

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Department of Health and Human Resources TITLE NUMBER: 64

CITE AUTHORITY: W. Va. Code §§ 16-1-4, 16-5C-5 and 16-5C-21(b)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 13

TITLE OF RULE BEING AMENDED: Nursing Home Licensure Rule

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

## FISCAL NOTE FOR PROPOSED RULES

Rule Title: Nursing Home Licensure Rule

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Type of Rule: XX Legislative            Interpretive            Procedural

Agency: Health and Human Resources

Address: One Davis Square  
Suite 100, East  
Charleston, WV 25301

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Phone Number: 304-558-0050 Email: jolynn.marra@wv.gov

### Fiscal Note Summary

Summarize in a clear and concise manner what effect this measure will have on costs and revenues of state government.

This rule revision establishes new licensure requirements for nursing homes, including background checks for individuals who have direct access to residents. WV Code 16-5C-21 requires the Secretary of the Department of Health and Human Resources (DHHR) to propose rules for legislative approval in accordance with State Code 29A-3-1 et seq., to allow persons to appeal decisions, demonstrate rehabilitation, request a review of their initial negative determinations and to implement any variance procedure as may be required by state or federal law.

The rule provides for DHHR to maintain a centralized database for providers to utilize to prescreen applicants and requires candidates for a job to provide fingerprints and undergo a state and national criminal background check. The DHHR has requested a one year, no cost extension of a federal grant that will fund establishment of background check programs for states. Additionally, a possible no cost extension for a fifth year is being considered by the Centers for Medicare and Medicaid Services. Estimated costs of the background check program is \$678,860 for SFY2015 and \$333,160 for SFY2016 (\$249,890 State and \$83,290 Federal). For years after SFY2016 the annual cost is estimated to be \$333,160, all state funds.

### Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	Fiscal Year		
	2014 Increase/Decrease (use "-" )	2015 Increase/Decrease (use "-" )	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	678,860	333,160
Personal Services		69,160	69,160
Current Expenses		609,700	264,000
Repairs and Alterations			
Buildings			
Equipment			
Land			
Other Assets			
<b>2. Estimated Total Revenues</b>			

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

The estimated costs above were calculated from the program budget estimates used for the grant application. These costs are as follows: One FTE program manager (salary of \$52,000, plus benefits of 33%, for a total of \$69,160); the other current expenses consist mainly of contractual costs (total contractual \$593K; software development costs of \$344K; hardware (servers/storage/networking) \$28K; maintenance \$34K; contractual staff (3 FTE positions) \$148K; and Office of Technology Project Management Office services \$39K). The remaining Current Expenses of \$16,700 consist of travel (\$3K for national conference); training sessions to be conducted throughout the state (\$8K); laptop purchase \$1700; printing, supplies and other miscellaneous costs of \$4K. Anticipating that CMS will grant the one-year no-cost extension, these costs are expected to be covered by the grant with no state funds needed. The full year implementation costs consist of all the costs listed above except for the \$344K software development costs and laptop purchase (all other costs are estimated to be ongoing costs to run the program). The costs above are the estimate of one year of program operation costs based on the information available at this time. For SFY16 the grant would cover the first quarter of costs (estimated to be \$83K) until it expires on 9/30/15, resulting in three quarters of costs to be funded by non-Federal funds (state funds or funds generated by fees); this is estimated at approximately \$250K for SFY16 (however this split in Federal/State funds may fluctuate based on the timing of activities). For years after SFY16 the full estimated cost of \$333K per year would be from state funds.

**Memorandum**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

In 2011 DHHR received a grant from Centers for Medicare and Medicaid Services (CMS) to implement a Criminal Background Check system with a rap-back process; the grant was for 3 years expiring on 9/30/14. The grant required a 25% match, for which background check fees will be used as in-kind match, resulting in no state general revenue being needed to match the federal funds. At this time due to various delays in getting the program initiated there is a request for a one-year no-cost extension from CMS, which would extend the expiration of the grant until 9/30/15. The federal funds are anticipated to cover the costs of the program through that extended due date. However, after that time another funding mechanism would be needed (either fees generated from a Department-assessed fee or state general revenue funds). At this time, the plan is to collect the fee when providers access the Department's prescreening database, but there is no estimate of what such a fee would be. Other states' fees for similar programs range from \$7.50-\$45. Currently CMS is surveying states to see if an additional (fifth) year would be beneficial in establishing the program.

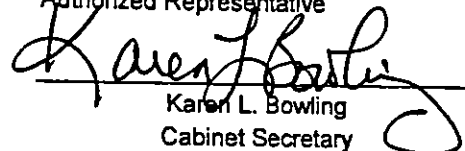
Date

6/27/14

Agency

Department of Health and Human Resources

Authorized Representative

  
Karen L. Bowling  
Cabinet Secretary

Legislative Rule, Title 64-13, Nursing Home  
Department of Health and Human Resources  
Office of Inspector General  
Office of Health Facilities Licensure and Certification

#### BRIEF SUMMARY

The provisions of W. Va. Code §§ 16-1-4 and 16-5C-5 require the Secretary of the Department of Health and Human Resources to regulate and license all nursing homes. During the 2014 Regular Legislative Session, the Code of West Virginia was amended by adding § 16-5C-21. This new section of Code is titled the Employment Restrictions. In addition, the rule has been updated to ensure compliance with state and federal requirements for nursing homes.

It is the purpose of this rule to implement state and federal law governing the licensing, operation, and standard of care in nursing homes located in the State of West Virginia. Compliance with this rule will help each resident attain or maintain the highest practicable physical, mental and psychosocial well-being in accordance with a comprehensive assessment and plan of care and prevailing standards of care, and will promote a standard of care that assures that the ability of each resident to perform activities of daily living does not diminish unless the resident's ability is diminished solely as a result of a change in the resident's clinical condition.

This rule establishes definitions; state administrative procedures; resident rights; quality of life; resident assessment; comprehensive care plans; quality of care; physical facilities, equipment, and site information; administration; human resources; laboratory, radiology, and other diagnostic services; clinical records; quality assessment and assurance; inspections and investigations; enforcement and due process; and deemed status.

#### STATEMENT OF CIRCUMSTANCES

One of the key goals of the nursing home legislative rule is to protect the health and welfare of the residents. During the 2014 Regular Legislative Session, House Bill 3108 was passed to identify prospective and current nursing home employees from having certain criminal convictions.

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 30, 2014

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Department of Health and Human Resources  
Office of Health Facility Licensure and Certification  
408 Leon Sullivan Way  
Charleston, WV 25301-1713  
(304) 558-0050

LEGISLATIVE RULE TITLE: Nursing Home Licensure

1. Authorizing statute(s) citation WV Code 16-1-4, 16-5C-5, and 16-5C-21

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 27, 2014

b. What other notice, including advertising, did you give of the hearing?  
n/a

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 28, 2014

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached     X                          No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

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- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Jolynn Marra, Director  
Office of Health Facility Licensure and Certification  
408 Leon Sullivan Way  
Charleston, WV 25301-1713  
phone (304) 558-0050  
fax (304) 558-2515  
email Jolynn.Marra@wv.gov

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

n/a

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

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b. Date of hearing or comment period:

June 27, 2014 - July 28, 2014

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached

July 24, 2014

Ms. Jolynn Marra  
Director  
Office of Health Facility Licensure and Certification  
408 Leon Sullivan Way  
Charleston, WV 25301-1713

Re: Proposed Nursing Home Licensure Rule

Dear Ms. Marra,

Thank you for the opportunity to comment on the proposed revisions to the West Virginia Nursing Home Licensure Rule.

Access and Visitation Rights

Section 5.5.a.3 – This section requires nursing homes to provide visitation rights to all individuals with the resident’s consent. The visitation privileges are subject to the resident’s expressed preferences and other provisions of this rule.”

Occasionally, visitors are inebriated and threatening when they arrive at the facility and pose a danger to residents and staff. Other times, they arrive at a late hour and disturb the rest of other residents.

To address these concerns, we ask that the proposed language be modified to specifically list the "other provisions of this rule" that address these circumstances and incorporate the following language.

*Facilities must provide 24 hour visitation rights to all individuals with the resident's consent. The visitation privileges are subject to the resident's expressed preferences. A nursing home may impose reasonable restrictions to protect the security of all the facility's residents and staff and may change the location of visits to assist caregiving or protect the privacy of other residents. Visitation privileges are subject to {other provisions – please enumerate} of this rule.*

### Hospice

Section 7.5 – This section needs a heading to be consistent with other sections.

This section addresses the relationship between nursing homes and hospice. It requires "a coordinated plan of care for both providers." Nursing homes report that hospice often acts unilaterally when a resident's situation changes suddenly or deteriorates rapidly. The nursing home is not consulted and, in fairness, time does not exist to prepare and coordinate a new plan of care. As a result, the nursing home cannot guarantee that the plan of care is being followed. Nursing homes should not receive a deficiency for actions taken by hospice.

### Criminal Background Checks.

We understand that the Department of Health and Human Resources has received a grant to facilitate computer background checks and that nursing homes have been selected as the first provider group to undertake the new background check process.

The new screening process is both exciting and concerning. The new computer system will inevitably experience glitches. By including

regulations related to the new background check system in the nursing home rule, facilities will be subject to deficiencies if the system does not work properly. This is a concern for our members.

We wonder if section 11.3 should be inserted into the Nursing Home Licensure Rule at a later date when all of the “bugs” have been worked out of the system or submitted as a separate rule. In the alternative, nursing homes would like some assurance from the Office of Health Facility Licensure and Certification that leniency will be granted until the system is functioning properly.

With respect to the rule itself, we offer the following comments.

1. Section 11.3.a.1 - This section requires that all direct access personnel applicants be prescreened. Nursing homes do not hire everyone that applies for a position. We believe that only those applicants for whom the nursing home is considering seriously for employment be prescreened. Requiring everyone who applies for employment to be prescreened is unnecessary and costly.
2. Section 11.3.b.3 – This section requires that a “nursing home shall notify applicants that their fingerprints will be retained by the State Police.” Should the same requirement apply to independent contractors as well?

If the independent contractor runs a background check, but decides not to hire an applicant or immediately terminates the applicant’s employment, the individual may never know that their fingerprints are being retained by the State Police. The responsibility of giving the notice should be upon the party directly receiving the fingerprint background check results.

3. The rule uses the terms “employment fitness determination” and “eligible fitness determination.” One term should be used consistently throughout the rule to avoid confusion. See sections 11.3.c and 11.3.d for examples.
4. Section 11.3.d.1.B – This section states that a person may work as a conditional employee when “an applicant has requested a variance of the fitness determination has been granted.” There are two concepts in this section – requesting a variance and being granted a variance. The wording is confusing. If a variance has been granted, conditional employment would not be needed.
5. Section 11.3.g.1 - This section requires the nursing home to maintain copies of all written notifications and correspondence related to the “prescreening, fingerprinting, conditional employment, variance and appeal processes.” A nursing home will not always know what documents exist for two types of direct access personnel - independent contractors and employees who have worked at another facility. If an independent contractor performs all of the background functions, it would be impossible for the nursing home to know of all correspondence related to the applicant. Similarly, if an employee of another facility corresponded with the Department during the initial background check, the nursing home would have no knowledge of this. A third scenario involves an individual who is granted a variance and seeks work at a new nursing home. The new nursing home may never know that a variance has been granted. The Secretary’s updated employment fitness determination may not disclose that a variance has been granted. The new nursing home will only know that the

person is eligible to be hired. It is not fair to ask nursing homes to maintain documents of which they are unaware.

The proposed rule mentions document retention in several places. (i.e. sections 11.3.a.1, 11.3.b.2, 11.3.c.5, 11.3.g.1) Please consider removing all references to document retention in the rule and replace them with a new section that addresses the core documents that are needed:

*Record Retention.*

*A nursing home shall maintain the following documents related to background checks for all direct access personnel working in the facility:*

- a. Documents establishing that an applicant has no negative findings on registries and licensure databases;*
- b. The Secretary's eligible (or employment – depending on the terminology adopted) fitness determination; and*
- c. Any variance granted by the Secretary, if applicable.*

*For conditional employees, the nursing home shall maintain documentation that establishes that the individual meets the qualifications for conditional employment.*

This document list establishes that the direct access personnel met the qualifications for employment. That is all the information that nursing home should be required to retain in personnel files.

6. 11.3.g.3 – This section requires the nursing home to “ensure proper completion of the background check process.” If an independent contractor or a prior facility performed the criminal background check there is no way that the facility can ensure that it was performed properly. The only thing that the facility can ensure is that it has the proper documentation to allow the individual to provide direct access care.

Alternative language is:

*Failure of the nursing home to maintain background documentation that all direct access personnel are eligible to work or knowingly employing an applicant or engaging an independent contractor who is ineligible to work may subject the nursing home to civil monetary penalties.*

Thank you again for the opportunity to comment on the proposed rule.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Patrick D. Kelly", written in a cursive style.

Patrick D. Kelly

CEO



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RECEIVED  
WV DHR-C-H-LAC

Jolynn Marra  
Director  
Office of Health Facility Licensure and Certification  
408 Leon Sullivan Way  
Charleston, WV 24301-1713

July 22, 2014

Dear Ms. Marra,

Please accept the following comments related to the proposed revisions to the West Virginia Nursing Home Licensure Rule:

Right to Choose a Personal Physician and Pharmacy

Section 4.9.e – The center should not bear financial responsibility for this choice. Please consider the following language. *“The other pharmacy source must meet the prescription medication packaging requirements of the nursing home, at a cost that does not exceed that of the contracted pharmacy. Costs that exceed that of the contracted pharmacy shall be the responsibility of the resident.”*

Access and Visitation Rights

Section 5.5.a.3 – This section requires nursing homes to provide visitation rights to all individuals with the resident’s consent. The visitation privileges are subject to the resident’s expressed preferences and other provisions of this rule.” Occasionally, visitors are inebriated when they arrive at the facility and pose a danger to residents. Other times, they arrive at a late hour and disturb the rest of other residents.

To address these concerns, please consider that the proposed language be modified to specifically list the “other provisions of this rule” that address these circumstances or incorporate the following language.

*“Facilities must provide 24 hour visitation rights to all individuals with the resident’s consent. The visitation privileges are subject to the resident’s expressed preferences. A nursing home may impose reasonable restrictions to protect the security of all the facility’s residents and may change the location of visits to assist caregiving or protect the privacy of other residents. Visitation privileges are subject to other provisions of this rule.”*

Hospice

Section 7.5 – This section needs a heading to be consistent with other sections.

This section addresses the relationship between nursing homes and hospice. It requires “a coordinated plan of care for both providers.” Nursing homes report that hospice often acts unilaterally when a resident’s situation changes suddenly or deteriorates rapidly. The nursing home is not consulted and, in fairness, time does not exist to prepare and



coordinate a new plan of care. As a result, the nursing home cannot guarantee that the plan of care is being followed. Nursing homes should not receive a deficiency for actions taken by hospice.

#### Nutrition

Section 8.10.c.1 - This section addresses a "significant weight loss" as well as a "severe weight loss. The definitions of "significant weight loss" is 5% in 30 days, 7.5% in 3 months, 10% in 6 months. "Severe weight loss" is defined as exceeding those parameters. Please correct language to reflect "greater than five percent...greater than seven and a half percent...greater than 10%".

#### Equipment and Furnishings in Resident Rooms

Section 9.4.e. - The requirement to have a "towel bar or equivalent" poses concern from an infection control and prevention standpoint. This requirement seems archaic, as all towels/bath linens should be handled as soiled linen once used. The use of towel bars promotes cross contamination.

#### Criminal Background Checks.

1. Section 11.3.a.1 - This section requires that all direct access personnel applicants be prescreened. Nursing homes do not hire everyone that applies for a position. We believe that only those applicants for whom the nursing home is considering seriously for employment be prescreened. Requiring everyone who applies for employment to be prescreened is unnecessary and costly.
2. Section 11.3.b.3 - This section requires that a "nursing home shall notify applicants that their fingerprints will be retained by the State Police." Should the same requirement apply to independent contractors as well?

If the independent contractor runs a background check, but decides not to hire an applicant or immediately terminates the applicant's employment, the individual may never know that their fingerprints are being retained by the State Police. The responsibility of giving the notice should be upon the party directly receiving the fingerprint background check results.

3. The rule uses the terms "employment fitness determination" and "eligible fitness determination." One term should be used consistently throughout the rule to avoid confusion. See sections 11.3.c and 11.3.d for examples.
4. Section 11.3.d.1.B - This section states that a person may work as a conditional employee when "an applicant has requested a variance of the fitness determination has been granted." There are two concepts in this section - requesting a variance



5. and being granted a variance. The wording is confusing. If a variance has been granted, conditional employment would not be needed.

6. Section 11.3.g.1 - This section requires the nursing home to maintain copies of all written notifications and correspondence related to the "prescreening, fingerprinting, conditional employment, variance and appeal processes." A nursing home will not always know what documents exist for two types of direct access personnel - independent contractors and employees who have worked at another facility. If an independent contractor performs all of the background functions, it would be impossible for the nursing home to know of all correspondence related to the applicant. Similarly, if an employee of another facility corresponded with the Department during the initial background check, the nursing home would have no knowledge of this. A third scenario involves an individual who is granted a variance and seeks work at a new nursing home. The new nursing home may never know that a variance has been granted. The Secretary's update employment fitness determination may not disclose that a variance has been granted. The new nursing home will only know that the person is eligible to be hired. It is not fair to ask nursing homes to maintain documents of which they are unaware.

The proposed rule mentions document retention in several places. (i.e. sections 11.3.a.1, 11.3.b.2, 11.3.c.5, 11.3.g.1) Please consider removing all references to document retention in the rule and replace them with a new section that addresses the core documents that are needed:

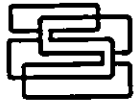
*Record Retention.*

*A nursing home shall maintain the following documents related to background checks for all direct access personnel working in the facility:*

- a. Documents establishing that an applicant has no negative findings on registries and licensure databases;*
- b. The Secretary's eligible (or employment - depending on the terminology adopted) fitness determination; and*
- c. Any variance granted by the Secretary, if applicable.*

*For conditional employees, the nursing home shall maintain documentation that establishes that the individual meets the qualifications for conditional employment. This list of documents establish that the direct access personnel meet the qualifications for employment. That is all the information that nursing home should be required to retain in personnel files.*

7. 11.3.g.3 - This section requires the nursing home to "ensure proper completion of the background check process." If an independent contractor or a prior facility performed the criminal background check there is no way that the facility can ensure that it was performed properly. The only thing that the facility can ensure is



# STONERISE

## HEALTHCARE

that it has the proper documentation to allow the individual to provide direct access care.

Alternative language is:

*Failure of the nursing home to maintain background documentation that all direct access personnel are eligible to work or knowingly employing an applicant or engaging an independent contractor who is ineligible to work may subject the nursing home to civil monetary penalties.*

Thank you for the opportunity to comment on the proposed language. Please feel free to contact me with any questions.

Sincerely:

Dee Adkins  
COO  
Stonerise Healthcare  
PO Box 18387  
South Charleston, WV 25303

Cc: Pat Kelly, CEO, WVHCA  
Larry Pack, Managing Member, Stonerise Healthcare

Title 64 Series 13  
Nursing Home Licensure Rule  
Legislative Rule  
West Virginia Department of Health and Human Resources

**Summary of Public Comments:**

**Comment: #1**

Right to Choose a Personal Physician and Pharmacy

Section 4.9.e. – The center should not bear financial responsibility for this choice. Please consider the following language. “The other pharmacy source must meet the prescription medication packaging requirements of the nursing home, at a cost that does not exceed that of the contracted pharmacy. Costs that exceed that of the contracted pharmacy shall be the responsibility of the resident.”

Comment from Stonerise Healthcare

**Response: #1**

The Department finds clarification is needed, and changes were made as requested.

**Comment: #2**

Access and Visitation Rights

Section 5.5.a.3 – This section requires nursing homes to provide visitation to all individuals with the resident’s consent. The visitation privileges are subject to the resident’s expressed preferences and other provisions of this rule.

Occasionally, visitors are inebriated and threatening when they arrive at the facility and pose a danger to residents and staff. Other times, they arrive at a late hour and disturb the rest of the other residents.

To address these concerns, we ask that the proposed language be modified to specifically list the “other provisions of this rule” that address these circumstances and incorporate the following language.

*Facilities must provide 24 hour visitation rights to all individuals with the resident’s consent. The visitation privileges are subject to the resident’s expressed preferences. A nursing home may impose reasonable restrictions to protect the security of all the facility’s residents and staff and may change the location of visits to assist caregiving or protect the privacy of other residents. Visitation privileges are subject to [other provisions – please enumerate] of this rule.*

Comment from Stonerise Healthcare and West Virginia Health Care Association

**Response: #2**

The Department finds clarification is needed, and changes were made as requested.

**Comment: #3**

Hospice

Section 7.5 – This section needs a heading to be consistent with other sections.

This section addresses the relationship between nursing homes and hospice. It requires “a coordinated plan of care for both providers.” Nursing homes report that hospice often acts unilaterally when a resident’s situation changes suddenly or deteriorates rapidly. The nursing home is not consulted and, in fairness, time does not exist to prepare and coordinate a new plan of care. As a result, the nursing home cannot guarantee that the plan of care is being followed. Nursing homes should not receive a deficiency for actions taken by hospice.

Comment from Stonerise Healthcare and West Virginia Health Care Association

**Response: #3**

Change considered, however, language contained in section 7.5 is consistent with the federal requirements. Therefore, no changes were made to the rule.

**Comment: #4**

Nutrition

Section 8.10.c.1. – This section addresses a “significant weight loss” as well as a “severe weight loss.” The definition of “significant weight loss” is 5% in 30 days, 7.5% in 3 months, 10% in 6 months. “Severe weight loss” is defined as exceeding those parameters. Please correct language to reflect “greater than five percent...greater than seven and a half percent...greater than 10%.”

Comment from Stonerise Healthcare

**Response: #4**

The Department finds clarification is needed, and changes were made as requested.

**Comment: #5**

Equipment and Furnishings in Resident Rooms

Section 9.4.e. – The requirement to have a “towel bar or equivalent” poses concern from an infection control and prevention standpoint. This requirement seems archaic, as all towels/bath linens should be handled as soiled linen once used. The use of towel bars promotes cross contamination.

Comment from Stonerise Healthcare

**Response: #5**

The Department finds clarification is needed, and changes were made as requested.

**Comment: #6**

Criminal Background Checks

We understand that the Department of Health and Human Resources has received a grant to facilitate computer background checks and that nursing homes have been selected as the first provider group to undertake the new background check process.

The new screening process is both exciting and concerning. The new computer system will inevitably experience glitches. By including regulations related to the new background check system in the nursing home rule, facilities will be subject to deficiencies if the system does not work properly. This is a concern for our members.

We wonder if section 11.3 should be inserted into the Nursing Home Licensure Rule at a later date when all the "bugs" have been worked out of the system or submitted as a separate rule. In the alternative, nursing homes would like assurances from the Office of Health Facility Licensure and Certification that leniency will be granted until the system is functioning properly.

Comment from West Virginia Health Care Association

**Response: #6**

Comment is appreciated and will be taken under advisement. The comment references a grant received by the Department of Health and Human Resources. This grant was awarded by the Centers for Medicare and Medicaid Services in response to the National Background Check Initiative and the Affordable Care Act.

**Comment: #7**

Section 11.3.a.1. – This section requires that all direct access personnel applicants be prescreened. Nursing homes do not hire everyone that applies to this position. We believe that only those applicants for whom the nursing home is considering seriously for employment be prescreened. Requiring everyone who applies for employment to be prescreened is unnecessary and costly.

Comment from Stonerise Healthcare and West Virginia Health Care Association

**Response: #7**

The Department finds the clarification is needed, and changes were made as requested.

**Comment: #8**

Section 11.2.b.3. – This section requires that a "nursing home shall notify applicants that their fingerprints will be retained by the State Police." Should the same requirement apply to independent contractors as well?

If the independent contractor runs a background check, but decides not to hire an applicant or immediately terminates the applicant's employment, the individual may never know that their fingerprints are being retained by the State Police. The responsibility of giving the notice should be upon the party directly receiving the fingerprint background check results.

Comment from Stonerise Healthcare and West Virginia Health Care Association

**Response: #8**

The Department finds the clarification is needed, and changes were made as requested.

**Comment: #9**

The rule uses the terms "employment fitness determination" and eligibility fitness determination." One term should be used consistently throughout the rule to avoid confusion. See sections 11.3.c. and 11.3.d. for examples.

Comment from Stonerise Healthcare and West Virginia Health Care Association

**Response: #9**

The Department finds the clarification is needed, and changes were made as requested.

**Comment: #10**

Section 11.3.d.1.B. – This section states that a person may work as a conditional employee when "an applicant has requested a variance of the fitness determination has been granted." There are two concepts in this section – requesting a variance and being granted a variance. The wording is confusing. If a variance has been granted, conditional employment would not be needed.

Comment from Stonerise Healthcare and West Virginia Health Care Association

**Response: #10**

The Department finds the clarification is needed, and changes were made as requested.

**Comment: #11**

Section 11.3.g.1. – This section requires the nursing home to maintain copies of all written notifications and correspondence related to the "prescreening, fingerprinting, conditional employment, variance and appeal processes." A nursing home will not always know what documents exist for two types of direct access personnel – independent contractors and employees who have worked at another facility. If an independent contractor performs all of the background functions, it would be impossible for the nursing home to know of all correspondence related to the applicant. Similarly, if an employee of another facility corresponded with the Department during the initial background check, the nursing home would have no knowledge of this. A third scenario involves an individual who is granted a variance and seeks work at a new nursing home. The new nursing home may never know that a variance has been granted.

The Secretary's updated employment fitness determination may not disclose that a variance has been granted. The new nursing home will only know the person is eligible to be hired. It is not fair to ask nursing homes to maintain documents of which they are unaware.

The proposed rule mentions document retention in several places (i.e. sections 11.3.a.1, 11.3.b.2, 11.3.c.5, 11.3.g.1). Please consider removing all references to document retention in the rule and replace them with a new section that addresses the core documents that are needed:

#### *Record Retention*

*A nursing home shall maintain the following documents related to the background checks for all direct access personnel working in the facility:*

- a. Documents establishing that an applicant has no negative findings on registries and licensure databases;*
- b. The Secretary's eligible employment fitness determination; and*
- c. Any variance granted by the Secretary, if applicable.*

*For conditional employees, the nursing home shall maintain documentation that establishes that the individual meets the qualifications for conditional employment.*

This list of documents establish that the direct access personnel meet that qualifications for employment. That is all the information that nursing home should be required to retain in personnel files.

Comment from Stonerise Healthcare and West Virginia Health Care Association

#### **Response: #11**

The Department finds the clarification is needed, and changes were made as requested.

#### **Comment: #12**

11.3.g.3. – This section requires the nursing home to “ensure proper completion of the background check process.” If an independent contractor or a prior facility performed the criminal background check there is no way that the facility can ensure that it was performed the criminal background check there is no way that the facility can ensure that it was performed properly. The only thing that the facility can ensure is that it has proper documentation to allow the individual to provide direct access care. Alternate language is:

*Failure of the nursing home to maintain background documentation that all direct access personnel are eligible to work or knowingly employing an applicant or engaging an independent contractor who is ineligible to work may subject the nursing home to civil monetary penalties.*

Comment from Stonerise Healthcare and West Virginia Health Care Association

#### **Response: #12**

The Department finds the clarification is needed, and changes were made as requested.

