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Dedicated to protecting and improving the health and environment of the people of Colorado

To: Members of the State Board of Health

From: Laurie Schoder, Policy Analyst, Health Facilities and Emergency Medical Services Division

Through: D. Randy Kuykendall, MLS; Director DRK

Date: May 18, 2016

Subject: Proposed Repeal of 6 CCR 1011-1, Standards for Hospitals and Health Facilities, Chapter 17, Rehabilitative Nursing Facility, with a Request for the Rulemaking Hearing to occur on July 20, 2016

The Division is proposing repeal of Chapter 17, Rehabilitative Nursing Facility. The rules are over 35 years old and explicitly state that they were promulgated to implement legislation authorizing a 12-month pilot project for this facility type. Any pilot project would have expired long ago and the Division has not licensed any such facilities in recent memory. Moreover, the current statutes do not include rehabilitative nursing facilities as a specific facility type that the Department is authorized to license.

The standards contained in Chapter 17 focus primarily on various forms of therapy, activities and social services that should be made available to assist in rehabilitating residents in nursing care facilities. The recent rewrite of Chapter 5, Nursing Care Facilities, incorporated all these topics and addressed them with an updated and more relevant standard of care. Therefore, this chapter of regulations is no longer relevant and the Division recommends its repeal.

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STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY

For Repeal of 6 CCR 1011-1, Standards for Hospitals and Health Facilities,
Chapter 17, Rehabilitative Nursing Facility
May 18, 2016

Basis and Purpose:

Pursuant to the Governor's Executive Order D2012-002 regarding regulatory efficiency reviews, the Division undertook a thorough review of this rule and determined that repeal was appropriate. Specifically, the standards for rehabilitative nursing facilities were initially adopted over 35 years ago and are no longer in line with current practice. Moreover, in the current statutes, rehabilitative nursing facilities are not specifically listed as one of the facility types that the Department is authorized to license and the Division has not licensed any such facilities in recent memory.

The standards contained in Chapter 17 focus primarily on various forms of therapy, activities and social services that should be made available to assist in rehabilitating residents in nursing care facilities. The recent rewrite of Chapter 5, Nursing Care Facilities, incorporated all these items and addressed them with a more modern and relevant standard of care. Therefore, this chapter of regulations is no longer relevant and the Division recommends its repeal.

These rules are repealed pursuant to the following statutes:

Section 24-4-103.3, C.R.S. (2015).
Section 25-1.5-103, C.R.S. (2015).

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

______ Yes
__X___ No

Is this rulemaking due to a federal statutory or regulatory change?

______ Yes
__X___ No

Does this rule incorporate materials by reference?

______ Yes
__X___ No

Does this rule create or modify fines or fees?

______ Yes
__X___ No

REGULATORY ANALYSIS

For Repeal of 6 CCR 1011-1, Standards for Hospitals and Health Facilities,
Chapter 17, Rehabilitative Nursing Facility
May 18, 2016

1. **A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

   It does not appear that anyone will be affected by this repeal since the Division does not, and has not in recent memory, licensed a rehabilitative nursing facility.

2. **To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.**

   The primary quantitative and qualitative impact of repealing this rule is a reduction in unnecessary regulation consistent with Section 24-4-103.3, C.R.S

3. **The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

   The Department does not anticipate there will be any costs to it or any other agency regarding repeal of this rule.

4. **A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.**

   Inaction would result in the continuation of out-dated and inappropriate standards. The recent rewrite of Chapter 5, Nursing Care Facilities, included all the topics contained in Chapter 17 and addressed them with an updated and more relevant standard of care. Therefore, repeal of this rule will benefit the industry and public alike by reducing confusion over the continued existence of this obsolete set of rules.

5. **A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

   The Division has determined that repeal is the least costly and least intrusive method for addressing these obsolete standards.

6. **Alternative rules or alternatives to rulemaking considered and why rejected**.

   As stated above, the Division did incorporate these topics into the revised Chapter 5 regulations which is why repeal of this Chapter 17 is now appropriate.

