



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Health TITLE-SERIES: 64-14
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 64-14 Assisted Living Facilities

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 16-5D-1 et seq.

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

15-5D-5

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? Yes

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? Yes

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD:

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED:

COMMENTS RECEIVED:

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING:

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule establishes specific standards and procedures for the health, safety, and protection of the rights and dignity of residents in assisted living facilities.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This filing is solely for a sunset date extension so OHFLAC may continue to regulate this industry.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

n/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			0
Personal Services			0
Current Expenses			0
Repairs and Alterations			0
Assets			0
Other			0
2. Estimated Total Revenues			0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

n/a

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

Yes

April L Robertson -- 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.

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TITLE 64
LEGISLATIVE RULE
BUREAU FOR PUBLIC HEALTH

SERIES 14
ASSISTED LIVING RESIDENCES

§64-14-1. General.

1.1. Scope. -- This legislative rule establishes specific standards and procedures to provide for the health, safety, and the protection of the rights and dignity of residents of assisted living residences. This rule should be read in conjunction with W. Va. Code §§16-5D-1, *et seq.* The West Virginia Code is available in public libraries and on the Legislature's web page, <http://wvlegislature.gov/>.

1.2. Authority. -- W. Va. Code §16-5D-5 and §16-1-4.

1.3. Filing Date. -- ~~May 1, 2019.~~

1.4. Effective Date. -- ~~July 30, 2019.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~July 30, 2024~~ August 1, 2029.

1.6. Application. -- This rule applies to any individual person and any organization, incorporated or unincorporated, including a partnership, corporation, trust, association or political subdivision of the State establishing, maintaining or operating an assisted living residence as defined in W. Va. Code §16-5D-2 and this rule. This rule does not apply to homes or asylums operated by fraternal orders pursuant to W. Va. Code §§35-3-1, *et seq.*, or to health care facilities subject to other applicable licensure rules, such as nursing homes, residential care communities, and behavioral health centers.

1.7. Enforcement. -- This rule is enforced by the Secretary of the Department of Health and Human Resources, or his or her designee.

§64-14-2. Definitions.

2.1. Definitions incorporated by reference. -- Those terms defined in W. Va. Code §§16-5D-1, *et seq.*, are incorporated herein by reference.

2.2. Abuse. -- The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods and services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain, or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology. Willful, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

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2.3. Activities of Daily Living. -- The activities that an individual generally performs regularly in the course of maintaining his or her physical self, such as eating, dressing, oral hygiene, toileting, personal grooming, and moving themselves from one location to another.

2.4. Administration of Medication. -- Assisting a person in the ingestion, application or inhalation of medications, including both prescription drugs and non-prescription drugs.

2.5. Administrator. -- The owner or individual selected by the licensee to be responsible for the day-to-day operation of the assisted living residence.

2.6. Adult Day Care. -- Care and supervision for elderly or disabled adults during daytime hours only.

2.7. Bed Capacity. -- The number of residents an assisted living residence is licensed to house.

2.8. Classification of Standards. -- The designation assigned to the requirements in this rule indicating the level of impact the requirement has on the health, safety and welfare of the residents. There are three levels used, indicated by Class I, Class II and Class III, with Class I having the most impact and Class III the least.

2.9. Communicable Disease. -- An illness caused by an infectious agent or its toxic product that is transmitted, directly or indirectly, to a susceptible host from an infected person or animal, or through the agency of an intermediate host or a vendor or through the inanimate environment.

2.10. Developmental Disorder. -- A group of disorders in which the predominant disturbance is in the acquisition of cognitive, language, motor, or social skills. The disturbance may involve a general delay, as in mental retardation, or a delay or failure to progress in a specific area of skill acquisition or multiple areas in which there are qualitative distortions of normal development.

2.11. Direct Care Staff. -- Individuals who assist or actually perform activities for residents such as eating, dressing, oral hygiene, toileting, personal grooming, repositioning, ambulating residents from one location to another, or provide care to residents who have one or more inappropriate behaviors that reasonably requires additional staff to control.

2.12. Disability. -- Any limitation of physical, mental, or social activity of an individual as compared with other individuals of similar age, sex, and occupation. It frequently refers to limitation of the usual or major activities, most commonly vocational.

2.13. Exploitation. -- The act or process of taking unjust advantage of another individual for one's own benefit that includes, but is not limited to, the deliberate misplacement or wrongful use of a resident or the resident's belongings or money without the resident's consent.

2.14. Extensive Nursing Care. -- The nursing care required when there is a major deviation from normal in a body system or multiple body systems of such magnitude that the deviations are life threatening and the individual's condition is unstable and unpredictable.

2.15. Functional Needs Assessment. -- Any measurement tool that identifies for the resident and the licensee those services that the licensee will need to obtain or provide for the resident in order to promote the resident's health, comfort, dignity, and independence.

2.16. Health Care Facility. -- A public or privately-owned institution, entity or adult residential facility or any part or unit thereof, that offers or provides health care services, such as personal assistance, supervision, nursing care, or behavioral health care, that are required to be licensed in accordance with state law to provide the services.

2.17. Immediate and Serious Threat. -- A situation that presents a high probability of serious harm or injury to one or more residents. An immediate or serious threat need not result in actual harm to any resident.

2.18. Imminent Danger. -- A situation that could reasonably be expected to immediately cause or contribute to death, serious physical harm, or illness to a resident, household member, or staff before the situation can be eliminated through a plan of correction according to subsection 3.10. of this rule.