**Comment: #13**

Suggest that wherever there is a reference to "incapacity" in the Proposed Rule, that the reference be examined to determine whether it should be modified with the phrase "to make healthcare decisions." Examples include, but are not limited to, Proposed Rule 4.6.a.1.B, 4.16.b.1.A.1, 4.16.b.1.A.4.(a), 5.5.a.2.D.3, and 5.5.b.2. Capacity is decision specific. A resident may lack capacity to make certain types of decisions, yet retain the capacity to make other decisions. As a general rule, nursing homes only evaluate capacity to make health care decisions. It is important the Proposed Rule specify what types of decisions the word "incapacity" encompasses order to promote and protect residents' autonomy and self-determination.

Comment by the WV State Long Term Care Ombudsman

**Response: #13**

The Department finds the clarification is needed, and changes were made as requested.

**Comment: #14**

Suggest adding a "general description of the resident's resource amount" to the list of written information describing a resident's financial obligation that must be provided in Proposed Rule 4.7.b. Even though the Department of Health and Human Resources should be providing an explanation, the resident's resource amount is a foreign concept to many residents. It would be beneficial for them to receive this information more than once. Non-payment of the resource amount is a problem that all nursing homes face and is often an early sign of financial exploitation. In the spirit of "an ounce of prevention is worth a pound of cure" providing a general description of the resource amount may head off a world of problems.

Comment by the WV State Long Term Care Ombudsman

**Response: #14**

The rule defines resident resource amount and address the requirements of the facility for explaining the resident resource amount to the resident, and their legal representative, if applicable. This language is in section 4.15.d of the rule. The changes will not be made as requested.

**Comment: #15**

Suggest clarifying Proposed Rule 4.10.d.3.B. As currently written, the Proposed Rule is not clear about what type of incapacity would trigger the authority of the legal representative. Lack of "capacity to make health care decisions" does not always equate to lack of capacity to make other types of decisions, including financial ones. Suggest "The nursing home shall administer the funds on behalf of the resident in the manner directed by the resident or, the appropriate legal representative with authority to make

financial decisions.” This would promote resident autonomy and self-determination and help to assure the appropriate exercise of a legal representative’s authority.

Comment by the WV State Long Term Care Ombudsman

**Response: #15**

The Department finds the clarification is needed, and changes were made as requested.

**Comment: #16**

Suggest removing Proposed Rule 4.13.e.1. from the list of circumstances that permit a deviation from the standard 30 day notice requirement for notices of involuntary discharge. The inclusion of a “discharge to a community setting” in any configuration is inconsistent with the requirements of federal law. Federal law requires that all notices of involuntary discharge be issued at least 30 days before the involuntary transfer or discharge except in very limited circumstances. “Discharge to a community setting” is not one of the exceptions recognized by federal law. (42 CFR 483.12(a)(5)). Additionally, Proposed Rule 4.13.e.1. is likely to cause confusion despite the fact that it incorporates other provisions of the rule. “Discharge to home” is the default location that most nursing homes use in their notices of involuntary discharge. By specifically referencing discharges to a community setting, the Proposed Rule creates the likelihood that a nursing home would improperly deviate from the 30 day notice requirement. The timing of the notice is particularly important in involuntary transfer and discharges. It helps set the timeframe for requesting assistance from outside entities, like the LTCO, and for requesting an appeal of the proposed discharge. Limiting the timeframe, even by suggestion, greatly reduces the opportunity for the affected resident to exercise her rights. Removing Proposed Rule 4.13.e.1 would not force residents who legitimately want to return to the community to wait 30 days before doing so, but it would reduce the chances that their opportunity to exercise their right to appeal and contact outside entities would not be improperly limited.

Comment by the WV State Long Term Care Ombudsman

**Response: #16**

The Department finds the clarification is needed, and changes were made as requested.

**Comment: #17**

Suggest replacing the word “understand fully” with “fully informed” in Proposed Rule 4.13.g.3. It is not generally possible to objectively measure a resident’s understanding of a right. However, it is entirely possible to measure the content and quality of information that was provided about that right.

Comment by the WV State Long Term Care Ombudsman

**Response: #17**

The Department finds the clarification is needed, and changes were made as requested.

**Comment: #18**

The word "and" is missing at the end of Proposed Rule 4.16.a. The requirements for the use of a restraint in Proposed Rules 4.16.a.1 and 4.16.a.2 are in addition to the requirements prescribed by Proposed Rule 4.16.a.

Comment by the WV State Long Term Care Ombudsman

**Response: #18**

The Department finds the clarification is needed, and changes were made as requested.

**Comment: #19**

Suggest adding "or persons of resident's choosing" to the list in Proposed Rule 7.2.a.2. enumerating the people eligible to participate in the care planning process. Some residents may not have family, but do have friends or other concerned individuals that they would like to participate in the care planning process. The rights of these residents should be acknowledged. Of course, no person should be permitted to participate without the consent of the resident.

Suggest clarifying that the copy of the care plan shall be provided "free of charge" upon request in Proposed Rule 7.4.a.1. The care plan is arguably the most relevant piece of paper in the resident's record. Requiring a nursing home to provide a copy without charge removes a significant barrier for those who truly desire a copy of their care plan and should not pose an undue burden on the nursing home because it is not likely that every resident, or even most residents, will avail themselves of this option.

Comment by the WV State Long Term Care Ombudsman

**Response: #19**

West Virginia Code was changed during the 2014 regular Legislative session through the passage of House Bill 4560. The new provision in Code addresses the reasonable expenses to be reimbursed, and guidance on offering copies at no cost.

**Comment: #20**

Suggest adding "Proposed Rule 8.15.e.4.3. A nursing home shall inform the resident's physician of the resident's refusal of the therapeutic diet." Whenever a resident exercises her right to refuse medical treatment it is important that her physician be made aware of this. A therapeutic diet is a type of medical treatment. Therefore, the physician should be informed. Adding this language is consistent with the existing requirements of Proposed Rule 4.6.a. and would not create an additional burden on nursing homes.

Comment by the WV State Long Term Care Ombudsman

**Response: #20**

The language in 8.15.e. are consistent to the requirements in 4.6. The changes requested were not made.

**Comment: #21**

Suggest further consideration of the requirement that temperatures of food be taken prior to the start of meal service in Proposed Rule 8.15.g.2.B. It would seem that it is equally essential to take the temperatures of food at the time of *actual* service. For example, as currently written the temperature of a resident's hot breakfast and milk could be within acceptable limits when taken in the kitchen prior to the start of meal service, but could be well out of acceptable limits by the time the last breakfast is served to a latecomer or delivered to the last resident with in-room service.

Comment by the WV State Long Term Care Ombudsman

**Response: #21**

The Department finds the clarification is needed, and changes were made in response to this comment.

**Comment: #22**

Suggest further clarifying the responsibilities of the nursing home and independent health contractor (IHC) in Proposed Rules 11.3.b.2, 11.3.b.3 and 11.3.g.1. As currently written, Proposed Rule 11.3.b.2. only addresses "conditional employees." The definition of "employees" only applies to nursing homes. Are employees of an IHC eligible for "conditional" status?

Comment by the State Long Term Care Ombudsman

**Response: #22**

Under 11.3.b.2 addresses both nursing homes and independent health contractors, so both are permitted to hire conditional employees per the provisions of the rule. No changes are necessary, therefore, the changes requested will not be made.

The Department finds clarification is needed under section 11.3.b.3, and changes were made as requested.

The Department finds clarification is needed under section 11.3.g.1, and changes will be made as requested. See Comment #11.

**Comment: #23**

Proposed Rule 11.3.b.2. requires nursing homes to inform applicants that fingerprints will be retained by law enforcement. Is the nursing home required to inform *only* applicants to the nursing home or must it inform *all* applicants, including those to an IHC? Finally, Proposed Rule 11.3.g.1. requires nursing homes to maintain supporting documentation for the background check process in personnel files of all employees and IHCs. Would the nursing home have a personnel file on the IHC?

Comment by the State Long Term Care Ombudsman

**Response: #23**

The Department finds the clarification is needed, and changes were made.

**Comment: #24**

Suggest removing the phrase "knowing they are ineligible to work" from Proposed Rule 11.3.g.3. As currently written a nursing home could arguably ignore the background check process and not be subject to monetary civil penalties so long as it could demonstrate that it did not know that an applicant was not eligible to work. This undermines the whole purpose of the background check process which is to require the nursing home obtain enough information so that it does know that an applicant is either eligible to work or not.

Comment by the State Long Term Care Ombudsman

**Response: #24**

The Department finds clarification is needed , and changes will be made based on this comment.

**Comment: #25**

There are two identical Proposed Rules 11.5.c.6.

**Response: #25**

The Department did not identify the identical language as cited in Comment #25. Section 11.5.c.6 has similar language as 11.5.c.5. The former addresses requirements for new employees, and the latter addresses requirements for annual training required each calendar year for all employees. No changes will be made based on the comment provided.

**Comment: #26**

Suggest adding "Proposed Rule 11.6.i. Results and supporting documentation of the criminal background check process." This would be consistent with the requirements of Proposed Rule 11.3.g.1. which outlines a nursing home's responsibilities for the maintenance of documentation for the background check process."

Comment by the WV Long Term Care Ombudsman

**Response: #26**

The Department finds the clarification is needed, and changes were made as requested.

**Comment: #27**

Suggest adding "13.3.g. Documents describing the authority of any legal representatives." Nursing homes are already required by Proposed Rule 4.3.e. to retain copies of the documents that describe the authority of a legal representative. The inclusion of that language here promotes consistency and serves to reinforce the importance of obtaining these documents and to help assure that legal representatives are only afforded the intended authority. One of the most frequent complaints presented by our residents involves legal representatives who overreach the limits of decision-making authority. Any regulatory language that prompts nursing homes to obtain this information could help promote resident autonomy and self-determination.

Comment by the WV Long Term Care Ombudsman

**Response: #27**

The Department finds the clarification is needed, and changes were made as requested.

**Comment: #28**

Suggest rewording Proposed Rule 15.2.e.1. The current phrasing is awkward and unclear. Suggest "The written notification shall also contain a description of the corrective action the nursing home shall be required to take and of any disciplinary action to be taken by the director."

Comment by the WV Long Term Care Ombudsman

**Response: #28**

The Department finds the clarification is needed, and changes were made consistent with the comments provided to describe the federal requirements for this type of notification.

Ms. Jolynn Marra, Director  
OHFLAC  
408 Leon Sullivan Way  
Charleston, WV 25301-1713

July 24, 2014

RE: SLTCO Comments to the Proposed Nursing Home Licensure Rule (64 CSR 13)

Dear Director Marra

Please consider these comments to the Proposed Nursing Home Licensure Rule (64 CSR 13) on behalf of the West Virginia Long-term Care Ombudsman Program.

#### **General**

Suggest that wherever there is a reference to “incapacity” in the Proposed Rule, that the reference be examined to determine whether it should be modified with the phrase “to make healthcare decisions.” Examples include, but are not limited to, Proposed Rule 4.6.a.1.B, 4.16.b.1.A.1, 4.16.b.1.A.4.(a), 5.5.a.2.D.3, and 5.5.b.2. Capacity is decision specific. A resident may lack capacity to make certain types of decisions, yet retain the capacity to make other decisions. As a general rule, nursing homes only evaluate capacity to make health care decisions. It is important the Proposed Rule specify what types of decisions the word “incapacity” encompasses order to promote and protect residents’ autonomy and self-determination.

#### **Resident Rights**

Suggest adding a “general description of the resident’s resource amount” to the list of written information describing a resident’s financial obligation that must be provided in Proposed Rule 4.7.b. Even though the Department of Health and Human Resources should be providing an explanation, the resident’s resource amount is a foreign concept to many residents. It would be beneficial for them to receive this information more than once. Non-payment of the resource amount is a problem that all nursing homes face and is often an early sign of financial exploitation. In the spirit of “an ounce of prevention is worth a pound of cure” providing a general description of the resource amount may head off a world of problems.

Suggest clarifying Proposed Rule 4.10.d.3.B. As currently written, the Proposed Rule is not clear about what type of incapacity would trigger the authority of the legal representative. Lack of “capacity to make health care decisions” does not always equate to lack of capacity to make other types of decisions, including financial ones. Suggest “The nursing home shall administer the funds on behalf of the resident in the manner directed by the resident or, the appropriate legal representative with authority to make financial decisions.” This would promote resident autonomy and self-determination and help to assure the appropriate exercise of a legal representative’s authority.

Suggest removing Proposed Rule 4.13.e.1. from the list of circumstances that permit a deviation

from the standard 30 day notice requirement for notices of involuntary discharge. The inclusion of a “discharge to a community setting” in any configuration is inconsistent with the requirements of federal law. Federal law requires that all notices of involuntary discharge be issued at least 30 days before the involuntary transfer or discharge except in very limited circumstances. “Discharge to a community setting” is not one of the exceptions recognized by federal law. (42 CFR 483.12(a)(5)). Additionally, Proposed Rule 4.13.e.1. is likely to cause confusion despite the fact that it incorporates other provisions of the rule. “Discharge to home” is the default location that most nursing homes use in their notices of involuntary discharge. By specifically referencing discharges to a community setting, the Proposed Rule creates the likelihood that a nursing home would improperly deviate from the 30 day notice requirement. The timing of the notice is particularly important in involuntary transfer and discharges. It helps set the timeframe for requesting assistance from outside entities, like the LTCO, and for requesting an appeal of the proposed discharge. Limiting the timeframe, even by suggestion, greatly reduces the opportunity for the affected resident to exercise her rights. Removing Proposed Rule 4.13.e.1 would not force residents who legitimately want to return to the community to wait 30 days before doing so, but it would reduce the chances that their opportunity to exercise their right to appeal and contact outside entities would not be improperly limited.

Suggest replacing the word “understand fully” with “fully informed” in Proposed Rule 4.13.g.3. It is not generally possible to objectively measure a resident’s understanding of a right. However, it is entirely possible to measure the content and quality of information that was provided about that right.

The word “and” is missing at the end of Proposed Rule 4.16.a. The requirements for the use of a restraint in Proposed Rules 4.16.a.1 and 4.16.a.2 are in addition to the requirements prescribed by Proposed Rule 4.16.a.

#### **Comprehensive Care Plans**

Suggest adding “or persons of resident’s choosing” to the list in Proposed Rule 7.2.a.2. enumerating the people eligible to participate in the care planning process. Some residents may not have family, but do have friends or other concerned individuals that they would like to participate in the care planning process. The rights of these residents should be acknowledged. Of course, no person should be permitted to participate without the consent of the resident.

Suggest clarifying that the copy of the care plan shall be provided “free of charge” upon request in Proposed Rule 7.4.a.1. The care plan is arguably the most relevant piece of paper in the resident’s record. Requiring a nursing home to provide a copy without charge removes a significant barrier for those who truly desire a copy of their care plan and should not pose an undue burden on the nursing home because it is not likely that every resident, or even most residents, will avail themselves of this option.

#### **Quality of Care**

Suggest adding “Proposed Rule 8.15.e.4.3. A nursing home shall inform the resident’s physician of the resident’s refusal of the therapeutic diet.” Whenever a resident exercises her right to

refuse medical treatment it is important that her physician be made aware of this. A therapeutic diet is a type of medical treatment. Therefore, the physician should be informed. Adding this language is consistent with the existing requirements of Proposed Rule 4.6.a. and would not create an additional burden on nursing homes.

Suggest further consideration of the requirement that temperatures of food be taken prior to the start of meal service in Proposed Rule 8.15.g.2.B. It would seem that it is equally essential to take the temperatures of food at the time of *actual* service. For example, as currently written the temperature of a resident's hot breakfast and milk could be within acceptable limits when taken in the kitchen prior to the start of meal service, but could be well out of acceptable limits by the time the last breakfast is served to a latecomer or delivered to the last resident with in-room service.

### **Human Resources**

Suggest further clarifying the responsibilities of the nursing home and independent health contractor (IHC) in Proposed Rules 11.3.b.2, 11.3.b.3 and 11.3.g.1. As currently written, Proposed Rule 11.3.b.2. only addresses "conditional employees." The definition of "employees" only applies to nursing homes. Are employees of an IHC eligible for "conditional" status? Proposed Rule 11.3.b.2. requires nursing homes to inform applicants that fingerprints will be retained by law enforcement. Is the nursing home required to inform *only* applicants to the nursing home or must it inform *all* applicants, including those to an IHC? Finally, Proposed Rule 11.3.g.1. requires nursing homes to maintain supporting documentation for the background check process in personnel files of all employees and IHCs. Would the nursing home have a personnel file on the IHC?

Suggest removing the phrase "knowing they are ineligible to work" from Proposed Rule 11.3.g.3. As currently written a nursing home could arguably ignore the background check process and not be subject to monetary civil penalties so long as it could demonstrate that it did not know that an applicant was not eligible to work. This undermines the whole purpose of the background check process which is to require the nursing home obtain enough information so that it does know that an applicant is either eligible to work or not.

There are two identical Proposed Rules 11.5.c.6.

Suggest adding "Proposed Rule 11.6.i. Results and supporting documentation of the criminal background check process." This would be consistent with the requirements of Proposed Rule 11.3.g.1. which outlines a nursing home's responsibilities for the maintenance of documentation for the background check process."

### **Clinical Records**

Suggest adding "13.3.g. Documents describing the authority of any legal representatives." Nursing homes are already required by Proposed Rule 4.3.e. to retain copies of the documents that describe the authority of a legal representative. The inclusion of that language here promotes consistency and serves to reinforce the importance of obtaining these documents and to

help assure that legal representatives are only afforded the intended authority. One of the most frequent complaints presented by our residents involves legal representatives who overreach the limits of decision-making authority. Any regulatory language that prompts nursing homes to obtain this information could help promote resident autonomy and self-determination.

**Inspections, Investigations, Enforcement and Due Process**

Suggest rewording Proposed Rule 15.2.e.1. The current phrasing is awkward and unclear. Suggest "The written notification shall also contain a description of the corrective action the nursing home shall be required to take and of any disciplinary action to be taken by the director."

**Conclusion**

The Proposed Rule contemplates several important improvements in the areas of residents' rights and quality. These comments were made with goal of further empowering and protecting West Virginia's nursing home residents while creating a culture of care that allows for maximum accommodation of each individual resident's needs and preferences and facilitates the creation of a homelike environment. Thank you for your consideration of these comments. Please feel free to contact me directly if you require any clarification or additional information.

Respectfully submitted,

Suzanne E. Messenger, Esq.  
State Long-term Care Ombudsman

TITLE 64  
LEGISLATIVE RULES  
WEST VIRGINIA DIVISION OF HEALTH

SERIES 13  
NURSING HOME LICENSURE RULE

FILED

2014 AUG -1 P 12:17

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

§ 64-13-1. General Provisions.

1.1. Scope. It is the purpose of this rule to implement state and federal law governing the licensing, operation, and standard of care in nursing homes located in the State of West Virginia. Compliance with this rule will help each resident attain or maintain the highest practicable physical, mental and psychosocial well-being in accordance with a comprehensive assessment and plan of care and prevailing standards of care, and will promote a standard of care that assures that the ability of each resident to perform activities of daily living does not diminish unless the resident's ability is diminished solely as a result of a change in the resident's clinical condition.

1.2. Authority. W. Va. Code §§ 16-1-4, ~~and 16-5C-5~~ and 16-5C-21(b)

1.3. Filing Date. ~~April 3, 2007.~~

1.4. Effective Date. ~~July 1, 2007.~~

~~1.5. Amendment of a Former Rule. This rule amends "Nursing Home Licensure Rule" W. Va. 64CSR13, effective July 1, 2007.~~

~~1.6.~~ 1.5. Application. This rule applies to nursing home residents and their legal representatives as well as every individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of the state that operates or applies to operate a nursing home as defined in this rule and W. Va. ~~§16-5C-2(c) & 16-5C-1 et seq.~~

~~1.7.~~ 1.6. Variances From This Rule.

~~1.7.a.~~ 1.6.a. The department may grant a variance from any provision of this rule if it determines that:

~~1.7.a.1.~~ 1.6.a.1. Strict compliance would impose a substantial hardship on the licensee;

~~1.7.a.2.~~ 1.6.a.2. The licensee will otherwise meet the goal of the rule; and

~~1.7.a.3.~~ 1.6.a.3. A variance will not result in less protection of the health, safety and welfare of the residents.

~~1.7.b.~~ 1.6.b. A variance shall not be granted from a provision pertaining to residents' rights.

~~1.7.b.1.~~ 1.6.b.1. Separate federal variance procedures may apply for provisions of this rule and are contained in the federal nursing home regulations.

~~1.7.b.2.~~ 1.6.b.2. Requests for variances from West Virginia fire safety and building construction requirements shall be addressed to the appropriate authorities.

~~1.8.~~ 1.7. Enforcement. -- This rule is enforced by the secretary of the Department of Health and Human Resources or his or her lawful designee.

#### § 64-13-2. Definitions.

The following definitions are for the purposes of implementing this rule.

2.1. Abuse. The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish.

~~2.1.~~ 2.2. Administrator. A person licensed in the State state of West Virginia as a nursing home administrator who is responsible for the day to day operation of the nursing home.

~~2.2.~~ 2.3. Advance Directive. Written instruction of an individual, such as a living will, a durable power of attorney for health care or general durable power of attorney, recognized under state law and relating to the provision of health care when the individual is unable to direct his or her own health care.

~~2.3.~~ 2.4. Annual Inspection. For the purpose of this rule, annual inspection is defined as occurring during a time frame of nine ~~(9)~~ to fifteen ~~(15)~~ months.

~~2.4.~~ 2.5. Applicant. The person who submits an application for a license or renewal of a license to operate a nursing home.

~~2.5.~~ 2.6. Bed Capacity. The maximum number of beds the nursing home is currently licensed to offer for resident occupancy.

~~2.6.~~ 2.7. Capacity to make health care decisions. A When a person who is able to comprehend and retain information which is material to a decision, especially as to the likely consequences; the person is able to use the information and weigh it in the balance as part of the process of arriving at a decision and is able to communicate the decision in an unambiguous manner.

~~2.7.~~ 2.8. Care Plan. A document, based on the comprehensive assessment and prepared by the interdisciplinary team in conjunction with the resident, that identifies measurable objectives for the highest level of functioning the resident may be expected to attain or maintain.

~~2.8.~~ 2.9. Causal Factors. Any stimulus that affects the behavior of a resident either positively or negatively.

~~2-9.~~ 2.10. Change of Ownership. Any transaction that results in change of control over the capital assets of a nursing home including, but not limited to, a conditional sale, a sale, a lease or a transfer of title or controlling stock.

~~2-10.~~ 2.11. Competent Person. A person who has not been adjudicated incompetent by a court of law.

2.12. Conviction. A finding of guilt by a court, a plea of guilty or *nolo contendere* was accepted, or when the individual entered a first offender, deferred adjudication, or arrangement or program where the judgment of conviction is withheld, regardless of whether an appeal is pending.

~~2-11.~~ 2.13. Deemed Status. Special consideration granted to a nursing home that receives accreditation from an accrediting organization whereby an accreditation report may be used in place of an annual licensing inspection by the State if the standards of the accrediting organization recognized by HCFA are comparable to the Medicare standards. When a nursing home has voluntarily applied for and has been accredited by a national accreditation program meeting the requirements of and approved by the Centers for Medicare and Medicaid Services (CMS).

~~2-12.~~ 2.14. Deficiency. An entry made on the West Virginia Department of Health and Human Resources STATE FORM that describes the specific requirements of the rule with which the nursing home failed to comply, an explicit statement that the requirement was not met, and the evidence to support the decision of noncompliance. A nursing home's failure to meet a specific requirement under the provisions of this rule, an explicit statement that the requirement was not met, and the evidence to support the decision of noncompliance.

~~2-13.~~ 2.15. Department. West Virginia Department of Health and Human Resources.

2.16. Direct Access. Physical contact with a resident of a nursing home, or access to their property, personally identifiable information, protected health information, or financial information.

2.17. Direct Access Personnel. An individual who has direct access by virtue of ownership, employment, engagement, or agreement with a nursing home. Direct access personnel does not include volunteers or students performing irregular or supervised functions, or contractors performing repairs, deliveries, installations or similar services for the nursing home.

~~2-14.~~ 2.18. Discharge. Moving the resident to a non-institutional setting when the releasing facility ceases to be responsible for the resident's care.

2.19. Disqualifying Offense. Any of the crimes enumerated in W. Va. Code § 16-5C-21 that exclude an applicant from direct access personnel positions in a nursing home.

~~2-15.~~ 2.20. Employee. Any person who performs personal services for the nursing home in exchange for monetary compensation where such personal services, including the results to be accomplished as well as the details and the means by which the results are accomplished, are controlled and directed by the nursing home, where monetary compensation is effected through the nursing home's payroll system.

~~2.16.~~ 2.21. Enabler. Any device that allows the resident to accomplish tasks that otherwise he or she could not accomplish, and maintains and improves a resident's ability to function.

~~2.17.~~ 2.22. Experimental Research. Development and testing of clinical treatments, such as an investigational drug or therapy, that involve treatment or control groups or both. For example, a clinical trial of an investigational drug is experimental research.

~~2.18.~~ 2.23. Family Council. A group of persons, family members or responsible parties of the residents, meeting as a group, having the right to express grievances in relation to the residents' well-being in general and to make recommendations concerning nursing home policies and procedures.

2.24. Fitness Determination. A finding by the secretary after review of an applicant's criminal history record information that the applicant is either eligible for employment or not.

2.25. Full Time Employee. An employee who works at least 35 hours per a regular seven-day week.

~~2.19.~~ 2.26. Governing Body. The person, or group of persons with the ultimate responsibility and authority for the conduct of the nursing home.

~~2.20.~~ 2.27. Harm. Noncompliance with this rule that has negatively affected the resident so that the resident's physical, mental or psychosocial well-being has been compromised and is not transient in nature.

~~2.21.~~ 2.28. Immediate Jeopardy. A situation in which the nursing home's noncompliance with one or more requirements of this rule has caused, or is likely to cause, serious injury, harm, impairment, or death of a resident.

~~2.22.~~ 2.29. Interdisciplinary Team. A team consisting of at least a registered nurse and other professional disciplines as appropriate, including the resident's physician, working together with the resident or the resident's representative, if applicable, to attain or maintain the resident at his or her highest practicable level of physical, mental and psychosocial well-being.

~~2.23.~~ ~~Institutional Setting.~~ ~~Any health care facility.~~

~~2.24.~~ 2.30. Independent Health Contractor. A licensed, certified, and/or registered health care provider who performs personal services for the nursing home in exchange for monetary compensation, where the nursing home has the right to specify the result to be accomplished by the work, but not the means and methods by which the result is accomplished.

2.31. Institutional Setting. Any health care facility.

~~2.25.~~ 2.32. Legal Representative. <sup>4</sup> A person appointed by an individual or by a duly authorized agency or court, or otherwise authorized by law to exercise some degree of control over a resident's

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<sup>1</sup>~~Nursing home administrators should note that various types of legal representatives do not necessarily have the lawful authority to act on behalf of the resident in all matters that require action by the legal representative. For~~

affairs; namely one of the following most appropriate to the decision to be made. Various types of legal representatives may not necessarily have the lawful authority to act on behalf of the resident in all matters that require action by the legal representative. For example, a conservator has responsibility for financial affairs, but not personal affairs such as medical care. Legal representatives include:

~~2.25.a.~~ 2.32.a. A conservator, temporary conservator or limited conservator appointed pursuant to the West Virginia ~~Legal Guardianship and Conservatorship Act, Act,~~ W. Va. Code ~~§ 44-1-1 et seq.,~~ § 44A-1-1 et seq., within the limits set by the appointing order;

~~2.25.b.~~ 2.32.b. A guardian, temporary guardian or limited guardian appointed pursuant to the West Virginia ~~Legal Guardianship and Conservatorship Act,~~ W. Va. Code ~~§ 44A-1-1 et seq.,~~ within the limits set by the appointing order;

~~2.25.c.~~ 2.32.c. A person appointed as committee or guardian prior to June 9, 1994, within limits set by the appointing order and W. Va. Code ~~§§ 44A-1-2-(d) and ;~~ 44A-1-1 et seq.

