



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Nursing Home Administrators Licensing
Board

RULE TYPE: Legislative

TITLE-SERIES: 21-01

RULE NAME: 21CSR1

CITE AUTHORITY: §30-25-6, 30-1-24.

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Veronica S Cummings -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 21
LEGISLATIVE RULE
WEST VIRGINIA NURSING HOME ADMINISTRATORS LICENSING BOARD

SERIES 1
NURSING HOME ADMINISTRATORS

§21-1-1. General.

- 1.1. Scope. -- This rule establishes the requirements for licensing as a Nursing Home Administrator.
- 1.2. Authority. -- W. Va. Code §30-25-6.
- 1.3. Filing Date. -- ~~July 20, 2016~~
- 1.4. Effective Date. -- ~~July 22, 2016~~
- 1.5. Sunset Provision -- This rule shall terminate and have no further force or effect upon the expiration of five (5) years from final filing.

§21-1-2. Definitions.

Whenever used in this rule, unless the context or subject matter requires a different meaning, the following terms have their respective meanings:

2.1. “Active Duty” means individuals who are employed full time in the armed forces of the United States and deployed outside of this state. Individuals will continue to be considered on active duty for the purposes of this rule for six months after discharge from active duty.

2.2. “AIT” refers to an Administrator-In-Training.

~~2.1.~~ 2.3. “Applicant” means any person making application for an original or renewal license or a temporary or emergency permit under the provisions of this article.

~~2.2.~~ 2.4. “Board” means the West Virginia Nursing Home Administrators Licensing Board as created in W. Va. Code §30-25-4.

~~2.2.~~ 2.5. “Code of Ethics” means the code of ethics developed by the American College of Health Care Administrators (ACHCA), Alexandria, Virginia (2014).

~~2.4.~~ 2.6. “Emeritus Status” means a retired nursing home administrator duly recognized by the Board to have at least twenty 20 years of practice, with the last ten 10 years of practice being consecutive years in West Virginia.

~~2.5.~~ 2.7. “Examination” means the national test and the state test that applicants are required to pass, unless specified otherwise.

~~2.6.~~ 2.8. “Fiscal management” means budgeting, census development, reimbursement, and financial projections.

~~2.9.~~ “Initial licensure fee” means the licensure fee or fees than an applicant must normally pay to obtain a nursing home administrator license, if the applicant is being licensed as a nursing home administrator in West Virginia for the first time.

~~2.7.~~ 2.10. “Inpatient health care facility” means a licensed nursing facility, an assisted living facility, licensed residential care community, a personal care facility, an inpatient hospice, or a hospital or a nursing facility that is a distinct part of a hospital or other like facility providing 24-hour nursing and/or rehabilitation care.

~~2.8.~~ 2.11. “Internship” means a practicum or course of study as part of a degree or post degree program designed especially for the preparation of candidates for licensure as nursing home administrators that involve supervision by an accredited college or university of the practical application of previously studied curriculum.

~~2.9.~~ 2.12. “License” means the document issued by the Board as defined in section five of this rule.

2.13. “Local labor market” means every county in West Virginia and any county outside West Virginia if any portion of that county is within fifty miles of the border of West Virginia, pursuant to WV Code §21-1C-2.

2.14. “Low Income Individual” means an individual in the local labor market as defined in WV Code §21-1-2, whose household adjusted gross income is below 130 percent of the federal poverty line. This term also includes any person enrolled in a state or federal public assistance program including, but not limited to the Temporary Assistance for Needy Families Program (TANF), Medicaid, or the Supplemental Nutrition Assistance Program (SNAP).

~~2.10.~~ 2.15. “Management experience” means the actual full-time practice of health care facility management of an inpatient health care facility as defined above with guidance and sharing of responsibility from the administrator and must include experience in personnel management, fiscal management, planning and organizing, and regulatory compliance.

2.16. “Military families” means any person who serves as an active member of the armed forces of the United States, the National Guard, or a reserve component as described in 38 U. S. C. §101, honorably discharged veterans of those forces, and their spouses. This term also includes surviving spouses of deceased service members who have not remarried.

2.17. NPDB refers to the National Practitioner Data Bank.

~~2.11.~~ 2.18. “Nursing home” means, for the purpose of the Administrator-In-Training program, a nursing ~~home means~~ a facility licensed by the State of WV as a nursing home or a distinct part of a hospital whose beds are denoted on the hospital license as a nursing home or skilled nursing facility.

~~2.12.~~ 2.19. “Nursing Home Administrator-In-Training” (AIT) means an individual registered with the Board, under ~~subsection~~ section 4.3. of this rule.

2.20. “OHFLAC” refers to the Office of Health Facility Licensure and Certification.

~~2.13.~~ 2.21. “Personnel management” means experience in determining staffing needs, creation of job descriptions, and recruitment of new employees, interviewing potential employees, and hiring and termination of employees.

~~2.14.~~ 2.22. “Planning and organizing” ~~includes but is not limited to,~~ for the purpose of management experience, ~~planning and organizing includes, but is not limited to~~ experience in short term planning, such as day-to-day operations of business-related events and long term planning, ~~such as~~ goal development, and organizing and delegating tasks to appropriate personnel with the end result being a coordinated work environment.