2.19. Legal Representative. -- A person chosen by the resident or 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 affairs. Legal representatives may have limited authority to act on behalf of the resident. For example, a conservator has responsibility for financial affairs, but not personal affairs such as medical care. Legal representatives include:

2.19.1. A conservator, temporary conservator or limited conservator 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 most recent court order;

2.19.2. A guardian, temporary guardian or limited guardian appointed pursuant to the West Virginia Guardianship and Conservatorship Act, W. Va. Code §§44A-1-1, *et seq.*, within the limits set by the most recent court order;

2.19.3. An individual appointed as committee or guardian prior to June 9, 1994, within the limits set by the appointing order and W. Va. Code §44A-11-2(d) and §§44A-1-1, *et seq.*;

2.19.4. An individual having a 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 law and the appointment;

2.19.5. A representative payee under the U.S. Social Security Act, Title 42 U.S. Code §§ 301, *et seq.*, within the limits of the payee's legal authority;

2.19.6. A health care surrogate decision-maker appointed pursuant to the West Virginia Health Care Decisions Act, W. Va. Code §§16-30-1, *et seq.*, within the limits set by the appointment;

2.19.7. An individual having a durable power of attorney pursuant to W. Va. Code §39B-1-101, or a power of attorney under common law, within the limits of the appointment;

2.19.8. An individual identified pursuant to W. Va. Code §16-3C-4, to grant consent for HIV-related testing and for the authorization of the release of test results;

2.19.9. A parent or guardian of a minor; or

2.19.10. An individual lawfully appointed in a similar or like relationship of responsibility for a resident under the laws of this state, or another legal jurisdiction, within the limits of the applicable law and appointing authority.

2.20. Licensed Health Care Professional. -- A health care professional currently licensed in West Virginia including, but not limited to, a social worker, dentist, practical nurse, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, registered professional nurse, or speech-language pathologist.

2.21. Life Care Contract. -- A financial agreement between the licensee and an individual in which the licensee agrees to provide specified care to the individual for the rest of the individual's life.

2.22. Limited and Intermittent. -- No more than two hours of nursing care per day for a period of time no longer than 90 consecutive days per episode.

2.23. Major Incident. -- An event or occurrence, the outcome of which places one or more resident's health and well-being in imminent danger, such as:

2.23.1. A fall, an accident, or another event that seriously injures or threatens the life of the resident;

2.23.2. A resident's death occurring from other than natural causes;

2.23.3. A missing resident who is likely to injure himself or herself, or who needs medication or treatment on a regular basis, and who is likely to have difficulty returning to the assisted living residence on his or her own;

2.23.4. Assault on a resident resulting in injury; and

2.23.5. Other suspected criminal activity or events that cause the disruption of normal assisted living residence activity, including threats or occurrences of extreme violence, explosions, fire, or natural disasters.

2.24. Mental Abuse. -- Includes, but is not limited to, subjecting or exposing a resident to behavior that may result in psychological trauma or injury, including, but not limited to, humiliating, harassing, teasing, or threatening; unreasonably restricting a resident's contact with family, friends, or other residents; unreasonably ignoring a resident's requests; threats of punishment or deprivation; or willfully violating a resident's rights, including confidentiality.

2.25. Mental Disorder. -- An illness that affects the psychological well-being or behavior of an individual to the extent that the individual requires treatment for his or her own welfare or the welfare of others.

2.26. Neglect. -- Failure of the facility, its employees, or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.

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

2.28. Ongoing Nursing Care. -- Nursing care that continues in excess of 90 consecutive days.

2.29. Residence. -- An assisted living residence as defined in W. Va. Code §16-5D-2.

2.30. Restraint.

2.30.1. Any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove at will and that physically limits, restricts, or deprives the resident of movement or mobility; or

2.30.2. Any drug used to limit movement or mental capacity of a resident for non-medical reasons beyond the requirements of therapeutic treatment.

2.31. Self-Administration of Medications. -- The act of a resident, who is independently capable of reading and understanding the labels of prescribed medication, in opening and accessing a prepackaged container of medication, and accurately identifying and taking the correct dosage of the medication, at the correct time and under the correct circumstances as prescribed by the physician.

2.32. Service Plan. -- A written description of the services that need to be provided to a resident to meet all of the needs identified in his or her functional needs assessment.

2.33. Sexual Abuse. -- Includes, but is not limited to, sexual harassment, sexual coercion, sexual exploitation, sexual assault, or sexual contact. It also includes taking or disseminating photographs, films, audio, or other recordings of a resident, without informed consent, when such items serve no health, well-being, safety, or medical purpose, and would serve to demean or humiliate the resident, including but not limited to, items that contain nudity, sexual and intimate relations, bathing, showering, toileting, or otherwise showing the resident in a compromising position, or agitating the resident to elicit a response, regardless of whether the resident has capacity.

2.34. Significant Change. -- A change in a resident's condition that is major, impacts on more than one area of the resident's health status, and requires intervention by a health care professional.

2.35. Supervision. -- The assumption of varying degrees of responsibility for the safety and well-being of residents including, but not limited to:

2.35.1. Being aware of the resident's whereabouts, to the extent identified as a need by the resident's assessment or service plan;

2.35.2. Monitoring the activities of a resident while on the premises of the residence to ensure the resident's health, safety, and well-being;

2.35.3. Reminding the resident of any important activities of daily living;

2.35.4. Overseeing the administration of medication, if not administering it;

2.35.5. Purchasing of food and other supplies, and meeting nutritional and food needs; and

2.35.6. Arranging for or providing transportation as necessary.

2.36. Verbal Abuse. -- Includes, but is not limited to, the use of oral, written, or gestured language that willfully includes disparaging and derogatory terms to residents or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse include, but are not limited to, threats of harm; saying things to frighten a resident, such as telling a resident that he or she will never be able to see his or her family again; intimidation; humiliation; threats of hostility; or vulgarity.

§ 64-14-3. State Administrative Procedures.

3.1. General Licensing Provisions.

3.1.1. No person, partnership, association, or corporation may operate an assisted living residence in the state of West Virginia without first obtaining a license pursuant to W. Va. Code §16-5D-6 and this rule.

3.1.2. A license is valid only for the person and for the location named in the application and on the license, and is not transferable.

3.1.2.a. The assisted living residence shall notify the Secretary in writing 30 days prior to a change in name or physical address of the program and request an application for a licensure amendment.

3.1.2.b. If the ownership of an assisted living residence changes, the new owner shall notify the Secretary within 10 days and immediately apply for a new license. The new owner's application for a license is valid for three months from the date the application is received by the Secretary.

3.1.3. Each assisted living residence location shall be licensed separately, regardless of whether the assisted living residence is operated under the same business name or management as another assisted living residence.