~~2.25.d.~~ 2.32.d. A person having medical power of attorney pursuant to the West Virginia Health Care Decisions Act, W. Va. Code § 16-30-1 et seq., within the limits set by the law and the appointment;

~~2.25.e.~~ 2.32.e. A representative payee under the U.S. Social Security Act, Title 42 US Code § 301 et seq., within the limits of the payee's legal authority;

~~2.25.f.~~ 2.32.f. A surrogate decision-maker appointed pursuant to the West Virginia Health Care Decisions Act, W. Va. § 16-30-1 et seq., within the limits set by the appointment;

~~2.25.g.~~ 2.32.g. A person having a  ~~durable~~ power of attorney pursuant to W. Va. Code ~~§39-4-1 §~~ 39B-1-101 et seq., ~~a power of attorney under common law, within the limits of the appointment;~~

~~2.25.h.~~ 2.32.h. A person identified pursuant to the W. Va. Code § 16-3C-4, to grant consent for HIV related testing and for the authorization of the release of the results;

~~2.25.i.~~ 2.32.i. A parent or guardian of a minor; or

~~2.25.j.~~ 2.32.i. A person lawfully appointed in a similar or like relationship of responsibility for a resident under the laws of this State, or another state or legal jurisdiction, within the limits of the applicable statute and appointing authority.

~~2.26.~~ 2.33. License. The document issued by the secretary that is the licensee's authority to receive residents and perform services included within the scope of this rule.

~~2.27.~~ 2.34. Licensed or Registered.

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~~example, a conservator has responsibility for financial affairs, but not personal affairs such as medical care.~~

~~2.27.a.~~ 2.34.a. Person. Licensed or registered by the proper authority to follow a profession in the State of West Virginia.

~~2.27.b.~~ 2.34.b. Nursing home. A nursing home licensed by the Department.

~~2.28.~~ 2.35. Licensee. A ~~person or persons~~ person, persons or entity holding a license to operate a nursing home, who is responsible for compliance with all rules and minimum standards.

~~2.29.~~ 2.36. Medicaid. The medical assistance program established pursuant to Title XIX of the Social Security Act.

~~2.30.~~ 2.37. Medicare. The medical insurance program established pursuant to Title XVIII of the Social Security Act.

~~2.31.~~ 2.38. Next of Kin. In descending order of priority;

~~2.31.a.~~ 2.38.a. The resident's spouse;

~~2.31.b.~~ 2.38.b. The resident's adult children;

~~2.31.c.~~ 2.38.c. The resident's parents;

~~2.31.d.~~ 2.38.d. The resident's adult siblings;

~~2.31.e.~~ 2.38.e. The resident's adult grandchildren;

~~2.31.f.~~ 2.38.f. The resident's close friends; and

~~2.31.g.~~ 2.38.g. Any other person or entity, including guardians, public officials and private corporations and other persons or entities which the department may from time to time designate in rules promulgated pursuant to ~~chapter twenty nine of the West Virginia Code~~ W. Va. Code 29A-1-1 et seq.

2.39. Negative Finding. A finding in the employment prescreening that excludes an applicant from direct access personnel positions.

~~2.32.~~ 2.40. Noncompliance. Any deficient practice or nonconformity that causes a nursing home to not be in substantial compliance with this rule.

~~2.33.~~ 2.41. Nourishing Snack. Two ~~{2}~~ or more food items from the basic food groups plus a beverage of milk, juice or the resident's preference.

~~2.34.~~ 2.42. Nursing Home. Any institution, or any part or unit of an institution, however named, in West Virginia, which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than 24 ~~twenty-four~~ hours, for four or more persons who are ill or otherwise incapacitated and in need of nursing care due to physical or mental impairment, or which

provides services for the rehabilitation of persons who are convalescing from an illness or incapacitation.

~~2.35.~~ 2.43. Nursing Personnel. The director of nursing, the charge nurse and all employees under the direct supervision of the director of nursing or charge nurse who attend to resident-oriented nursing functions, including registered professional nurses, licensed practical nurses and nursing aides, but excluding employees engaged in administration, dietetics, social services, activities staff, housekeeping, laundry and maintenance.

2.44. Office of Health Facility Licensure and Certification. The agency within the West Virginia Department of Health and Human Resources, responsible for regulatory oversight of West Virginia nursing homes.

~~2.36.~~ 2.45. Ombudsman. Any person or organization designated by the State Long Term Care Ombudsman as part of the West Virginia Long-Term Care Ombudsman Program.

~~2.37.~~ 2.46. Plan of Care. The overall profile of services and expected outcomes of care that may include those plans to meet the person's needs after discharge to the community. This includes all care and services outlined in the resident's medical record.

~~2.38.~~ 2.47. Poor Performer. A nursing home which has repeat deficiencies that resulted in harm or greater whereby the nursing home cannot avoid an enforcement action by correction of the deficiency.

~~2.39.~~ 2.48. Premises. A tract of land, together with all buildings, equipment, fixtures and facilities erected, constructed or situated on the land, and all rights, powers, easements, and rights-of-way, and all interests in property, real, personal or mixed, now owned or hereafter acquired by a licensed person and appurtenant to or used in connection with the nursing home.

~~2.40.~~ 2.49. The Protection and Advocacy Network. The system established to protect and advocate the rights of persons with developmental disabilities specified in the Developmental Disabilities Assistance and Bill of Rights Act, and the protection and advocacy system established under the Protection and Advocacy for Mentally Ill Individuals Act.

~~2.41.~~ 2.50. Qualified. The capacity of a person who is licensed, certified or registered to perform a duty or a task in accordance with applicable State law and other accrediting bodies.

~~2.42.~~ 2.51. Regulatory Grouping. A set of directly-related regulatory requirements.

~~2.43.~~ ~~2.52.~~ Repeat Deficiency. ~~A deficiency that: 1) is cited on the current inspection and, 2) was cited on the previous inspection or any intervening inspection between the current inspection and the previous inspection and, 3) has had a plan of correction submitted for the previous inspection or any intervening inspection that was accepted by the director and, 4) is cited based on the same regulatory grouping.~~

2.52. Repeat Deficiency. A deficiency that meets all of the following conditions: is cited on the current inspection; was cited on the previous inspection or any intervening inspection between the current inspection and the previous inspection; has had a plan of correction submitted for the previous

inspection or any intervening inspection that was accepted by the director; and is cited based on the same regulatory grouping.

~~2.44.~~ 2.53. Resident Council. A group of residents having the right to meet as a group and to express grievances in relation to the residents' well-being in general and to make recommendations concerning nursing home policies and procedures.

2.54. Resident Resource Amount. The portion of a resident's income determined by the Department which a resident who receives Medicaid long-term care assistance contributes to the cost of care every month.

~~2.45.~~ 2.55. Restraint. Any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the person cannot remove at will and which restricts freedom from movement or normal access to one's body, or any drug ~~used to limit movement by a resident or to limit mental capacity of a resident beyond the requirements of therapeutic treatment that is used for discipline or convenience and not required to treat medical symptoms.~~

~~2.46.~~ 2.56. Routine Dental Service. A service consisting of an annual inspection of the oral cavity for signs of disease, diagnosis of dental disease, dental radiographs as needed, dental cleaning, fillings, minor dental plate adjustments, smoothing of broken teeth, and limited prosthodontic procedures such as impressions of dentures and fitting of dentures.

~~2.47.~~ 2.57. Secretary. The Secretary of the Department of Health and Human Resources, or his or her designee.

~~2.48.~~ 2.58. Staff. Any person or persons who perform personal services for the nursing home in exchange for monetary compensation where such personal services, including the results to be accomplished as well as the details and the means by which the results are accomplished, are controlled and directed by the nursing home, regardless of whether monetary compensation is effected through the nursing home's payroll system or the nursing home's accounts payable system.

~~2.49. State Board of Review.— A board designated by State law through which a resident may appeal a discharge from a nursing home.~~

~~2.50.~~ 2.59. Standard Quality of Care. Substantial compliance with this rule.

2.60. State Board of Review. A board within the Department designated by state law through which a resident may appeal a discharge or transfer from a nursing home.

2.61. Substantial Compliance. A level of compliance with the rules such that no deficiencies exist or such that identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

~~2.51.~~ 2.62. Transfer. Moving the resident from the nursing home to another legally responsible institutional setting.

~~2.52, 2.63.~~ Treatment. Care provided for the purposes of maintaining and or restoring health, improving functional levels, or relieving symptoms.

**§ 64-13-3. State Administrative Procedures.**

**3.1. General Licensure Provisions.**

3.1.a. No person may establish, operate, maintain, offer or advertise a nursing home as defined in this rule within the ~~State~~ state of West Virginia unless that person obtains a valid license.

3.1.b. A separate license is required for nursing homes maintained or operated on separate premises even though maintained or operated under the same ownership or management.

3.1.c. Separate buildings on the same premises, operated under the same ownership and management, are one ~~(1)~~ nursing home unless the director determines otherwise.

3.1.d. A license is valid only for the premises and persons named in the application.

3.1.e. A license is not transferable or assignable and shall be surrendered on demand to the director.

3.1.f. If the ownership of a nursing home with a valid unexpired license changes, the new owner shall apply for a new license.

3.1.g. The application for a license by the new owner has the effect of a valid license for three ~~(3)~~ months from the date the application is received by the director.

3.1.h. The nursing home shall obtain approval from the director prior to changing the name of the nursing home.

3.1.i. An approved name change is reflected in a newly issued license at a charge of ~~fifty dollars~~ ~~(\$50.00)~~.

3.1.j. The words "clinic," "hospital," "sanitarium," or any other word that suggests a type of institution other than the proposed or existing nursing home shall not appear in the name.

3.1.k. A license shall state:

3.1.k.1. The name of the nursing home to which it applies;

3.1.k.2. The name of the applicant who is the licensee;

3.1.k.3. The maximum bed capacity for which it is granted;

3.1.k.4. The date of issuance; and

3.1.k.5. The expiration date.

3.1.l. The name on the license shall be that used in the application which specifically identifies the nursing home.

3.2. Exceptions.

3.2.a. Nothing contained in this rule applies to:

3.2.a.1. A hospital as defined in W. Va. Code § 16-5B-1 et seq.;

3.2.a.2. Institutions as defined in W. Va. Code §§ 27-1-6 and 25-1-3;

3.2.a.3. A federally operated institution;

3.2.a.4. Institutions operated for the care and treatment of alcoholic patients;

3.2.a.5. Offices of physicians;

3.2.a.6. Hotels;

3.2.a.7. ~~Residential Board and Care Homes, Assisted Living Residences,~~ as defined under W. Va. Code ~~§16-5H-2 § 16-5D-2(a)(1) et seq.~~; ~~or similar places that furnish to their guests only room and board;~~

3.2.a.8. Boarding homes or similar places that furnish to their guests only room and board;

~~3.2.a.8.~~ 3.2.a.9. Extended care facilities operated in conjunction with a hospital;

~~3.2.a.9.~~ 3.2.a.10. Facilities, including intermediate care facilities for ~~the mentally retarded individuals with intellectual disabilities~~ required to be licensed under W. Va. Code §27-9-1;

~~3.2.a.10.~~ ~~Personal Care Homes as defined under W. Va. Code §16-5D-2;~~

3.2.a.11. Residential Care Communities as defined under W. Va. Code § 16-5N-2; and

3.2.a.12. Homes or asylums operated by fraternal orders pursuant to W. Va. Code § 35-3-1 et seq.

3.2.b. The care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin, to the head of the household, or his or her spouse, does not constitute a nursing home within the meaning of this rule.

3.3. Initial License.

3.3.a. An applicant shall submit an application to the director, on a form prescribed by the director, containing information sufficient to demonstrate that the nursing home is in compliance with the standards for nursing homes established in W. Va. Code § 16-5C-1 et seq., and this rule.

3.3.b. The application shall be filed not less than ~~thirty (30)~~ days and not more than ~~ninety (90)~~ days prior to the date proposed for commencement of operation.

#### 3.4. Renewal License.

3.4.a. An applicant for a renewal license shall submit an application to the director on the form prescribed by the director.

3.4.b. A completed application for renewal of a license shall be submitted not less than ~~thirty (30)~~ days and not more than ~~ninety (90)~~ days prior to the expiration date of the current license.

3.4.c. The fee for renewal of a license, as determined by the director pursuant to W. Va. Code §§ 16-5C-6(e) and 16-5C-1 et seq., shall accompany the license renewal application.

3.4.d. The director shall renew an original license when the following conditions are met:

3.4.d.1. The director finds the nursing home in substantial compliance with the provisions of W. Va. Code § 16-5C-1 et seq., and with this rule;

3.4.d.2. The licensee applied for a renewal within the time period specified in this subsection; and

3.4.d.3. The licensee submitted the correct renewal fee with the application.

3.4.e. A renewal license is valid for one ~~(1)~~ year from the date of issuance.

#### 3.5. Provisional License.

3.5.a. If the director finds that a nursing home applying for renewal of a license is not in substantial compliance with the requirements of this rule and the provisions of W. Va. Code § 16-5C-1 et seq., the director may, at his or her discretion, issue a provisional license.

3.5.b. A provisional license may be issued only when the director makes the following findings:

3.5.b.1. That the care given in the nursing home does not pose a substantial threat to the health and safety of residents; and

3.5.b.2. That the nursing home has demonstrated improvement and potential for substantial compliance within the term of the license for which renewal is requested.

3.5.c. A provisional license shall not be issued for a period greater than six ~~(6)~~ months.

3.5.d. No extensions or renewals shall be granted on provisional licenses.

#### 3.6. Inspections of Licensed and ~~Unlicensed~~ Unlicensed Facilities.

3.6.a. Before licensing a nursing home, the director shall inspect the nursing home.

3.6.b. The director shall conduct at least one ~~(1)~~ unannounced inspection annually, or in accordance with Section 17 of this rule on deemed status of a licensed nursing home, to determine compliance with the provisions of W. Va. Code § 16-5C-1 et seq., and this rule.

3.6.c. In accordance with W. Va. Code §§ ~~16-5C-9~~ and 16-5C-1 et seq., the director or designee has the right to enter the premises of a nursing home that the director has reason to believe is being operated or maintained as a nursing home without a license.

3.6.d. If the owner or person in charge of an unlicensed nursing home refuses entry pursuant to this subsection, the director shall apply to the circuit court of the county in which the nursing home is located or in the circuit court of Kanawha County for a warrant authorizing inspection.

3.6.e. If the director finds, on the basis of the inspection, that the nursing home is operating as a nursing home without a license, the nursing home shall apply for a license within ~~ten (10)~~ days in accordance with the provisions of this rule or shall reduce the number of residents to three ~~(3)~~ or fewer.

3.6.f. A nursing home which fails to apply for a license is subject to the penalties established ~~Sections 15 and 16 of~~ by the provisions of this rule.

3.6.g. The director shall file an inspection report according to this rule and shall keep the report on file for five ~~(5)~~ years.

3.6.h. An inspection report shall list each deficiency in the nursing home's compliance with statutes and rules, indicating for each deficiency specifically which provision has not been met.

3.6.i. The director shall send a copy of the report of an inspection to the nursing home.

### 3.7. License; Posting; Licensed Capacity.

3.7.a. The owner shall post the license in a conspicuous place on the licensed premises.

3.7.b. The department on behalf of the State of West Virginia shall maintain ownership of each license certificate issued to a licensee; upon the suspension or revocation of the license, or upon discontinuing operation of the home by voluntary action of the licensee, the owner shall return each license certificate to the director immediately.

3.7.c. The number of residents in a nursing home may not at any time exceed the licensed capacity of the home as shown on the license.

3.7.d. Emergency. A request for temporary authority to exceed the licensed capacity may be made to the director in the event of an emergency.

### 3.8. Change in Status Necessitating Discharge or Transfer of Residents.

3.8.a. Whenever a licensee plans to discontinue all or part of its operation or change its ownership or location, and the change in status would necessitate the discharge or transfer of residents, the administrator shall notify the director at least ~~ninety (90)~~ days prior to the proposed date of the change in status.

3.8.b. For licensees planning a change in status as described in ~~Subdivision 3.8.a.~~ of this Subsection rule:

3.8.b.1. This rule remains fully applicable until all residents have been discharged or transferred.

3.8.b.2. At least ~~sixty (60)~~ days prior to the date of the planned change in status, the administrator shall provide the director with a written transfer plan, subject to approval by the director. This plan shall include the following:

3.8.b.2.A. Documentation that adequate staff and resident care will be provided;

3.8.b.2.B. The licensee's arrangements to make an orderly transfer of residents and to minimize the health risks; and

3.8.b.2.C. The placement action proposed to be taken for each ~~person~~ resident.

3.8.b.3. The administrator, upon request, shall provide the licensing agency with any additional information related to the transfer plan as well as follow-up reports regarding specific placement action.

3.8.b.4. The licensee shall not admit new residents after the date of the written notice required in this Section.

### 3.9. Availability of Reports and Records.

3.9.a. The director shall make available for public inspection and, upon request, provide hard copies at a cost of ~~twenty-five cents (\$0.25)~~ per page or electronically at a nominal cost, of the following documents:

3.9.a.1. Applications and exhibits;

3.9.a.2. Inspection reports;

3.9.a.3. Reports of investigations conducted in response to complaints; and

3.9.a.4. Any other reports filed with or issued by the director pertaining to the compliance of a nursing home with applicable laws, and rules.

3.9.b. If the director determines it is in the best interest of the public, the director may provide copies of records and reports free of charge to nonprofit community organizations upon written request.

3.9.c. The director shall treat a report of inspection of a nursing home as public information from the time an acceptable plan of correction is submitted.

3.9.d. If the nursing home does not submit a written plan of correction within the time specified by the director pursuant to ~~Section 16~~ of this rule, reports pertaining to the nursing home shall be made public at the expiration of the specified time.

3.9.e. Other records and reports shall be treated as public information from the time they are submitted to or issued by the director.

3.9.f. Nothing contained in this Section shall be construed to require or permit the public disclosure of confidential medical, social, personal or financial records of any resident.

3.9.g. Before releasing a report or record considered to be public information, the director shall delete any confidential information regarding a resident that reasonably permits identification of the resident.

3.9.h. The director shall delete from complaints made available to the public under this Section any information required to be held confidential under ~~subdivision 4.4.e.~~ the provisions of this rule.

### 3.10. Nursing Home Licensing Advisory Council.

3.10.a. The director shall establish a licensing advisory council composed of licensed nursing home administrators, representatives of appropriate government agencies and consumers.

3.10.b. The composition of the council shall be determined by the director and be comprised of no less than ~~ten (10)~~ members and no more than ~~fifteen (15)~~ members.

3.10.c. The purpose of the council is to make recommendations to the director about regulatory issues and improvement of nursing home services.

3.10.d. The council shall hold a meeting not less than semiannually, at least one ~~(1)~~ of which shall be held in a public setting and receive input from the public.

### 3.11. Transfer Agreements.

3.11.a. The nursing home shall have in effect a transfer agreement with one ~~(1)~~ or more hospitals approved for participation under the Medicare and Medicaid programs that reasonably assures:

3.11.b. Timely admission of a resident to the hospital when transfer is medically appropriate as determined by a physician; and

3.11.c. Medical and other information needed for care and treatment of residents is exchanged between the institutions.

### 3.12. Interpretive Guidelines.

3.12.a. The department may issue interpretive guidelines related to this rule and prior to the adoption and implementation of the guidelines, shall provide notice of a public comment period to all affected parties.

#### **§ 64-13-4. Residents' Rights.**

##### **4.1. Nursing Home Policies and Procedures.**

4.1.a. The governing body of a nursing home shall establish written policies and procedures regarding the rights and responsibilities of residents. The policies adopted shall be consistent with the provisions of this rule.

4.1.b. Through the administrator, the governing body is responsible for on-going development of and adherence to procedures implementing policies regarding the rights and responsibilities of residents.

4.1.c. A nursing home shall make its policies and procedures available upon request to:

4.1.c.1. Residents or potential residents; and

4.1.c.2. Legal representatives.

##### **4.2. Duties of Staff.**

4.2.a. All members of the nursing home staff shall ensure that every resident under their care is accorded all rights set forth in Sections 4 and 5 of this rule.

4.2.b. The nursing home staff shall at least annually receive training from or approved by the Department in the proper implementation of residents' rights policies under Paragraph 11.5.c.4 the provisions of this rule.

4.2.c. When the nursing home staff limits or restricts the rights of a resident for medical reasons, the staff will document the specific reasons for the limitation or restriction in the resident's medical record, and the specific period of time the limitation or restriction will be in place. The resident or the resident's legal representative shall ~~authorize~~ be notified of the limitation or restriction ~~in writing.~~

##### **4.3. Rights of Legal Representatives.**

~~4.3.a. The rights and obligations established under this rule devolve to a resident's legal representative if, in accordance with applicable State law, the resident lacks capacity to exercise his or her rights and obligations.~~

~~4.3.a.1. If a legal representative has been appointed for, or designated by, any resident as having the authority to exercise on behalf of the resident one or more of the resident's rights under this rule, the nursing home shall afford the legal representative the full opportunity to exercise that authority.~~

~~4.3.a.2. A legal representative shall exercise his or her authority in conformance with State and federal law.~~

~~4.3.a.3. Nothing in this rule shall in any way be construed to diminish or deprive any person of any rights other than specifically provided in this rule.~~

~~4.3.b. If a resident is unable to make medical decisions:~~

~~4.3.b.1. In the case of a resident adjudged incompetent by the court, the nursing home shall notify the resident's legal representative to act on the resident's behalf;~~

~~4.3.b.2. In the case of a resident who has not been adjudged incompetent by the court, the nursing home may notify the resident's legal representative to act on the resident's behalf;~~

4.3.a. In the case of a resident who has been determined by a West Virginia court to meet the definition of a protected person in need of the assistance of a guardian, conservator or both under W. Va. 44A-1-4, or by a court of competent jurisdiction in a similar proceeding under the laws of another state, the rights of the resident are exercised by the person appointed to act on the resident's behalf.

4.3.b. In the case of any other resident, any legal-surrogate designated in accordance with the State law may exercise the resident's rights to the extent provided by State law.

4.3.c. The nursing home shall make every reasonable effort to communicate the rights and obligations established under this rule directly to the resident.

4.3.d. If the rights of a resident have devolved to another person, the nursing home shall maintain documentation of the determination of incapacity to make health care decisions or incompetence, in the ~~residents~~ resident's medical record.

4.3.e. The nursing home shall maintain in the residents' medical record verification of the authority of the legal ~~representative;~~ representative and shall provide the legal representative with a general description of the scope of the legal representative's decision-making authority, as developed and approved by the Department.

4.3.f. After a resident has been determined to lack capacity to make health care decisions a nursing home shall reevaluate the resident's capacity to make health care decisions at least annually.

~~4.3.f.~~ 4.3.g. If the resident regains his or her capacity to make health care decisions, the powers of the legal representative shall cease immediately.

#### 4.4. Confidentiality and Access to Records and Information.

4.4.a. Confidential Treatment. The nursing home shall assure confidential treatment of each resident's personal and medical records and may approve or refuse their release to any person outside the nursing home, except in the case of his or her transfer to another health care institution, as required by law, or for a third party payment contract.

4.4.b. Access to Records. Upon an oral or written request, the nursing home shall provide to each resident access to all of his or her records, including current clinical records, within ~~twenty-four~~ {24} hours of the request

4.4.b.1. Records may only be available during normal business operating hours, excluding weekends and holidays.

~~4.4.c. A resident may purchase, at a cost not to exceed twenty-five cents (\$0.25) per page, photocopies of the records or any portions of them, upon oral or written request to the nursing home.~~

4.4.c. The facility may charge a fee for labor, supplies, and postage for providing copies of the resident's medical record in accordance with W. Va. Code § 16-29-1 et seq.

4.4.c.1. The nursing home will provide the photocopied materials to the resident within two {2} working days of the request.

4.4.d. Access to Survey and Inspection Reports. Any person shall have the right to review the most recent and past state and federal inspection and complaint reports with the nursing home's plan of correction.

4.4.d.1. A nursing home shall make the results of surveys and inspections, as well as plans of correction, available for examination in a place readily accessible to residents and shall post a notice of their availability.

4.4.d.2. A nursing home may charge an amount not to exceed ~~twenty-five cents (\$0.25)~~ per page for copies of reports requested by any person.

4.4.e. A nursing home shall adopt policies and procedures that will protect the confidentiality of the resident as it relates to use of the resident's name and photographs.

4.5. Right for information. A nursing home shall:

4.5.a. Inform a resident of his or her rights and responsibilities under this rule and all rules governing resident conduct, prior to or at the time of admission and within ~~thirty~~ {30} days of any changes to the rules regarding residents' rights, and the resident shall acknowledge receipt of this information in writing.

4.5.b. Prominently display a copy of the residents' rights and responsibilities, the names, addresses, and telephone numbers of all associated State agencies including licensing agencies, and State and local ombudsmen programs.

4.5.c. Reasonably accommodate residents with special communication needs such as hearing impairments and a primary language other than English to inform residents of their rights.

4.5.d. Inform a resident about:

4.5.d.1. ~~The resident's medical condition, or if a resident is declared incapacitated in which case the legal representative shall be informed.~~ The resident has the right to be informed of his or her medical condition. If a resident lacks capacity to make health care decisions, the appropriate legal representative shall also be informed.

4.5.d.2. ~~The resident's care and treatment, or if a resident is declared incapacitated, the legal representative shall be informed.~~ The resident has the right to be informed of his or her care and treatment. If a resident lacks capacity to make health care decisions, the appropriate legal representative shall also be informed.

4.5.e. Inform a resident of the right to voice all grievances without discrimination or reprisal and promptly resolve a resident's grievances.

4.5.f. ~~Self-Administration~~ Self-Administration of Drugs. A resident may self-administer drugs if the interdisciplinary team determines that ~~self-administration~~ self-administration is safe. The interdisciplinary team shall review the ~~self-drug administration~~ self-administration determination at least quarterly.

#### 4.6. Refusal of Treatment and Experimental Research.

4.6.a. Refusal of Treatment. A resident has the right to refuse treatment and to refuse to participate in experimental research.

4.6.a.1. As provided under State law, a resident who has the capacity to make a health care decision and who either withholds consent to treatment or makes an explicit refusal of treatment, either directly or through an advance directive, shall not be treated against his or her wishes.

4.6.a.1.A. If the resident is unable to make a health care decision, a decision by the resident's legal representative to forego treatment is, subject to state law, equally binding on the nursing home.

4.6.a.1.B. When a refusal of treatment occurs, the nursing home shall assess the reasons for the resident's refusal, clarify and educate the resident, and in the case of incapacity to make health care decisions, the legal representative, as to the consequences of the refusal, and offer alternative treatments, and continue to provide all other services.

4.6.a.1.C. The nursing home shall maintain documentation in the resident's medical record of the resident's refusal and the actions taken.

4.6.a.2. Refusal of Experimental Research. The resident shall have the opportunity to refuse to participate in experimental research prior to the start of the research.

4.6.a.2.A. The nursing home shall inform a resident being considered for participation in experimental research of the nature of the experiment and of the possible consequences for participation.