~~2.15.~~ 2.23. “Practice of nursing home administration” means any service requiring nursing home administration, education, training, or experience and applying such to planning, organizing, staffing, directing and controlling the total management of a nursing home.

~~2.16.~~ 2.24. “Professional misconduct or unprofessional conduct” means any conduct by a licensed nursing home administrator (NHA) or permittee, including, but not limited to, any of the following:

~~2.16.a.~~ 2.24.a. Obtaining a license or emergency permit by means of fraud, deceit, or intentional misrepresentation;

~~2.16.b.~~ 2.24.b. Engaging in deceit, fraud, or intentional misrepresentation in the course of providing professional services or engaging in professional activities;

~~2.16.c.~~ 2.24.c. Failing to exercise a professional regard for the safety, health, and life of the patient;

~~2.16.d.~~ 2.24.d. Discriminating in respect to patients, employers, or staff on account of race, religion, color, national origin, sex, disability, ancestry, or any other legally protected status identified in applicable federal or state law civil rights laws; ~~and or~~

~~2.16.e.~~ 2.24.e. Failing to comply with the Code of Ethics.

~~2.17.~~ 2.25. “Reexamination” means a process whereby the applicant may petition the Board to retake either the National and/or State examination if the applicant has not passed the licensure ~~exams~~ examinations.

~~2.18.~~ 2.26. “Regulatory Compliance” means experience in federal and state survey requirements, development or implementation of policies and procedures to meet current regulations, plans of corrections, and mandatory regulatory requirements.

~~2.19.~~ 2.27. “Substandard Quality of Care Policy” means the procedures the Board follows upon receipt of notice by the OHFLAC citing a Medicare/Medicaid certified nursing facility with providing substandard quality of care.

2.28. “Unreversed”, as that term refers to a criminal conviction, means that a conviction has not been set aside, vacated, pardoned, or expunged.

~~2.20.~~ 2.29. “Violation” means a failure to comply with W. Va. Code §30-25-1 *et seq.* or any provision of this rule.

~~2.21. “OHFLAC” is Office of Health Facility Licensure and Certification.~~

~~2.22. AIT is Administrator In Training.~~

~~2.23. NPDB is the National Practioner Practitioner Data Bank.~~

§21-1-3. Examinations.

3.1. Scheduling of examinations and reexaminations.

3.1.a. Applicants before examination shall meet all pre-requirements for taking the examinations as specified in this rule. Upon Board approval, applicants may apply to test online for the NAB National Examination through the National Association of Boards of Examiners of Long Term Care Administrators website – www.nabweb.org. The costs or fees charged by the testing agency for the national examination are not covered in the initial application fee. An applicant shall pay all testing fees directly to the testing agency.

3.1.b. Upon Board approval, applicants may sit for the WV State Examination. This examination is administered once a month. The initial application fee covers an applicant's first time taking the examination, and \$50 is charged for each additional testing. Applicants shall contact the Board office to schedule the examination.

3.1.c. Applicants may take the national and state examination up to four times within one year from the date they receive Board approval. If an applicant fails either examination for the fourth time or is unable to successfully test within one year from the date of Board approval the applicant may appear before the Board and present evidence of further education or extenuating circumstance before the Board may consider that person eligible for reexamination.

3.1.d. If the applicant fails to notify the Board of his or her request for additional time to test prior to the expiration of the one year time period approved by the Board; the applicant shall be required to submit a new application to sit for both the national and state exams.

3.1.e. The Board shall keep a record stating in detail the results of the examination for each applicant as a permanent record.

3.2. Pre-examination requirements:

3.2.a. An applicant shall not be permitted to take an examination for licensure as a nursing home administrator unless the applicant submits satisfactory evidence to the Board that the applicant has met the following requirements:

3.2.a.1. Submits a written and complete application for licensure and examination, on forms approved by the Board, at least 30 days prior to the examination day;

3.2.a.2. Attains the age of years;

3.2.a.3. Submits written documentation from a licensed physician that he or she:

3.2.a.3.a. ~~Possess~~ Possesses no physical impairments that would prohibit him or her from performing the duties of a nursing home administrator, ~~which include good health and freedom from contagious disease such as poor health or contagious disease;~~ and

3.2.a.3.b. ~~Possess~~ Possesses no mental impairment that would appear to the Board to be likely to interfere with the performance of the duties of a nursing home administrator.

3.2.a.4. Submits two letters of reference covering at least the calendar year preceding the date of application which address the applicant's:

3.2.a.4.a. Ability to understand and communicate general and technical information necessary to the administration and operation of a nursing home (i.e., applicable health and safety rules);

3.2.a.4.b. Ability to assume responsibility for the administration of a nursing home as evidenced by prior accredited activities and evaluations of prior services; and

3.2.a.4.c. Ability to relate the physical, psychological, spiritual, emotional, and social needs of ill and/or aged individuals to the nursing home administration and create the compassionate climate necessary to meet the needs of the patients in the nursing home;

3.2.a.5. Submits evidence of completion of high school or other secondary school education;

3.2.a.6. Submits evidence of completion of a baccalaureate or higher degree from an accredited college or university; and

3.2.a.7. Submits evidence of completion of a Board approved Administrator-In-Training program, unless waived by the Board.

