treatment team.

8.8.2 In conjunction with the resident or authorized representative, the BMC establishes and reviews the SBS Plan.

8.8.3 The development and review of the SBS must include:

8.8.3.1 The clinical efficacy and ethical acceptability of the plan;

8.8.3.2 A description of the results of the most recent functional assessment to identify environmental factors that correlate with the occurrence of dangerous target behaviors;

8.8.3.3 A description of the resident and his or her clinical/educational/vocational progress;

8.8.3.4 A description of positive reinforcement components that are designed to teach and strengthen appropriate behaviors;

8.8.3.5 A description of the most recent mental health review and recent changes in medication or other psychiatric interventions;

8.8.3.6 A description of any medical conditions that might be expected to impact on the occurrence of dangerous behaviors;

8.8.3.7 A description of any familial or other emotional variables that might be expected to impact on the occurrence of dangerous behaviors;

8.8.3.8 A summary of the risk benefit analysis for each proposed intervention; and

8.8.3.9 A summary statement as to the general effectiveness of the SBS Plan and a recommendation for future use.

8.8.4 Following approval by the BMC, the HRC must review the SBS Plan at their next meeting.

## **9.0 Personnel**

**9.1 Director**

**9.1.1 Qualifications**

9.1.1.1 Must be at least 21 years of age and must possess one of the following:

9.1.1.1.1 A master's degree in social work, sociology, psychology, guidance and counseling, a human behavioral science or a related field from an accredited college, and three years of full-time work experience in human services or a related field, at least two years of which must have been in an administrative or supervisory capacity; or

9.1.1.1.2 A bachelor's degree in social work, sociology, psychology, guidance and counseling, a human behavioral science or a related field from an accredited college, and five years of post-bachelor's degree full-time work experience in human services or a related field, at least two years of which must have been in an administrative or supervisory capacity.

9.1.2 The director must adopt and implement a chain of command that ensures the proper and effective supervision and monitoring of employees and volunteers.

9.1.3 The director must be employed full-time.

## 9.2 Supervisor

### 9.2.1 Qualifications

9.2.1.1 Must be at least 21 years of age and must possess at least one of the following:

9.2.1.1.1 A master's degree in social work, sociology, psychology, guidance and counseling, human behavioral science or a related field from an accredited college and at least two years of full-time work experience in social work, human services, counseling or a related field; or

9.2.1.1.2 A bachelor's degree in social work, sociology, psychology, guidance and counseling, human behavioral science or a related field from an accredited college and at least four years of full-time work experience in social work, human services, counseling or a related field; or

9.2.1.1.3 An associate degree in social work, sociology, psychology, guidance and counseling, human behavioral science or a related field from an accredited college and three years of full-time work experience in an IBSER.

9.2.2 The supervisor must be employed full-time.

## 9.3 Direct Care Worker

### 9.3.1 Qualifications

9.3.1.1 Must be at least 21 years of age and must possess a high school diploma or an equivalent.

9.3.2 Each IBSER shall have dedicated direct care workers in numbers adequate to meet the care needs of each resident.

## 9.4 Administrative Oversight and Supervisor-to-Staff Ratios

9.4.1 The Director must ensure that there is a sufficient number of administrative, supervisory, social service, educational, recreational, direct care, and support employees or volunteers to perform the functions prescribed by these requirements and to provide for the care, needs, protection and supervision of residents.

9.4.2 The ratio of direct care workers to residents during off-grounds activities or excursions must be the same as the ratio of direct care workers to residents that are required during on-grounds activities.

9.4.3 There must be a full-time director for 1 or more IBSERs.

9.4.4 Each IBSER must have a full-time supervisor.

9.4.5 The director or supervisor must be on-call and available to the direct care workers at all times.

9.4.6 A minimum of 2 direct care workers must be on site and awake at all times when residents are present in the IBSER.

9.4.6.1 The number of direct care workers on duty must be based upon the assessment of the residents needs.

## 9.5 Orientation and Training of Employees and Volunteers

9.5.1 All employees and volunteers must complete a minimum of 40 hours of orientation before commencing work. This orientation will include:

9.5.1.1 The purpose, policies and procedures of the IBSER;

9.5.1.2 Their role and responsibilities for the protection of residents;

9.5.1.3 The requirements to report allegations of abuse, neglect, mistreatment and financial exploitation;

9.5.1.4 Emergency procedures and the location of emergency exits and emergency equipment, including first aid kits;

9.5.1.5 Confidentiality requirements, including Health Insurance Portability and Accountability Act (HIPAA); and

9.5.1.6 Crisis management and safety.

9.5.2 Employees must be deemed competent in physical intervention techniques prior to working with residents.

9.5.3 In addition to an initial orientation, all direct care workers must receive 40 hours of training annually to maintain, enhance or improve their knowledge and skills in carrying out their job responsibilities. Instruction must include:

9.5.3.1     Cardiopulmonary resuscitation (CPR);

9.5.3.2     First aid;

9.5.3.3     Cultural sensitivity;

9.5.3.4     Behavior management; and

9.5.3.5     Physical intervention techniques.

9.5.4     All orientation and training documents must be kept on file to document the delivery of the training to each employee/volunteer.

## 9.6     Volunteers

9.6.1     The qualifications of volunteers must be appropriate to the duties they perform.

9.6.2     A designated employee must be assigned to supervise volunteers.

9.6.3     Any volunteer who provides services or assistance on a routine basis is subject to the same background check as employees.

9.6.4     Volunteers are not permitted to perform physical interventions.

## 9.7     Health

9.7.1     All prospective employees and volunteers must have, on file, the results of a general physical examination within 12 months prior to the date of employment or volunteering.

9.7.2     All prospective employees and volunteers must have, on file, evidence that they have had a medically accepted procedure for screening for tuberculosis (TB) within 3 months prior to the date of employment or volunteering.

9.7.2.1     Minimum requirements for TB testing are those currently recommended by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

9.7.3     To be eligible to work in the IBSER or program, an employee or volunteer must be free from communicable disease.

9.7.4     All IBSERs shall have on file evidence of an annual vaccination against influenza for all employees and volunteers unless refused or medically contraindicated.

9.7.4.1     The provider must document and keep on file each employee's/volunteer's acceptance or refusal of the flu vaccine.

## **10.0     Severability**

Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

**15 DE Reg. 1603 (05/01/12)**

**23 DE Reg. 43 (07/01/19) (Final)**