4.6.b. A nursing home shall not transfer or discharge a resident for refusing treatment unless criteria for transfer or discharge are met under ~~Subsection 4.13~~ the provisions of this rule.

4.7. Written Information. A nursing home shall provide to residents a written description of ~~resident's~~ their legal rights which includes:

4.7.a. A description of the manner of protecting personal funds, under ~~Subdivision 4.10.g.~~ the provisions of this rule;

4.7.b. A description of the ~~residents's~~ financial obligation as explained to the ~~residents~~ resident prior to or at the time of admission, including ~~residents'~~ charges for services available, charges not covered under the Medicaid Program, or charges not included in the nursing home's basic rate;

4.7.c. A description of the requirements and procedures for Medicaid eligibility including information about the availability of asset assessments upon request at the county Department office;

4.7.d. A list of names, addresses, and telephone numbers of the director, the Medicaid fraud control unit, and all related state client advocacy groups such as the ombudsmen program and the protection and advocacy network; and

4.7.e. A statement that the resident may file a complaint with the director concerning resident abuse, neglect, and misappropriation of resident property in the nursing home.

4.8. Advance Directives.

4.8.a. The resident has the right to execute an advance directive.

4.8.b. A nursing home shall maintain written policies and procedures regarding advance directives including:

4.8.b.1. Provisions to inform and provide written information to all adult residents concerning the right to accept or refuse medical or surgical treatment and, at the resident's option, execute an advance directive; and

4.8.b.2. A written description of the nursing home's policies implementing advance directives.

4.8.c. A nursing home shall only admit residents for which it has the capacity to administer care in accordance with the resident's advance directives, but ~~can not~~ cannot require a resident to execute an advance directive as a condition of admission.

4.8.c.1. The nursing home shall notify the resident or legal representative of its inability to honor a resident's advance directive executed after admission to the nursing home and assist in finding appropriate alternative placement if he or she desires.

4.9. Right to Choose a Personal Physician and Pharmacy.

~~4.9.a. The resident has the right to choose a personal physician, and to request and receive a second opinion from a physician of the resident's choice where significant alternatives for care or treatment exist or when the resident requests information concerning care or treatment alternatives.~~

~~4.9.a.1. The resident shall receive the information from his or her doctor or the administrator or his or her designee, as appropriate.~~

~~4.9.b. Upon admission, the nursing home shall provide the resident with the names of physicians who have attending privileges at the nursing home.~~

4.9.a. Upon admission, the nursing home shall provide the resident with the names of the physicians who have attending privileges at the nursing home.

4.9.a.1. The resident has the right to choose a personal physician.

4.9.b. The resident has the right to request and receive a second opinion from a physician of the resident's choice where significant alternatives for care or treatment exist or when the resident requests information concerning care or treatment alternatives. It is the resident's responsibility to select his or her attending physician and any consulting physicians. The attending physician must have privileges at the nursing home.

4.9.c. The nursing home shall provide written notice to the resident of the name, address, telephone number, and ~~speciality~~ specialty of his or her attending physician at the time of admission and when any change in physician is made.

4.9.d. When a resident has no attending physician, it is appropriate for the facility to assist residents to obtain one in consultation with the resident and subject to the resident's right to choose.

4.9.e. The resident has a right to obtain prescription medications from sources other than the nursing home's contract pharmacy. The other pharmacy source must meet the prescription medication packaging requirements of the nursing home, at a cost that does not exceed that of the contracted pharmacy. Costs that exceed that of the contracted pharmacy shall be the responsibility of the resident.

#### 4.10. Management of Residents' Personal Funds.

4.10.a. The resident has the right to manage his or her own financial affairs, and the nursing home shall not require residents to deposit their personal funds with the nursing home.

4.10.b. Upon written authorization of a resident, the nursing home shall hold, safeguard, manage, and account for the personal funds of the resident deposited with the nursing home ~~as specified in Subdivisions 4.10.c. through 4.10.f. of this Section~~ under the provisions of this rule.

4.10.c. Deposit of funds.

4.10.c.1. Funds in excess of fifty dollars (\$50).

4.10.c.1.A. A nursing home shall deposit any resident's personal funds in excess of ~~fifty dollars (\$50)~~ in an interest-bearing account (or accounts) that is separate from any of the nursing home's operating accounts and that credits all interest earned on a resident's funds to that account.

4.10.c.1.B. In pooled accounts, there shall be a separate accounting for each resident's share.

4.10.c.2. Funds less than ~~fifty dollars (\$50)~~.

4.10.c.2.A. A nursing home shall maintain a resident's personal funds that do not exceed fifty dollars (\$50) in a non-interest bearing account, interest-bearing account, or petty cash fund.

4.10.d. Accounting and records:

4.10.d.1. A nursing home shall establish and maintain a system that assures a complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the nursing home.

4.10.d.2. The system shall preclude any co-mingling of a resident's funds with nursing home funds or with the funds of any person other than another resident.

4.10.d.3. The individual financial record shall be available through quarterly statements and on request to the resident or his or her legal representative.

4.10.d.3.A. For any transaction from a resident's account, the nursing home shall provide the resident with a receipt and retain a copy of the receipt.

4.10.d.3.B. The nursing home shall administer the funds on behalf of the resident in the manner directed by the resident or in the case of incapacity, the legal representative.

4.10.e. Notice of certain balances.

4.10.e.1. A nursing home shall notify each resident who receives Medicaid benefits:

4.10.e.1.A. When the amount in the resident's account reaches ~~two hundred dollars (\$200)~~ less than the Supplemental Security Income (SSI) resource limit for one person; and

4.10.e.1.B. The amount in the account, in addition to the value of the resident's other non-exempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

4.10.f. Conveyance upon death or discharge.

~~4.10.f.1. Upon the death or discharge of a resident with personal funds deposited with the nursing home, the nursing home shall convey, within thirty (30) days, the resident's funds, and a final accounting of those funds, to the discharged resident, or to the person or probate jurisdiction administering the resident's estate.~~

4.10.f.1. Upon the death of a resident, any funds remaining in his or her personal account shall be made payable to the person or probate jurisdiction administering the estate of the resident. If after 30 days there has been no qualification over the decedent resident's estate, those funds are presumed abandoned and are reportable to the State Treasurer pursuant to the West Virginia Uniform Unclaimed Property Act, § 36-8-1 et seq.

4.10.f.2. Upon discharge of a resident with personal funds deposited with the nursing home, the nursing home shall convey, within 30 days, the resident's funds and an accounting of those funds to the discharged resident or to his or her legal representative.

4.10.g. Assurance of financial security.

4.10.g.1. A nursing home shall purchase a bond or obtain and maintain commercial insurance with a company licensed in the ~~State~~ state of West Virginia if the nursing home in any one month handles an amount greater than ~~thirty-five dollars (\$35)~~ per resident per month in the aggregate.

4.10.g.1.A. The sum of the bond or insurance shall be at least ~~one and twenty-five one hundredths (1.25)~~ times the average amount of residents' funds deposited with the nursing home during the nursing home's previous fiscal year. Reference Table 64-13B of this rule.

4.10.g.1.B. The insurance policy shall specifically designate the resident as the primary beneficiary or payee for reimbursement of lost funds.

4.10.g.1.C. A nursing home shall reimburse the resident, within ~~thirty (30)~~ days, for any losses and seek its reimbursement through the bond or insurance.

4.10.g.1.D. A nursing home is responsible for any insurance deductible.

4.10.g.1.E. The director may require a nursing home to file an additional bond or purchase additional insurance in the following circumstances:

4.10.g.1.E.1. When the director determines that the amount of the bond or insurance is insufficient to protect the residents' money; or

4.10.g.1.E.2. When the amount of the bond or insurance is impaired by recovery against it.

4.10.g.1.F. When a nursing home ceases to handle residents' funds in amounts that require a bond or insurance, the director shall allow the release of the bond or insurance upon the nursing home providing an accounting to the residents.

4.10.g.1.G. When a nursing home determines, on the basis of ~~medical~~ professional judgement judgment, that a resident is unable to manage his or her financial affairs and does not have a legal financial representative, the nursing home shall notify the resident's next of kin to initiate guardianship, or conservatorship ~~or incompetency proceedings~~.

4.10.g.1.G.1. Prior to initiating an involuntary transfer or discharge based on non-payment, the nursing home shall notify the resident's nearest next of kin, if known, to initiate guardianship or conservatorship.

~~4.10.g.1.H. A nursing home may initiate guardianship, conservatorship or incompetency proceedings on behalf of the resident if the resident has no next of kin or if the next of kin, once notified, fails to act.~~

4.10.g.1.H. If a nursing home determines, on the basis of professional judgment, that a resident is unable to manage his or her financial affairs and that his or her legal financial representative is not using the resident's funds to pay for his or her stay, prior to initiating an involuntary transfer or discharge based on non-payment, a nursing home shall notify the appropriate authorities.

4.10.g.1.I. An employee of a nursing home, or a person or his or her spouse having a financial interest in the nursing home, shall not serve as a resident's legal representative unless the employee or person is related to the resident within the degree of consanguinity of second cousin or unless the nursing home has been named temporary legal representative payee.

#### 4.11. Resident Work.

4.11.a. A resident has the right to refuse to perform services for the nursing home, and a resident has the right to perform services for the nursing home if he or she chooses when:

4.11.a.1. The nursing home has documented the need or desire for work in the resident plan of care;

4.11.a.2. The resident plan of care specifies the nature of the services to be performed and whether the services are voluntary or paid;

4.11.a.3. Compensation for paid services is at or above prevailing rates for the services; and

4.11.a.4. The resident agrees to the work arrangement described in the resident plan of care.

#### 4.12. Bed-Hold and Readmission Rights.

4.12.a. Upon payment of the nursing home's bed-hold rate or in the case of Medicaid residents, in accordance with the policy and procedure currently prescribed by the State plan, a resident has the right to retain the bed in which he or she is a resident. The nursing home shall notify a resident in writing at the time of admission and hospitalization or leave of absence, of the bed-hold policy.

4.12.b. After a hospitalization or a leave of absence for which there was no bed-hold, a former resident has the right to be re-admitted to the first available bed in a semi-private room in the nursing home from which he or she came, if the resident requires the services provided by the nursing home.

4.12.b.1. If a former resident wishes to return to the nursing home and meets the requirements for coverage under the Medicare program, the resident may be placed in a bed certified to participate in that program.

4.13.b.2. The nursing home shall accept the resident back from the hospital when the resident's medical condition has stabilized, provided that the resident continues to require the services that the nursing home provides and a bed is available. If the nursing home elects to not accept the resident back, the nursing home shall comply with the applicable provisions of this rule.

~~4.12.b.2, 4.12.b.3.~~ If the nursing home is not certified under the Medicare program and the resident chooses placement in a nursing home providing Medicare coverage, at the resident's request, the resident ~~may~~ must be placed on a waiting list for readmission to the nursing home after Medicare coverage has ceased if the original nursing home can provide the necessary services to the former resident.

#### 4.13. Admission, Transfer and Discharge.

4.13.a. Refusal of Certain Transfers. A resident has the right to refuse a transfer to another room within the nursing home if the purpose of the transfer is to relocate:

4.13.a.1. A resident of a Medicare certified skilled nursing home (SNF) from the distinct part of the institution that is a SNF to a part of the institution that is not a SNF; or

4.13.a.2. A resident of a non-Medicare certified nursing home (NF), from the distinct part of the institution that is a NF to a distinct part of the institution that is a SNF.

4.13.b. Transfer and discharge requirements. The nursing home shall permit each resident to remain in the nursing home, unless:

4.13.b.1. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing home;

4.13.b.2. The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the nursing home;

4.13.b.3. The health or safety of persons in the nursing home is endangered;

4.13.b.4. The resident has failed, after reasonable and appropriate notice, to pay for a stay at the nursing home; or

4.13.b.5. The nursing home ceases to operate.

#### 4.13.c. Documentation.

4.13.c.1. When a nursing home transfers or discharges a resident, the resident's clinical record shall contain the reason for the transfer or discharge.

4.13.c.2. The documentation shall be made by the resident's physician when transfer or discharge is necessary under ~~paragraphs 4.13.b.1 through 4.13.b.3 of this Subsection.~~ the provisions of this rule.

4.13.d. Notice before transfer or discharge. Before a nursing home transfers or discharges a resident, it shall:

4.13.d.1. Provide written notice to the resident ~~or~~ and his or her legal representative as appropriate, of the transfer or discharge. The notice shall be in a language the resident understands and shall include the following:

4.13.d.1.A. The reason for the proposed transfer or discharge;

4.13.d.1.B. The effective date of the proposed transfer or discharge;

4.13.d.1.C. The location or other nursing home to which the resident is being transferred or discharged;

4.13.d.1.D. A statement that the resident has the right to appeal the action to the State Board of Review, with the appropriate information regarding how to do so;

4.13.d.1.E. The name, address and telephone number of the State long term care ombudsman;

4.13.d.1.F. For nursing home residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled persons; and

4.13.d.1.G. For nursing home residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill persons.

4.13.d.1.H. A copy of the notice of proposed transfer or discharge shall be sent to the State Long-Term Care Ombudsman.

4.13.e. Time of notice. The notice of transfer or discharge shall be made by the nursing home at least ~~thirty (30)~~ days before the resident is discharged or transferred, except the notice shall be made as soon as practicable before a transfer or discharge when:

~~4.13.e.1. The discharge is to a community setting in accordance with Subdivision 4.13.g. of this Subsection;~~

~~4.13.e.2.~~ 4.13.e.1. The safety of persons in the nursing home would be endangered;

~~4.13.e.3.~~ 4.13.e.2. The health of persons in the nursing home would be endangered;

~~4.13.e.4.~~ 4.13.e.3. The resident's health improves sufficiently to allow a more immediate transfer or discharge;

~~4.13.e.5.~~ 4.13.e.4. An immediate transfer or discharge is required by the resident's urgent medical needs; or

~~4.13.e.6.~~ 4.13.e.5. A resident has not resided in the nursing home for ~~thirty (30)~~ days.

4.13.f. Orientation for Transfer or Discharge.

4.13.f.1. A nursing home shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the nursing home.

4.13.f.2. Involuntary Transfer. In the event of an involuntary transfer, the nursing home shall assist the resident or legal representative or both in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge and by developing a plan designed to minimize any transfer trauma to the resident.

4.13.f.2.A. The plan may include counseling the resident, or legal representative or both regarding available community resources and taking steps under the nursing home's control to assure safe relocation.

4.13.g. Discharge to a Community Setting.

4.13.g.1. A nursing home shall not discharge a resident requiring the nursing home's services to a community setting against his or her will.

4.13.g.2. A nursing home shall document that a resident who was voluntarily discharged to a community setting fully understood all options for care and helped develop a plan of care in anticipation of the resident's discharge.

4.13.g.3. Each resident shall ~~understand~~ be fully informed of the right to refuse a discharge.

4.13.g.4. A nursing home shall provide information about and referral to the appropriate social service agencies and community resources offering assistance in facilitating a resident's return to the community, as necessitated by the resident's individual needs.

4.13.h. Discharge Against Medical Advice.

4.13.h.1. In the event that the resident, or the resident's legal representative on behalf of the resident who lacks the capacity to make health care decisions, chooses to discharge from the nursing home to a residence that does not provide the level of care or services required to maintain the resident's health or safety, or both, the nursing home shall:

4.13.h.1.A. Immediately inform the resident's attending physician;

4.13.h.1.B. Educate the resident, and the resident's legal representative, if appropriate, regarding the possible consequences for discharging to an inappropriate placement;

4.13.h.1.C. Provide information about and referral to appropriate community resources, if requested by the resident.

4.13.h.1.D. Make a referral, as appropriate, to the adult protective services agency to promote resident safety;

4.13.h.1.E. Document the resident's reason for discharging against medical advice, if known; and

4.13.h.1.F. Document all actions taken and the responses by the resident or legal representative, or both, in the resident's medical record.

#### 4.14. Equal Access to Quality Care.

4.14.a. Each resident or person requesting admission to a nursing home shall be free from discrimination by the nursing home, unless the discrimination:

4.14.a.1. Is the result of the nursing home not being able to provide adequate and appropriate care, and treatment and services to the resident or applicant due to the resident's or applicant's history of mental or physical disease or disability; and

4.14.a.2. Is not contrary to a federal or State law, regulation or rule:

4.14.a.2.A. That prohibits the discrimination; or

4.14.a.2.B. . That requires the care to be provided if the nursing home participates in a financial program requiring the admittance or continued residence of the person.

4.14.b. For all persons, regardless of source of payment, a nursing home shall establish and maintain ~~a set~~ an identical set of policies and procedures regarding admission, transfer, discharge and the provision of services.

#### 4.14.c. Civil Rights.

4.14.c.1. A nursing home shall not segregate a resident, give separate treatment, restrict the enjoyment of any advantage or privilege enjoyed by others in the nursing home, or provide any aid, care services, or other benefits that are different from or are provided in a different manner from those provided to others in the nursing home on the grounds of race, color, religion or national origin, age, disability, ~~sex~~ gender or other protected status.

4.14.c.2. A nursing home shall not deny admission to a prospective resident on the grounds of race, religion or national origin, age, disability, ~~sex~~ gender or other protected status.

#### 4.15. Admissions and Payment Policy.

4.15.a. A nursing home shall not require:

4.15.a.1. Residents or potential residents to waive their rights to Medicare or Medicaid; and

4.15.a.2. Oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

4.15.b. Third Party Guarantee. A nursing home shall not require a third party guarantee of payment to the nursing home as a condition of admission or expedited admission, or continued stay in the nursing home.

4.15.b.1. A nursing home, however, may require for admission or for continued stay of the resident, that a person who has legal right and access to a resident's income or resources available to pay for care to sign a contract, without incurring personal financial liability, to provide payment from the resident's income or resources.

4.15.c. A nursing home shall fully inform each resident prior to or at the time of admission and during his or her stay, of services available in the nursing home, including a contract if one exists with a hospice provider, and of related charges, including any charge for services not covered under Medicare or Medicaid, or not covered by the nursing home's basic per diem rate, including the nursing home's policy on providing toiletries, adult briefs, wheelchairs, and all personal care and medical items.

4.15.c.1. A nursing home may charge any amount for services furnished to non-Medicaid residents consistent with this paragraph.

4.15.c.2. Medicaid residents and their legal representatives shall be informed that if they desire a private room, they may privately supplement the Medicaid payment by directly paying the facility the difference between the semi-private room rate and the private room rate.

4.15.d. A nursing home shall inform residents in writing about Medicaid and Medicare eligibility and what is covered under those programs including information on resource limits, a general description of the resource amount, and allowable uses of the resident's income for items and services not covered by Medicaid and Medicare.

4.15.e. In the case of a person eligible for Medicaid, a Medicaid/Medicare approved nursing home shall not charge, solicit or accept, or receive, in addition to any amount otherwise required to be paid under the State Medicaid Plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission or continued stay in the nursing home.

4.15.e.1. A nursing home may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State Medicaid Plan as included in the term "nursing home services" if the nursing home gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for or receipt of such additional services.

4.15.e.2. A nursing home may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the nursing home for a Medicaid eligible resident.

4.15.f. A nursing home shall give the resident a ~~thirty (30)~~ day notice when changes are made to items and services ~~specified in Subdivisions 4.16.c. and 4.16.d. of this Subsection~~ under the provisions of this rule.

#### 4.16. Freedom from Restraint and Abuse.

4.16.a. General. Each resident shall be free from mental and physical abuse, and free from chemical and physical restraints and abuse except when the restraint is authorized in writing by a physician for a specified and limited period of time, except under emergency circumstances, and

4.16.a.1. The restraint is necessary to protect the resident from injury to himself or others;  
or

4.16.a.2. The restraint is used as a therapeutic intervention or enabler for specified periods of time to attain and maintain the resident's highest practicable physical, mental or psychosocial well-being.

#### 4.16.b. Restraints.

##### 4.16.b.1. Assessments.

4.16.b.1.A. Before a resident is restrained, the nursing home shall conduct and document a comprehensive restraint assessment that includes:

4.16.b.1.A.1. Identifying the behaviors or clinical indications for why the resident may be a candidate for use of a restraint. The resident, and in the case of incapacity to make health care decisions, the resident's legal representative, shall be involved throughout this process, as well as appropriate disciplines, as indicated based on the resident's needs;

4.16.b.1.A.2. Identifying the causal factors;

4.16.b.1.A.3. Identifying, assessing, and attempting restraint free interventions that are appropriate for the person; and

4.16.b.1.A.4. The following, if alternatives to restraints are not found to be practicable:

4.16.b.1.A.4.(a). A full explanation to the resident, and in the case of incapacity to make health care decisions, the resident's legal representative, of the reasons for using the restraint, the benefits and risks of the restraint, and the obtaining of written consent from the resident, and in the case of incapacity to make health care decisions, the resident's legal representative;

4.16.b.1.A.4.(b). Documentation that the use of the restraint will enhance the resident's quality of life and functional abilities and is clinically beneficial; and

4.16.b.1.A.4.(c). An assessment of the resident to identify the least restrictive type of restraint that will provide for the resident's needs.

##### 4.16.b.2. Physician's order.

4.16.b.2.A. After a comprehensive restraint assessment indicates the need for a restraint and the resident's attending physician concurs, the resident's attending physician shall write an order to

be included in the resident's plan of care specifying the type, precise application, circumstances and duration of the restraint.

4.16.b.3. The resident's plan of care shall include, at a minimum:

4.16.b.3.A. The type and size of restraint that is to be used;

4.16.b.3.B. When the restraint is to be used;

4.16.b.3.C. For physical restraints, a schedule of release time and what individualized activity is to be provided during that period of time; and

4.16.b.3.D. A systematic and gradual process to reduce the restraint or eliminate it, or both.

4.16.b.4. Application. Nursing home staff shall apply the physical restraints in accordance with the manufacturer's instructions and in a manner to allow for quick release.

4.16.b.5. Monitoring and release. Nursing home staff shall directly monitor a resident who has been restrained at least every half hour, ~~and~~ The resident shall be released from the restraint at least every two ~~(2)~~ hours and provided exercise, toileting, and skin care.

4.16.b.6. Policies and procedures. A nursing home shall establish and implement policies and procedures for restraint use.

4.16.b.7. Emergency.

4.16.b.7.A. In the case of an emergency, licensed nursing personnel authorized by the nursing home in writing may order the use of a physical restraint for a specified and limited period of time not to exceed ~~twenty-four (24)~~ hours until the resident's attending physician can be notified of the resident's condition requiring the emergency application.

4.16.b.7.B. Continued use is subject to the same evaluation process described in this Subdivision and shall be ordered by the resident's attending physician.

4.16.c. Abuse.

4.16.c.1. A resident has the right to be free from verbal, sexual, physical, and mental abuse, financial exploitation, discrimination, denial of privileges, corporal punishment and involuntary seclusion.

4.16.c.2. Staff treatment of residents.

4.16.c.2.A. The nursing home shall develop and implement written policies and procedures that prohibit neglect, abuse of residents, and misappropriation of resident property. The policy and procedures shall address the screening, training, prevention, identification, investigation,

protection, reporting and response of allegations of resident neglect, abuse, and misappropriation of resident property.

4.16.c.3. A nursing home shall not employ persons who have:

4.16.c.3.A. Been found guilty of abusing, neglecting, exploiting or mistreating residents, incapacitated adults or children by a court of law; or

4.16.c.3.B. Had a finding entered into the ~~Certified~~ Registered Nursing Assistant Registry or the West Virginia Adult Abuse Registry concerning abuse, neglect, exploitation or mistreatment of residents or misappropriation of their property.

4.16.c.4. A nursing home shall report any knowledge it has of actions by a court of law against an employee, that would indicate unfitness for service as a nurse aide or other nursing home staff to the West Virginia ~~Certified~~ Registered Nursing Assistant Registry or the appropriate licensing authority and the director.

4.16.c.4.A. Actions by a court of law which indicate unfitness for service include a substantiated charge of abuse, neglect or exploitation against an employee, or conviction of an offense for actions related to bodily injury, theft or misuse of funds or property, or other crimes related to public welfare, in any jurisdiction within or outside of the ~~State~~ state of West Virginia.

4.16.c.5. A nursing home shall ensure that all alleged violations involving mistreatment, neglect, exploitation or abuse, including injuries of unknown source, and misappropriation of resident property are reported in accordance with State law.

4.16.c.6. A nursing home shall document that all alleged violations are thoroughly investigated and shall take appropriate steps to prevent further potential abuse while the investigation is in progress.

4.16.c.7. The results of all investigations shall be reported to the administrator or his or her designated representative and to other officials in accordance with State law, including the director within five (5) working days of the incident, and if the alleged violation is verified appropriate corrective action shall be taken.

4.17. Complaint Procedures.

4.17.a. A nursing home shall develop and implement written procedures for registering and responding to complaints by residents, their legal representatives and the public.

4.17.b. A nursing home shall designate an employee to be responsible for receiving complaints.

4.17.c. A nursing home shall establish a method to inform the administrator of all complaints.

4.17.d. A nursing home shall establish a process for investigation and assessment of the validity of all complaints.

4.17.e. A nursing home shall provide a mechanism to record all complaints received and any action taken on them and to communicate the findings or outcomes to the resident, or the resident's legal representative, making the complaint.

4.17.f. A nursing home shall assure that careful consideration is given to each complaint even when it has been made by a person who often makes complaints having no valid basis.

4.17.g. A nursing home shall establish a program to assure that its personnel are familiar with complaint policies and procedures.

4.17.h. A nursing home shall establish a program to educate residents and their legal representatives about the nursing home's complaint policies and procedures

**§ 64-13-5. Quality of Life.**

5.1. A nursing home shall care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life, and in accordance to their individual needs and preferences.

5.2. Dignity.

5.2.a. Each resident shall be treated with consideration and respect and with full recognition of his or her dignity and individuality.

5.2.b. The resident shall have the exclusive right to use and enjoy his or her personal property, and the property shall not be used by other residents or staff without the express permission of the resident.

5.3. Privacy.

5.3.a. Communication. A resident may associate and communicate privately with persons of his or her choice.

5.3.b. Mail. A resident shall receive his or her personal mail unopened unless a request to the contrary has been made to the staff by the resident.

5.3.c. Married Couples. A married resident shall be assured privacy for visits by his or her spouse. A resident has the right to share a room with his or her spouse when married residents live in the same nursing home and both spouses consent to the arrangement.

5.3.d. Roommates. Two residents have the right to share a room if both consent to the arrangement, subject to the availability of such accommodations within the facility.

~~5.4.~~ 5.3.e. Telephone. A resident shall be assured reasonable access to a telephone located in a quiet area where the resident can conduct a private conversation without being overheard or disturbed by others.

~~5.5.~~ 5.3.f. A resident has the right to personal privacy regarding accommodations, medical treatment, written communications, personal care, visits, and meetings of family and resident groups, but this does not require the nursing home to provide a private room for each resident.

~~5.6.~~ 5.4. Self-Determination and Participation. The resident has the right to:

~~5.6.a.~~ 5.4.a. Choose activities, schedules, and health care consistent with his or her interests, assessments and plans of care;

~~5.6.b.~~ 5.4.b. Interact with members of the community both inside and outside the nursing home;

~~5.6.c.~~ 5.4.c. Make choices about aspects of his or her life in the nursing home that are significant to the resident;

~~5.6.d.~~ 5.4.d. Retain and use personal clothing and possessions and make his or her room as homelike as possible, according to his or her individual tastes and desires taking into consideration, space limitations, other residents' rights, and safety and sanitation issues.