3.3. Waiver of Administrator-In-Training requirement:

3.3.a. The Board may waive the Administrator-In-Training requirement if an applicant can demonstrate to the Board's satisfaction that he or she meets one of the following three criteria:

3.3.a.1. Successfully completed a minimum of 12 hours of subjects specifically designated as health care management and/or health care administration in his or her baccalaureate or higher degree curriculum and at least 1,000 hours of management experience in an inpatient health care facility. The 1,000 hours requirement may be met through participation in a Board approved Administrator-In-Training program or through work performed in a nursing home on an emergency permit. The burden is on the applicant to demonstrate the 12-hour requirement is incorporated in the baccalaureate curriculum or higher degree;

3.3.a.2. ~~Possess~~ Possesses a baccalaureate degree and has worked in long term care in the role of an Assistant Administrator or an equivalent position, such as a Director of Nursing, Assistant Director of Nursing, or Social Services Director, for a period of three years; or

3.3.a.3. ~~Possess~~ Possesses a baccalaureate degree or higher from a National Association of Long Term Care Administrator's Board (NAB) accredited college program with internship or an accredited college program that has a baccalaureate degree or higher in Health Care Administration, Health Services Administration or a similarly related administration field that includes an internship program.

3.3.b. If the applicant fails to produce evidence of these requirements that is satisfactory to the Board, the applicant shall complete an Administrator-In-Training program as specified in ~~subsection~~ section 4.3 of this rule.

3.4. Background checks.

3.4.a. Criminal history.

3.4.a.1. Applicants shall consent to a criminal background check by the Board.

3.4.a.2. The Board shall request a Criminal Identification Bureau Report from the West Virginia State Police and a fingerprint criminal history background check by the Federal Bureau of Investigation (FBI).

3.4.a.3. The Board shall not approve an applicant for examination or licensure who has been convicted of a crime, unless a variance has been granted, which prohibits a person from working in a nursing home as established by law (see WV Code §16-5C-21)

3.4.b. Professional history.

3.4.b.1. An applicant shall report to the Board any and all current and former licenses and certifications that the applicant has held.

3.4.b.2. The Board may deny an applicant's request for examination or licensure based on adverse actions taken against an applicant's license or certification.

3.4.b.3. The Board may deny an applicant's request for examination or licensure based on incomplete, vague, or misleading information provided by the applicant to the Board.

3.5. Disqualification; Reexamination.

3.5.a. An applicant for examination who does not meet pre-examination requirements shall be given written notification by the Board by certified mail return receipt requested, of his or her disqualification, ~~and~~ the reasons for the disqualification, and of his or her right to a hearing within 30 days.

3.5.b. An applicant for examination who does not meet pre-examination requirements may petition the Board in writing for a hearing and a review of his or her application within 30 days of receipt of the notification of disqualification.

3.5.c. Where an applicant for examination has not met pre-examination requirements, he or she may submit a new application for qualification for examination. The applicant shall meet the requirements for licensing that are in force at the time of the reapplication.

3.5.d. Every applicant shall successfully pass a written national and state examination.

3.6. Personal Interview.

3.6.a. The Board shall interview an applicant and shall designate a time and place at which an applicant may be required to present himself or herself for inquiry as to his or her suitability to sit for the examination or for licensure.

3.6.b. If an applicant fails to appear before the Board at a place and time set by the Board on two occasions, the Board must cease to process the applicant's request for examination or licensure.

3.6.c. An applicant may start the process again by filing a new application and paying all applicable fees.

§21-1-4. Education, Training and Experience.

4.1. Registration of licensed and/or accredited education institutions and courses of study.

4.1.a. A licensed or accredited educational institution offering any courses of study for the purpose of qualifying applicants for licensure as a nursing home administrator shall first submit the courses of study to the Board for approval. In order for a course of study to be approved, it shall cover those subjects contained on the written national examination as provided for in ~~subsection~~ section 3.4. of this rule.

4.2. Continuing Education.

4.2.a. Every licensed administrator shall obtain, annually, at least 20 clock hours of continuing education, through programs approved by the Board or by the National Association of Boards of Examiners of Long Term Care Administrators National Continuing Education Review Service (NCERS).

4.2.a.1. Emeritus Status Administrators shall obtain, annually, at least 10 clock hours of continuing education approved as provided in ~~subsection~~ subdivision 4.2.a. of this rule.

4.2.b. A licensee seeking continuing education hours for completion of a college course in health care administration may submit to the Board the syllabus of the completed course along with a copy of the official transcript verifying the final grade received. The Board may approve one credited college course hour, to be applied as 10 continuing education hours.

4.3. Practical Training and Experience; 1000 hour AIT Program.

4.3.a. Prior to entering the 1,000 hour nursing home AIT program for the purpose of obtaining practical training and experience, the applicant shall apply for the AIT permit on a form prescribed by the Board, and submit a fee of \$600 payable by certified check or money order to the Board.

