



October 20, 2017

Cynthia Dellinger  
WV Department of Health and Human Resources  
Office of the General Counsel  
One Davis Square, Suite 100 East  
Charleston, WV 25301  
Cynthia.H.Dellinger@wv.gov

**Dear Ms. Dellinger:**

Disability Rights of West Virginia is the federally mandated protection and advocacy (P&A) system for the state of West Virginia. As the P&A, DRWV is often working with the behavioral health facilities and services in the state. DRWV has reviewed Title 64 West Virginia Administrative Rules, Department of Health and Human Resources, Series 59, relating to Behavioral Health Client Rights and Series 74, relating to Behavioral Health Consumer Rights, and has noted the following concerns.

Under the two above mentioned Administrative Rule series, patients who are receiving treatment from State operated facilities are entitled to a greater number of rights and protections than those who receive treatment from privately operated facilities. This is true, regardless of whether an individual voluntarily was admitted to the private facility or was diverted or discharged to the private facility through state mandated commitment proceedings. If, after being committed to a psychiatric or behavioral health facility, an individual is placed in one of the State operated facilities, that individual is granted more stringent, detailed protections against things like seclusion and restraint, than if they were diverted to one of the private facilities through the commitment process.

For example, §64-59-10.1 through 10.25 provide detailed analysis of when seclusion and restraint may be used on a patient, and under what circumstances. It provides timelines for physician evaluation, release from restraint, and intervention precautions. Whereas §64-74-10.1 through 10.5 provides general guidance only. More examples of detail disparities can be seen in the sections relating to General Rights, §64-59-5.1 through 5.9 and §64-74-4.1.a through g, Right to Treatment §64-59-6.1 through 6.14 and §64-74-7.1 through 7.12, and the Client's Right to Advocacy and Grievance Procedure, §64-59-20.1 through 20.2.16.e and §64-74-15.1 through 15.9. Specifically, with regards to client advocacy, patients at a state operated facility are entitled to an independent advocate in the hospital setting, §64-59-20.1. However, there is no requirement in series 74 putting clients who are assigned to a private facility at a disadvantage regarding rights and protections to those who are assigned to state operated facilities.

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## **Removing Barriers to Opportunity and Equality**

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It is DRWV's firm belief that having the exact same regulations relating to treatment and rights is essential for proper continuity of care and assurance that the vulnerable population being served by the facilities has its rights protected. Management of state facility census should not dictate what rights an individual in need of behavioral health services receives.

Sincerely,

A handwritten signature in black ink, appearing to read "Delcie R. Gorum". The signature is fluid and cursive, with a long horizontal stroke at the end.

Delcie R. Gorum

Staff Attorney