7. **To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.**

   As stated above, the Division relied on data showing that it does not, and has not in recent memory, licensed a rehabilitative nursing facility.

STAKEHOLDER Comment
For Repeal of 6 CCR 1011-1, Standards for Hospitals and Health Facilities,
Chapter 17, Rehabilitative Nursing Facility

The following individuals and/or entities were included in the development of these proposed rules:

There were no specific individuals or entities included in the discussion regarding repeal of this chapter of regulation, but the following individuals were included in the development of the recently revised Chapter 5 regulation which incorporated all of the topics from Chapter 17: The Colorado Medical Directors Association and other licensed medical professionals; various owners, administrators, staff and consultants of licensed nursing care facilities; the Colorado Health Care Association; Leading Age Colorado; and the Colorado Hospital Association.

The following individuals and/or entities were notified that this repeal was proposed for consideration by the Board of Health:

All licensed healthcare facilities; subscribers to the Health Facilities Community Blog; and representatives of the Colorado Health Care Association, Leading Age Colorado, the Colorado Hospital Association, Denver Regional Council of Governments, and the Colorado Gerontological Society.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

No major factual or policy issues were encountered.

Please identify health equity and environmental justice (HEEJ) impacts. Does this proposal impact Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are there other factors that influenced these rules?

The Division is unaware of any health equity and environmental justice impacts.

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
2
3 **Health Facilities and Emergency Medical Services Division**
4
5 **STANDARDS FOR HOSPITALS AND HEALTH FACILITIES: CHAPTER 17 - REHABILITATIVE**
6 **NURSING FACILITY - REPEALED**
7
8 **6 CCR 1011-1 Chap 17**
9

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10 ~~Copies of these regulations may be obtained at cost by contacting:~~
11 ~~Division Director~~
12 ~~Colorado Department of Public Health and Environment~~
13 ~~Health Facilities Division~~
14 ~~4300 Cherry Creek Drive South~~
15 ~~Denver, Colorado 80222-1530~~
16 ~~Main switchboard: (303) 692-2800~~
17 ~~These chapters of regulation incorporate by reference (as indicated within) material originally published~~
18 ~~elsewhere. Such incorporation, however, excludes later amendments to or editions of the referenced~~
19 ~~material. Pursuant to 24-4-103 (12.5), C.R.S., the Health Facilities Division of the Colorado Department of~~
20 ~~Public Health And Environment maintains copies of the incorporated texts in their entirety which shall be~~
21 ~~available for public inspection during regular business hours at:~~
22 ~~Division Director~~
23 ~~Colorado Department of Public Health and Environment~~
24 ~~Health Facilities Division~~
25 ~~4300 Cherry Creek Drive South~~
26 ~~Denver, Colorado 80222-1530~~
27 ~~Main switchboard: (303) 692-2800~~
28 ~~Certified copies of material shall be provided by the division, at cost, upon request. Additionally, any~~
29 ~~material that has been incorporated by reference after July 1, 1994 may be examined in any state~~
30 ~~publications depository library. Copies of the incorporated materials have been sent to the state~~
31 ~~publications depository and distribution center, and are available for interlibrary loan.~~
32 ~~In addition to the standards currently in effect in chapter V, Nursing Care Facility, Standards for Hospitals~~
33 ~~and Health Facilities, Colorado Department of Health, the following standards will apply to facilities~~
34 ~~furnishing services as a “Rehabilitative Nursing Facility” under provisions of Senate Bill 95 passed by the~~
35 ~~Fifty-first General Assembly.~~

36 STATEMENT OF PURPOSE
37 ~~The purpose of “these regulations is to adopt standards for a new class of health facility known as a~~
38 ~~“Rehabilitative Nursing Facility” in order to implement a 12-month pilot project for such facility as required~~
39 ~~by Senate Bill 95, 1978 General Assembly.~~
40
41