4.3.b. The Board shall not approve an application for an AIT permit unless the applicant submits evidence satisfactory to the Board that he or she meets all pre-examination requirements under this rule and that:

4.3.b.1. The training is under the full-time supervision of a fully licensed nursing home administrator who has been licensed and practicing for at least three years in West Virginia for at least the preceding year. The nursing home administrator must be approved by the Board as a preceptor, and accept the responsibility of training the applicant;

4.3.b.2. The training is of a grade and character satisfactory to the Board;

4.3.b.3. The training is to be obtained in a licensed nursing home which has been approved by the Board;

4.3.b.4. The trainee agreement form provided by the Board is signed by the nursing home AIT and the preceptor and submitted to the Board for approval; and

4.3.b.5. The nursing home AIT has no outside employment during training hours or thereafter unless the employment is known of and approved by the preceptor.

4.3.c. Progress Report.

4.3.c.1. A preceptor of an AIT shall file quarterly forms provided by the Board and shall set forth an accurate record of the duties performed by the AIT during the period covered by the report.

4.3.c.2. Every report filed by the preceptor of the nursing home AIT shall be approved and signed by the preceptor and by the AIT.

4.3.c.3. If a preceptor of an AIT fails to file quarterly reports for a period of two years from the date of issuance of the in-training permit, the Board shall consider that the AIT has abandoned his or her practical training and experience. If the AIT thereafter seeks to qualify for a nursing home administrator license, the Board shall consider him or her as a new applicant, with no portion of training completed. The applicant shall meet the requirements for qualification for training, examination, and licensure that exist at the time of the new application.

4.3.c.4. A nursing home AIT may take two weeks leave each year for compulsory military training, vacation, or sick leave ~~each year~~ without loss of credit for his or her required practical training and experience.

4.3.c.5. If an AIT discontinues his or her training, the preceptor and the AIT shall report the discontinuance of the ~~Administrator in Training~~ AIT Program to the Board, within 30 days after the discontinuance.

4.3.c.6. A change of preceptor of the nursing home AIT in any nursing home shall be reported to the Board in writing by the preceptor and the AIT within 10 days after the change of the supervision. The new administrator of the nursing home, if willing to continue the training program of the AIT, must meet the qualifications of a preceptor as required in this rule and shall obtain Board approval.

4.3.c.7. The Board shall allow an AIT whose training and experience is interrupted by service in the Armed Forces of the United States, to resume his or her training and experience at any time within one year after the date of his or her honorable discharge from active service.

4.3.c.8. The period for the training program as an AIT shall last for a period of not more than 1000 hours and shall be under the supervision of a preceptor who has been approved by the Board.

4.3.c.9. Alternating and rotating shifts and working hours may be approved by the Board as being acceptable upon request by the AIT: *Provided*, That at least 50% of the training hours will be served between the hours of 7:00 a.m. and 10:00 p.m. in regular steady, full time employment under the personal supervision of the nursing home administrator preceptor at the nursing home in which the nursing home AIT is employed; ~~and~~ the preceptor will provide full-time supervision for the AIT; and the supervision is provided in the nursing home where the trainee is employed.

4.3.c.10. If the Board determines that a preceptor has failed to provide the AIT with the opportunity to adequately train himself or herself under the proper supervision in the administrative and operating functions of the nursing home, the Board shall cancel the preceptor's authorization to serve as preceptor, for a period of time prescribed by the Board.

4.3.c.11. When the preceptor's authorization is cancelled, the AIT's program shall be suspended or a partial program shall be accepted until such time as the AIT locates another qualified preceptor who is approved by the Board, after which time the AIT's training shall continue.

4.3.c.12. After an applicant for licensure completes the AIT program and before he or she sits for the licensing examination, the Board may appoint a committee to determine if the applicant has received training consistent with the guidelines established by the Board.

4.3.c.13. After completion of the AIT Program, the AIT shall pay all additional fees referred to in subdivision 3.1.c. of this rule.

§21-1-5. Licenses.

5.1. Qualifications for licenses.

5.1.a. To be eligible for a license as a nursing home administrator an applicant shall:

5.1.a.1. Meet all pre-examination requirements as set forth in ~~subsection~~ section 3.2 of this rule, as well as meet requirements of all other applicable rules; and

5.1.a.2. Pass the national and state examinations prescribed by the Board in the subject of nursing home administration.

5.2. Application for and issuance of license, renewal of licenses and display.

5.2.a. An applicant for a nursing home administrator license shall submit an application, on forms prescribed by the Board, and pay the Board a license fee of \$600.00 in the form of a certified check or money order. The Board shall return the fee, minus any costs incurred by the Board as stated in section 9.1 of this rule, if it denies a license to the applicant.

5.2.b. An applicant for emeritus administrator status shall submit an application on the forms prescribed by the Board and pay the Board a fee equivalent to one-half of the renewal fee for other licenses in the form of a certified check or money order.

5.2.c. When the Board finds that an applicant meets all of the requirements of this rule for a license as a nursing home administrator, it shall immediately issue a license to the applicant. If the Board finds the applicant does not meet the requirements, the Board shall contact the applicant in writing and give reasons for the denial of the license.