3.1.4. The words "clinic," "hospital," "nursing home," "residential care community" or any other words that suggest a type of facility other than an assisted living residence shall not be used in the name or the advertising of the residence.

3.1.5. The licensee is responsible for compliance with this rule, W. Va. Code §§16-5D-1, *et seq.*, and other relevant federal and state laws.

3.1.6. The Secretary may issue an initial or a renewal license for a period not to exceed one year, except if an applicant submits an application for renewal of a license currently in effect in accordance with this rule and W. Va. Code §§16-5D-1, *et seq.*, together with the required fee. The license shall continue in effect until:

3.1.6.a. One year following the expiration date of the license;

3.1.6.b. The date of a revocation or suspension of the license pursuant to this rule and W. Va. Code §§16-5D-1, *et seq.*, or

3.1.6.c. The date of issuance of a new license, whichever date occurs first.

3.2. Initial Licensure Application.

3.2.1. An applicant for initial licensure shall submit a completed application to the Office of Health Facility Licensure and Certification, along with a non-refundable fee, and any additional information the Secretary may require.

3.2.2. The applicant shall have his or her signature on the application and have accompanying forms notarized. The signature shall serve as a release for obtaining references, credit, and other background information.

3.2.3. The applicant shall pay the cost of the initial licensure inspections, pursuant to W. Va. Code §16-5D-6(i) before the issuance of an initial license.

3.2.4. The applicant shall provide to the Secretary a preliminary operating plan that includes a proposed budget with projected monthly income, a balance sheet showing all expenses and income on forms provided by the Secretary, including but not limited to, reimbursement of the owners, lease payment, and monthly rates charged.

3.2.5. The applicant shall submit the application and fee at least 90 days prior to the date proposed for the commencement of operations.

3.2.6. Except as specified in subsection 3.5. of this rule, and after a satisfactory inspection to ensure compliance with this rule, the Secretary shall issue an initial license.

3.3. License Renewal.

3.3.1. The licensee shall submit an application for renewal of a license to the Secretary at least 90 days before the expiration date of the current license.

3.3.2. Except as specified in subsection 3.4. of this rule, the Secretary shall issue a renewal license to an assisted living residence when the following conditions are met:

3.3.2.a. The residence is found to be in substantial compliance with this rule;

3.3.2.b. The applicant has submitted a completed application and all requested financial information; and

3.3.2.c. The residence has met all Class I standards of this rule.

3.4. Non-Issuance of Initial or Renewal License.

3.4.1. The Secretary may refuse to issue or may revoke either an initial or a renewal license if he or she finds evidence of the following:

3.4.1.a. The applicant or licensee has a lack of financial stability to operate, such as insufficient capital, delinquent accounts, checks returned because of insufficient funds, and nonpayment of taxes, utility expenses, and other essential services;

3.4.1.b. The applicant or licensee has a personal history that has:

3.4.1.b.1. Evidence of abuse, fraud, or substantial and repeated violations of applicable laws and rules in the operation of any health care facility or service organization, or in the care of dependent persons; or

3.4.1.b.2. An ineligible employment fitness determination from the West Virginia Clearance for Access: Registry and Employment Screening unit of the Department of Health and Human Resources and not received a variance;

3.4.1.c. The applicant or licensee has been denied a license or has had a license to operate a health care facility revoked in West Virginia or any other jurisdiction during the previous five years;

3.4.1.d. The applicant or licensee has a record of noncompliance with lawful orders of the department or other licensing or certification agency for any jurisdiction in which the applicant has operated, directed, or participated in the operation of a health care facility;

3.4.1.e. The applicant, licensee, or person in charge of the residence has refused the Secretary entry and access to residents and records for an inspection or survey;

3.4.1.f. The applicant or licensee has converted the property of a resident for his or her own use, or has secured property, or a bequest of property, from a resident by undue influence;

3.4.1.g. The applicant, licensee, or administrator has submitted false information to the Secretary during the licensure process or during the course of an inspection or survey of the residence;

3.4.1.h. The applicant or licensee has moved residents of the assisted living residence to another location owned or operated by the applicant or licensee without prior approval of the location by the Secretary;

3.4.1.i. The applicant or licensee has built or renovated a residence without complying with the requirements of subsection 3.12. of this rule;

3.4.1.j. The applicant or licensee has failed to correct a violation of any Class I standard, or has failed to be in substantial compliance with the requirements of this rule; or

3.4.1.k. The residence has failed to receive a recommendation for licensure from the state fire marshal.

3.4.2. Before refusing to issue an initial or renewal license or revoking a license, the commissioner shall consider all available evidence at the time of the determination, including:

3.4.2.a. The history of the residence and the applicant or licensee in complying with this rule; and

3.4.2.b. Notices of violations that have been issued to the residence and the applicant or licensee, findings of surveys and inspections, and any evidence provided by the applicant or licensee, residents, law enforcement officials, and other interested individuals.

3.5. Provisional License.

3.5.1. The Secretary may issue a provisional license when:

3.5.1.a. The licensee has failed to meet all the requirements of W. Va. Code §§16-5D-1, *et seq.*, but care given in the residence is adequate for the residents' needs and the licensee has demonstrated improvement and evidences potential for substantial compliance during the term of the provisional license; or

3.5.1.b. All requirements for renewal of a license are not met prior to the expiration of the previously issued license.

3.5.2. When the Secretary issues a provisional license, he or she shall determine the period of time for which the license is valid, but the period shall not exceed one year.

3.5.3. The Secretary shall not renew a provisional license.

3.5.4. If the Secretary denies a provisional license or a provisional license expires, the applicant for a license shall meet the requirements for an initial license, including the cost of an initial application fee and inspections as determined by the Secretary.

3.5.5. The Secretary shall not issue a provisional license when the residence is in violation of any Class I standard or has a record of noncompliance with this rule.

3.6. Inspections.

3.6.1. The Secretary shall inspect an assisted living residence as necessary to carry out the intent of W. Va. Code §§16-5D-1, *et seq.*, and this rule.