~~5.6.d.1.~~ 5.4.d.1. A nursing home may specify in the admission contract the nursing home's liability for a residents personal clothing and possessions;

~~5.6.e.~~ 5.4.e. Practice their religion and religious beliefs as they choose, as long as it does not impinge upon the rights of others; and

~~5.6.f.~~ 5.4.f. Participate in planning care and treatment.

~~5.7.~~ 5.5. Access and Resident and Family Groups and Councils. Each resident shall be encouraged and assisted with exercising his or her rights as a resident of the nursing home and as a citizen or resident of the United States. The resident shall be assisted with voicing grievances and recommending changes in policies and services without fear of reprisal, interference, coercion, punishment, or discrimination.

~~5.7.a.~~ 5.5.a. Access and Visitation Rights.

~~5.7.a.1.~~ 5.5.a.1. A nursing home shall not deny a resident immediate access to, and shall provide immediate access to a resident by:

~~5.7.a.1.A.~~ 5.5.a.1.A. A representative of a government agency with jurisdiction over some aspect of the nursing home;

~~5.7.a.1.B.~~ 5.5.a.1.B. The ombudsman; and

~~5.7.a.1.C.~~ 5.5.a.1.C. Any other individual, whether the individual is a relative or a non-relative, of the resident's choosing.

~~5.7.a.2.~~ 5.5.a.2. A person entering a nursing home, other than a representative of the director, who has not been invited by a resident or a resident's legal representative shall:

~~5.7.a.2.A.~~ 5.5.a.2.A. Promptly advise the administrator or other available agent of the nursing home of his or her presence;

~~5.7.a.2.B.~~ 5.5.a.2.B. Not enter the living area of a resident without identifying him or herself to the resident and without receiving the resident's permission to enter;

~~5.7.a.2.C.~~ 5.5.a.2.C. Terminate a visit with a resident upon request of the resident;

~~5.7.a.2.D.~~ ~~Not disclose communications with a resident unless the resident authorizes disclosure;~~

~~5.7.a.2.E.~~ 5.5.a.2.D. Be permitted to visit all areas of the nursing home except:

~~5.7.a.2.E.1.~~ 5.5.a.2.D.1. Living areas of a resident who objects;

~~5.7.a.2.E.2.~~ 5.5.a.2.D.2. Business records of the nursing home unless the administrator consents;

~~5.7.a.2.E.3.~~ 5.5.a.2.D.3. Personal and medical records of the resident, unless the resident or in case of incapacity to make health care decisions, the resident's legal representative, consents in writing;

~~5.7.a.2.E.4.~~ 5.5.a.2.D.4. Food service areas requiring sanitary conditions;

~~5.7.a.2.E.5.~~ 5.7.a.2.D.5. A pharmaceutical or secure area; or

~~5.7.a.2.E.6.~~ 5.5.a.2.D.6. Any other areas where inspection might endanger any person or might invade the privacy of any employee or resident.

~~5.7.a.3.~~ 5.5.a.3. A nursing home ~~shall~~ may establish preferred visiting hours consisting of at least eight (~~8~~) hours per day between 8:00 a.m. and 8:00 p.m., seven (~~7~~) days a week. Facilities must provide 24 hour visitation rights to all individuals with the resident's consent. The visitation privileges are subject to the resident's expressed preferences. A nursing home may impose reasonable restrictions to protect the security of all the facility's residents and may change the location of visits to assist caregiving or protect the privacy of other residents. Visitation privileges are subject to other provisions of this rule.

~~5.7.a.3.A.~~ 5.5.a.3.A. Visiting hours shall be posted conspicuously in a public place in the nursing home.

~~5.7.a.4.~~ 5.5.a.4. Relatives, non-relatives of the resident's choosing, and members of the clergy shall be permitted to visit a seriously ill resident without restriction to the extent possible.

~~5.7.b.~~ 5.5.b. Resident's Refusal.

~~5.7.b.1.~~ 5.5.b.1. The resident has the right to refuse a visit and the visit shall be terminated upon the resident's request.

~~5.7.b.2.~~ 5.5.b.2. In the case of an incapacitated person, the legal representative may refuse visits on behalf of the resident only if the legal representative demonstrates that the visits have a harmful effect on the resident. All relevant information shall be documented in the resident's medical record.

~~5.7.c.~~ 5.5.c. Administration's Exclusion.

~~5.7.c.1.~~ 5.5.c.1. The administrator or designee in charge of the nursing home may refuse a visitor access or require the visitor to leave only if:

~~5.7.c.1.A.~~ 5.5.c.1.A. In the judgment of the administrator, or his or her designee, the presence of the visitor is detrimental to the health, safety, or welfare of the resident or other residents or the visitor or the functioning of the nursing home;

~~5.7.c.1.B.~~ 5.5.c.1.B. Access is sought for financial solicitation or commercial purposes, or;

~~5.7.c.1.C.~~ 5.5.c.1.C. A resident does not wish the visitor to stay.

~~5.7.c.2.~~ 5.5.c.2. The restriction and the reasons for it shall be documented and kept on file.

~~5.7.d.~~ 5.5.d. Resident and Family Groups and Councils.

~~5.7.d.1.~~ 5.5.d.1. Residents have the right to organize, maintain, and participate in resident groups in the nursing home.

~~5.7.d.2.~~ 5.5.d.2. A resident's family has the right to meet in the nursing home with the families of other residents.

~~5.7.d.3.~~ 5.5.d.3. The nursing home shall provide a resident or family group with private space for meetings.

~~5.7.d.4.~~ 5.5.d.4. The nursing home shall provide assistance for resident or family group meetings, if requested.

~~5.7.d.5.~~ 5.5.d.5. Staff or visitors may attend resident or family group meetings only at the group's invitation.

~~5.7.d.6.~~ 5.5.d.6. The nursing home shall respond in writing to oral and written requests from resident and family council meetings. Resident councils and family councils shall be encouraged to make recommendations regarding nursing home policies.

~~5.7.d.7.~~ 5.5.d.7. The nursing home shall provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings.

~~5-7.d.8.~~ 5.5.d.8. When a resident or family group exists, the nursing home shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the nursing home.

~~5-8.~~ 5.6. Participation in Other Activities.

~~5-8.a.~~ 5.6.a. A resident has the right, at his or her discretion, to participate in social, religious, and community activities that do not interfere with the rights of other residents in the nursing home.

~~5-9.~~ 5.7. Accommodation of Residents' Needs.

~~5-9.a.~~ 5.7.a. A resident has the right to reside and receive services in the nursing home with reasonable accommodations for individual needs and preferences, except when the health or safety of the person or other residents would be endangered.

~~5-9.b.~~ 5.7.b. A resident has the right to receive written notice before the resident's room or roommate in the nursing home is changed and to be informed of the reason for the change. The written notice shall contain the date of the proposed change and the reason for the change as allowed by the privacy and confidentiality provisions of this rule. The nursing home shall make efforts to assure that the changes are effected with the least disruption to the resident's life.

~~5-10.~~ 5.8. Activities.

~~5-10.a.~~ 5.8.a. The nursing home shall provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident. ~~The ongoing program of activities shall provide for evening and weekend activities.~~ The ongoing program of activities shall include, where feasible, activities that occur outside the nursing home, and provide for evening and weekend activities.

~~5-10.b.~~ 5.8.b. The activities program shall be directed by a person who:

~~5-10.b.1.~~ 5.8.b.1. Is a qualified therapeutic recreation specialist or activities professional who has two ~~(2)~~ years of experience in a social or recreational program within the last five ~~(5)~~ years, one ~~(1)~~ of which was full-time in a resident activities program in a health care setting; or

~~5-10.b.2.~~ 5.8.b.2. Is a qualified occupational therapist or occupational therapy assistant or

~~5-10.b.3.~~ 5.8.b.3. Has demonstrated the ability to provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident; and has completed a training course approved by the State.

~~5-10.c.~~ 5.8.c. If the intended activities director does not meet the requirements above, he or she shall require regularly scheduled consultation by a person who meets the qualifications described in ~~Subdivision 5-10.c.1.~~ of this rule. The consultation by a qualified consultant may continue until the time a candidate can meet the required qualifications, but not for more than a period of ~~twelve (12)~~ months from the date of hire.

~~5.10.c.1.~~ 5.8.c.1. A qualified activities consultant is a qualified professional who is a qualified therapeutic recreation specialist or activities professional who is licensed, registered or certified, if applicable, and has three years of experience in a social or recreational program. This person shall:

~~5.10.c.1.A.~~ 5.8.c.1.A. Visit the nursing home as indicated by the needs of the nursing home and its residents, but not less than eight ~~(8)~~ hours quarterly; and

~~5.10.c.1.B.~~ 5.8.c.1.B. Provide a written, dated report, containing the time and duration of the visit and a summary of the findings with recommendations for improvements in the program to the administrator and the activities director, within ~~ten (10)~~ working days of the completion of the onsite visit.

~~5.10.d.~~ 5.8.d. The duties of the activities director shall include:

~~5.10.d.1.~~ 5.8.d.1. Developing the nursing home's recreational and activities plan; organizing and directing the program, developing and implementing a written monthly activities calendar at least one ~~(1)~~ month in advance; completing an accurate resident assessment and care plan; documenting participation or nonparticipation in activities and reasons for nonparticipation as it relates to the resident's care plan; and maintaining a current record of community services, resources, programs, and nursing home materials available to the residents, staff, and families; and

~~5.10.d.2.~~ 5.8.d.2. Designing an activities program to restore, maintain, and improve functioning and well-being in conjunction with the care plan for the individual resident.

~~5.11.~~ 5.9. Social Services.

~~5.11.a.~~ 5.9.a. The nursing home shall provide medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

~~5.11.b.~~ 5.9.b. A nursing home with ~~sixty (60)~~ or more beds shall employ a qualified social worker on a full-time basis.

~~5.11.c.~~ 5.9.c. A qualified social worker is a person with:

~~5.11.c.1.~~ 5.9.c.1. A license to practice social work in the ~~State~~ state of West Virginia; and

~~5.11.c.2.~~ 5.9.c.2. Who has a demonstrated ability to provide medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

#### **§64-13-6. Resident Assessment.**

6.1. The nursing home shall conduct a comprehensive, accurate, standardized, and reproducible assessment of each resident's functional capacity.

6.2. Admission Orders.

6.2.a. At the time each resident is admitted, the nursing home shall have physician orders for the resident's immediate care.

6.3. Comprehensive Assessments.

6.3.a. The nursing home shall make a comprehensive assessment of a resident's needs which:

6.3.a.1. Is based on a uniform data set and instrument specified by the director; and

6.3.a.2. Describes the resident's capability to perform daily life functions and any significant impairments in functional capacity.

6.3.b. The comprehensive assessment shall include the resident's:

6.3.b.1. Identification and demographic information;

6.3.b.2. Customary routine;

6.3.b.3. Cognitive patterns;

6.3.b.4. Communication;

6.3.b.5. Vision;

6.3.b.6. Mood and behavior patterns;

6.3.b.7. Psychosocial well-being;

6.3.b.8. Physical functioning and structural problems;

6.3.b.9. Continence;

6.3.b.10. Disease diagnosis and health conditions;

6.3.b.11. Dental and nutritional status;

6.3.b.12. Skin conditions;

6.3.b.13. Activity pursuit;

6.3.b.14. Medications;

6.3.b.15. Special treatments and procedures;

6.3.b.16. Discharge potential;

6.3.b.17. Documentation and summary information regarding the additional assessment performed through the resident assessment protocols.

6.3.b.18. Documentation of participation in assessment.

6.3.c. Frequency. Comprehensive assessments shall be conducted:

6.3.c.1. No later than ~~fourteen (14)~~ days after the date of admission;

6.3.c.2. Within ~~fourteen (14)~~ days after the facility determines, or should have determined that there has been a significant change in the resident's physical or mental condition; and

6.3.c.3. In no case less often than every ~~three hundred sixty-six (366)~~ days.

6.3.d. Review of Assessments. A nursing home shall examine each resident no less than once every ~~ninety-two (92)~~ days, and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.

6.3.e. Use. The nursing home shall use the results of the assessment to develop, review, and revise the resident's comprehensive plan of care under ~~Section 7~~ the provisions of this rule.

6.3.f. Coordination. A nursing home shall coordinate assessments with any State-required pre-admission screening program to the maximum extent practicable to avoid duplicative testing and effort.

6.4. Accuracy of Assessments.

6.4.a. Each assessment shall be conducted or coordinated with the appropriate participation of health professionals.

6.4.b. Each assessment shall be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

6.4.c. Each person who completes a portion of the assessment shall sign and certify the accuracy of that portion of the assessment.

6.4.d. Civil money penalty for falsification.

6.4.d.1. A person who willfully and knowingly certifies (or causes another person to certify) a material and false statement in a resident assessment is subject to civil money penalties.

6.4.e. Use of independent assessors.

6.4.e.1. If the director determines, under an inspection or otherwise, that there has been a knowing and willful certification of false statements under ~~Subdivision 6.3.c.~~ the provisions of this rule the director may require (for a period specified by the director) that resident assessments under this

section be conducted and certified by persons who are independent of the nursing home and who are approved by the director.

#### **§ 64-13-7. Comprehensive Care Plans.**

##### ~~7.1. Development of the Care Plan.~~

~~The nursing home shall develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, mental and psychosocial needs that are identified in the comprehensive assessment.~~

7.1. Development of the Care Plan. The nursing home shall develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, mental and psychosocial needs that are identified in the comprehensive assessment.

##### 7.1.a. The comprehensive care plan shall describe the following:

7.1.a.1. The services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under ~~Section 8~~ the provisions of this rule; and

7.1.a.2. Any services that would otherwise be required under ~~Sections 4 and 5~~ the provisions of this rule, but are not provided due to the resident's exercise of rights including the right to refuse treatment.

##### 7.2. Timing of the Care Plan and Participation Requirements.

##### 7.2.a. A comprehensive care plan shall be:

7.2.a.1. Developed within seven ~~(7)~~ days after the completion of the comprehensive assessment;

7.2.a.2. Prepared by an interdisciplinary team, which includes the attending physician, a registered nurse with responsibility for the resident, other appropriate staff in disciplines as determined by the resident's needs, and to the extent practicable, the participation of the resident and the resident's family, or others with the consent of the resident or the resident's legal representative; and

7.2.a.3. Periodically reviewed and revised by a team of appropriate persons after each assessment.

##### 7.3. Services Provided Under a Care Plan.

##### 7.3.a. The services provided or arranged by the nursing home shall:

7.3.a.1. Meet professional standards of quality; and

7.3.a.2. Be provided by qualified persons in accordance with each resident's written plan of care.

7.4. Plans for Care and Medical Records.

7.4.a. Plans for care.

7.4.a.1. The resident's plan of care shall be developed for each resident upon admission and maintained by the nursing service in cooperation with all other services. Each resident and appropriate legal representative shall be provided a copy of the resident's plan of care upon their request.

7.4.a.2. The plan of care shall provide a profile of the needs of the individual resident, identify the role of each service in meeting those needs, and the supportive measures each service will use to complement each other service in the accomplishment of the overall goal of care.

7.4.a.3. The plan of care plan shall be in writing and contain at least the following:

7.4.a.3.A. The goals to be accomplished;

7.4.a.3.B. Individually designed activities to meet the goals;

7.4.a.3.C. Therapies;

7.4.a.3.D. Treatments, including diet requirements; and

7.4.a.3.E. A statement of which discipline, or professional service person is responsible for each element prescribed in the plan.

7.4.a.4. A nursing home shall have written policies and procedures to ensure that through the resident care conferences or other means of coordination, the resident care plan shall be reviewed and revised as needed, but at least quarterly. The review shall be noted in the medical record.

7.4.a.5. Policies and procedures shall delineate the rules and responsibilities of each service in relation to the resident care plan.

7.4.a.6. The resident care plan shall be available for use by all personnel caring for the resident.

7.4.a.7. Relevant information from the resident care plan shall be made available with other information that is conveyed when the resident is transferred to another nursing home, an acute care facility or referred for continuing care by other agencies upon discharge to the community.

7.4.a.8. The nursing home shall maintain a discharge plan for each resident and shall include at least the following:

7.4.a.8.A. An initial assessment including discharge potential and goals, completed at admission or within no more than seven ~~(7)~~ days after admission;

7.4.a.8.B. Relevant information concerning such areas as nursing assessment, social history, rehabilitation potential, resident's needs at discharge and available community resources; and

7.4.a.8.C. Periodic review and re-evaluation on a monthly basis for the first three ~~(3)~~ months after admission and then at least quarterly.

7.4.b. Discharge.

7.4.b.1. General. When a resident is discharged to another nursing home or location or to his or her home, the nursing home shall prepare a discharge summary prior to the discharge. The summary shall be conveyed to the receiving nursing home or location at the time of discharge. The summary shall include:

7.4.b.1.A. The resident's name and identifying number;

7.4.b.1.B. The name of the attending physician;

7.4.b.1.C. The date of admission;

7.4.b.1.D. The date of discharge;

7.4.b.1.E. A provisional and final diagnosis;

7.4.b.1.F. The course of treatment and care in the nursing home;

7.4.b.1.G. Pertinent diagnostic findings;

7.4.b.1.H. Essential information regarding the resident's illness or problems;

7.4.b.1.I. Restorative procedures;

7.4.b.1.J. Medication instructions; and

7.4.b.1.K. The nursing home, agency or location to which the resident was discharged:

7.4.b.2. Anticipated Discharge. When a discharge is anticipated, a nursing home shall prepare for the resident a discharge summary that includes:

7.4.b.2.A. A recapitulation of the resident's stay;

7.4.b.2.B. A final summary of the resident's status ~~to include items in Subdivision 6.2.b.~~ within the provisions of this rule, prepared at the time of the discharge, that is available for release to authorized persons and agencies with the consent of the resident or legal representative;

7.4.b.2.C. Thirty ~~(30)~~ day notification of the discharge as appropriate and in compliance with other provisions of this rule; and

7.4.b.2.D. If the resident is discharged to his or her home, the resident shall be given appropriate information concerning his or her needs for care and medications including a post-discharge plan of care that is developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

7.4.b.3. The death of a resident shall be reported immediately to the attending physician and to the resident's legal representative and family as relevant.

7.4.b.3.A. The discharge summary shall include the requirements specified in this rule.

7.4.b.4. A nursing home shall complete medical records promptly within a time period specified in the nursing homes ~~polices~~ policies and procedures manual, not to exceed ~~thirty (30)~~ days after the resident is discharged.

7.4.b.4.A. The discharge summary shall contain a dated physician's signature.

7.5. When a nursing home resident is also a patient of a hospice, the nursing home and the hospice shall communicate, establish, and agree upon a coordinated plan of care for both providers that is based on an assessment of the individual resident's needs.

#### **§64-13-8. Quality of Care.**

8.1. Each resident shall receive, and the nursing home shall provide, the necessary care and services to attain or maintain the highest practicable physical, spiritual, mental, and psychosocial well-being of the residents, in accordance with the comprehensive assessment and plan of care.

8.2. Activities of Daily Living. Based on the comprehensive assessment of a resident, the nursing home shall ensure that:

8.2.a. A resident's abilities in activities of daily living do not diminish unless circumstances of the resident's clinical condition demonstrate that diminution was unavoidable. Activities of daily living include the resident's ability to:

8.2.a.1. Bathe, dress, and groom;

8.2.a.2. Transfer and ambulate;

8.2.a.3. Use the toilet;

8.2.a.4. Eat; and

8.2.a.5. Use speech, language, or other functional communication systems.

8.2.b. A resident is given the appropriate treatment and services to maintain or improve his or her abilities specified in ~~Subdivision 8.2.a.~~ of this rule.

8.2.b.1. Assistive devices. The nursing home shall provide special eating equipment and utensils for residents who need them.

8.2.b.2. The nursing home shall evaluate residents having potential to benefit from the assistive devices to assure that the assistive devices meet the residents' needs; and

8.2.c. A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

8.3. Vision and Hearing.

8.3.a. To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the nursing home shall, if necessary, assist the resident:

8.3.a.1. In making appointments; and

8.3.a.2. By arranging for transportation to and from the office of a practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices

8.4. Pressure Sores. Based on the comprehensive assessment of a resident, the nursing home shall ensure that:

8.4.a. A resident who enters the nursing home without pressure sores does not develop pressure sores unless the resident's clinical condition demonstrates that they were unavoidable; and

8.4.b. A resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

8.5. Urinary Incontinence. Based on the resident's comprehensive assessment, the nursing home shall ensure that:

8.5.a. A resident who enters the nursing home without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization is necessary;

8.5.b. A resident who has an in-dwelling catheter has a documented medical reason for the catheter; and

8.5.c. A resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible, unless the restoration of function is not possible due to the physical or cognitive condition of the resident.

8.6. Range of Motion. Based on the comprehensive assessment of a resident, the nursing home shall ensure that:

8.6.a. A resident who enters the nursing home without a limited range of motion does not experience a reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

8.6.b. A resident with a limited range of motion receives appropriate treatment and services to increase range of motion or to prevent further decrease in a range of motion.

8.7. Mental and Psychosocial Functioning. Based on the comprehensive assessment of a resident, the nursing home shall ensure that:

8.7.a. A resident who displays mental or psychosocial adjustment difficulty receives appropriate treatment and services to correct the assessed problem; and

8.7.b. A resident whose assessment did not reveal a mental or psychosocial adjustment difficulty does not display a pattern of decreased social interaction or increased withdrawn, angry or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern is unavoidable.

8.8. Feeding Tubes. Based on the comprehensive assessment of a resident, the nursing home shall ensure that:

8.8.a. A resident who has been able to eat enough alone or with assistance is not fed by tube unless the resident's clinical condition demonstrates that use of a feeding tube is unavoidable; and

8.8.b. A resident who is fed enterally receives the appropriate treatment and services to prevent secondary complications such as reflux, aspiration, aspiration pneumonia, diarrhea, vomiting, dehydration, and metabolic abnormalities, and to restore, if possible, normal eating skills.

8.9. Accidents.

~~8.9.a. A nursing home shall provide an environment that remains as free of accident hazards as possible; and~~

8.9.a. A nursing home shall provide an environment that remains as free from accident hazards as possible.

~~8.9.b. Where each resident receives adequate supervision and assistive devices to prevent accidents.~~

8.9.b. A nursing home shall provide an environment where each resident receives adequate supervision and assistive devices to prevent accidents.

8.9.c. The nursing home shall complete a written report of any incident or accident in which a resident is involved, either inside or outside of the nursing home.

8.9.d. The report shall include the:

- 8.9.d.1. Date of the occurrence;
- 8.9.d.2. Time of the occurrence;
- 8.9.d.3. Place of the occurrence;
- 8.9.d.4. Details of the occurrence; and
- 8.9.d.5. Date and signature of the reviewing physician.

8.9.e. The report shall be written and signed by the person who is responsible for the resident at the time that the accident or incident occurred.

8.10. Nutrition. Based on a resident's comprehensive assessment, the nursing home shall ensure that a resident:

8.10.a. Maintains acceptable parameters of nutritional status, unless the resident's clinical condition demonstrates that this is not possible;

8.10.b. Receives a therapeutic diet when there is a nutritional problem; and

~~8.10.c. Who has an unplanned weight loss of ten percent (10%) or more in six (6) months, or a gradual progressive unexplained weight loss of ten percent (10%) or more below the person's admission body weight, shall have a thorough nutritional assessment, including appropriate laboratory studies.~~

8.10.c. Who has an unplanned weight loss or gradual progressive unexplained weight loss shall have a thorough nutritional assessment, including appropriate laboratory studies. The unplanned or unexplained weight loss shall be assessed by the following parameters:

8.10.c.1. A significant weight loss of five percent or a severe weight loss of greater than five percent in a one month interval;

8.10.c.2. A significant weight loss of seven and a half percent or a severe weight loss of greater than seven and a half percent in a three month interval;

8.10.c.3. A significant weight loss of 10% or a severe weight loss of greater than 10% in a six month interval.

8.11. Hydration. A nursing home shall provide each resident with sufficient fluid intake to maintain proper hydration and health.

8.12. Special Needs. A nursing home shall ensure that residents receive proper treatment and care for the following special needs:

- 8.12.a. Injections;
- 8.12.b. Parenteral and enteral fluids;

8.12.c. Colostomy, ureterostomy, or ileostomy care;

8.12.d. Tracheostomy care;

8.12.e. Tracheal suctioning;

8.12.f Respiratory care;

8.12.g. Foot care;

8.12.h. Prostheses; and

8.12.i. Skin conditions.

8.13. Medications and Drugs.

8.13.a. Each resident's drug regimen shall be free from unnecessary drugs. An unnecessary drug is any drug used in any of the following circumstances or combinations of circumstances:

8.13.a.1. In excessive doses (including duplicate therapy);

8.13.a.2. For excessive duration;

8.13.a.3. Without adequate monitoring;

8.13.a.4. Without adequate indications for its use; or

8.13.a.5. In the presence of adverse consequences that indicate the dose should be reduced or discontinued.

8.13.b. Antipsychotic Drugs. Based on a comprehensive assessment of a resident, the nursing home shall ensure that:

8.13.b.1. Residents who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record; and

8.13.b.2. Residents who use antipsychotic drugs receive gradual dose reductions and behavioral ~~interventions~~ interventions, unless clinically contraindicated, in an effort to discontinue these drugs.

8.13.c. Medication Errors. The nursing home shall ensure that:

8.13.c.1. It is free of medication error rates of five percent (~~5%~~) or greater; and

8.13.c.2. Residents are free of any significant medication errors.

8.13.d. Controlled Drugs Policy. The nursing home shall have policies and procedures regarding the procurement, storage, dispensing, administration and disposition of controlled substances that conform to the Uniform Controlled Substances Act, W. Va. Code ~~§60A-1-1 et seq.~~ § 60A-1-101 et seq. Federal regulations and the rules of the West Virginia Board of Pharmacy.

8.14. Nursing Services Staffing.

8.14.a. A nursing home shall have sufficient nursing personnel to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. Staffing shall not, other than during short unforeseeable emergencies, be less than an average of ~~two and twenty five one hundredths (2.25)~~ hours of nursing personnel time per resident per day.

8.14.a.1. Minimum hours of resident care personnel to residents are outlined in Table 64-13.A of this rule.

8.14.a.2. Facilities with fewer than ~~fifty one (51)~~ beds are staffed at higher hours as outlined in table 64-13.A. of this rule.

8.14.b. A nursing home shall provide services by sufficient numbers of each of the following types of personnel on a ~~twenty four (24)~~ hour basis to provide nursing care to all residents in accordance with resident care plans:

8.14.b.1. Licensed nurses; and

8.14.b.2. Other nursing personnel. Based on the residents' needs and the nursing home services, the nursing home may determine the combination of licensed nurse time and nursing assistant time if the total meets the minimum 2.25 hours nursing personnel time requirement.

8.14.c. Charge Nurse. A nursing home shall designate a licensed nurse to serve as a charge nurse on each shift;

8.14.d. Registered Nurse. A nursing home shall have a registered nurse on duty in the facility for at least eight ~~(8)~~ consecutive hours, seven ~~(7)~~ days a week.

8.14.d.1. In facilities with fewer than ~~sixty (60)~~ beds, the director of nursing may serve to meet this requirement.

8.14.e. Nurse on Call. If there is not a registered professional nurse on duty, there shall be a registered professional nurse on call.

8.14.f. Director of Nursing. A nursing home shall designate in writing a registered nurse to serve as the director of nursing services on a full-time basis, who shall be on duty at least five ~~(5)~~ days a week, eight ~~(8)~~ hours a day during the day shift.

8.14.g. The director may require staffing ratios above the specified minimum ratios if necessary to meet the residents' needs.

