

NOTICE OF AGENCY APPROVAL

FILED

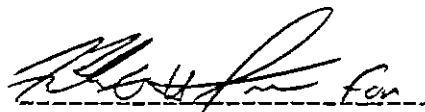
1965 OCT 18 PM 1:38

STATE OF WEST VIRGINIA
DEPARTMENT OF STATE

LEGISLATIVE RULE: Nursing Home Administrators, Chapter 30-25, Series I.

WV Nursing Home Administrators Licensing Board

The attached legislative rule constitutes the official rule approved by the Wv Nursing Home Administrators Licensing Board, and filed pursuant to law with the Secretary of State and the Legislative Rule Making Review Committee.



Dr. Earl L. Fisher, Chairman

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Nursing Home Administrators Licensing Board

Subject: Proposed rule and regulation governing nursing home administrators

PERTINENT DATES

Filed for public comment: November 10, 1983
Hearing held: December 8, 1983
Filed in Secretary of State's Office: October 18, 1985
Filed LRMRC: August 15, 1985
Filed as emergency rule: July 29, 1985

ABSTRACT

Section 1 is a general section and states that the scope of the rule is the establishment of requirements for licensure as a nursing home administrator. This section also contains the authority, filing date and effective date. The effective date given is July 25, 1985.

Section 2 defines terms to be used in the rule.

Section 3 relates to limitations on general administrators. A licensed nursing home administrator may not administer more than two nursing homes at one time. Limits are placed on the total number of beds which he may administer and he must average at least twenty hours per week at each facility. An administrator serving a facility in a dual capacity is also limited as to number of beds the facility may have and he may not serve at any other facility in any other capacity without Board approval.

Section 4 specifies those requirements which a candidate must meet prior to taking the licensing examination and specifies how examinations shall be scheduled. It also lists those subjects which must be included on the examination.

Section 5 relates to education, training and experience. Accredited educational institutions must register their courses of study in nursing home administration with the Board. Programs in continuing education must also be registered with the Board. Every licensed administrator must take thirty hours of continuing education every two years.

Persons not having a degree in nursing home administration or a related field must serve a one year administrator-in-training internship prior to taking the licensing examination. This section lists the requirements which must be met prior to obtaining an internship permit and specifies certain requirements for training during the internship.

Section 6 concerns licenses and their issuance and renewal. It also provides for the issuance of emergency, temporary and administrator-in-training permits. Additionally, provision is made for the replacement of lost, mutilated or destroyed licenses and the return of revoked licenses.

Section 7 allows the Board to suspend and revoke licenses. Any person who is denied a license or permit or who has a license suspended or revoked is entitled to a hearing and may appeal any adverse decision by the Board to the circuit court and to the Supreme Court of Appeals.

The Board or any person may also prefer charges against any licensee, administrator-in-training or holder of an emergency permit. After notice to the person charged, the Board is to hold a hearing on the charges and based upon the hearing to take appropriate disciplinary action.

Section 8 allows the Board to issue a license to an applicant who holds a valid license in another state upon payment of a fee and passage of an examination on State laws and regulations. After notice and hearing the Board may revoke or suspend the endorsement upon evidence that the license in another state has been lawfully revoked or suspended.

Section 9 provides for the restoration of a license after revocation or expiration.

Section 10 relates to applicability, legal effect and severability. It also states that the rules may not be amended except at a regularly called meeting of the Board upon a majority vote of the Board.

AUTHORITY

Statutory authority: W. Va. Code, §30-25-7(a) (3)

W. Va. Code, §30-25-7(a) (3) provides as follows:

(a) The Board shall: ...