3.6.2. The Secretary shall conduct at least one inspection of a residence prior to issuing an initial license, but shall not conduct an inspection until after the following conditions are met:

3.6.2.a. The application and application fee have been received and the application has been determined to be complete; and

3.6.2.b. All requested documentation has verified the readiness of the residence for an inspection.

3.6.3. The Secretary shall conduct periodic unannounced inspections to determine the residence's continued compliance with this rule.

3.6.4. The Secretary has the right to enter a home or structure that is believed to be operating or maintained as an assisted living residence without a license, to conduct inspections without prior notice. If the operator or person in charge of the suspected assisted living residence or licensed assisted living residence refuses entry, the Secretary may apply to the circuit court in which the suspected residence is located or the circuit court of Kanawha County for a warrant to authorize an inspection or to compel attendance to the premises of the suspected residence.

3.7. Complaint Investigation.

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3.7.1. Any person may register a complaint with the Secretary alleging a violation of this rule by an assisted living residence or an individual alleged to be unlawfully operating an assisted living residence, by stating the complaint and identifying the name and address of the residence.

3.7.2. The Secretary may conduct investigations as necessary to determine the validity of the complaint and shall notify the licensee of the residence or the individual alleged to be operating an illegal assisted living residence of the complaint at the time of the completion of the investigation.

3.7.3. The Secretary shall notify the licensee or the operator of an unlicensed residence of any corrective action required, the time frame for completion of the corrective action, and any disciplinary action to be taken by the Secretary.

3.7.4. Except as provided in subdivision 3.7.5. of this rule, the Secretary shall keep the names of a complainant and of any resident named in the complaint confidential and shall not disclose the names to the public without written or verbal permission of the complainant and the resident, and his or her legal representative, if any, unless there is an immediate risk to the resident. The Secretary shall delete the name of a complainant or resident named in a complaint or information contained in the report of an investigation that could reasonably identify the complainant or any resident. Information contained in any report of abuse, neglect, or an emergency situation made in accordance with W. Va. Code §9-6-8 shall be confidential and shall not be released except as provided in that article.

3.7.5. If a complaint becomes the subject of a judicial proceeding, nothing in this rule is construed to prohibit the disclosure of information that would otherwise be disclosed in judicial proceedings.

3.7.6. Any type of discriminatory treatment of a resident or employee by whom or on whose behalf a complaint has been submitted to the Secretary, within 120 days of the filing of the complaint or the institution of the action, raises a rebuttal presumption that the discriminatory treatment action was taken by the licensee in retaliation for the complaint or action.

3.8. Waivers.

3.8.1. The Secretary may waive a requirement of this rule if after thorough investigation, he or she determines that the waiver will not adversely affect the health, safety, welfare, or rights of the residents.

3.8.2. The licensee shall submit a written request for a waiver and the request shall:

3.8.2.a. Specify the specific requirement in this rule for which the waiver is requested;

3.8.2.b. Specify the time period for which the waiver is requested;

3.8.2.c. Include specific and detailed reasons for the request;

3.8.2.d. Explain why the specific requirement cannot be complied with; and

3.8.2.e. Document that there will be no adverse effect on the residents' health, safety, welfare, or rights if the waiver is granted.

3.9. Reports and Records.

3.9.1. The Secretary shall prepare a written report of any inspection made pursuant to this rule within 15 days of the completion of the inspection and shall mail or electronically transmit to the licensee or administrator, as applicable, a statement of deficiencies that contains the violations of this rule.

3.9.2. The names of residents shall be kept confidential and shall not be disclosed without the resident's written permission or by order of court of record. Nothing contained in this rule shall be construed to require or permit the public disclosure of confidential medical, social, personal, or financial records of any resident. Before releasing a report or record judged public information, the Secretary shall delete any information regarding a resident that would reasonably permit identification of the resident.

3.9.3. The Secretary shall provide notification to the social security administration if a residence demonstrates continued noncompliance with this rule.

3.10. Plans of Correction.

3.10.1. The licensee of an assisted living residence, found on the basis of inspection or other investigation to have violations of requirements in this rule, shall develop, sign, and date a plan of correction, and submit it to the Secretary within 15 working days of receipt of the statement of deficiencies.

3.10.2. The Secretary shall require immediate correction of violations identified as constituting immediate and serious threats to the health or safety of a resident or employee.

3.10.3. For deficiencies other than those constituting immediate and serious threats, the licensee is expected to comply with the rule within 60 days of the inspection, unless the Secretary waives this requirement and allows more time to correct certain types of deficiencies.

3.10.4. The plan of correction shall specify:

3.10.4.a. The violations to be corrected;

3.10.4.b. The actions taken or proposed to correct the violations and procedures to prevent their recurrence; and

3.10.4.c. The dates on which each violation is corrected or by which each will be corrected, that allows the shortest possible time to reasonably correct each specific violation.

3.10.5. The Secretary shall notify the licensee in writing of his or her approval, suggested modifications, or rejection of the plan of correction, or any part thereof.

3.10.6. If modifying or rejecting the proposed plan of correction, the Secretary shall state the reasons for the modification or rejection.

3.10.7. If the Secretary rejects the plan of correction, the licensee has up to 15 working days from the receipt of the Secretary's determination to submit a revised plan.

3.10.8. The Secretary may conduct a follow-up, on-site inspection to verify the correction of any violations identified during an inspection or any other investigation.

3.11. Classification of Standards.

In accordance with W. Va. Code §16-5D-5(c), the classification for each standard indicates the most serious classification that may be assigned to that standard.

3.12. New Construction, Additions, Renovations, and Alterations.

3.12.1. The requirements of this section apply in total to all proposed assisted living residences. Existing residences proposing additions and renovations shall meet only the requirements determined applicable by the Secretary to the new or renovated portion.

3.12.2. For new construction, additions, renovations, or alterations to existing residences, and before construction begins on a proposed residence, the applicant shall submit a complete set of drawings and specifications for the architectural, structural, and mechanical work as follows:

3.12.2.a. For a large assisted living residence, an architect or engineer registered in West Virginia shall prepare, sign, and seal the submitted set of construction drawings and specifications and submit one set of these documents to the Secretary and the state fire marshal for approval. The registered architect or engineer shall also inspect the new residence, or the additions and renovations, during the construction phase.