42 PHYSICAL THERAPY SERVICES
43 ~~A. General~~
44 ~~Physical therapy services are those services ordered by a physician or upon a physician's referral and~~
45 ~~provided to a patient by or under the supervision of a physical therapist to achieve and maintain the~~
46 ~~highest level of functional ability.~~
47 ~~Physical therapy services include, but are not limited to, the following:~~
48 ~~1. Assisting the physician in an evaluation of the patient's rehabilitation potential.~~
49 ~~2. Applying muscle, nerve, joint and functional ability tests.~~
50 ~~3. Treating patients to relieve pain, develop and restore function.~~
51 ~~4. Assisting patients to achieve and maintain maximum performance using physical means~~
52 ~~such as exercise, massage, heat, sound, water, light and electricity.~~

~~5. Communicating with the nursing staff in the carryover of physiotherapy programs as appropriate for them to perform.~~

~~B. Staff~~

~~The physical therapy service unit shall be under the supervision of a full-time physical therapist licensed by the State of Colorado. Additional licensed physical therapists and physical therapy aides shall be available in sufficient numbers to perform adequately the services designated by the supervisor.~~

~~The facility shall provide for the consultative services of a physician experienced in rehabilitative medicine to work with the physical therapist(s) and the nursing staff in general program planning and individual resident consultations.~~

~~C. Duties of Physical Therapist Supervisor~~

~~The physical therapist supervisor shall be responsible for the following:~~

~~1. An evaluation of the patient and the preparation of a physical therapy treatment plan conforming to the attending physician's orders and goals. The plan is to include information on modalities, frequency and duration of treatment. The treatment plan will be modified based upon subsequent reevaluations, will define long term and short term goals, and outline current treatment program.~~

~~2. For consultation with other facility personnel who are providng patient care so that physical therapy treatment is integrated with overall health care plan.~~

~~3. Shall be responsible for communicating with nursing personnel as to the administration of selected restorative nursing procedures.~~

~~4. Maintenance of health records which shall contain pertinent information on the patient. Notes indicating that physical therapy services have been performed shall be entered into the patient's health record each day the service is needed, and signed by the physical therapist. Progress notes shall be written and signed at least weekly by the physical therapist during the active treatment stages, thereafter as appropriate but not less than every thirty days.~~

~~5. Completion of a discharge summary to include recommendation for any further treatment or followup written within five days of discharge.~~

~~6. Development and implementation of written cleaning and culturing techniques of hydrotherapy equipment.~~

~~D. Policies and Procedures~~

~~There shall be written policies and procedures governing the provision of physical therapy. The physical therapy supervisor shall be responsible for the development and implementation of physical therapy policies, procedures and job descriptions, with the assistance of the patient care policy committee.~~

~~E. Equipment and Space~~

~~Physical therapy equipment and space shall be sufficient to provide an adequate physical therapy service and to meet the needs of the patients accepted for treatment.~~

OCCUPATIONAL THERAPY SERVICES

~~A. General~~

~~Occupational therapy is a medically prescribed service in which selected purposeful activity is used to restore the functional capacity of those individuals whose ability to cope with tasks of daily living are threatened or impaired by developmental deficit, the aging process, physical illness or injury or psychosocial disabilities.~~

~~Occupational therapy includes:~~

~~1. Assisting physician in his evaluation of a patient's level of function by applying diagnostic and prognostic tests.~~

~~2. Reevaluation of the patient as his condition changes and modifying treatment goals consistent with these changes.~~

~~3. Increasing or maintaining a patient's capability for independence through the use of professionally selected self-care skills, daily living tasks and tests, and therapeutic exercises to improve function.~~

~~4. Enhancing of patient's physical, emotional and social well being by training in the performance of tasks modified to the patient's level of physical and emotional tolerance.~~

~~5. Use of tests to determine patient's ability in areas of concentration, attention, thought organization, perception and problem solving.~~