5.2.d. The license is valid for a period ending on June 30 each year and may be renewed without formal examination upon timely application for renewal on a form prescribed by the Board and payment to the Board of the renewal fee of \$300.00 in the form of a certified check or money order. The Board may deny an application for renewal for any reason which would justify the denial of an original application for a license, or for failure to provide written verification of satisfactory attendance and completion of relevant continuing education as specified in ~~subsection~~ section 4.2 of this rule.

5.2.e. The nursing home administrator license certificate shall be conspicuously displayed by the licensee at his or her principal place of business.

5.2.f. Only a person who has qualified as a licensed nursing home administrator and who hold a valid current license certificate may use the title "Nursing Home Administrator" and the abbreviation of "N.H.A." after his or her name. No other person shall use or shall be designated by this title or this abbreviation or any other words, letters, etc., to indicate he or she is licensed as a nursing home administrator. A person who holds an emergency permit or of an AIT permit shall not be considered as

meeting the requirements for licensure as a nursing home administrator and, therefore, may not use the title "Nursing Home Administrator" or the abbreviation of "N.H.A."

5.2.g. A licensee desiring to cease engaging in the practice of nursing home administration temporarily shall send written notice to the Board. Upon receipt of the notice, the Board shall place the licensee on an inactive list. While his or her name remains on this list the licensee shall not be subject to the payment of any fee and shall not engage in the practice of nursing home administration or act as a nursing home administrator ~~as the case may be~~, in this State. When the person again desires to engage in the practice of nursing home administration or to act as a nursing home administrator in this State, the person shall apply for renewal of his or her license by submitting the current renewal application and fee, and verification of all required continuing education hours for every licensure year the licensee was on inactive status.

5.2.h. After one year from the expiration date of his or her license, any licensee who has not given written notice to the Board and who has not been placed on the Board's inactive list as indicated in 5.2.g the licensee will be treated as a new applicant and be required to meet all the provisions of 3.2 of this rule.

5.2.i. No person shall be or act as a nursing home administrator, except as provided by W. Va. Code §30-25-10, unless they hold a current valid license or permit issued pursuant to this rule;

5.2.j. A listing of West Virginia's Nursing Home Administrators is available from the Board for a fee of \$50.00.

5.2.k. A person holding a license or permit from this Board shall report to the Board any known or observed violation of W. Va. Code §30-25-14 et seq., or the Board's rules. Any person holding a license or permit issued by the Board (including self-reporting) shall report such occurrence within 30 days.

5.3. Waiver of Fees and Other Requirements for Certain Applicants and Licensees.

5.3.a. Waiver of Initial Licensure Fees.

5.3.a.1. Low-income individuals may request a waiver of the initial licensure fee by submitting with their completed licensure application a waiver request form, provided by the Board, and all documentation of eligibility for the waiver, as required by the Board. The Board shall review the request for waiver and any required documentation and issue a decision within 30 days of receipt of the completed application and request.

5.3.a.2. Military families may request a waiver of the initial licensure fee by submitting with their completed licensure application a waiver request form, provided by the Board, provided by the Board, and all documentation of eligibility for the waiver, as required by the Board. The Board shall review the request for waiver and any required documentation and issue a decision regarding eligibility for the initial licensure fee waiver within 30 days of receipt of the completed application and request.

5.3.a.3. Upon determining that an applicant is eligible to obtain an initial [professional license], the Board shall waive the initial licensure fee if the applicant qualifies as a "low-income individual" or as an individual within the class "military families" as defined in this rule.

5.3.b. Active Duty Military Families.

Military members on active duty and their spouses, as defined by this rule, may seek a waiver of continuing education requirements and fees in accordance with the provisions of W. Va. Code §30-1B-1 et seq. The Board shall review the request for waiver and waive any fees or continuing education requirements as required by law.

5.3.5.4. License Restrictions.

5.3.a.5.4.a. The following restrictions apply to a licensed nursing home administrator:

5.3.a.1.5.4.a.1. A licensed nursing home administrator shall not direct more than two nursing homes at one time. An administrator may direct two nursing homes which are within reasonable proximity. For the purposes of this section, reasonable proximity is defined as 30 minutes driving time. An administrator may not direct more than a total of 120 beds;

5.3.a.2.5.4.a.2. An administrator of two nursing homes shall average not less than 20 hours per week at each nursing home. The administrator shall have a competent and experienced assistant at each nursing home. The nursing home administrator shall document each period of service. The documentation shall be available to the Board upon request;

5.3.a.3.5.4.a.3. An administrator who is a registered professional nurse cannot serve the same nursing home both as a director of nursing services and administrator unless the nursing home has a licensed capacity of 30 beds or less fewer;

5.3.a.4.5.4.a.4. An administrator who is also director of nursing services or who has any other dual capacity in any other nursing home regardless of whether or not the second home is within reasonable proximity shall obtain prior Board approval to serve in that dual capacity;

5.3.a.5.5.4.a.5. An administrator, upon receipt of a license, is responsible for any nursing home which he or she administers, while meeting all applicable state and federal laws and rules and regulations; and

5.3.a.6.5.4.a.6. An emeritus status administrator, upon approval of the Board, shall be permitted the privilege of limited practice not to exceed an average of 40 hours per week for up to 6 cumulative months per year.