3.12.2.b. For a small assisted living residence, the applicant shall submit a set of drawings and specifications that are drawn to scale and fully dimensioned, to the Secretary and state fire marshal for approval.

3.12.2.c. Unless substantial construction is started within one year of the date of approval of final drawings, the architect, engineer, or applicant, whichever applicable, shall obtain written permission from the Secretary that the plan approval for construction is still valid and in compliance with this rule.

3.12.3. The Secretary shall inspect sites for all proposed residences and sites of additions or renovations to existing residences, prior to the applicant initiating construction. Sites shall:

3.12.3.a. Have adequate drainage to divert surface water and be located in an area above the 100-year flood plain;

3.12.3.b. Have a water supply that is safe and sized to meet all residential needs and requirements of the sprinkler system and has as its source of water either:

3.12.3.b.1. A public water system that complies with the Bureau for Public Health rule, "Public Water Systems," W. Va. Code R. §§64-3-1, *et seq.*; or

3.12.3.b.2. A water well that complies with the Bureau for Public Health rules, "Water Well Regulations," W. Va. Code R. §§64-19-1, *et seq.*, and "Water Well Design Standards," W. Va. Code R. §§64-46-1, *et seq.*; and

3.12.3.c. Have precautions to assure the residents' safety, if located near railroads, freight yards, traffic arteries, or airports.

3.12.4. A qualified soils engineer shall review any questionable soil conditions, high walls, or surface water runoff, and if conditions require, perform earth core borings and laboratory tests. If engineered soil is installed or other soil tests conducted, the applicant shall provide the Secretary with copies of the soil test reports.

3.12.5. The Secretary shall inspect and approve all construction, new additions, renovations, or alterations prior to the admission of new or additional residents. When construction is substantially complete, the applicant shall submit a substantial completion form signed by all the parties involved and a completed inspection request form to the Secretary.

3.12.6. An assisted living residence shall pay a \$400 fee plus the actual costs of the initial inspections made by the Secretary prior to issuing a license. The cost shall be billed to the assisted living residence or owner(s) by the Secretary after the inspections and must be paid in full before a license is issued.

3.12.7. The applicant shall submit plans for the addition, removal, or modification of equipment that is permanently affixed to the building or that may otherwise involve or necessitate new construction, alterations, or additions to the residence to the Secretary for approval.

3.12.8. Other changes involving equipment, that may or may not require physical changes in the residence, but that may relate to other standards and requirements of this rule may require the Secretary's approval. The applicant shall request approval in advance from the Secretary regarding a specific change or rearrangement. Areas in which changes are likely to require approval include, but are not limited to, the kitchen, the laundry, and the heating equipment.

3.12.9. The applicant shall submit the plan of operation to the Secretary for approval, and the Secretary shall determine the licensed bed capacity. For an increase in the licensed bed capacity, the licensee shall obtain prior written approval of the Secretary.

3.12.10. The residence shall comply with the state fire commission, the International Building Code, 2003 Ed.

3.12.11. The residence shall comply with the Fire Commission rule, "Fire Code," W. Va. Code R. §§87-1-1, *et seq.*

3.12.12. The residence shall comply with the Americans with Disabilities Act (ADA) and the American National Standards Institute (ANSI) codes.

3.12.13. The residence shall comply with local building or zoning codes if they require standards higher than those required by this rule.

3.12.14. The applicant shall have evidence of compliance signed by local fire, building, and zoning officials available onsite for review.

3.12.15. The residence shall have an all-weather, hard surface road that connects directly to a highway.

3.12.16. The residence shall have parking areas with:

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3.12.16.a. Clean, solid, earth beds; a compacted stone base; and a hard surface, all-weather finish coat; free of broken, gaped, or uneven paving, with slopes that permit good drainage; and

3.12.16.b. Adequate spaces for all staff on duty and a minimum of one parking space for each five beds.

3.12.17. The residence shall have hard, slip-resistant surface concrete walks at all exits that connect to the main walk or parking area, that are a minimum of 36 inches wide.

3.12.18. The applicant shall ensure that low windows, open porches, changes in floor level, and similar potential hazards are designed so that the danger of accidents is minimized, and that dangerous areas on the site are safeguarded.

3.12.19. The applicant shall store oxygen outdoors in an enclosure protected from the weather or in a well-ventilated oxygen storage room of approved construction, with doors locked to prevent unauthorized entry.

3.12.20. The residence shall have a call system that is audible to staff who are on duty and that can be accessed from each bed and other areas as necessary for the safety of residents. Electronic call systems may be required based on the size of the residence, the staffing patterns, and the configuration of the building.

3.12.21. Bedrooms shall:

3.12.21.a. Have at least 100 square feet of floor area per resident in single occupancy rooms, and 90 square feet of floor area per resident in double occupancy rooms;

3.12.21.b. Have an outside exposure through a vertical transparent window;

3.12.21.c. Not extend below ground level unless granted written approval by the Secretary;
and

3.12.21.d. Not be occupied by more than two persons.

3.12.22. The residence's toilet and bathing facilities shall provide the following:

3.12.22.a. A minimum of two bathrooms, each containing a flushing toilet and hand washing sink, with a mirror over the sink, at a ratio of no less than one toilet and lavatory for every six residents;

3.12.22.b. A minimum of one bathing facility per floor, with a bath tub or shower, equipped with non-slip surfaces, a flushing toilet, and a hand washing sink, at a ratio of no less than one bathing facility for every 10 residents;

3.12.22.c. Grab-bars at toilets, tubs, and showers that are securely mounted to the finished wall with a steel plate or a two inch by six-inch wood plate backing behind the wall. Grab bar brackets shall be spaced to support 250 pounds of a concentrated load at any point on the grab bar; and

3.12.22.d. Bathroom doors with locking type hardware that swing outward and can be opened from outside in the event of an emergency.

3.12.23. The residence shall have a dining area of at least 15 square feet per resident and an area of at least 15 square feet per resident for leisure space. The dining room may serve as part of the leisure room, and if combined, a dining and leisure room area shall have a minimum of 30 square feet per resident.