1 ~~6. Developing function to a maximum level so that early testing can be applied for future job~~
2 ~~-raining and employment.~~
3 ~~B. Staff~~
4 ~~Occupational therapy shall be under the direct supervision of a full-time registered Occupational~~
5 ~~Therapist.~~
6
7
8 ~~C. Duties of Occupational Therapy Supervisor~~
9 ~~The occupational therapy supervisor will be responsible for:~~
10 ~~1. Development of an initial evaluation treatment plan and administration in accordance with~~
11 ~~physician's prescription and rehabilitation goals.~~
12 ~~2. Consultation with other personnel within the facility who are providing patient care and~~
13 ~~plan with them for integration of a treatment program into the overall health care plan.~~
14 ~~3. Entry of patient's chart of procedures performed and then signed by the occupational~~
15 ~~therapist. Progress notes shall be written at least weekly and signed on each visit.~~
16 ~~D. Policies and Procedures~~
17 ~~There shall be written policies and procedures governing the provision of occupational therapy. The~~
18 ~~occupational therapy supervisor shall be responsible for the development and implementation of~~
19 ~~occupational therapy policies, procedures and job descriptions, subject to the assistance and approval of~~
20 ~~the patient care policy committee.~~
21 ~~E. Equipment and Space~~
22 ~~Equipment necessary to enable patients to increase their functional capacity or capability shall be~~
23 ~~provided. This shall include, but not be limited to:~~
24 ~~1. Supportive slings, supportive and/or assistive hand splints and materials from which to~~
25 ~~fabricate these and other assistive devices.~~
26 ~~2. Adaptive devices to aid in the performance of daily living skills such as sating, dressing,~~
27 ~~grooming, writing, with instructions for their use.~~
28 ~~3. Means and supplies for adapting equipment for reeducation in activities of daily living.~~
29 ~~4. Sufficient space shall be available to implement all treatment plans.~~

30 ACTIVITIES SERVICE
31 ~~A. General~~
32 ~~This service shall be staffed and equipped to meet the needs and interests of each patient to encourage~~
33 ~~self-care and resumption of normal activities. It should be designed to meet the needs and interest of~~
34 ~~each patient within the limitations set by the patient's physician. An activity program shall have a written~~
35 ~~planned schedule of social and other purposeful independent or group activities designed to make the~~
36 ~~patient's life more meaningful, to stimulate and support his desire to use his physical and mental~~
37 ~~capabilities to their fullest extent, to enable him to maintain his highest attainable social, physical and~~
38 ~~emotional functioning, his usefulness and self-respect but not necessarily to correct or remedy a disability.~~
39 ~~The program shall provide a therapeutic milieu facilitating the individual's ability to cope with social,~~
40 ~~emotional and physical disabilities.~~
41 ~~The program shall include activities for evenings and weekends. Residents may be vigorously~~
42 ~~encouraged, but no resident shall be forced to participate.~~
43 ~~Suitable activities will be made available for patients unable-to leave their rooms.~~
44 ~~Programs will not be limited to the premises of the facility. Activities and facilities in the community will be~~
45 ~~an integral part of the overall activities program.~~
46 ~~Consultive sources shall be used in the planning and organizing of appropriate programs, incorporating~~
47 ~~post-planning services intended to enable the patient to function and gain independence.~~
48 ~~Remedial education programs consistent with the patient's needs and plan of care shall be available~~
49 ~~through appropriate community school facilities.~~
50 ~~Skill training programs shall be provided but not limited to techniques of behavior modification training in~~
51 ~~self-skills, sensory training or the modalities of reality orientation and remotivation therapy.~~
52 ~~Programs which include the co-mingling of persons with differing disabilities shall be appropriate to the~~
53 ~~group needs.~~
54 ~~B. Staff~~
55 ~~The activity program shall be under the supervision of a full-time director who shall be a trained recreation~~

