



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Bob Wise
Governor

Bureau for Public Health
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Paul L. Nusbaum
Secretary

March 21, 2002

Joe Manchin, III
West Virginia Secretary of State
State Capitol, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0770

RE: **Procedural Rule 12CSR1.1. et seq.**
Regular Meeting of the West Virginia Nursing Home
Licensing Advisory Council

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

MAR 25 A 11:15

FILED

Dear Secretary Manchin:

I am the in-house counsel for the Office of Health Facility Licensure and Certification.

In an Ethics Commission Opinion dated December 12, 2001, our office was advised that the Nursing Home Licensing Advisory Council was not a public body and therefore was not subject to the Open Governmental Meetings Act, W.Va. Code § 6-9A-3. (Please see attached Advisory Opinion No. 2001-37.)

Therefore, because the above captioned procedural rule was promulgated under the authority of the Open Government Proceedings Act which has now been rendered inapplicable, the Office of Health Facility Licensure and Certification respectfully requests that the West Virginia Procedural Rule entitled "Regular Meeting of the West Virginia Nursing Home Licensing Advisory Council", 12 CSR 1 (1984) be removed from the listing of procedural rules.

If you have any questions, please feel free to contact me at the address or telephone number above.

Sincerely,

Alice Warner Shumlas
Alice Warner Shumlas, Esquire

AWS:rj

Enclosure

cc: John M. Wilkinson, OHFLAC Director
Matthew Keefer, Program Manager
Deanna Kramer, Program Manager

SCANNED

OPEN MEETINGS ADVISORY OPINION NO. 2001-37

Issued On January 3, 2002 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Nursing Home Licensing Advisory Council (NHLAC) asks if the Open Governmental Proceedings Act applies to its meetings.

FACTS RELIED UPON BY THE COMMITTEE

NHLAC was created under an administrative rule issued by the Office of Health Facility Licensure and Certification in the Bureau of Public Health. The Council advises the agency regarding regulatory issues and improvement of nursing home services. These recommendations are not binding on the agency. NHLAC includes nursing home operators, private citizens and state employees. It is required to hold at least two meetings per year, one of which must be open to the public.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

The Open Meetings Act defines a "public agency" as:

Any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing authorized by law to exercise some portion of executive or legislative power.

W. Va. Code § 6-9A-2(6).

ADVISORY OPINION

NHLAC is an administrative subunit of State government. However, the Council's limited authority to provide advice and non-binding recommendations does not involve the exercise of executive or legislative power. Therefore, NHLAC is not a public agency subject to the requirements of the Open Meetings Act. However, NHLAC must hold one open meeting per year in accordance with the administrative rule.



Chairman

TITLE 12
PROCEDURAL RULES
NURSING HOME LICENSING ADVISORY COUNCIL

SERIES 1
REGULAR MEETINGS OF THE WEST VIRGINIA
NURSING HOME LICENSING ADVISORY COUNCIL

§12-1-1. General.

1.1. Scope. -- Section three, article nine-a, chapter six of the West Virginia Code mandates that the West Virginia Nursing Home Licensing Advisory Council shall promulgate rules by which the time and the place of all regularly scheduled meetings and the time, place and purpose of all special meetings are made available in advance, to the public and the news media, except in the event of an emergency requiring immediate official action.

1.2. Authority. -- W. Va. Code §6-9A-3

1.3. Filing date. -- December 14, 1984

1.4. Effective Date. -- January 14, 1985

§12-1-2. Application and enforcement.

This rule shall apply to the council and any and all individuals desiring to attend or to address the West Virginia Nursing Home Licensing Advisory Council. The enforcement of this rule shall be vested with the Secretary of the West Virginia Nursing Home Licensing Advisory Council.

§12-1-3. Definitions.

3.1. Council. -- The West Virginia Nursing Home Licensing Advisory Council established by Nursing Home Licensure, West Virginia Board of Health Legislative Rules, Chapter 16-5C, Series 1 (1983), as amended.

3.2. Department. -- The West Virginia Department of Health.

3.3. Meeting. -- The convening of a governing body of a public body for which a quorum is required.

3.4. Quorum. -- A simple majority of the constituent membership of the council.

3.5. Secretary. -- The director of the health facili-

ties evaluation division of the West Virginia Department of Health.

§12-1-4. Regular meetings established; time, place.

4.1. The West Virginia Nursing Home Licensing Advisory Council shall meet in regular session on the third Tuesday of the second month of each calendar quarter: Provided, That when such third Tuesday falls upon a legal holiday the council may designate another date by a majority of those council members present and voting.

4.2. The council shall convene all regular meetings at one thirty p.m. unless otherwise changed by a majority vote of those council members present and voting.

4.3. The council shall convene all regular meetings in the conference room of the P&G Building, 2019 Washington Street, East, Charleston, West Virginia 25305 unless otherwise changed by a majority vote of those council members present and voting.

4.4. The council may without notice, move the location of the meeting to accommodate members of the public who wish to attend such meeting in the event the meeting room is too small to accommodate such attendance.

4.5. All regular meetings shall be general meetings for the consideration of any and all matters which may properly come before the council.

§12-1-5. Special meetings; notice required, time, place and purpose.

5.1. The council may convene special meetings in accordance with the procedures established herein.

5.2. Special meetings of the board may be called by the chairman, the secretary or by two (2) members of the board upon written request to the secretary.

5.3. The secretary shall send to all members at least five (5) days in advance of a special meeting, a written notice setting forth the time and place of such special meeting and the matter to be considered at such special meeting: Provided, That such written notice is not required if the time, the place and the matter for consideration has been fixed in a regular meeting or if all the members are present at a special meeting.

5.4. The secretary shall cause the notification of the public and the news media by issuing a public notice of such special meeting at least five (5) days in advance of such meeting. The public notice shall contain the time, the place and the matter to be considered. A copy of such public notice shall be filed with the office of the Secretary of State.

5.5. The provisions of this section shall not apply in the event of an emergency requiring immediate official action by the board.

§12-1-6. Cancellation of meetings.

6.1. Meetings may be canceled by the chairman one (1) or more days prior to the scheduled time of the meeting. In the event of a cancellation, the chairman shall cause notification of all members informing them of the cancellation.

6.2. The secretary shall send to all members a written notice of the cancellation, and shall immediately file a public notice of meeting cancellation with the office of the Secretary of State.

§12-1-7. Proceedings to be open; exceptions executive session permitted.

7.1. Notwithstanding any other provision of law or regulation all meetings of the council shall be open to the public, excepting the provision of section four, article nine-a, chapter six of the West Virginia Code.

7.2. An executive session may be held only upon a

majority affirmative vote of the members present.

§12-1-8. Minutes.

8.1. The West Virginia Nursing Home Licensing Advisory Council shall provide for the preparation of written minutes of all its meetings. All such minutes shall be available to the public within a reasonable time after the meeting and shall include the following information:

- (a) The date, time and place of the meeting;
- (b) The name of each council member present or absent;
- (c) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and
- (d) The results of all votes and, upon request of a member, the vote of each member, by name.

8.2. Minutes of executive sessions may be limited to material which is not inconsistent with the provisions of section four, article nine-a, chapter six of the West Virginia Code.

§12-1-9. Quorum; majority vote required; vote by proxy prohibited.

A majority of the members of the council shall constitute a quorum. The vote of a majority of all members present at any meeting of the council shall be necessary to take any action. Proxy voting is hereby prohibited.

§12-1-10. Records of the council - public document.

All records and proceedings of the council are public records and shall be available to the public during the usual and customary business hours of the department.