3.12.24. If the residence provides laundry services, the laundry room shall have separation between the soiled and clean laundry, mechanical ventilation in the soiled area, a clean area large enough for folding linens, and venting to the outside for any electric or gas dryer.

3.12.25. The residence shall have at least one service sink per floor for a sanitary means of disposal of waste water in an area inaccessible to residents.

3.12.26. The residence shall have sewage disposal in accordance with Bureau for Public Health rules, "Sewer Systems, Sewage Treatment Systems, and Sewage Tank Cleaners," W. Va. Code R. §§64-9-1, *et seq.*, and "Sewage Treatment and Collection System Design Standards," W. Va. Code R. §§64-47-1, *et seq.*

§64-14-4. Administrative Requirements.

4.1. General Administrative Requirements.

4.1.1. The licensee shall develop and adopt written policies and procedures that are consistent with this rule and specific to the assisted living residence, governing the care and safety of residents, and all other policies and procedures required by this rule. The licensee shall sign and date the policies and procedures at the time of adoption and of any changes. (Class III)

4.1.2. The licensee shall have a copy of the policies and procedures available for review on request by employees, residents, and the general public. (Class III)

4.1.3. The licensee shall have a resident bill of rights, and house rules governing resident behavior and responsibilities, that are both in writing and consistent with this rule. (Class III)

4.1.4. Unless otherwise approved in writing by the Secretary, a licensee shall not rent, lease, or use any part of the residence for any purpose other than the operation of housing residents. (Class III)

4.1.5. A licensee that intends to provide adult day care shall obtain prior approval from the Secretary by notifying the Secretary of the number of individuals the residence proposes to serve in addition to the residence's licensed bed capacity. Individuals to be served shall have the same health screening as required for the residents and shall not have extensive or ongoing nursing care needs. The Secretary's determination shall be based on space requirements, services proposed to be provided, staffing, and the residence's history of compliance with this rule. (Class III)

4.1.6. Any individual, including an employee, or his or her spouse, having a financial interest in the residence shall not serve as a resident's legal representative, with the exception of a representative payee under the United States Social Security Act, unless he or she is related to the resident within the consanguinity of second cousin. (Class III)

4.1.7. All employees of an assisted living residence shall be subject to the provisions of the West Virginia Clearance for Access: Registry and Employment Screening Act, W. Va. Code §§16-49-1, *et seq.* and W. Va. Code R. §§69-10-1, *et seq.* (Class II)

4.2. The Licensee.

4.2.1. The licensee shall comply with this rule; the terms of the assisted living residence's license; W. Va. Code §§16-5D-1, *et seq.*; other applicable federal, state, or local laws; and with the residence's policies. (Class II)

4.2.2. The licensee shall protect the physical and mental well-being of residents. (Class II)

4.2.3. The licensee shall maintain accurate records and reports required by this rule. (Class II)

4.2.4. The licensee shall administer the residence on a sound financial basis consistent with good business practices and shall maintain fiscal records that accurately identify, summarize, and classify funds received and disbursed for the operation of the residence. The issuance of bad checks or accumulation of delinquent bills constitute evidence that the licensee lacks satisfactory proof of financial ability to operate the residence in accordance with the requirements of W. Va. Code §16-5D-6. (Class II)

4.2.5. The licensee shall notify the Secretary in writing within 10 days of any permanent change in the administrator and in the consulting or supervising registered professional nurse of the residence. A licensee shall not operate a residence more than 30 days without a qualified administrator or supervising registered professional nurse, unless the Secretary grants an extension, based on a determination that a reasonable attempt has been made to find a suitable replacement. (Class III)

4.2.6. The licensee shall report major incidents, as defined in subsection 2.23. of this rule, to the Office of Health Facility Licensure and Certification as soon as possible, and no later than the next business day. (Class III)

4.3. Administrator.

4.3.1. A large residence shall have an administrator who is at least 21 years of age and has an associate degree or its equivalent in a related field, except an individual who was approved as an administrator prior to August 15, 1996, who shall have at least a high school education or its equivalent approved by the State Department of Education. A small residence shall have an administrator who is at least 21 years of age and has completed high school or a general education development (GED) certificate. (Class III)

4.3.2. The assisted living residence shall have an administrator who has received an eligibility fitness determination or variance from the West Virginia Clearance for Access: Registry and Employment Screening unit of the Department of Health and Human Resources. (Class II)

4.3.3. The administrator shall participate in eight hours of training related to the operation of a residence annually and a record of this training shall be available for review. (Class III)

4.3.4. The administrator shall know the requirements of this rule, develop and execute all policies and procedures required by this rule, ensure compliance with all applicable laws, and ensure the adequacy and appropriateness of services delivered to the residents. (Class II)

4.3.5. The administrator or a responsible employee, designated in writing, shall be present and in charge of the residence at all times. (Class II)

4.4. Staffing Requirements.

4.4.1. Each assisted living residence shall have a minimum of one direct care staff person 24 hours per day, who can read and write, and shall have a sufficient number of qualified employees on duty to provide the residents with all of the care and services they require. (Class I)

4.4.1.a. Day shift – In addition to the one direct care staff person on the day shift, the residence shall have one direct care staff on the day shift for each 10 residents identified on their needs assessments to have two or more of the following care needs: dependence on staff for eating, toileting, ambulating residents from one location to another, bathing, dressing, repositioning, oral hygiene, personal grooming, or one or more inappropriate behaviors that reasonably require additional staff to control, such as sexually acting out, stripping in public settings, refusing basic care, destroying property, or injurious behavior to self or others (hereinafter referred to as “special care needs”);

4.4.1.b. Evening shift – In addition to the one direct care person on the evening shift, the residence shall have at least one additional direct care staff on the evening shift for each 15 residents identified on their functional needs assessments to have two or more special care needs;

4.4.1.c. Night shift – In addition to the one direct care person on the night shift, the residence shall have at least one additional direct care staff on the night shift for each 18 residents identified on their functional needs assessments to have two or more special care needs.