1 therapist and who shall have access to the nursing staff and/or special activities staff for assistance as
2 needed. There shall be additional assistants as needed to carry cut a comprehensive activity program as
3 dictated by the needs of -he patients.
4 C. Duties of Activity Director
5 The activity director shall be responsible for:
6 1. An initial evaluation and assessment of each resident within ten days of admission unless
7 an evaluation has been done by the referring agency within thirty days prior to admission
8 to the facility.
9 2. Development of an activity plan for each resident which shall be approved by the patient
10 care assessment committee (or some similar group). This plan shall be concerned with
11 social interactions, physical and recreational activity, and shall be reviewed as
12 appropriate but at least semiannually.
13 3. Development of a program of activities for the institution as a whole, which shall be
14 designed so as to offer residents the opportunity for choice among a variety of activities
15 such as discussion and study groups, reading, games, sports, simple homemaking tasks,
16 exercise classes, musical and other creative activities and religious services.
17 D. Policies and Procedures
18 Written policies and procedures governing the conduct of the activity program shall be developed by the
19 activity director with the assistance and approval of the patient care policy committee, and shall be
20 available for use by the activity director and other personnel assisting in the program.
21 E. Equipment and Space
22 Designated activity areas appropriate to independent and group needs of patients shall be maintained.
23 Such areas shall be:
24 1. Accessible to wheelchair and ambulatory patients.
25 2. Of sufficient size to accommodate necessary equipment and permit unobstructed
26 movement of wheelchair and ambulatory patients or personnel responsible for instruction
27 or supervision.
28 3. Have adequate space to store equipment and supplies.
29 4. Activity room(s) shall approach a goal of 10 sq. feet per resident.
30 5. Equipment and supplies shall include, but not be limited to, leatherwork, weaving,
31 needlework, ceramics, woodworking, painting, and graphic arts.

32 SOCIAL SERVICES
33 A. General
34 Social work services, in addition to the requirements contained in Section 15, chapter V, Colorado
35 Standards for Hospitals and Health Facilities, must also provide the following:
36 1. The social services supervisor shall ensure that within five days after admission each
37 resident shall be interviewed and a social services assessment completed by a qualified
38 social worker.
39 2. The social services supervisor shall develop a plan, including goals and treatment, for
40 social work services for each resident, with participation of the resident, his family, and all
41 the treating disciplines. This may be carried out as part of the initial care planning
42 process. The plan will be reviewed at least quarterly.
43 3. Signed and dated progress reports shall be written in the health record of each patient
44 receiving social services as necessary but not less than monthly by a member of the
45 social services department.
46 4. The social worker shall participate as a member of the patient care assessment
47 committee.
48 5. There shall be discharge planning and implementation through liaison with local health
49 and welfare agencies, other community personnel and the patient's family or authorized
50 representative.
51 6. Orientation and inservice training of other staff members on all shifts shall be coordinated
52 by the social services supervisor and shall be conducted at least monthly, to assist in the
53 recognition and understanding of the emotional problems and social needs of patients
54 and families and to teach how to implement appropriate action to meet such identified
55 needs.

1 7. The social services supervisor shall ensure that the needs and entitlements of each
2 resident for public benefits and services are identified and satisfied.
3 B. Staff
4 There shall be a social work staff employed a sufficient number of hours in the facility to meet the social
5 needs of the patients. As a minimum, the staff shall consist of one full-tine LSW II who shall be
6 responsible for organizing, directing and supervising other members of the social work staff.
7 Appropriate job descriptions shall be available for all social work staff personnel.
8 Adequate clinical support services shall be available for the social work staff.
9 C. Policies and Procedures
10 There shall be written policies and procedures developed and maintained which govern provision of social
11 service within the facility. Policies shall be approved by the patient care policy committeee.
12 D. Equipment and Space
13 Adequate equipment, supplies and space shall beavailable to the staff and patient personnel to assure
14 the proper operation of the service.