5.5. Consideration of Prior Criminal Convictions.

5.5.a. The Board may not disqualify an applicant from initial licensure to engage in a profession or occupation because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the profession of long-term care administration. In determining whether a criminal conviction bears a rational nexus to long-term care administration, the Board shall consider:

5.5.a.1. The nature and seriousness of the crime for which the individual was convicted;

5.5.a.2. The passage of time since the commission of the crime;

5.5.a.3. The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

5.5.a.4. Any evidence of rehabilitation or treatment undertaken by the individual.

5.5.b. Because the term “moral turpitude” is vague and subject to inconsistent applications, the Board will not rely upon the description of a crime for which an applicant has been convicted as one of “moral turpitude” as a basis for denying licensure: *Provided*, That if the prior conviction for the underlying crime bears a rational nexus to long-term care administration, the Board will consider the conviction.

5.5.c. If an applicant is disqualified from licensure because of a prior criminal conviction, the Board shall later permit the applicant to apply for initial licensure if:

5.5.c.1. A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

5.5.c.2. The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

5.5.c.3. The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure to be determined by the Board.

5.5.d. An individual with a criminal record who has not previously applied for licensure may petition the Board at any time for a determination of whether the individual’s criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual’s criminal record to enable the Board to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The board shall provide the determination within 60 days of receiving the petition from the applicant. The board may charge a fee to recoup the cost for each petition.

~~5.4.5.6.~~ Emergency Permit.

~~5.4.a.5.6.a.~~ If a licensee dies or is unable to continue as the administrator for an unexpected cause, the owner, ~~or~~ governing body, or other appropriate person in charge of the nursing home involved may designate an acting authority as administrator. The Board may issue an emergency permit to the acting administrator if it finds the appointment will not endanger the safety of the occupants of the nursing home.

~~5.4.b.5.6.b.~~ An emergency permit is valid for a maximum of six months and is not renewable.

~~5.4.c.5.6.c.~~ The fee for an emergency permit is \$300.00 and shall be submitted in the form of a certified check or money order, and is non-refundable.

~~5.5.d.5.6.d.~~ The hours an individual serves as an acting administrator under an emergency permit may be counted toward the 1,000 hours of his or her AIT training. The individual shall document all hours of service. The documentation shall be available to the Board upon request.

~~5.5.5.7.~~ Temporary Permit.

~~5.5.a.5.7.a.~~ The Board may issue a temporary permit for a period of 90 days, to an applicant for a reciprocity license who has accepted employment in the State of West Virginia, but who must wait for the Board to meet to act on his or her application. The temporary permit may be renewed at the discretion of the Board.

~~5.5.b.~~5.7.b. The fee for a temporary permit is \$300 and shall be submitted in the form of a certified check or money order and is non-refundable.

~~5.6.5.8.~~ Lost, mutilated or destroyed licenses.

~~5.6.a.5.8.a.~~ Upon receipt of satisfactory evidence that a license has been lost, mutilated or destroyed, the Board shall issue a duplicate license upon payment of a fee of \$5.

~~5.7.5.9.~~ Return of license.

~~5.7.a.5.9.a.~~ The administrator shall return the license certificate and/or duplicate copies to the Board immediately upon revocation of the license or request by the Board.

§21-1-6. Suspension or Revocation, Hearing and Judicial Review.

6.1. Suspension or revocation of ~~license~~ licenses or permits.

6.1.a. The Board may, at any time upon its own motion, and shall, upon verified written complaint of any person, conduct an investigation to determine whether there are any grounds for the suspension or revocation of a license or permit issued pursuant to this rule.

6.1.b. The Board may suspend or revoke any license or permit when it finds the licensee or holder of a temporary permit has:

6.1.b.1. Obtained a license or permit by means of fraud or deceit;

6.1.b.2. Failed or refused to comply with the provisions of this rule or with the provisions of W.Va. Code §16-5C-1 *et seq.*; or

6.1.b.3. Failed or refused to comply with the expectations contained in the Code of Ethics.

6.1.c. When the Board suspends or revokes a license of a licensee, it shall notify the OHFLAC of its actions.

6.2. Complaints and hearing procedures.

6.2.a. Complaints.

6.2.a.1. Any person, public officer, association or the Board may register a complaint against any licensee, AIT or holder of an emergency or temporary permit for any of the reasons specified in ~~subsection~~ section 6.1. of this rule. The complaint, submitted to the Board, shall be in writing.

6.2.a.2. When the Board receives a notice by the OHFLAC citing a Medicare/Medicaid certified nursing facility of providing substandard quality of care, the Board shall take immediate action in accordance with subdivision 6.2.a.3 of this subsection:

6.2.a.3. Substandard Quality of Care Policy.