4.4.2. One employee who has current first aid training and current cardiopulmonary resuscitation (CPR) training, as applicable, shall be on duty at all times. A record of this training shall be available for review. (Class I)

4.4.3. A multi-story residence shall have at least one awake staff per story while residents are sleeping, unless the residents are certified by a physician or psychologist as not in need of sleep time supervision, and the residence has an emergency call system from the residents to the awake staff person. (Class I)

4.4.4. The residence shall have sufficient staff to meet the laundry, food service, housekeeping, and maintenance requirements of this rule. (Class II)

4.4.5. The licensee shall maintain staffing records that accurately reflect the actual employees on duty in the residence at any given time, including the hours they have worked and the positions they worked, and provide them to the Secretary upon request. (Class III)

4.4.6. If a resident experiences a poor outcome related to a lack of supervision or unmet care needs, the Secretary may require the licensee to add staff. (Class I)

4.5. Employee Orientation and Training.

4.5.1. The licensee shall provide and maintain a record of training to new employees prior to scheduling them to work unsupervised, and no later than within the first 15 days of employment, in

accordance with a written plan that includes, at a minimum, emergency procedures and disaster plans; the residence's policies and procedures; resident rights; confidentiality; abuse prevention and reporting requirements; the ombudsmen's role; complaint procedures; specialty care based on individualized resident needs and service plans; the provision of group and individual resident activities; and infection control. (Class II)

4.5.2. The licensee shall provide and maintain a record of in-service training annually to all staff on the topics of resident rights, confidentiality, abuse prevention and reporting requirements, the provision of resident activities, infection control, fire safety and evacuation plans, and specialty care based on individual resident needs and service plans. (Class II)

4.5.3. The licensee shall provide training to all new employees within 15 days of employment and annually thereafter on Alzheimer's disease and related dementias. The licensee shall maintain an employee training record. The training shall be a minimum of two hours in duration and shall include all the following: basic understanding of Alzheimer's disease and other dementias; communication approaches and techniques for use when interacting with persons with Alzheimer's disease or a related dementia; prevention and management of problem behaviors; and activities and programming appropriate for these individuals. (Class II)

4.6. Personnel Records.

4.6.1. The licensee shall maintain a confidential personnel record for each employee, including the administrator, and for volunteers who provide personal assistance to more than one resident. Each record shall contain at least the following:

4.6.1.a. The employee's date of employment, current home address and telephone number, social security number, and proof of compliance with age requirements of applicable federal and state laws;

4.6.1.b. Evidence that each assisted living residence employee, independent contractor, or volunteer has received an eligibility fitness determination or variance from the West Virginia Clearance for Access: Registry and Employment Screening unit of the Department of Health and Human Resources, if applicable;

4.6.1.c. A position title and proof of any required education or license; and

4.6.1.d. A health record containing the results of a pre-employment and annual screening for tuberculosis and other communicable diseases as indicated by exposure, prevalence, or currently accepted medical practice in congregate living situations as indicated by the Secretary. (Class III)

4.6.2. The licensee shall maintain personnel records on file at the residence for at least three years following the termination of an employee and shall document the date and reason for the termination. (Class III)

4.7. Administrative Admission and Discharge.

4.7.1. The licensee shall not discriminate against residents or a prospective resident on the basis of race, national origin, religion, age, gender, sexual orientation, or disability. (Class III)

4.7.2. The licensee shall enter into a written contract with the resident on admission to the residence that specifies, at a minimum, the following information:

4.7.2.a. The type of resident population that the residence is licensed to serve and will serve;

4.7.2.b. The health and nursing care services that the residence will provide to meet the resident's needs, including cardiopulmonary resuscitation, and how they will be provided;

4.7.2.c. An annual or monthly contract price, full disclosure of all costs including what changes in care needs will result in increases, additions or modifications to the costs, the refund policy, and an assurance that the resident shall not be held liable for any cost that was not disclosed;

4.7.2.d. Discharge criteria, including notification policies;

4.7.2.e. How to file a complaint;

4.7.2.f. Medication storage, handling, distribution, and disposition, and responsibility for payment;

4.7.2.g. Management of residents' funds; and

4.7.2.h. Whether or not the residence has liability insurance coverage. (Class III)

4.7.3. The licensee shall provide a copy of the contract to each party in the contract and maintain a copy of the contract on file in the residence. If the existing contract does not meet the requirements of this rule, the licensee shall provide current residents with a new or updated contract that includes the required provisions within 90 days of the effective date of this rule. (Class III)

4.7.4. At the same time as providing the contract, the licensee shall also provide the resident with the following information:

4.7.4.a. House rules governing resident behavior and responsibilities, including the residence's smoking policy;

4.7.4.b. The resident's bill of rights;

4.7.4.c. How the resident's personal property will be protected from loss and theft;

4.7.4.d. The requirements for medical examinations and treatment orders;

4.7.4.e. How the resident will be assisted in making appointments for medical, dental, nursing, or mental health services, and how transportation to and from these services will be arranged; and

4.7.4.f. How to access the residence's policies and procedures. (Class III)

4.7.5. The licensee is prohibited from entering into a life care contract without the prior written permission of the Secretary. In making a determination to grant permission, the Secretary shall consider the licensee's financial situation by reviewing the licensee's financial statements for a minimum of three

years and any related information he or she requests; the licensee's experience in the management of a life care community; and the licensee's ability to potentially manage residents with a catastrophic illness or disease. (Class III)

4.7.6. Thirty days prior to any increase, addition, or other modification of the rates of the resident's care or services, the licensee shall give the resident a written notice of the proposed change. However, when the increase, addition, or modification in cost is required by the resident's increased care needs as determined by a licensed health care professional, and the licensee has informed the residents, in writing, of the possibility of such increase, addition, or modification at the time of admission and periodically during his or her stay, the 30-day notice shall be waived. The licensee shall instead give the residents a choice between paying the increase, addition, or modification or moving to another residence. If the resident chooses to move, the resident is required to give notice of the move as set out in the admission contract. (Class III)

4.7.7. The licensee shall give the resident notice of and file a copy of the notice in the resident's record of the 30-day written notice prior to discharge, unless an emergency situation arises that requires the resident's transfer to a hospital or other higher level of care, or if the resident is a danger to him or herself or others. (Class III) The licensee shall assist the resident to find an alternative placement that is appropriate to the resident's individual needs as identified by the service plan.