8.14.h. Paid Feeding Assistants. Paid feeding assistants are authorized to feed residents who have no feeding complications, under the direct supervision of a registered professional nurse (RN) or a licensed practical nurse (LPN).

8.14.h.1. Paid feeding assistants may set up a resident's meal tray for dining, assist in feeding the resident, and record the resident's intake at the meal. Paid feeding assistants are to be used in accordance with the West Virginia Department of Health and Human Resources Office of Health Facility Licensure and Certification Guidelines for Paid Feeding Assistants.

8.14.i. Posting of Nurse Staffing Information. The nursing home shall post the following information on a daily basis.

8.14.i.1. The current date; resident census; and the total number and the actual hours worked by the following categories of licensed and unlicensed nursing staff directly responsible for resident care per shift, including:

8.14.i.1.A. Registered nurses;

8.14.i.1.B. Licensed practice nurses; and

8.14.i.1.C. Registered nurse aides.

8.14.i.2. The nursing home must post this information in a clear and readable document; and in a prominent place readily accessible to residents and visitors.

8.14.i.3. The nursing home shall, upon oral or written request, make the nurse staffing data available to the public for review. Copies of the nurse staffing data is subject to a charge not to exceed \$0.25 per page.

8.14.i.4. The nursing home shall maintain the posted nurse staffing data for a minimum of 18 months.

8.15. Dietary Services.

8.15.a. Dietary Staffing.

8.15.a.1. Dietitian. A nursing home shall employ a qualified dietitian either full-time, part-time, or on a consultant basis.

8.15.a.1.A. A qualified dietitian is one who is registered by the Commission on Dietetic Registration and licensed by the West Virginia Board of Licensed Dietitians; or

8.15.a.1.B. Is qualified as defined by the West Virginia Board of Licensed Dietitians, and is licensed by that board to provide professional nutritional ~~services in West Virginia.~~

8.15.a.1.C. Consultation shall be based upon the residents' needs and shall occur at intervals of no less than every ~~thirty (30)~~ 37 days and for no less than eight ~~(8)~~ hours.

8.15.a.2. A dietary manager shall be employed if a dietitian is not employed full-time and shall be one of the following:

8.15.a.2.A. A dietetic technician, registered by the ~~American Dietetic Association~~ Academy of Nutrition and Dietetics;

8.15.a.2.B. A certified dietary manager, as certified by the ~~Dietary Manager's Association~~ Association of Nutrition and Foodservice Professionals; ~~or~~

8.15.a.2.C. A graduate of an associate or baccalaureate degree program in foods and nutrition or food service management; ~~or~~

8.15.a.2.D. A person enrolled in an approved program to become a certified dietary manager within 60 days of accepting responsibility for the position. This person shall successfully complete the program within the specific timeframes outlined by the enrolled program and shall successfully pass the Certified Dietary Manager (CDM) examination within no more than two months of completing the approved program.

8.15.a.3. The dietary manager, under the direction of the dietitian, is responsible for the daily operation of the dietetic service;

8.15.b. Sufficient staff. A nursing home shall employ sufficient support personnel competent to carry out the functions of the dietary service.

8.15.c. Menus and Nutritional Adequacy.

8.15.c.1. A nursing home shall meet the nutritional needs of residents in accordance with the ~~Recommended Dietary Allowances~~ Reference Dietary Intake (RDI) of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

8.15.d. Food. A nursing home shall provide each resident with:

8.15.d.1. Food prepared by methods that conserve nutritive value, flavor, and appearance.

8.15.d.1.A. Meals shall be prepared and served the same day;

8.15.d.2. Food that is palatable, attractive, and at the proper temperature;

8.15.d.2.A. At the time of receipt by the resident, foods shall be at a temperature of no less than ~~120°F~~ 120°F for hot foods and at no more than ~~50°F~~ 50°F for cold foods;

8.15.d.3. Food prepared in a form designed to meet individual needs;

8.15.d.4. Food substitutes of similar nutritive value for food the resident refuses; and

8.15.d.5. Food prepared with ~~salt~~ seasoning, unless contraindicated by a physician's order;

and

8.15.d.6. Iodized salt, if used.

8.15.e. Diets including regular diets. All residents shall have a physician's order for the specific type of diet he or she is to receive as set forth in the nursing home's diet manual.

8.15.e.1. Therapeutic and texture modified diets shall be served to residents in accordance with the physician's orders.

8.15.e.2. Nursing personnel shall advise food service in writing of each resident's diet order, and a copy of the order shall be kept on file for at least one ~~(1)~~ year.

8.15.e.3. Therapeutic Diets.

8.15.e.3.A. Therapeutic diets shall be prescribed by the attending physician. A current therapeutic diet manual that is not more than five ~~(5)~~ years old and is approved by the dietitian shall be available for nursing personnel and physicians.

8.15.e.4. Recognizing that the resident has the right to refuse medical treatment, all residents have the right to request substitute foods even when this violates the physician's orders.

8.15.e.4.A. A nursing home shall provide education to the resident regarding the benefits of the prescribed diet and consequences of his or her refusal to eat the prescribed diet.

8.15.e.4.B. A nursing home shall document the informed decision in the resident's clinical record.

8.15.f. Frequency of meals.

8.15.f.1. A nursing home shall provide at least three ~~(3)~~ meals daily at regular times, or in accordance with residents' preferences and customary routines.

8.15.f.2. No more than ~~fourteen~~ ~~(14)~~ hours shall elapse between a substantial evening meal and breakfast the following day.

8.15.f.2.A. Breakfast shall not be served before 7:00 A.M., unless by a resident's request.

8.15.f.3. A nursing home shall offer a nourishing snack at bedtime daily, as determined by the residents' needs.

8.15.f.3.A. The amount of the snacks consumed by the resident shall be recorded in the resident's medical record.

8.15.f.3.B. The amount of supplement consumed by the resident shall be recorded in the resident's medical record.

8.15.g. Sanitary conditions. A nursing home shall:

8.15.g.1. Procure food from sources approved or considered satisfactory by Federal, State or local authorities;

8.15.g.2. Store, prepare, distribute, and serve food under sanitary conditions;

8.15.g.2.A. Hold hot foods at or above 135°F and cold foods at or below 40°F, or the current Federal Drug Administration Food Code; and

8.15.g.2.B. Temperatures of foods are taken and documented prior to placement in the hot or cold food holding area.

8.15.g.3. Dispose of garbage and refuse properly.

8.15.h. Emergency supplies.

8.15.h.1. A nursing home shall have a planned three ~~(3)~~ day disaster menu that correlates with the emergency food supply.

8.15.h.2. The emergency food supply shall be maintained on the premises with non-perishable foods and disposable supplies to meet all resident needs for three ~~(3)~~ days.

8.15.h.3. The emergency food supply may be incorporated with the regular stock of food supplies.

8.15.i. A nursing home shall maintain a dietetic service that is organized either directly by a nursing home or through a written agreement with a contractor who complies with the standards of this rule.

8.15.j. The dietetic service shall be in substantial compliance with the ~~Division of Health rule, "Food Establishments," 64CSR17.~~ Division of Health Rule, Food Establishments, 64CSR17.

8.16. Physician and Physician Extender Services.

8.16.a. A physician shall personally approve in writing a recommendation that a person be admitted to a nursing home. Each resident shall remain under the care of a physician.

~~8.16.a.~~ 8.16.b. Physician supervision. A nursing home shall ensure that:

~~8.16.a.1.~~ 8.16.b.1. The medical care of each resident is supervised by a physician; and

~~8.16.a.2.~~ 8.16.b.2. Another physician supervises the medical care of residents when their attending physician is unavailable.

~~8.16.b.~~ 8.16.c. Physician visits. The physician shall:

~~8.16.b.1.~~ 8.16.c.1. Review the resident's total program of care, including medications and treatments, and examine the resident personally at each visit required ~~by Subdivision 8.16.c. of this subsection~~ under the provisions of this rule;

~~8.16.b.2.~~ 8.16.c.2. Write, sign, and date progress notes at each visit; and

8.16.c.3. Sign and date all orders.

~~8.16.c.~~ 8.16.d. Frequency of physician visits. The resident shall be seen face-to-face by a physician:

~~8.16.c.1.~~ 8.16.d.1. Within five ~~(5)~~ days prior to admission or within ~~seventy-two (72)~~ hours following admission; and

~~8.16.c.2.~~ 8.16.d.2. At least every ~~thirty (30)~~ days for the first ~~ninety (90)~~ days after admission, and as the resident's condition warrants. A nursing home shall assure that physician visits occur as clinically indicated for the resident.

~~8.16.c.3.~~ 8.16.d.3. After the ~~ninety (90)~~ day requirement has expired, the physician shall visit every sixty (60) days and as the resident's condition warrants.

~~8.16.d.~~ 8.16.e. Except as provided in ~~Subdivision 8.16.e. of this Subsection~~ under the provisions of this rule, all required physician visits shall be made by the physician personally.

~~8.16.e.~~ 8.16.f. After the initial visit, at the option of the physician, the required visit every ~~sixty (60)~~ days may be alternated between personal visits by the physician and visits by a physician's assistant, nurse practitioner or clinical nurse specialist ~~in accordance with subdivision 8.16.g. of this Subsection~~ under the provisions of this rule.

~~8.16.f.~~ 8.16.g. Availability of physicians for emergency care. A nursing home shall provide or arrange for the provision of physician services ~~twenty-four (24)~~ hours a day, in case of an emergency.

~~8.16.g.~~ 8.16.h. Physician delegation of tasks. Except as specified in ~~paragraph 8.16.c.2 of this section~~ under the provisions of this rule, a physician may delegate tasks to a physician assistant, nurse practitioner, or clinical nurse specialist who:

~~8.16.g.1.~~ 8.16.h.1. Is licensed by the State;

~~8.16.g.2.~~ 8.16.h.2. Is acting within the scope of practice as defined by W. Va. Code §30-3-1 et seq.; and

~~8.16.g.3.~~ 8.16.h.3. Is under the supervision of the physician.

#### 8.17. Specialized Rehabilitative Services.

8.17.a. Provision of services. If specialized rehabilitative services such as, but not limited to, physical therapy, speech-language pathology, occupational therapy, and psychological or psychiatric rehabilitative services, are required in the resident's comprehensive plan of care, a nursing home shall:

8.17.a.1. Provide the required services; or

8.17.a.2. Obtain the required services from an outside resource, in accordance with Subsection 11.4 of this rule, from a provider of specialized rehabilitative services.

8.17.b. Qualifications. Specialized rehabilitative services shall be provided under the written order of a physician by qualified personnel as determined by licensing boards of those personnel.

#### 8.18. Dental Services.

8.18.a. A nursing home shall provide, or obtain from an outside resource in accordance with Subsection 11.4 of this rule, the following dental services to meet the needs of each resident:

8.18.a.1. Routine dental services (to the extent the resident is covered under the State Medicaid Plan); and

8.18.a.2. Emergency dental services ~~twenty-four (24)~~ hours a day.

8.18.b. A nursing home shall assist a resident in need of dental services by:

8.18.b.1. Making dental appointments;

8.18.b.2. Arranging for transportation to and from the dentist's office; and

8.18.b.3. Referring residents with lost or damaged dentures to a dentist.

#### 8.19. Pharmacy Services.

8.19.a. A nursing home shall provide routine and emergency drugs and biologicals to its residents, or obtain them under an agreement described in ~~Subsection 11.4~~ under the provisions of this rule.

8.19.b. All drugs shall be provided in conformance with the requirements of federal, state and local laws, regulations and rules.

8.19.c. Procedures. A nursing home shall provide pharmaceutical services, including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals, to meet the needs of each resident.

8.19.d. Service consultation. A nursing home shall employ or obtain the services of a licensed pharmacist who:

8.19.d.1. Provides consultation on all aspects of the provision of pharmacy services in the nursing home;

8.19.d.2. Establishes a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation; and

8.19.d.3. Determines that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled.

8.19.e. Drug regimen review.

8.19.e.1. The drug regimen of each resident shall be reviewed, by a licensed pharmacist, at least every ~~thirty-seven (37)~~ days.

8.19.e.2. The drug regimen review shall include substances that are regarded as herbal products or dietary supplements.

8.19.f. The nursing home shall conduct a drug regimen review on the premises.

8.19.g. The pharmacist shall report any irregularities in the drug regimen review to the attending physician and the director of nursing, who shall act upon these reports.

8.19.h. Labeling of drugs and biologicals.

8.19.h.1. Drugs and biologicals used in the nursing home shall be labeled in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, with the expiration date when applicable.

8.19.i. Storage of drugs and biologicals.

8.19.i.1. In accordance with state and federal ~~laws~~ laws, the nursing home, shall store all drugs and biologicals in locked compartments under proper temperature controls and permit only authorized personnel to have access to the keys.

8.19.i.2. A nursing home shall provide separately locked, permanently affixed compartments for the storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 42 U.S.C. § 812, and other drugs subject to abuse, except when the nursing home uses single unit package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.

8.19.j. A nursing home shall establish policy to assure that residents' requests for prescription medications from sources other than the contracted pharmacy be honored.

8.20. Infection Control.

8.20.a. A nursing home shall establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

8.20.b. Infection control program. A nursing home shall establish and implement an infection control program under which it:

8.20.b.1. Investigates, controls, and prevents infections in the nursing home;

8.20.b.2. Determines what procedures, such as isolation, shall be applied to a resident and isolates only to the extent that is required to protect the resident and others; and

8.20.b.3. Maintains a record of incidents, investigations, and corrective actions related to infections.

8.20.b.3.A. The records shall provide for analysis of causal factors and identification of preventative actions to be implemented.

8.20.c. Preventing spread of infection.

8.20.c.1. Policies and Procedures. A nursing home shall establish and implement policies and procedures consistent with current accepted standards of practice regarding the administration of pneumococcal vaccine, influenza vaccine, and screening for tuberculosis.

8.20.c.2. Isolation. When the nursing home staff determines by means of the infection control program that a resident needs isolation to prevent the spread of infection, the nursing home shall isolate the resident or make arrangements to have the resident transferred to a nursing home

which can better meet the needs of the resident if the nursing home is unable to provide the required degree of isolation.

8.20.c.3. A resident who is transferred under the provisions of this rule and desires to return to the original nursing home shall be readmitted immediately to the first available bed in a semi-private room when the need for isolation has abated, provided that the resident still requires the care provided by the original nursing home and that nursing home is able to meet the resident's needs.

~~8.20.c.3.~~ 8.20.c.4. Employee restrictions. A nursing home shall prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease.

~~8.20.c.4.~~ 8.20.c.5. Hand-washing. A nursing home shall require staff to wash their hands after each direct resident contact and after engaging in any activity for which hand washing is indicated by accepted standards of professional practice.

8.20.d. Linens. Personnel shall handle, store, ~~process, and~~ process, and transport linens in order to prevent the spread of infection.

#### **§64-13-9. Physical Facilities, Equipment and Site Information.**

##### 9.1. Applicability; Construction; Additions; Renovations; Other Standards.

9.1.a. If the director determines that changes necessary for compliance with this section of this rule would create an undue hardship for a nursing home in existence at the time this rule becomes effective, the nursing home may be governed by rules which were in effect prior to the effective date of this rule.

9.1.b. The standard for construction, renovations, and alterations are the relevant sections of the ~~1996-1997 latest~~ latest edition of "The Guidelines for Design and Construction of Hospitals and Health Care Facilities", ~~as recognized by the American Institute of Architects, Academy of Architecture for Health~~ according to Facilities Guidelines Institute (FGI) and published by American Society for Healthcare Engineering (ASHE) with assistance from the U. S. Department of Health and Human Services.

9.1.c. A nursing home shall comply with the ~~1996 most current Edition~~ edition of the National Fire Protection Association (NFPA) of "NFPA 99 Standards for Health Care Facilities."

9.1.d. A nursing home shall comply with the current edition of the state building code ~~Building Officials and Code Administrators, 13<sup>th</sup> Ed. 1996 (BOCA).~~

9.1.e. A nursing home shall comply with all applicable provisions of the Americans with Disabilities Act (ADA).

9.1.f. A nursing home shall submit a complete set of architectural, structural, and mechanical drawings, drawn to scale not less than one-eighth ~~(1/8)~~ inch equals one ~~(1)~~ foot, and shall be approved by the director before construction begins.

9.1.f.1. This requirement applies to new construction, additions, renovations, or alterations to existing nursing homes.

9.1.g. The submitted drawings and specifications shall be prepared, signed and sealed by a person registered to practice architecture in the ~~State~~ state of West Virginia.

9.1.g.1. The project shall be inspected during the construction phase by a registered professional architect or his or her representative.

9.1.h. The requirement for a registered architect may be waived by the director depending on the scope of the project.

9.1.i. A nursing home shall submit complete architectural drawings and specifications for any alterations, renovations, and equipment modifications or additions which may necessitate changes to the nursing home floor plan, impact on safety, or require the services of a design professional, and shall be approved by the director prior to beginning any construction.

9.1.j. Minor renovations that do not alter floor plans, impact on safety or require the services of a design professional may not require approval of the director.

9.1.k. A performance statement shall be obtained by the owner from the builder and design professional of a proposed nursing home stating that in constructing the nursing home the builder has followed the plans which are on file with and approved by the director.

9.1.l. All new facilities, additions, and alterations shall be inspected by the director and shall have the director's approval in writing prior to admitting residents.

9.1.l.1. A nursing home shall request in writing a pre-opening inspection no less than thirty (30) days prior to the proposed opening date.

9.1.m. All fees specified in the Division of Health rule, "~~Fees for Services,~~" Fees for Services, 64CSR51, for site inspections of new construction or major renovations, architectural review of drawings and specifications, and inspections of new projects prior to opening are the responsibility of the nursing home or design professional.

9.1.n. Unless substantial construction is started within one (1) year of the date of approval of final drawings, the owner or architect shall secure written notification from the director that the plan approval for construction is still valid and in compliance with this rule.

## 9.2. Site Characteristics and Accessibility.

9.2.a. Sites for all new nursing homes and sites for additions to existing nursing homes shall be inspected by the director prior to site development and the completion of final drawings and specifications.

9.2.b. The site shall be located in an environment that is free from flooding and excessive noise sources such as railroads, freight yards, traffic arteries and airports.

9.2.b.1. The site shall not be exposed to excessive smoke, foul odors or dust.

9.2.c. The site shall have good drainage, approved sewage disposal, an approved potable water supply, electricity, telephone and other necessary utilities available on or near the site.

9.2.d. The site shall be accessible to physicians, emergency services and other necessary services.

9.2.e. Accessibility and transportation to the site and the nursing home shall be facilitated by paved, hard surfaced, all weather roads which are kept passable at all times.

9.2.e.1. The road shall connect directly to a paved hard surface highway.

9.2.e.2. Grades to all sites shall permit access for emergency vehicles and ~~fire-fighting~~ firefighting equipment in all weather conditions.

9.2.f. Parking areas shall be sufficient according to the ~~guidelines set by the American Institute of Architects.~~ latest edition of the Guidelines for Design and Construction of Health Care Facilities according to the Facilities Guidelines Institute (FGI) and published by American Society for Healthcare Engineering (ASHE).

9.2.g. Hard surface walks, a minimum of ~~forty-eight (48)~~ inches wide with a slip resistant surface, shall be provided at all entries and exits and connect into the main walk or parking area.

9.2.h. Soil conditions shall be reviewed as necessary by a qualified soils engineer and if conditions require, earth core boring shall be conducted.

9.2.h.1. The design professional shall supply the director with copies of soil test reports if engineered fill is installed or if other soil tests are conducted.

9.2.i. Local building codes and zoning restrictions shall be followed.

9.2.i.1. The owner, or his or her designee, shall maintain documentation certifying compliance signed by local fire, building and zoning officials, and this documentation shall be available for review.

9.3. Increase in Bed Capacity.

9.3.a. Bed capacity may be increased after the director has determined that the nursing home physical facilities will support the increase and there is compliance with other requirements including certificate of need requirements.

9.4. Equipment and Furnishings in Resident Rooms.

9.4.a. A nursing home shall provide each resident with a bed that accommodates his or her individual needs.

9.4.b. A nursing home shall provide each resident with a night stand that has a drawer for toilet articles and utensils.

9.4.c. The nursing home shall provide a chair for each resident that accommodates the resident's individual needs.

9.4.d. The nursing home shall provide each resident with reasonable closet and drawer space for clothing and personal items.

9.4.d.1. Shelves and drawers shall be positioned at a height that accommodates the needs of the individual resident.

9.4.e. Each resident shall have individual towel bars or an equivalent. In semi-private rooms towel bars shall be located to encourage individual use.

~~9.4.f. A nursing home shall provide cubicle curtains or other physical barriers that assure visual privacy for each resident.~~

~~9.4.g.~~ 9.4.f. A nursing home shall provide window dressings and curtains or draperies, maintained in good condition.

9.4.g. The provisions of this subsection shall be liberally construed to allow the nursing home to provide reasonable accommodations in accordance with the individual needs and preferences of each resident.

#### 9.5. Laundry and Linens.

9.5.a. A nursing home shall have written procedures for handling, storing, processing, and transporting linens and other laundered goods in a manner to prevent the spread of infection.

9.5.b. A nursing home shall provide at least one clean, comfortable pillow for each bed and additional pillows shall be available.

9.5.c. A nursing home shall provide clean waterproof mattresses or mattress covers that are non-absorbent.

9.5.d. Sufficient supplies of linens shall be available to nursing personnel to assure the cleanliness and comfort of each resident.

9.5.e. The nursing home shall provide each resident with individual towels, wash cloths, and blankets.

9.5.f. When electric blankets are used, they shall be UL approved and checked periodically by the nursing home's staff for safety.

#### 9.6. Nursing Equipment and Sterile Supplies.

9.6.a. A nursing home shall have the sufficient quantity and type of nursing equipment to meet the individual care needs for each resident.

9.6.b. All electrical resident care equipment shall be maintained, inspected and tested in accordance with the manufacture recommendations, and the applicable sections of the "National Fire Protection Association NFPA 99 Standard for Health Care Facilities".

9.6.c. All non-electrical equipment used for inhalation therapy (oxygen) shall be stored and maintained in accordance with the applicable sections of the "National Fire Protection Association NFPA 99 Standard for Health Care Facilities."

9.6.d. If a nursing home provides electrical life support services, all electrical equipment used to sustain life shall be connected to an emergency generator, through a critical branch electrical system.

9.6.d.1. The generator and all critical branch electrical circuits shall comply with the standards as identified in the "National Fire Protection Association NFPA 99 Standard for Health Care Facilities."

9.6.e. All equipment shall be maintained in accordance ~~with section 8.19~~ with the provisions of this rule.

9.6.f. Clean nursing equipment and sterile supplies shall be stored in a clean work room or store room that does not permit resident contact.

9.6.g. Sterile supplies shall not be stored under sink drains, in soiled utility rooms or in areas where contamination may occur.

9.6.h. Sterile supplies shall not be stored nor used beyond their dated shelf life.

9.6.i. Damaged supplies and utensils shall not be used.

#### 9.7. General Maintenance and Housekeeping.

9.7.a. A nursing home shall be constructed, maintained and equipped to protect the health and safety of residents, personnel, and the public.

9.7.b. All new nursing homes shall establish and maintain the nursing home and equipment in accordance with the most recent edition ~~guidelines in the 1996-1997 Edition~~ of the Guidelines for Design and Construction of Hospitals and Health Care Facilities. ~~as recognized by The American Institute of Architects for Health.~~ All new nursing homes shall establish and maintain the nursing home and equipment in accordance with ~~the guidelines in the 1996-1997 Edition~~ the most recent edition of the Guidelines for Design and Construction of Hospitals and Health Care Facilities ~~as recognized by The American Institute of Architects for Health.~~

~~9.7.c. All existing nursing homes shall establish and maintain the nursing home and equipment in accordance with the guidelines referenced in the Minimum Requirements of Construction and Equipment for Hospitals and Medical Facilities - U.S. Department of Health Education and Welfare (DHEW NO. (HRA) 81-14500).~~

9.7.d.c. A nursing home shall establish and implement a maintenance program that assures that:

9.7.d.c.1. All equipment is operable and in a safe working condition;

9.7.d.c.2. The interior and exterior of the building is safe; and

9.7.d.c.3. The grounds are maintained in a presentable condition free from rubbish and other health hazards of a similar nature.

9.7.e.d. A nursing home shall establish and implement a housekeeping program and services that assures a clean, sanitary environment.

9.7.f.e. A nursing home shall provide a comfortable, home-like environment for residents.

9.7.g.f. A nursing home shall be kept free of insects, rodents and vermin by an effective pest control program. Insecticidal strips are prohibited.

9.7.h.g. Pesticides shall be applied only by an applicator certified by the United States Department of Agriculture.

9.7.i.h. A nursing home shall have sufficient supplies for housekeeping and maintenance properly stored and conveniently located to permit frequent cleaning of floors, walls, woodwork, windows, and screens, and to facilitate building and grounds maintenance

#### 9.8. Solid Waste and Bio-Hazard Waste Disposal.

9.8.a. A nursing home shall have procedures and contracts for disposing of bio-hazardous waste.

9.8.a.1. Chain of custody receipts and forms shall be maintained by the nursing home for one (~~1~~) year.

9.8.b. A nursing home shall have procedures for disposing of non-hazardous medical waste and similar waste that is not considered hazardous in a safe sanitary manner.

9.8.c. Solid waste, including garbage and refuse, shall be removed from the building daily or more often as necessary.

9.8.d. All garbage and refuse shall be stored in durable, covered, leak-proof and vermin-proof containers or dumpsters.

9.8.d.1 The containers and dumpsters shall be kept clean of all residue accumulation.

9.8.e. All garbage and refuse shall be disposed of in accordance with the applicable provisions of state and local law and rules governing the management of garbage and refuse.

9.9. Water Supply.

9.9.a. A nursing home shall have a water supply that is safe and of sufficient capacity to meet the residents' needs and the requirements of the sprinkler system.

9.9.b. A nursing home shall have as its source of water a public water system that complies with West Virginia Division of Health Rules, Public Water Systems, 64CSR3, or a water well that complies with West Virginia Division of Health Rules, Water Well Regulations, 64CSR19 and Water Well Design Standards, 64CSR46.

9.9.c. A nursing home shall have hot and cold running water in sufficient supply to meet the needs of the residents.

9.9.d. Hot water distribution systems serving resident care areas shall be recirculating to provide continuous hot water at each hot water outlet.

9.9.d.1. The temperatures shall be appropriate for comfortable use but shall not exceed ~~110°~~ 110 degrees.

9.9.e. A nursing home shall have written agreements with water suppliers to deliver water when there is a loss of the normal supply.

9.10. Sewage Disposal.

9.10.a. Sewage disposal shall be in accordance with West Virginia Division of Health Rules, Sewage System Rules, and West Virginia Division of Health Rules, Sewage Treatment and Collection System Design Standards, 64CSR47.

9.10.b. The sewage system shall be adequate to meet the nursing home's needs.

9.10.c. Sewage systems shall be kept in good working order and shall be properly operated and maintained.

9.11. Fire Safety, Disaster and Emergency Preparedness.

9.11.a. A nursing home shall provide evidence of compliance with applicable rules of the State Fire Commission.

9.11.a.1. Any variation to compliance with the fire code shall be coordinated with the department and approved in writing by the state fire marshal.

9.11.b. A nursing home shall have a written internal and external disaster and emergency preparedness plan approved by the director that sets forth procedures to be followed in the event of an internal or external disaster or emergency that could severely affect the operation of the nursing home.

9.11.c. The disaster and emergency preparedness plan shall have procedures to be followed in the event of the following: fire, missing resident, high winds, tornadoes, bomb threats, utility failure, flood and severe winter weather.