(3) Promulgate reasonable rules and regulations implementing the provisions of this article and the powers and the duties conferred upon the

Board hereby, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-A of this Code;

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Probably. The Board, as stated above, has the authority to "promulgate reasonable rules and regulations implementing [the law] and the powers and duties conferred upon the board." Chapter 30, Article 25 of the W. Va. Code relating to Nursing Home Administrators addresses the licensing of nursing home administrators and gives the Board the power and the duty to examine applicants and issue licenses. Article 25 does not give the Board any authority over a nursing home administrator, once he has been licensed, other than the power of the Board to suspend, revoke or decline to renew a license. The Board does not have any authority under Article 25 to place limitations on a general licensed administrator as it is attempting to do in sections 3.1, 3.2, 3.3 and 3.4 of the proposed legislative rule. These sections would limit the number of institutions and beds which an administrator could oversee and would also limit his ability to serve an institution or institutions in a dual capacity. This type of regulation would properly be under the auspices of the Board of Health which, under W. Va. Code, §16-5C-5, has the duty to promulgate regulations relating to "minimum numbers and qualifications of personnel, including management, medical and nursing, aides, orderlies and support personnel, according to the size and classification of the facility;"

Counsel also feels that the Board may have exceeded the scope of its authority in Section 6.5 of the proposed rule. This section would allow the Board to issue a temporary permit to an applicant for endorsement while the Board takes action on the application. Apparently, a need has arisen for a temporary permit because the proposed rule has been amended to require applicants for endorsement to take and pass an examination on "state laws and regulations applicable to nursing homes." The temporary permit would allow the applicant to practice while awaiting licensing. W. Va. Code, §30-25-4(b) states that a person may endorse into this state without examination. Since the word "may" is not mandatory, the Board is within its authority to require an examination. However, Article 25 speaks only to the issuance of licenses and emergency permits by the Board and does not speak to temporary permits.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

In general, yes. As mentioned in I, counsel believes the Board went beyond the intent of the statute with part of section 3. In addition, counsel does not feel that the proposed rule goes far enough in that the Board makes no attempt to specify the grounds upon which it may base a decision to suspend, revoke or fail to renew a license. Otherwise, the rules are in conformity with the intent of the statute.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

Yes. Section 7.2.2 of the proposed rule, which is identical to W. Va. Code, §30-25-9(b), permits the Board to require a person demanding a hearing on the denial, suspension or revocation of a license or emergency permit to give reasonable security for the costs of the hearing and to assess the costs of the hearing against that person if he does not substantially prevail at the hearing. W. Va. Code, §30-1-8 which relates to all licensing boards under Chapter 30, including this Board, mandates that a hearing be held prior to the suspension or revocation of any "certificate, license, registration or authority." Thus, a person facing suspension or revocation of his license or temporary permit has a right to a hearing, which right is not subject to the condition of giving reasonable security for the costs of the hearing.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes. However, it should be noted that those sections relating to hearings and judicial review are unnecessary in that they have been taken verbatim from the statute.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Yes. Overall, the organization of the rules is somewhat disjointed, with provisions on related subjects located in different sections so that its difficult to discern the law

on any point without searching through the entire rule.

Counsel will not enumerate all of the provisions here, but there are numerous instances of ambiguous or unclear language which needs clarification.

Section 5 seems to speak to Board approval of educational programs but provides no guidance as to what standards or educational requirements must be met in order to obtain Board approval.

Section 5.3.2(c) refers to an administrator who has been approved by the Board as a preceptor. The proposed rules give no guidance on how to obtain Board approval, what requirements must be met to obtain approval or the duties of a preceptor.

Section 5.3.3(a) requires the preceptor to file reports with the Board. Section 5.3.3(c) refers to failure of the administrator-in-training to file "reports". Counsel wonders if this is the same report required of the preceptor.

Confusion is created by the interchangeable use of the terms "reciprocity" and "endorsement".

Under Section 7.4 there is no guidance as to what type of "charges" may be brought against a licensee or holder of a temporary permit. Under Subsection 2, provision is made for a preliminary hearing on the "charges" but there is no mention of notice to the "charged" person of the preliminary hearing. Additionally, the hearings under Section 7.4.3 should follow the exact same procedure required under W. Va. Code, §30-25-9 and 10 or Sections 7.2 and 7.3 of the proposed rule.

Counsel also has numerous other suggestions which will be discussed with the Board.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 20A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

W. Va. Code, §29A-3-11 requires submission to the Committee of a brief summary of the content of the legislative rule, a statement of the circumstances which require the rule and a fiscal note containing all information included in a fiscal note for either House of the Legislature in the statement of the economic impact of the rule on the State or its residents. The Board failed to comply with these requirements.