6.2.a.3.a. As a result of ~~sections 1819(a), (b), (c), (d), and 1919(a), (b), (c), and (d)~~ of the provisions of Section 1819 of the Social Security Act (42 U.S.C. § 1395i-3), state survey agencies,

~~like~~ such as the DHHR and OHFLAC, are required to advise state boards responsible for licensing nursing home administrators when a Medicare/Medicaid certified nursing facility is cited for deficiencies which constitute substandard quality of care. Inasmuch as there are no further directives for interpretation as to how state licensing boards will manage such notifications, it is the prerogative of each state's board to define its policy, as provided in this subdivision.

6.2.a.3.b. It will be the policy of the West Virginia Nursing Home Administrators Licensing Board to pursue the following plan in discharging its duties:

6.2.a.3.c. Upon notification from OHFLAC, a certified letter will be sent to the administrator of record for the facility alleged to have offered substandard quality of care indicating the same and requesting a response from the administrator to each of the allegations. If the current administrator of record has been at the facility for less than one year, the previous administrator of record will also be contacted to address in writing each allegation of substandard quality of care. The administrator's reply must be postmarked no later than 30 days after receipt of the Board's letter.

6.2.a.3.d. Upon receipt of the response from the administrator and within 90 days of the day the Board receives notification from OHFLAC, under the direction of the chair of the West Virginia Nursing Home Administrators Licensing Board, an assessment by staff, members of the Board, and/or a representative from the Attorney General's Office will be made of all documents received (i.e., HCFA-2567 Statements of Deficiency and Plans of Correction, administrator's response, etc.). From that point, a brief written assessment of the facts will be made and filed with the chairman of the Board indicating whether or not it is believed nursing home administrator licensing regulations were violated. If the written assessment establishes that the nursing home administrators licensing regulations were violated, the chair of the Board will be responsible for seeing that an interview is scheduled with the administrator to assess his/her knowledge and soundness of judgment in being able to adequately discharge the functions of a nursing home administrator (NHA). If it is shown by a preponderance of the evidence that nursing home administrator licensure rules were violated, a written order with findings of fact and conclusions of law will be sent to the administrator with a copy filed in the person's record defining the course of action that will follow. Likewise, if it is shown by a preponderance of the evidence that there were no violations of nursing home administrator licensure rules, a letter will be sent to the administrator so advising with a copy of the correspondence to be retained in the licensee's file.

6.2.a.3.e. ~~Related to the aforementioned point and establishment of~~ If there are grounds for potential action against a nursing home administrator for violation of nursing home administrators licensure rules, ~~with legal guidance i.e., the West Virginia Attorney General's Office, private counsel, etc., section 6.1 of Title 21, legislative rule effective July 3, 2003~~ the Board shall follow the applicable procedures established in section 6.1 of this rule pertaining to suspension, revocation, hearing or judicial review. ~~will be implemented pertinent to suspension, revocation, hearing, and judicial review.~~ Final disposition of the review will be completed as quickly as possible but not to exceed 150 days from date of the first notification of substandard quality of care by the OHFLAC. Proceedings in regard to final disposition will be made in the record and retained in the Board's file for the NHA under review.

6.2.a.3.f. If within 24 months of first being advised by OHFLAC subsequent notice is received by the Nursing Home Administrators Licensing Board alleging substandard quality of care in a facility under the direction of the same licensed nursing home administrator, within the same time lines as previously described, at the direction of the chair of the Board, the Board will conduct a second interview on the issue of substandard quality of care. Facts from the first review will be revisited along with all new allegations of repeat deficiencies. The Board will follow the process identified in previous points 2 and 3 will be replicated relative to section 6.1 paragraphs 6.2.a.3.c through 6.2.a.3.e. of this section with

regard to the new allegations. Final disposition of the Board's action will be recorded and retained in appropriate NHA and/or board files.

6.2.a.3.g. From the time the West Virginia Nursing Home Administrators Licensing Board is first advised by OHFLAC of alleged substandard quality of care in a West Virginia licensed nursing facility, all correspondence and records pertinent to the administrator and/or administrators in question will be retained for 30 months. During this period if follow up reviews by OHFLAC do not result in subsequent referrals to the Nursing Home Administrators Licensing Board for matters of substandard quality of care, the Board, at its discretion, may order cases closed with files destroyed. If this occurs, such action will be considered at a duly called board meeting with the decision recorded in board minutes.

6.2.b. Preliminary hearings.

6.2.b.1. The Board, or any person or persons appointed by it, may hold a preliminary hearing to determine whether a formal hearing on the ~~charges~~ complaint is necessary. The Board shall give the person against whom the complaint has been registered, written notice of the date, time, and place of the preliminary hearing.

6.2.b.2. The Board may dismiss the complaint and take no action on the complaint, by formal hearing or otherwise. In that event, the Board shall file and make a part of its record the complaint and the order dismissing the complaint. If the Board does not dismiss the complaint, it shall hold a formal hearing in accordance with ~~subsection~~ section 6.3 of this rule.

6.3. Procedures for hearing.

6.3.a. The Board may deny a license, renewal of a license or permit pursuant to W. Va. Code ~~§§30-25-1 et seq. and §30-1-1 et seq.~~ and §30-25-1 et seq.

6.3.b. Whenever the Board denies an application for any original or renewal license or denies an application for an emergency permit it shall make and enter an order to that effect and serve a copy of the order on the applicant licensee, or permittee as the case may be, by certified mail, return receipt requested. If the applicant desires to challenge the Board's order denying the application, the applicant shall request a hearing. The request shall be made in writing to the Board within 20 days after receipt of the order.