9.11.d. The disaster and emergency preparedness plan shall include at least an alternate shelter agreement, an emergency transportation policy, and an emergency food supply list and menu that will provide nutrition for all persons residing in the nursing home for a minimum of ~~seventy-two (72)~~ hours.

9.11.e. The disaster and emergency preparedness plan shall be developed and maintained with the assistance of qualified fire safety and other emergency response teams.

9.11.f. There shall be copies of the disaster and emergency preparedness plan at all staff stations or emergency control stations.

9.11.f.1. The disaster and emergency preparedness plan shall be located in an area that allows visual contact at all times. The nursing home staff shall know the location of the plan at all times.

9.11.g. The local fire department shall be provided with a floor and disaster plan and be given opportunities to become familiar with the nursing home.

9.11.h. A nursing home shall have a written plan and procedures for transferring casualties and uninjured residents.

9.11.h.1. These procedures shall include the transfer of pertinent resident records including identification information, diagnoses, allergies, advance directives, medications and treatments, and other records needed to ensure continuity of care.

9.11.i. A nursing home shall have written instructions regarding the location and use of alarm systems, signals and ~~fire fighting~~ firefighting equipment.

9.11.j. A nursing home shall have information regarding methods of fire containment.

9.11.k. A nursing home shall have written instructions regarding accessibility for evacuation routes.

9.11.l. The disaster and emergency preparedness plan shall be reviewed and updated by the administrator or his or her designee on an annual basis and signed and dated by the administrator or his or her designee to verify the plan was reviewed.

9.11.m. Emergency call information shall be conspicuously posted near each telephone in the nursing home, exclusive of telephones in resident rooms. This information shall include at least the following:

9.11.m.1. The telephone numbers of the fire department, the police, and ambulance service and other appropriate emergency services; and

9.11.m.2. Key personnel telephone numbers, including at least the following:

- 9.11.m.2.A. The administrator;
- 9.11.m.2.B. The director of nursing or nurse on call;
- 9.11.m.2.C. The maintenance director or safety director;
- 9.11.m.2.D. The physician on call; and
- 9.11.m.2.E. Other appropriate personnel.

9.11.n. A nursing home shall have at least one non-coin operated telephone or one extension on each resident occupied unit and additional telephones and extensions if needed to summon help in case of an emergency.

9.11.o. A nursing home shall provide an area of sufficient space to hold the congregate population of the nursing home with a heat source that is supplied with emergency electrical power from the emergency power source.

#### 9.12. Disaster Training.

9.12.a. A nursing home shall operate an internal disaster preparedness program that includes orientation and ongoing training and drills in procedures and specific assignments.

9.12.b. The internal disaster plan shall be rehearsed at least annually.

9.12.c. Fire drills shall be held at least quarterly for each shift.

9.12.d. Disaster Rehearsal and Fire Drill Reports. A nursing home shall keep on file for at least two (2) years, a dated written report and an evaluation of each disaster rehearsal and fire drill conducted on the premises.

#### 9.13. Animals.

9.13.a. Any nursing home where animals visit or are boarded shall have policies that assure the general well-being of residents as approved by the director. The policies shall comply with local health ordinances.

### § 64-13-10. Administration.

10.1. A nursing home shall be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

#### 10.2. Licensure.

10.2.a. A nursing home shall be licensed ~~pursuant to section 3~~ under the provisions of this rule.

10.2.b. A nursing home shall operate and provide services in compliance with all applicable federal, state, and local laws, rules, and codes and with accepted professional standards and principles that apply to professionals providing services in a nursing home.

10.3. Governing Body.

10.3.a. A nursing home shall have a governing body.

10.3.b. The governing body shall adopt and enforce rules governing the health care and safety of residents, the protection of their personal and property rights, and the operation of the nursing home.

10.3.c. The governing body shall develop a written nursing home plan that will be reviewed annually. In addition to the other requirements described in law and in this rule, the nursing home plan shall include:

10.3.c.1. An annual operating budget, including all anticipated income and expenses; and

10.3.c.2. A capital expenditure plan for at least a ~~three~~ {3} year period.

10.3.d. The governing body shall assure the development and maintenance of written policies and procedures that govern the services the nursing home provides.

10.3.d.1. The policies and procedures shall include as a minimum all policies and procedures required by this rule.

10.3.d.2. A copy of each written policy and procedure shall be available for inspection on request by the nursing home's staff and residents and by members of the public.

**§ 64-13-11. Human Resources.**

11.1. Professional Staff.

11.1.a. A nursing home shall employ on a full-time, part-time or consultant basis those professionals necessary to carry out the provisions of this rule.

11.2. Professional Qualifications.

11.2.a. Professional staff shall be licensed, certified, or registered in accordance with applicable laws.

~~11.3. Criminal Background Checks.~~

~~11.3.a. A nursing home shall conduct a criminal conviction investigation on all applicants for employment.~~

~~11.3.b. If an applicant has been convicted of a misdemeanor or a felony offense constituting child abuse or neglect or abuse or neglect of an incapacitated adult, he or she may not be employed by a nursing home.~~

~~11.3.c. An applicant may also not be employed by the nursing home if he or she is under indictment for, or convicted of, in any court of a crime punishable by imprisonment for more than one year or is a fugitive from justice.~~

### 11.3. Criminal Background Checks.

#### 11.3.a. Pre-Screening.

11.3.a.1. A nursing home shall prescreen all direct access personnel applicants considered for hire for negative findings by way of an internet search of registries and licensure databases through the department's designated website. The secretary may charge a fee for its use

11.3.a.2. A nursing home shall ensure that all independent health contractors who provide direct access personnel prescreen their applicants considered for hire for negative findings by way of an internet search of registries and licensure databases through the department's designated website. The secretary may charge a fee for its use.

#### 11.3.b. Fingerprinting.

11.3.b.1. If the applicant has a negative finding on any required registry or licensure database, the nursing home shall notify the applicant of such finding and shall not employ that applicant.

11.3.b.2. If the applicant does not have a negative finding in the prescreening process, and the nursing home or independent health contractor, if applicable, is considering the applicant for employment, the applicant shall submit to fingerprinting for a state and federal criminal history record information check, and may be employed as a conditional employee subject to the provisions of this rule.

11.3.b.3. Applicants considered for hire shall be notified by the hiring entity that their fingerprints will be retained by the State Police Criminal Identification Bureau and the Federal Bureau of Investigation to allow for updates of criminal record information.

11.3.b.4. An applicant who has gone through the criminal background check process described by the provisions of this rule, but has not been employed by a nursing home for five years, must submit new fingerprints and obtain a new employment fitness determination from the secretary.

#### 11.3.c. Employment Fitness Determination.

11.3.c.1. After an applicant's fingerprints have been compared with the state and federal criminal history information, the State Police shall notify the secretary of the results for the purpose of making an employment fitness determination.

11.3.c.2. If the secretary's review of the criminal history record information reveals the applicant does not have a disqualifying offense pursuant to W. Va. Code § 16-5C-21 et seq., the applicant may be employed.

11.3.c.3. If the secretary's review of the criminal history record information reveals a conviction of a disqualifying offense, the applicant may not be employed, unless a variance has been requested or granted.

11.3.c.4. The secretary shall provide written notice of the employment fitness determination to the nursing home or independent health contractor, if applicable, but shall not disseminate the criminal history record information.

11.3.c.5. The nursing home shall maintain a copy of the written notice of the eligible fitness determination in the applicant's personnel file.

11.3.d. Conditional Employees.

11.3.d.1. Conditional basis employment for no more than 60 days may occur when:

11.3.d.1.A. An applicant does not have a negative finding on a required registry or licensure database, and the employment fitness determination is pending the criminal history record information; or

11.3.d.1.B. An applicant has requested a variance of the employment fitness determination and that a decision is pending.

11.3.d.2. All conditional employees shall receive direct on-site supervision by the nursing home until an eligible fitness determination is received.

11.3.d.3. The conditional employee, pending the employment fitness determination, must affirm, in a signed statement, that he or she has not committed a disqualifying offense, and acknowledge that a disqualifying offense shall constitute good cause for termination. Conditional employees who have requested a variance shall not be required to sign such a statement.

11.3.e. Variance.

11.3.e.1. The applicant, or the nursing home or independent health contractor, if applicable, on the applicant's behalf, may file a written request for a variance of the fitness determination with the secretary.

11.3.e.2. The secretary may grant a variance if mitigating circumstances surrounding the negative finding or disqualifying offense is provided, and the secretary finds that the individual will not pose a danger or threat to residents or their property, or both.

11.3.e.3. Mitigating circumstances may include:

11.3.e.3.A. The passage of time;

11.3.e.3.B. Extenuating circumstances such as the applicant's age at the time of conviction, substance abuse, or mental health issues;

11.3.e.3.C. A demonstration of rehabilitation such as character references, employment history, education, and training; and

11.3.e.3.D. The relevancy of the particular disqualifying information with respect to the type of employment sought.

11.3.e.4. The secretary shall mail to the applicant and the nursing home or independent health contractor, if applicable, a written decision within 60 days of receipt of the request indicating whether a variance has been granted or denied.

11.3.f. Appeals.

11.3.f.1. If the applicant believes that his or her criminal history record information within the state of West Virginia is incorrect or incomplete, he or she may challenge the accuracy of such information by writing to the State Police for a personal review.

11.3.f.2. If the applicant believes that his or her criminal history record information from outside the state of West Virginia is incorrect or incomplete, he or she may appeal the accuracy of such information by contacting the Federal Bureau of Investigation for instructions.

11.3.f.3. If the purported discrepancies are at the charge or final disposition level, the applicant must address this with the court or arresting agency that submitted the record to the State Police.

11.3.f.4. The applicant shall not be employed during the appeal process.

11.3.g. Responsibility of the Nursing Home.

11.3.g.1. Record Retention. A nursing home shall maintain the following documents related to the background checks for all direct access personnel working in the facility, including:

11.3.g.1.A. Documents establishing that an applicant has no negative findings on registries and licensure databases.

11.3.g.1.B. The Secretary's eligible employment fitness determination;

11.3.g.1.C. Any variance granted by the Secretary, if applicable; and

11.3.g.1.D. For conditional employees, the nursing home shall maintain documentation that establishes that the individual meets the qualifications for conditional employment.

11.3.g.2. Except as otherwise permitted by this rule, the nursing home may not employ an applicant, or engage an independent health contractor, prior to completing the background check process.

11.3.g.3. Failure of the nursing home to maintain background check documentation that all direct access personnel are eligible to work or employing an applicant or engaging an independent contractor who is ineligible to work may subject the nursing home to civil money penalties.

#### 11.3.h. Change in Employment.

11.3.h.1. If an individual applies for employment at a subsequent nursing home, the applicant is not required to submit to fingerprinting and a criminal background check if:

11.3.h.1.A. The individual previously submitted to fingerprinting and a full criminal background check as required by this rule;

11.3.h.1.B. The prior criminal background check confirmed that the individual did not have a disqualifying offense;

11.3.h.1.C. The individual received prior approval from the secretary to work for or with the nursing home or independent health contractor, if applicable; and

11.3.h.1.D. No new criminal activity that constitutes a disqualifying offense has been reported.

11.3.h.2. The secretary shall provide a copy of the employment fitness determination upon request by a subsequent nursing home.

#### 11.4. Use of Outside Resources.

11.4.a. If a nursing home does not employ a qualified professional person to furnish a specific service to be provided by the nursing home, the nursing home shall have that service furnished to residents by a person or agency outside the nursing home under an arrangement or an agreement as described in 42 U.S.C. § 1395x(w) or an agreement as described in ~~Subsection 11.2 of~~ within this rule, and services shall meet the ongoing identified needs of residents to ensure implementation of the plan of care and to avoid unnecessary duplication of services.

11.4.b. Under arrangements as described in 42 U.S.C. § 1395x(w) or written agreements pertaining to services furnished by outside resources, the nursing home is responsible for the following:

11.4.b.1. Obtaining services that meet professional standards and principles that apply to professionals providing services in a nursing home; and

11.4.b.2. The timeliness of the services.

#### 11.5. Staff Development.

11.5.a. All personnel shall attend and participate in regularly scheduled in-service training programs developed for the staff by either nursing home personnel or outside resources. The purpose of the in-service program shall be to:

11.5.a.1. Plan and organize a system of training that begins with an orientation program and continues throughout employment with scheduled in-service training programs;

11.5.a.2. Develop in each employee an awareness of his or her abilities and limitations in providing care for residents; and

11.5.a.3. Develop the abilities of each employee by an in-depth review of operational policies and procedures, instruction of methods and procedures to follow in implementing assigned duties as it relates to a specific job description, and to provide current information that will assist in providing quality care.

11.5.b. A nursing home shall maintain records of attendance, and if absences occur shall schedule a make-up class to be completed.

11.5.c. A nursing home shall complete a performance review of every employee at least once every ~~twelve (12)~~ months and provide regular in-service education based on the outcome of these reviews. The in-service training shall:

11.5.c.1. Be sufficient to ensure the continuing competence of ~~certified~~ registered nursing assistants, but shall be no less than ~~twelve (12)~~ hours per year;

11.5.c.2. Address areas of weakness as determined in the employee's evaluation and may address the special needs of residents as determined by the nursing home staff;

11.5.c.3. For nursing staff providing services to residents with cognitive impairments, also address the care of the cognitively impaired; and

11.5.c.4. Include in-service instruction to all personnel on the following:

11.5.c.4.A. The problems and needs of the aged, ill and disabled;

11.5.c.4.B. The prevention and control of infections;

11.5.c.4.C. Disaster preparedness and fire and safety rules;

11.5.c.4.D. Accident prevention;

11.5.c.4.E. Confidentiality of resident information;

11.5.c.4.F. Protection of a resident's privacy and personal property rights, and dignity and protection of residents' rights,

11.5.c.4.G. Complaint procedures, abuse, neglect, and misappropriation of personal property.

11.5.c.5. The nursing home shall provide training to all new employees, staff, and independent health contractors used by the nursing home, within ~~thirty (30)~~ days of employment or the next regularly scheduled orientation program, whichever occurs first, on ~~alzheimer's~~ Alzheimer's disease and other dementias. The training shall be a minimum of two ~~(2)~~ hours in duration and shall include all of the following: a basic explanation of how the disease process affects persons with ~~alzheimer's~~ Alzheimer's disease and other dementias; communication approaches and techniques for use when interacting with persons with ~~alzheimer's~~ Alzheimer's disease or other dementias; prevention and management of problem behaviors; and activities and programming appropriate for these individuals.

11.5.c.6. The nursing home shall provide training on ~~alzheimer's~~ Alzheimer's disease and other dementias to all employees, staff, and independent health contractors used by the nursing home each calendar year. The training shall be a minimum of two ~~(2)~~ hours in duration and shall include all of the following: a basic explanation of how the disease process affects persons with ~~alzheimer's~~ alzheimer's Alzheimer's disease and other dementias; communication approaches and techniques for use when interacting with persons with ~~alzheimer's~~ Alzheimer's disease or other dementias; prevention and management of problem behaviors; and activities and programming appropriate for these individuals.

11.6. Personnel Records. A nursing home shall maintain a confidential personnel record for each employee containing the following information:

11.6.a. A dated application

11.6.b. Reference verification;

11.6.c. Results indicating a satisfactory health status for the employees' current job assignment as required in ~~Subsection 8.19~~ within the provisions of this rule.

~~11.6.d. Results of annual physical;~~

~~11.6.e. 11.6.d.~~ Evaluations of work performance;

~~11.6.f. 11.6.e.~~ Current license, registration, or certification status if applicable to the job;

~~11.6.g. 11.6.f.~~ A summary of each employee's in-service training for the previous two years;

~~11.6.h. 11.6.g.~~ Any nursing home specific required forms; ~~and~~

~~11.6.i. 11.6.h.~~ A job description signed by the employee; and

11.6.i. Records required to be retained for criminal background checks as defined by the provisions of this rule.

11.7. Medical Director. A nursing home shall designate, in writing, a physician accountable to the governing body to serve as medical director to ensure that medical care provided to residents is adequate and appropriate.

11.7.a. The medical director is responsible for:

11.7.a.1. Reviewing policies, procedures, and guidelines to ensure adequate, comprehensive services;

11.7.a.2. Coordinating medical care provided, including the attending physician, in the nursing home so it is adequate and appropriate;

11.7.a.3. Assisting in the evaluation of credentialing and re-credentialing of licensed independent practitioners, physicians' assistants and nurse practitioners to determine whether they will be authorized to practice within the organization by recommendation;

11.7.a.4. Approving in-service training programs; and

11.7.a.5. Reviewing and evaluating incident reports or summaries of incident reports, identifying hazards to health and safety, and making recommendations as needed.

#### **§ 64-13-12. Laboratory, Radiology, and Other Diagnostic Services.**

12.1. Laboratory Services.

12.1.a. A nursing home shall provide or obtain laboratory services to meet the needs of its residents. The nursing home is responsible for the timeliness of the services.

12.1.b. If a nursing home provides its own laboratory services, the services shall meet the requirements in the federal regulation, 42CFR Part 493.

12.1.c. If a nursing home arranges for outside laboratory services, the nursing home shall ensure that the laboratory services meet the requirements in the federal regulation, 42CFR Part 493.

12.1.d. If a nursing home provides blood bank and transfusion services, the nursing home shall ensure that the services are federally certified in the appropriate specialties and sub-specialties of services in accordance with the requirements to which it is subject.

12.1.e. A nursing home shall:

12.1.e.1. Provide or obtain laboratory services only when ordered by a physician;

12.1.e.2. Promptly notify the physician of the findings;

12.1.e.3. Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

12.1.e.4. File laboratory reports in the resident's clinical record that are dated and contain the name and address of the testing laboratory.

**12.2. Radiology and Other Diagnostic Services.**

12.2.a. A nursing home shall provide or obtain radiology and other diagnostic services to meet the needs of its residents. The nursing home is responsible for the timeliness of the services.

12.2.b. If a nursing home provides its own diagnostic services, the services shall meet the applicable licensing and certification requirements established for those services.

12.2.c. If a nursing home does not provide its own diagnostic services, it shall have an agreement to obtain these services from a provider or supplier that meets all applicable licensing and certification requirements established for those services.

12.2.d. A nursing home shall:

12.2.d.1. Provide or obtain radiology and other diagnostic services only when ordered by the attending physician;

12.2.d.2. Promptly notify the physician of the findings,

12.2.d.3. Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

12.2.d.4. File in the resident's clinical record signed and dated reports of x-ray and other diagnostic services, with the name and address of the provider of the service.

**§ 64-13-13. Clinical Records.**

**13.1. Records Maintenance and Retention.**

13.1.a. A nursing home shall maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

13.1.a.1. Complete;

13.1.a.2. Accurately documented;

13.1.a.3. Readily accessible; and

13.1.a.4. Systematically organized.

13.1.b. All of a resident's clinical records shall be retained for the longer of the following time periods:

13.1.b.1. Five ~~(5)~~ years from the date of discharge or death; or

13.1.b.2. For a minor, three ~~(3)~~ years after a resident reaches ~~eighteen (18)~~ years of age.

13.1.c. A nursing home shall safeguard clinical record information against loss, destruction, or unauthorized use.

13.1.d. A nursing home shall ensure that each clinical record contains a photograph of the resident, unless the resident objects.

13.2. Confidentiality. A nursing home shall keep all information contained in the resident's clinical record confidential, ~~except~~ unless the resident, or applicable legal representative, authorizes disclosure or when release is required by:

13.2.a. Transfer to another health care institution;

13.2.b. Law;

13.2.c. Third party payment contract; or

13.2.d. The resident.

13.3. Contents. The clinical record shall contain:

13.3.a. Sufficient information to identify the resident;

13.3.b. All the resident's assessments;

13.3.c. The resident's plan of care and services provided;

13.3.d. The results of any pre-admission screening conducted by the State;

13.3.e. Progress notes; ~~and~~

13.3.f. Physician orders; and

13.3.g. Documents describing the authority of any legal representative.

#### **§ 64-13-14. Quality Assessment and Assurance.**

14.1. Quality Improvement Committee.

14.1.a. A nursing home shall maintain a quality improvement and assessment committee consisting of:

14.1.a.1. The director of nursing services;

14.1.a.2. The medical director; and

14.1.a.3. At least three ~~(3)~~ other members of the nursing home's staff.

14.1.b. The quality improvement and assessment committee shall:

14.1.b.1. Meet at least quarterly to identify issues of quality assessment and improvement activities;

14.1.b.2. Develop and implement appropriate plans of action to correct identified quality deficiencies;

14.1.b.3. Continuously measure, assess, and improve all important resident care and nursing home functions;

14.1.b.4. Collect and review outcome data and use it to systematically benchmark the level of quality with that of other extended care providers; and

14.1.b.5. Collect and review resident satisfaction.

14.2. Disclosure of Records. The ~~State~~ director may not require disclosure of the quality improvement committee records insofar as the disclosure is related to the compliance with the requirements of this section.

14.3. Sanctions.

14.3.a. The ~~agency~~ director shall not use good faith attempts as documented by a nursing home's committee to identify and correct areas of concern or deficiencies as a basis for citing a new deficiency or as a basis for sanctions.

#### **§64-13-15. Inspections and Investigations.**

15.1. Regular Inspections.

15.1.a. The director shall make or cause to be made inspections by his or her authorized representatives as necessary to carry out the intent of W. Va. § 16-5C-1 et seq. and this rule.

15.1.b. All licensed nursing homes shall be inspected annually, or in accordance with ~~Section 17~~ of the provisions of this rule to determine the nursing homes' compliance with applicable statutes and rules.

15.1.b.1. Nursing homes with the greatest number of deficiencies shall be investigated with greater frequency as determined by the director.

15.1.c. The director shall provide a nursing home with a written description of its deficiencies within ~~ten~~ ~~(10)~~ working days of the last day of the inspection.

15.2. Complaint Investigation.

15.2.a. Any person may register a complaint with the director alleging violation of applicable statutes and rules by a nursing home.

15.2.a.1. The director shall document all complaints and shall identify the nursing home involved.

15.2.b. A complaint that the director determines is willfully intended to harass a nursing home or is without any reasonable basis shall not be investigated.

15.2.b.1. The director shall notify a complainant presenting a complaint determined either as intended to harass a nursing home or as without reasonable basis that no further investigation will be conducted.

15.2.c. The director shall conduct an unannounced inspection of the nursing home to determine the validity of the complaint.

15.2.c.1. The director shall provide the nursing home with general notice of the substance of the complaint only at the time of the inspection.

15.2.d. The director shall conduct other investigations necessary to determine the validity of the complaint.

15.2.e. No later than ~~that~~ than ~~twenty~~ (20) working days after investigating and completing a complaint, the director shall notify the complainant and the nursing home in writing of the results of the investigation.

~~15.2.e.1. A description of the corrective action the nursing home shall be required to take and of any disciplinary action to be taken by the director shall be sent to the complainant.~~

~~15.2.e.2. If a complaint has been found to be substantiated, the director shall advise any injured party of the possibility of a civil remedy under W. Va. Code § 16-5C-1 et. seq.~~

15.2.f. The names of a complainant or of any person named in a complaint shall not be disclosed by the department without that person's written authorization.

15.2.f.1. If a complaint becomes the subject of a judicial proceeding, nothing in this section shall be construed to restrict disclosure of information that would otherwise be disclosed in a judicial proceeding.

15.2.g. Before any complaint is disclosed to a nursing home or the public pursuant to ~~Subdivision 16.2.v. of~~ the provisions of this rule, the nursing home shall redact any information in the complaint that could reasonably identify the complainant or a resident.

15.2.h. A nursing home is prohibited from discharging or in any manner discriminating against a resident or employee because the person, legal representative, next of kin or concerned party has filed a complaint or participated in a proceeding authorized by W. Va. Code §16-5C-1 et seq.

15.2.h.1. A rebuttable presumption of retaliatory action against a resident shall arise against any nursing home that adversely discriminates against a resident who submitted, or on whose behalf a complaint was submitted, to the director or who is involved in any proceeding instituted under W. Va. Code §16-5C-1 et seq., within ~~one hundred and twenty~~ (120) days of the filing of the complaint.

15.2.i. A ~~nursing home~~ director shall make investigations of complaints involving immediate jeopardy to resident health or safety within ~~twenty four~~ (24) hours of the date of receipt of the complaint.

15.2.i.1. A ~~nursing home~~ director shall make investigations of complaints involving harm that does not present immediate jeopardy, within ~~ten~~ (10) days of the date of the complaint.

15.2.i.2. A ~~nursing home~~ director shall make investigations of complaints involving no harm, but with potential for greater than minimal harm, that are not immediate jeopardy, within ~~forty five~~ (45) days of the date of the complaint.

15.2.i.3. A ~~nursing home~~ director shall make investigations of complaints involving no harm with potential for minimal harm and all other complaints at the time of the next inspection.

15.2.j. If within ~~one hundred twenty~~ (120) days of an inspection or a complaint investigation, a nursing home fails to comply with the requirements of this rule, the director shall inform all residents of the nursing home's non-compliance.

15.2.j.1. If the non-compliance results in an action against the license of the nursing home, the director shall notify residents of the time period during which residents may relocate if they wish prior to the deficient nursing home being reported to the Social Security Administration if the nursing home is certified under the Medicare or Medicaid programs.

15.2.j.2. The director shall provide all residents with a list of nursing homes and agencies to assist them in moving if they wish to relocate.

15.2.k. The director shall make copies and information concerning applications, inspections, investigations and other reports available for public inspection from the time of receipt of the plan of correction.

15.2.k.1. A ~~nursing home~~ director shall make copies of all inspection reports available to the state long-term ombudsman, the local office of adult protective services, and the Social Security regional offices.

15.2.l. Within ~~two hundred ten~~ (210) days of an inspection or complaint investigation after which deficiencies are not timely corrected, the director shall send the name and address of the deficient nursing home to the appropriate regional office of the Social Security Administration and identify it as a deficient nursing home.

15.2.m. The director shall provide the State long-term care ombudsman with the following within ninety (90) days:

- 15.2.m.1. A statement of deficiencies reflecting nursing home noncompliance;
- 15.2.m.2. Reports of adverse actions imposed on a nursing home; and
- 15.2.m.3. The date and time of any inspection.

15.3. ~~Informal Dispute Resolution. (Informal Hearing).~~ The director shall offer a nursing home an opportunity for an informal dispute resolution process and an independent informal dispute resolution process so a nursing home may contest a cited deficiency.

~~15.3.a. The director shall offer a nursing home an opportunity for an informal dispute resolution.~~ Informal Dispute Resolution.

15.3.a.1. Documentation for an informal dispute resolution shall be submitted with, but separate from, the plan of correction for existing deficiencies.

15.3.a.2. The request for an informal dispute resolution shall be submitted at the time the plan of correction is submitted for existing deficiencies.

15.3.a.3. The director shall write policy and procedures addressing the manner in which an informal dispute resolution shall be conducted.

15.3.a.4. The policy and procedures for an informal dispute shall be available to the public upon written request.

~~15.3.b.~~ 15.3.a.5. If the director fails to complete an informal dispute resolution in a timely manner it does not delay the effective date of any enforcement action against the nursing home.

~~15.3.c.~~ 15.3.a.6. If during the informal dispute resolution process a nursing home is successful in demonstrating that deficiencies should not have been cited, the director shall remove the deficiencies from the statement of deficiencies and rescind any enforcement action imposed solely as a result of those cited deficiencies.

~~15.3.d.~~ 15.3.a.7. All communications during an informal dispute resolution are confidential and cannot be used by or against the licensee or the director in the event a formal hearing takes place.

