

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119  
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)  
16 **DE Admin. Code** 3320

### EMERGENCY

#### EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119

16 **DE Admin. Code** 3320 Intensive Behavioral Support and Educational Residence

#### 3320 Intensive Behavioral Support and Educational Residence

#### AUTHORITY

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 **DE Admin. Code** 3320 Intensive Behavioral Support and Educational Residence. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for intensive behavioral support and educational residences.

#### REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 has significantly impacted many vulnerable individuals receiving healthcare services throughout the community.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 19 (07/01/21).

In addition, staff at intensive behavioral support and educational residences must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 10.0.

#### EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 3320 Intensive Behavioral Support and Educational Residence, specifically, Section 10.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

#### **10.0 Infection Prevention and Control**

##### 10.4 Specific Requirements for COVID-19

10.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

10.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.

10.4.3 The licensee must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

10.5 The licensee shall amend their policies and procedures to include:

- 10.5.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.
- 10.5.2 Staff refusals to participate in COVID-19 testing:
- 10.5.3 Staff refusals to authorize release of testing results or vaccination status to the licensee.
- 10.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and
- 10.5.5 Plans to address staffing shortages and licensee demands should a COVID-19 outbreak occur.

This Emergency Order shall take effect on September 30, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3).

## PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to [Corinna.Getchell@Delaware.gov](mailto:Corinna.Getchell@Delaware.gov), or by fax to 302-421-7401.

## ORDER

It is hereby ordered, this 10th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3320 Intensive Behavioral Support and Educational Residence, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS  
Cabinet Secretary

## 3320 Intensive Behavioral Support and Educational Residence

### 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 licensed 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 IBSEs 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 the 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 IBSERs 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 IBSEs 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 Infection Prevention and Control**

- 10.1 The IBSER shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.
  - 10.1.1 The infection prevention and control program must cover all services and all areas of the IBSER, including provision of the appropriate personal protective equipment for all residents, staff, and visitors.
- 10.2 The individual designated to lead the IBSER's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and

communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the IBSER's infection control outcomes.

10.3 All IBSER staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.

**10.4 Specific Requirements for COVID-19**

10.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

10.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.

10.4.3 The licensee must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

10.5 The licensee shall amend their policies and procedures to include:

10.5.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.

10.5.2 Staff refusals to participate in COVID-19 testing;

10.5.3 Staff refusals to authorize release of testing results or vaccination status to the licensee.

10.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and

10.5.5 Plans to address staffing shortages and licensee demands should a COVID-19 outbreak occur.

**11.0 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)**

**25 DE Reg. 330 (10/01/21) (Emer.)**