6.3.c. Whenever the Board determines that there is probable cause to believe a permit holder or licensee has violated W. Va. Code §30-25-1 et seq. or any provision of this rule, the Board shall serve upon the licensee, by certified mail, return receipt requested, a copy of the notice of hearing. The notice of hearing shall provide the licensee with notice of the charges being brought against him or her.

6.3.d. All of the pertinent provisions of W. Va. Code §29A-5-1 et seq. and §30-1-1 et seq., apply to and govern the hearing and the administrative procedures in connection with and following the hearing.

6.3.e. Upon conclusion of the hearing, the Board may revoke the license of the licensee, or an emergency or temporary permit, or take other disciplinary action or dismiss the charges.

6.3.f. An order of suspension made by the Board may contain conditions regarding reinstatement of the license or permit.

6.3.g. The Board, in its discretion, may direct a rehearing or take additional evidence, and may rescind or affirm the prior order after the rehearing, but nothing in this section precludes appropriate relief under and pursuant to the laws providing for the review of an administrative determination by the courts of the state.

6.3.h. All disciplinary hearings shall be published within the Nursing Home Administrators Licensing Board website to allow the public communities, resident's families, and facility staff access to the date, time, and location of hearing.

6.3.i. The order of the Board is final unless reversed, vacated, or modified upon judicial review of the order in accordance with the provisions of ~~subsection~~ section 6.4. of this rule.

6.4. Judicial review; Appeal to Supreme Court of Appeals.

6.4.a. Any person adversely affected by an order of the Board rendered after a hearing held in accordance with the provisions of ~~subsection~~ section 6.3. of this rule, is entitled to judicial review of the decision. All of the pertinent provisions of W. Va. Code §29A-5-1 *et seq.* apply to and govern the judicial review.

6.4.b. The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals, in accordance with the provisions of W. Va. Code §29A-6-1 *et seq.*

§21-1-7. Reciprocity.

7.1. The Board in its discretion, and subject to W. Va. Code §30-25-9 ~~prescribing the qualifications for a nursing home administrator license~~, may grant a nursing home administrator license to an individual licensed in another state who possesses the qualifications and meets the reasonable standards prescribed by the Board pursuant to W. Va. Code §30-25-8 and upon payment of a fee of \$600.

7.1.a. Applicants who hold current certification from the American College of Health Care Administrators, or other such nationally approved certification, shall have their applications acted upon immediately upon receipt; therefore, expediting the reciprocity process.

7.1.b. Additionally, the following conditions shall be met:

7.1.b.1. The other licensing state must maintain a system and standard of qualification and examination for a nursing home administrator license, which is substantially equivalent to those required in West Virginia;

7.1.b.2. The applicant for reciprocity must hold a current license as a nursing home administrator which has not been revoked or suspended.

7.1.b.3. The applicant for reciprocity must pass a Federal query investigation by the NPDB.

7.1.c. A nursing home administrator licensed in this state seeking reciprocity or endorsement ~~into~~ in another state and requiring Board verification of licensure shall submit a fee of \$100 to the Board for this verification.

§21-1-8. Restoration.

8.1. The Board may restore a license after revocation upon submission of evidence satisfactory to the Board that the applicant for the restoration of a license has met the conditions required by the Board.

8.2. Restoration after lapse.

8.2.a. The Board may reinstate a license which has lapsed during the first year immediately following the expiration date of a valid permanent administrator license. The Nursing Home Administrator with a lapsed license shall submit a formal request as well as an application for licensure along with the proper fee and meet the requirements for continuing education hours.

8.2.b. The nursing home administrator seeking reinstatement shall pay a late charge for reinstatement of license, in addition to the licensure renewal fee.

8.2.b.1. The Board shall impose the following reinstatement fees, based on the date range during which the person requests to reinstate a license in the year following the lapse:

8.2.b.1.A. July 1 through September 30 - \$100

8.2.b.1.B. October 1 through December 31st - \$200

8.2.b.1.C. January 1 through March 31st - \$300

8.2.c. The Board, in its discretion, may reinstate the license of a previously licensed ~~WV~~ West Virginia Nursing Home Administrator whose license has lapsed for more than one year from its date of expiration and may grant a waiver for re-examination. The applicant must submit a formal request along with an application that includes, but is not limited to, the applicant's professional history, the applicant's criminal history, good cause for the lapse and evidence of at least 20 hours of continuing education hours completed in the 12 months prior to his or her request for a reinstated license. The applicant must also pay a fee of \$500. If the Board does not grant the request to reinstate the license, the applicant will be treated as a new applicant under this rule and shall be required to complete all requirements and pay all applicable fees associated with a new application.

§21-1-9. Refunds.

9.1. The Board shall refund to an applicant that chooses to withdraw from the application process their entire application fee minus a processing fee of \$100. Refunds of the following fees are permitted:

9.1.a. AIT application fee;

9.1.b. A licensure examination application fee; and

9.1.c. A reciprocity application fee.