15.3.b. Independent Informal Dispute Resolution. The independent informal dispute resolution process shall be implemented as defined in W. Va. Code § 16-5C-12a et seq.

#### **§64-13-16. Enforcement and Due Process.**

##### **16.1. Enforcement: Director's Powers, Duties and Rights.**

16.1.a. The director may invoke penalties against a nursing home violating the provisions of this rule in accordance with the provisions of this rule.

##### **16.2. Enforcement Generally.**

16.2.a. The director may assess civil penalties, and may suspend, revoke, or deny renewal of the license of a nursing home for cause after notice as required by this rule and the provisions of W. Va. Code § 16-5C-1, et seq., or take any other action contemplated by this rule. Cause may include one (1) or more of the following:

- 16.2.a.1. Failure to provide standard quality of care for residents;
- 16.2.a.2. Willfully and knowingly falsifying the material content of resident assessments;
- 16.2.a.3. Failure to submit a plan of correction required by W. Va. Code § 16-5C-1 et seq.;
- 16.2.a.4. Failure to submit a plan of correction that is approved by the director;
- 16.2.a.5. Failure to correct deficiencies within the time frame specified in an approved plan of correction;
- 16.2.a.6. Repeat noncompliance within the same regulatory grouping as defined in this rule;
- 16.2.a.7. Failure to cooperate with or interference with the director or an authorized representative of the director in the inspection of the nursing home;
- 16.2.a.8. Failure to comply with this rule;
- 16.2.a.9. Violation of any provision of this rule that produces immediate jeopardy to the health or safety of residents;
- 16.2.a.10. Violation of the provisions of this rule relative to the discharge of residents or employees because of complaints against the nursing home;
- 16.2.a.11. Use of subterfuge or other dishonest action in applying for an original or renewal license;
- 16.2.a.12. Use of subterfuge or other dishonest action in obtaining the time, date and location of any inspection;
- 16.2.a.13. Abuse of residents;
- 16.2.a.14. Neglect of residents;
- 16.2.a.15. Misappropriation of residents' property; or
- 16.2.a.16. Attempted bribery of any employee or contracted person of the department.

16.3. Formal Hearings and Due Process for Actions of Enforcement.

16.3.a. All formal hearings shall be conducted pursuant to West Virginia Department of Health and Human Resources Legislative Rules, Rules of Procedure for Contested Cases, 64CSR1.

16.3.b. An applicant for a license or a licensee or any other person aggrieved by an order or other action by the director pursuant to this rule or to W. Va. Code § 16-5C-1 et seq., shall have the opportunity for a formal hearing by the director, upon written request to the director in a manner prescribed in West Virginia Department of Health and Human Resources Administrative Rules Rules of Procedure for Contested Case Hearings and Declaratory Ruling, 64CSR1.

16.3.c. A formal hearing pursuant to this rule shall be conducted in accordance with the pertinent provisions of W. Va. Code §§ 29A-4-1 et seq., and 29A-5-1 et seq.

16.3.d. A nursing home may request a formal hearing and seek judicial review pursuant to W. Va. Code §§ 16-5C-12 and ~~13~~ 16-5C-13 et seq. to contest the deficiencies issued by the director, irrespective of whether the deficiency results in the imposition of civil money penalty.

16.3.d.1. The director shall begin an enforcement action to ensure compliance with W. Va. Code § 16-5C-1 et seq., or any rule or order issued thereunder, whenever the director determines that any person:

16.3.d.1.A. Has engaged in, or is engaging in, an act or practice in violation of W. Va. Code § 16-5C-1 et seq., or any rule or order; or

16.3.d.1.B. When it appears to the director that any person has aided, abetted, or caused, or is aiding, abetting or causing such an act or practice; or

16.3.d.1.C. That no action is being taken under federal regulation or that the action does not adequately protect the residents' health or safety.

16.3.d.2. The director shall impose one or more of the following remedies:

16.3.d.2.A. License termination;

16.3.d.2.B. Reduction of bed capacity;

16.3.d.2.C. Ban on new admissions;

16.3.d.2.D. Temporary management;

16.3.d.2.E. Civil money penalties; or

16.3.d.2.F. Closure of the nursing home in emergency situations or transfer of residents, or both.

16.3.e. A nursing home may not avoid cited deficiencies or enforcement actions because it has undergone a change of ownership.

16.4. Ban on New Admissions and Reduction in Licensed Bed Capacity.

16.4.a. The director shall by order place a ban on new admissions, reduce the licensed bed capacity of a nursing home, or both, when on the basis of inspection he or she makes the following findings:

16.4.a.1. The licensee is not providing adequate care under the nursing home's existing bed capacity; and

16.4.a.2. A reduction in licensed bed capacity or a ban on new admissions, or both, would place the nursing home in a position to render adequate care.

16.4.b. A reduction in licensed bed capacity or a ban on new admissions, or both, remains in effect until the nursing home is determined by the director to be in substantial compliance with this rule.

16.4.c. If the residents of the nursing home are in immediate jeopardy regarding their health, safety, welfare or rights, the director may seek an order to transfer residents out of the nursing home as provided for in ~~subsection 4.13~~ under the provisions of this rule.

16.4.d. Any notice to a licensee of reduction in licensed bed capacity or a ban on new admissions shall include the terms of the order, the reasons for the order and a date set for compliance.

#### 16.5. Revocation or Suspension of License.

16.5.a. If the director suspends a nursing home's license, he or she shall also specify the conditions giving rise to the suspension that are to be corrected by the licensee during the period of suspension to entitle the licensee to apply for reinstatement of his or her license.

16.5.a.1. If the director revokes a license, he or she may stay the effective date of the revocation by not more than ~~ninety (90)~~ days upon a showing that the stay is necessary to assure appropriate placement of residents.

16.5.b. The director's order is final unless vacated or modified by court order.

#### 16.6. Immediate Jeopardy or Repeat Deficiency.

16.6.a. The director may enforce this rule, administratively or in court, without first affording an opportunity to correct a deficiency when the director finds either of the following:

16.6.a.1. Violation of this rule jeopardizes the health or safety of a resident; or

16.6.a.2. The violation is a repeat deficiency which has caused harm to a resident.

16.6.b. The suspension, expiration, forfeiture or cancellation by operation of law or order of the director of a license issued by the director shall not deprive the director of the authority as provided by law and this rule to take any of the following actions:

16.6.b.1. Institute or continue a disciplinary proceeding;

16.6.b.2. Institute or continue a proceeding for the denial of license application;

16.6.b.3. Enter an order denying a license application; or

16.6.b.4. Take any other disciplinary action as provided by state law or rules.

16.6.c. Withdrawal of a license application shall not deprive the director of the right to penalize the applicant on any other ground using any authority otherwise provided by law or this rule.

16.7. Procedure for Civil Penalties.

16.7.a. Assessment and application of civil penalties.

16.7.a.1. The director shall assess and apply penalties for violations of this rule in accordance with the provisions W. Va. Code § 16-5C-1 et seq., and this rule.

16.7.a.2. Upon completion of a report of inspection, the director shall determine what civil money penalties he or she shall assess.

16.8. Notice of Civil Money Penalty.

16.8.a. The director shall send to the nursing home a certified written notice of intent to impose a civil money penalty including the basis for imposing the civil money penalty.

16.8.a.1. The notice shall include:

16.8.a.1.A. The nature of the noncompliance;

16.8.a.1.B. The statutory basis for the civil money penalty;

16.8.a.1.C. The amount of the civil money penalty;

16.8.a.1.D. Any factors that were considered when determining the amount of the civil money penalty;

16.8.a.1.E. When the civil money penalty is due; an

16.8.a.1.F. Instructions for responding to the notice, including a statement of the nursing home's right to a hearing, and the implications of waiving a hearing.

16.9. Amount of Civil Money Penalty.

16.9.a. Civil money penalties assessed against licensed nursing homes may not be less than ~~five dollars~~ (\$50) nor more than ~~eight thousand dollars~~ (\$8,000):

16.9.a.1. The director may not assess a civil money penalty against a nursing home that corrects the violation of the rule within ~~twenty~~ (20) days of receipt of written notice of the violation,

unless it is a repeat deficiency or the nursing home is a poor performer when a civil money penalty can be assessed immediately.

16.9.b. Hearing and Due Process for a Civil Money Penalty.

16.9.b.1. A nursing home shall, within sixty (60) days from receipt of the notice of an initial, reconsidered, or revised determination of the director, submit any request for a hearing on the determination of the noncompliance that is the basis for imposition of the civil money penalty. For good cause shown, a hearing examiner may extend the time for filing the request for hearing.

16.9.b.2. If a nursing home requests a hearing within the time specified in this rule, the director shall collect the civil money penalty within ~~fifteen (15)~~ days of a final adjudication that upholds the director's determination of non-compliance.

16.9.b.3. If a nursing home waives its right to a hearing in accordance with this rule, the director shall collect the civil money penalty within ~~seventy-five (75)~~ days of the notice of determination of the director.

16.9.b.4. If the nursing home waives its right to a hearing, the civil money penalty shall be reduced by ~~thirty-five percent (35%)~~ by the director.

16.9.c. If a civil money penalty is assessed by the federal ~~Health Care Financing Administration Centers for Medicare and Medicaid Services (CMS)~~ or the State Medicaid Agency for the same deficiency, the director shall reduce any State civil money penalty by the amount of the federal civil money penalty in calculating the amount owed.

16.9.d. Cumulative Remedies.

16.9.d.1. The civil money penalties and remedies provided by W. Va. Code ~~§16-5C-15~~ § 16-5C-1 et seq. are cumulative and are in addition to all other penalties and remedies provided by law.

16.9.d.1.A. For a violation that presents immediate jeopardy to the health, safety or welfare of one ~~(1)~~ or more residents, the director may impose a civil money penalty of not less ~~that~~ than ~~three thousand (\$3,000)~~ dollars nor more than ~~eight thousand dollars (\$8,000)~~.

16.9.d.2. For a violation that actually harms one ~~(1)~~ or more residents, the director may impose a civil money penalty of not less than ~~one thousand dollars (\$1,000)~~ nor more than ~~three thousand dollars (\$3,000)~~.

16.9.d.3. For a violation that has the potential to harm one ~~(1)~~ or more residents, the director may impose a civil money penalty of not less than ~~fifty dollars (\$50)~~ nor more than ~~one thousand dollars (\$1,000)~~.

16.9.d.4. For a repeat deficiency, the director may impose a civil money penalty of up to ~~one hundred fifty percent (150%)~~ of the penalties ~~provided in paragraphs (1.A.), (2.A.) and (d.3.) of this Subdivision.~~ under the provisions of this rule.

16.9.d.5. If no plan of correction is submitted as established in this section, the director may assess a civil money penalty in the amount of ~~one hundred dollars (\$100)~~ a day unless the nursing home has provided a reasonable explanation for the violation that has been accepted by the director.

16.9.d.6. If a deficiency for which an acceptable plan of correction has been provided to the director is not corrected upon revisit to the nursing home, the deficiency shall be regarded as a repeat deficiency.

16.9.d.7. Residents, residents' families or legal representatives, and ombudsmen may also independently pursue violations of this rule in court. Any waiver by a resident or his or her legal representative of the right to commence an action under W. Va. Code ~~§16-5C-15~~, § 16-5C-1 et seq., whether oral or in writing, is void as contrary to public policy.

#### 16.10. Civil Money Penalty Procedures After Termination of a License.

16.10.a. In the case of termination of a nursing home license, the director shall send the civil money penalty information after the:

16.10.a.1. Final administrative decision is made;

16.10.a.2. Nursing home has waived its right to a hearing; or

16.10.a.3. Time for requesting a hearing has expired and the director has not received a hearing request from the nursing home.

16.10.b. A civil money penalty payment is due ~~fifteen (15)~~ days after:

16.10.b.1. A final administrative decision;

16.10.b.2. The time period for requesting a hearing has expired;

16.10.b.3. Receipt of the written request to waive a hearing; or

16.10.b.4. The effective date of termination of a license.

#### 16.11. Civil Money Penalty for Notification of Inspection.

16.11.a. The director shall assess a civil money penalty not to exceed ~~two thousand dollars (\$2,000)~~ against any person who notifies, or causes to be notified, a nursing home of the time or date on which an inspection is scheduled to be conducted.

#### 16.12. Interest on Civil Penalties.

16.12.a. The assessment for penalties and for costs of actions taken under W. Va. Code § 16-5C-1 et seq., shall accrue interest at the rate of five percent (~~5%~~) per annum beginning ~~thirty (30)~~ days after receipt of notice of the assessment or after receipt of the director's final order following a hearing, ~~which ever~~ whichever is later.

16.12.b. All assessments against a nursing home that are unpaid shall be added to the nursing home's licensure fee and may be filed as a lien against the property of the licensees or operators of the nursing home.

16.13. Action for Recovery of Civil Penalties.

16.13.a. The director shall, in a civil judicial proceeding, recover any unpaid civil money penalty that has not been contested under ~~W. Va. Code § 16-5C-12~~ within ~~thirty (30)~~ days of receipt of the director's final order, or that has been affirmed on judicial review, as provided in W. Va. Code ~~§16-5C-13. § 16-5C-1 et seq.~~

16.13.a.1. All money collected by assessments of civil penalties or interest shall be paid into a special resident benefit account and shall be applied by the director for:

16.13.a.1.A. The protection of the health or property of the nursing home's residents;

16.13.a.1.B. Long-term care educational activities;

16.13.a.1.C. The costs arising from the relocation of residents to other facilities when no other funds are available;

16.13.a.1.D. In an emergency situation when no other funds available, the operation of the nursing home pending correction of deficiencies or closure; and

16.13.a.1.E. The reimbursement of residents for personal funds lost.

16.14. Immediate Jeopardy. If there is immediate jeopardy to the residents' health, safety, welfare or rights the director shall petition the circuit court.

16.14.a. The circuit court may issue an Order to:

16.14.a.1. Close the nursing home;

16.14.a.2. Transfer the residents in the nursing home to other nursing homes; or

16.14.a.3. Appoint temporary management to oversee the operation of the nursing home and to assure the health, safety, welfare and rights of the nursing home's residents.

16.15. Temporary Management.

16.15.a. Upon petition of the director, a circuit court may divest the licensee or operator of a nursing home of possession and control of a nursing home and appoint temporary management.

16.15.a.1. The temporary management is responsible to the court and has any powers and duties granted by the court to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare and rights of the residents of the nursing home.

16.15.a.2. These powers include, but are not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the nursing home or to repair or improve the nursing home to return it to compliance with applicable requirements and the power to receive, conserve, and expend funds, including payments on behalf of the licensee or operator of the nursing home.

16.15.a.3. The temporary management shall give priority to expenditures for current direct resident care or the transfer of residents.

16.15.b. The person charged with temporary management shall be an officer of the court, is not liable for conditions at the nursing home that existed or originated prior to his or her appointment and is not personally liable, except for his or her own gross negligence and intentional acts for situations that result in injuries to persons or damage to property at the nursing home during the temporary management.

16.15.c. No person shall impede the operation of the temporary management.

16.15.c.1. There shall be an automatic stay for a ~~ninety~~ (90)-day period subsequent to the establishment of a temporary management of any action that would interfere with the functioning of the nursing home, including, but not limited to, cancellation of insurance policies, termination of utility services, attachments to working capital costs, foreclosures, evictions and repossessions of equipment used in the nursing home.

16.15.d. The temporary management established for the purpose of making improvements to bring a nursing home into compliance with applicable requirements shall not be terminated until the court has determined that the nursing home has the management capability to ensure continued compliance with all applicable requirements.

16.15.d.1. If the court has not made the determination within six ~~(6)~~ months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the nursing home shall be closed.

16.15.d.2. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court.

16.15.d.2.A. This accounting will be based on receipts and shall consist of the deduction of the cost of temporary management, expenditures and civil penalties and interest no longer subject to appeal in that order; and

16.15.d.2.B. The nursing home shall pay any excess to the licensee or operator of the nursing home.

16.15.e. The temporary manager shall bill the nursing home on a bi-weekly basis and the nursing home shall pay any amounts due within ~~fifteen~~ (15) days.

16.15.e.1. The amount paid to the temporary manager for a ~~thirty~~ 30 day period may not exceed the seventy-fifth percentile of the allowable administrators' salary reported on the most recent cost report for the nursing home's peer group as determined by the director.

16.16. Corrective Action.

16.16.a. The director shall enforce these provisions to protect residents of nursing homes.

16.16.b. A nursing home, found on the basis of an inspection to have deficiencies, shall develop a plan of correction and submit it to the director within ~~ten~~ {10} working days of receipt of a report of inspections. The director may allow three ~~{3}~~ additional days in the event of a documented extenuating circumstance.

16.16.c. A plan of correction shall specify the time when the nursing home shall correct each violation cited in the report.

16.16.d. The time specified shall be the shortest possible time within which the nursing home can reasonably be expected to correct the violation.

16.16.e. The time stated is subject to approval or modification by the director.

16.16.f. In determining whether to approve the time submitted by the nursing home, the director shall consider the following factors:

16.16.f.1. The seriousness of the violation;

16.16.f.2. The number of residents affected;

16.16.f.3. The availability of required equipment or personnel;

16.16.f.4. The estimated time required for delivery and installation of required equipment;

and

16.16.f.5. Any other relevant circumstances.

16.16.g. A plan of correction shall contain:

16.16.g.1. The corrective actions that the nursing home will accomplish for those residents found to have been affected by the deficiency;

16.16.g.2. How the nursing home will identify other residents having the potential to be affected by the same deficiency and what corrective action will be taken;

16.16.g.3. What measures the nursing home will put into place or what systemic changes will be made to ensure that the deficiency does not recur; and

16.16.g.4. How the nursing home will monitor the corrective actions put in place to ensure the deficiency will not recur, i.e., what quality assurance program will be put into place.

16.16.h. A plan of correction submitted by a nursing home shall be approved, modified or rejected by the director.

16.16.i. The director shall notify each nursing home within ~~ten~~ (10) working days as to whether a plan of correction has been approved, modified or rejected.

16.16.j. If the director rejects or modifies the plan, the reasons for the action shall be stated in the notice.

16.16.k. When the director rejects a plan of correction, a revised plan shall be submitted by the nursing home to the director within seven (7) working days of receipt of the rejection.

16.16.l. A nursing home with a repeat deficiency or with deficiencies resulting in immediate jeopardy or causing harm to a resident may not submit a revised plan of correction.

16.16.m. If the nursing home fails to submit a plan of correction that is accepted by the director or to correct any deficiency within the time specified in an accepted plan of correction, the director may assess civil money penalties as provided in this rule or may initiate any other legal or disciplinary action available to him or her in accordance with State law and this rule.

#### **§ 64-13-17. Deemed Status.**

##### **17.1. Approval Process.**

17.1.a. Upon approval of deemed status by the ~~Health Care Financing Administration~~ Centers for Medicare and Medicaid Services (CMS), the director shall accept accreditation by the Joint Commission on the Accreditation of Healthcare Organizations or any other ~~Health Care Financing Administration~~ CMS approved accrediting organization with standards and inspection process comparable to W. Va. Code §16-5C-1, et seq., and the regulations and rules duly promulgated thereunder as evidence that the nursing home demonstrates compliance with or meets all licensing requirements. The director shall not perform a licensing inspection if the following criteria are met:

17.1.a.1. A nursing home sends the director a copy the of organization's official accreditation report within ~~thirty~~ (30) days of the nursing home's notification of accreditation; and

17.1.a.2. Quality of care measures are identified and assured as required by W. Va. Code ~~§16-5C-9a(e).~~ §16-5C-1 et seq.

##### **17.2. Responsibilities of the Director.**

17.2.a. The director may use this report in lieu of one (1) regular nursing home licensure inspection.

17.2.b. The director shall make any inspections and investigations as he or she considers necessary, investigate complaints, perform follow up activities on adverse accreditation findings, conduct periodic validation inspections, and perform any ~~Health Care Financing Administration~~ CMS mandated tasks.

17.2.c. Pursuant of W. Va. Code ~~516-5C-9a(d)~~, § 16-5C-1 et seq., the director may revoke the nursing home's exemption from State licensing inspections upon substantiation of a complaint.

TABLE 64-13A  
Minimum Ratios of Resident Care Personnel to Residents

Total Resident Care Personnel			Total Resident Care Personnel			Total Resident Care Personnel			Total Resident Care Personnel		
No of	Hours	# Pers	No of	Hours	# Pers	No of	Hours	# Pers	No of	Hours	# Pers
Residents	per day	per day	Residents	per day	per day	Residents	per day	per day	Residents	per day	per day
3 to 10	48	6	91	205	26	136	306	38	181	408	51
11 to 20	56	7	92	207	26	137	309	39	182	410	51
21 to 30	72	9	93	210	26	138	311	39	183	412	52
31 to 40	90	11	94	212	27	139	313	39	184	414	52
41 to 50	113	14	95	214	27	140	315	39	185	417	52
51	115	14	96	216	27	141	318	40	186	419	52
52	117	15	97	219	27	142	320	40	187	421	53
53	120	15	98	221	28	143	322	40	188	423	53
54	122	15	99	223	28	144	324	41	189	426	53
55	124	16	100	225	28	145	327	41	190	428	54
56	126	16	101	228	29	146	329	41	191	430	54
57	129	16	102	230	29	147	331	41	192	432	54
58	131	16	103	232	29	148	333	42	193	435	54
59	133	17	104	234	29	149	336	42	194	437	55
*60	135	17	105	237	30	150	338	42	195	439	55
61	138	17	106	239	30	151	340	43	196	441	55
62	140	18	107	241	30	152	342	43	197	444	56
63	142	18	108	243	30	153	345	43	198	446	56
64	144	18	109	246	31	154	347	43	199	448	56
65	147	18	110	248	31	155	349	44	200	450	56
66	149	19	111	250	31	156	351	44	201	453	57
67	151	19	112	252	32	157	354	44	202	455	57
68	153	19	113	255	32	158	356	45	203	457	57
69	156	20	114	257	32	159	358	45	204	459	57
70	158	20	115	259	32	160	360	45	205	462	58
71	160	20	116	261	33	161	363	45	206	464	58
72	162	20	117	264	33	162	365	46	207	466	58
73	165	21	118	266	33	163	367	46	208	468	59
74	167	21	119	268	34	164	369	46	209	471	59
75	169	21	120	270	34	165	372	47	210	473	59
76	171	21	121	273	34	166	374	47	211	475	59
77	174	22	122	275	34	167	376	47	212	477	60
78	176	22	123	277	35	168	378	47	213	480	60
79	178	22	124	279	35	169	281	35	214	482	60
80	178	22	125	282	35	170	383	48	215	484	61
81	180	23	126	284	36	171	385	48	216	486	61
82	183	23	127	286	36	172	387	48	217	489	61
83	185	23	128	288	36	173	390	49	218	491	61
84	187	23	129	291	36	174	392	49	219	493	62
85	189	24	130	293	37	175	394	49	220	495	62
86	194	24	131	295	37	176	396	50	221	498	62
87	196	25	132	297	37	177	399	50	222	500	63
88	198	25	133	300	38	178	401	50	223	502	63

Total Resident Care Personnel			Total Resident Care Personnel			Total Resident Care Personnel			Total Resident Care Personnel		
No of	Hours	# Pers	No of	Hours	# Pers	No of	Hours	# Pers	No of	Hours	# Pers
Residents	per day	per day	Residents	per day	per day	Residents	per day	per day	Residents	per day	per day
89	201	25	134	302	38	179	403	50	224	504	63
90	203	25	135	301	38	180	405	51	225	507	63

\*60 and less may include director of nurse

Number of personnel per day are full-time personnel equivalents based on forty (40) hours per week

TABLE 64-13B  
Surety Bond Schedule

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$ 1 to \$2,000	\$2,500
\$2,001 to \$2,100	\$2,625
\$2,101 to \$2,200	\$2,750
\$2,201 to \$2,300	\$2,875
\$2,301 to \$2,400	\$3,000
\$2,401 to \$2,500	\$3,125
\$2,501 to \$2,600	\$3,250
\$2,601 to \$2,700	\$3,375
\$2,701 to \$2,800	\$3,500
\$2,801 to \$2,900	\$3,625
\$2,901 to \$3,000	\$3,750
\$3,001 to \$3,100	\$3,875
\$3,101 to \$3,200	\$4,000
\$3,201 to \$3,300	\$4,125
\$3,301 to \$3,400	\$4,250
\$3,401 to \$3,500	\$4,375
\$3,501 to \$3,600	\$4,500
\$3,601 to \$3,700	\$4,625
\$3,701 to \$3,800	\$4,750
\$3,801 to \$3,900	\$4,875
\$3,901 to \$4,000	\$5,000
\$4,001 to \$4,100	\$5,125
\$4,101 to \$4,200	\$5,250
\$4,201 to \$4,300	\$5,375
\$4,301 to \$4,400	\$5,500
\$4,401 to \$4,500	\$5,625

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$4,501 to \$4,600	\$5,750
\$4,601 to \$4,700	\$5,875
\$4,701 to \$4,800	\$6,000
\$4,801 to \$4,900	\$6,125
\$4,901 to \$5,000	\$6,250
\$5,001 to \$5,100	\$6,375
\$5,101 to \$5,200	\$6,500
\$5,201 to \$5,300	\$6,625
\$5,301 to \$5,400	\$6,750
\$5,401 to \$5,500	\$6,875
\$5,501 to \$5,600	\$7,000
\$5,601 to \$5,700	\$7,125
\$5,701 to \$5,800	\$7,250
\$5,801 to \$5,900	\$7,375
\$5,901 to \$6,000	\$7,500
\$6,001 to \$6,100	\$7,625
\$6,101 to \$6,200	\$7,750
\$6,201 to \$6,300	\$7,875
\$6,301 to \$6,400	\$8,000
\$6,401 to \$6,500	\$8,125
\$6,501 to \$6,600	\$8,250
\$6,601 to \$6,700	\$8,375
\$6,701 to \$6,800	\$8,500
\$6,801 to \$6,900	\$8,625
\$6,901 to \$7,000	\$8,750
\$7,001 to \$7,100	\$8,875
\$7,101 to \$7,200	\$9,000

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$7,201 to \$7,300	\$9,125
\$7,301 to \$7,400	\$9,250
\$7,401 to \$7,500	\$9,375
\$7,501 to \$7,600	\$9,500
\$7,601 to \$7,700	\$9,625
\$7,701 to \$7,800	\$9,750
\$7,801 to \$7,900	\$9,875
\$7,901 to \$8,000	\$10,000
\$8,001 to \$8,100	\$10,125
\$8,101 to \$8,200	\$10,250
\$8,201 to \$8,300	\$10,375
\$8,301 to \$8,400	\$10,500
\$8,401 to \$8,500	\$10,625
\$8,501 to \$8,600	\$10,750
\$8,601 to \$8,700	\$10,875
\$8,701 to \$8,800	\$11,000
\$8,801 to \$8,900	\$11,125
\$8,901 to \$9,000	\$11,250
\$9,001 to \$9,100	\$11,375
\$9,101 to \$9,200	\$11,500
\$9,201 to \$9,300	\$11,625
\$9,301 to \$9,400	\$11,750
\$9,401 to \$9,500	\$11,875
\$9,501 to \$9,600	\$12,000
\$9,601 to \$9,700	\$12,125
\$9,701 to \$9,800	\$12,250
\$9,801 to \$9,900	\$12,375

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$9,901 to \$10,000	\$12,500
\$10,001 or more	Calculate <sup>2</sup> __

\*Calculate 1.25 times the prior year's average monthly balance of client's funds.

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<sup>2</sup> 1.25 times the prior year's average monthly balance of client's funds