15 OTHER SERVICES
16 Depending on the needs of the patients accepted for care, the following services will be furnished on a full
17 or parttime in-house or outside consultant basis.
18 A. Speech Pathology and Audiology Services
19 1. General
20 Speech pathology and/or audiology services are physician referred services which provide diagnostic
21 screening, preventive and corrective therapy for individuals with speech, hearing and/or language
22 disorders. The person providing such services must be a qualified speech pathologist or audiologist who
23 has a current certificate of clinical compliance in the appropriate area granted by the American Speech
24 and Hearing Association or equivalent.
25 2. Speech therapy services shall include the following: a. Speech, language, and
26 educational capacity screening for any individual admission who is involved in an
27 educational or turoring program, as required by PL94-102. b. Participation in the
28 development of initial care plans for each admission, including the recommendation of
29 speech, language, and/or hearing evaluations when appropriate.
30 3. When required, speech therapy services will provide as a minimum: a. Evaluation of
31 patients to determine the type of speech, language and/or hearing disorder. b.
32 Determination and recommendation of the appropriate speech, language, and hearing
33 therapy and institution of such therapy when approved. c. Instruction of other facility
34 personnel and family members in methods of assisting the patient to improve and/or
35 correct speech or hearing disorders.
36 4. Entries shall be made by the consultant in the health record to include all pertinent
37 information of patient history and background and a signed medical order for the service.
38 Progress notes including patient's reaction to treatment and any changes in condition
39 shall be written at least monthly and be signed by the speech pathologist or audiologist.
40 5. There shall be written policies and procedures governing speech and hearing approved
41 by the patient care policy committee.
42 6. There shall be sufficient equipment, tests, materials and supplies to implement the
43 treatment and program required by each patient seen by the speech pathologist and/or
44 audiologist.
45
46
47 B. Psychiatric Services
48 1. The facility shall employ fully-trained psychological therapist(s) or counsellor(s),
49 experienced in the problems of rehabilitative care, as needed to provide inservice
50 training, group and individual counselling to the staff with regard to resident-staff
51 interactions, and group and individual therapy to residents. a. Such services may be
52 coordinated through one of the existing departments in the facility or may be provided as
53 a separate service. b. In either of the above cases, individual resident care needs shall
54 be identified, and provision of care coordinated through the care planning process.
55 2. The facility shall provide the consultive services of a psychiatrist on an as-needed basis.

~~C. Resident Care Coordinator~~

~~One or more individuals on the staff of the facility shall be designated as resident care coordinators whose responsibility it shall be to see that care plans/individual program plans are implemented, and reassessments performed when required.~~

~~The hours spent as resident care coordinator shall not be counted as part of the staff time of any of the previously mentioned nursing or restorative services.~~

FACILITIES AND EQUIPMENT - GENERAL

~~The pilot project is intended to provide facilities much more varied than those commonly found in a skilled nursing facility. The following should be provided whenever possible as adjunctive aides in promoting a more normal atmosphere for patients being considered for return to independent living outside the facility.~~

1. ~~A goal of 160 sq. ft. per single bedroom and 240 sq. ft. for a double bedroom with no more than 2 patients per room.~~
2. ~~Portable screens or furniture arrangement should provide privacy for occupants of double occupancy rooms.~~
3. ~~Provide for wheelchair access to vanity and storage space, lavatory, and toilet.~~
4. ~~Provide for wheelchair access to writing surfaces, shelving and display furnishings.~~
5. ~~A resident kitchen area shall be provided for supervised restorative training, which shall include counter, sink, cabinets, cooktop oven and refrigerator.~~
6. ~~A resident laundry shall be provided for supervised restorative training which shall include a domestic washer, clothes dryer, laundry tray, handwashing facilities, ironing board, and counter space.~~

SPECIAL NURSING STAFF REQUIREMENTS

1. ~~As stated in current standards, there must be a full-time (8 hours per day, five days per week) director of nursing who is a currently licensed registered professional nurse experienced in rehabilitative nursing care, who devotes full time to supervision and management of the nursing service.~~
2. ~~In addition, there shall be at least one registered professional nurse, other than the D.O.N., and one licensed practical nurse on each shift to supervise resident care.~~
3. ~~The individual nursing needs of the residents shall be the major consideration in staffing the nursing service. In all cases the number of nursing staff shall be sufficient to provide at least 3.5 hours of nursing care per resident per 24 hour period exclusive of the hours of the D.O.N. or of the alternate when functioning as the D.O.N. This is also exclusive of staff training or orientation time.~~
4. ~~Rehabilitative nursing care shall be emphasized to include but not restricted to activities of daily living training, vigorous encouragement to participate in activities, prevention of contractures and decubitus ulcers, and individual bowel and bladder re-training programs.~~

TRANSPORTATION

~~If patients attend schools in the community, transportation and supervision to and from schools shall be arranged in accordance with the needs and conditions of the patients. Transportation shall also be available for the recreational needs of the patients.~~