4.7.8. The licensee shall maintain a register of all residents in order by the dates of the residents' admissions. The register shall include each resident's name, the date of admission, the date of his or her last day in the residence, and if transferred, the name of the place to which the resident was transferred. (Class III)

4.7.9. The licensee shall keep resident records in safe storage for at least five years from the date of the death, discharge, or transfer of the resident. If the residence ceases to operate, the licensee shall procure a holding area for the resident records that will ensure the confidentiality and safety of the records from loss, destruction, or unauthorized use. (Class III)

4.8. Management and Control of Resident Funds.

4.8.1. The licensee shall manage a resident's funds at the written request of the resident only, in the manner directed by the resident, in the resident's best interests, using generally accepted accounting principles to manage the funds, and in accordance with this rule. (Class III)

4.8.2. The licensee shall assure that the accounting system does not commingle resident funds with the assisted living residence's funds or with the funds of any other person. (Class III)

4.8.3. The licensee shall deposit a resident's personal funds exceeding \$200 in an interest-bearing account at a local bank. (Class III)

4.8.4. If the licensee handles resident funds in excess of \$25 per resident and in excess of \$500 for all residents in any month, he or she shall file a bond in an amount and with such surety as the Secretary approves that is sufficient to cover all resident funds at all times. The sum of the bond to be fixed by the Secretary based upon the amount of resident funds may not be less than \$2,500, as shown in Table 64-14 A at the end of this rule. When the amount of any bond that is filed is insufficient to adequately protect the resident funds, or when the amount of the bond is impaired, the licensee shall file an additional bond in an amount necessary to adequately protect the resident funds. (Class III)

4.8.5. The licensee shall maintain an account record with supporting documentation for each resident that shows in detail all funds received on behalf of the resident and the disposition of all funds received. Persons shopping for residents shall provide a list with a description and price of items purchased if the purchase exceeds \$10, along with payment receipts, for these items. (Class III)

4.8.6. The licensee shall provide upon request a complete, accurate accounting of the receipt, management, and disposition of resident funds to the resident and his or her representative, any authorized entity, and to the Secretary, and at least quarterly to the resident if not requested. (Class III)

4.8.7. If the resident or legal representative requests to terminate the resident's account, the licensee shall provide an accounting for all funds received and expended, and refund any money remaining in the account to the resident or legal representative. (Class III)

§64-14-5. Resident Rights.

5.1. General Rights.

5.1.1. The licensee shall post in a conspicuous place the assisted living residence's license, a copy of the residents' rights, the house rules including visiting hours, and the phone numbers of the abuse hotline, the Office of Health Facility Licensure and Certification, and the state ombudsman. (Class III)

5.1.2. The licensee shall also post the name, address, and telephone number of the designated long-term care ombudsman program serving the region in which the residence is located, with a brief description of the services provided by the long-term care ombudsman program, and a statement of the penalties for willful interference and retaliation. (Class III)

5.1.3. The licensee shall provide one or as many copies as needed of the residents' rights to the resident. (Class III)

5.1.4. The licensee shall promptly notify the resident and the resident's legal representative or designated family member when there is a change in residents' rights. (Class III)

5.1.5. The licensee shall notify the resident and his or her representative or designated family member at least 72 hours prior to a change in room or roommate assignment unless an emergency situation occurs. (Class III)

5.1.6. The resident has the right to have a representative exercise one or more of the resident's rights, to the extent provided by federal and state law.

5.1.6.a. The licensee must treat the decisions of the legal representative as the decisions of the resident to the extent required by a court or delegated by the resident, in accordance with federal and state law.

5.1.6.b. The resident retains the right to exercise those rights not delegated to the legal representative, including the right to revoke a delegation of rights, except as limited by state law.

5.1.6.c. The licensee shall not extend to the legal representative the right to make decisions on behalf of the resident beyond the extent required by the court or delegated by the resident, in accordance with federal and state law.

5.1.7. Nothing in this rule shall in any way be construed to diminish or deprive any individual of his or her rights under federal and state laws. (Class III)

5.1.8. A resident shall be encouraged and assisted to exercise his or her rights as a resident and as a citizen, including voting in governmental elections. (Class III)

5.1.9. A resident has the right to be free from restraint, interference, coercion, discrimination, or reprisal from the licensee in exercising his or her rights. (Class II)

5.1.10. A resident has the right to be free from discriminatory practices related to admission or services on the grounds of race, religion, national origin, age, gender, sexual orientation, or disability. (Class II)

5.1.11. A resident has the right to manage his or her financial affairs and shall not be required to deposit his or her personal funds with the residence. (Class III)

5.1.12. A resident has the right to inspect all of his or her records, to obtain one free copy of the records, and to purchase additional copies at a reasonable cost. (Class III)

5.1.13. A resident has the right to view the results of inspections and complaint investigations conducted by the licensing agency. The licensee shall make available, in a place accessible to residents, the deficiencies cited during the most recent survey, any complaint investigation conducted within the preceding 12 months, and the residence's plan of correction. (Class III)

5.1.14. A resident has the right to retain and use personal possessions including furnishings and clothing as space permits, unless to do so would infringe upon the rights, health, or safety of other residents. (Class III)

5.2. Treatment.

5.2.1. A resident has the right to participate in planning his or her overall care, to use the physician and pharmacist of his or her choice, to be fully informed in advance about care and treatment that may affect him or her, to make advanced directives about his or her medical care, and to refuse treatment. (Class II)

5.2.2. The licensee shall ensure that no resident is abused, exploited, neglected, mistreated, or restrained by physical or chemical means. Staff shall only use physical restraints in an emergency under physician's order and for the safety of the resident or others in the assisted living residence until professional help arrives on the premises. Restraint use shall not exceed a 24-hour period. Restraints used during emergencies are limited to a cloth vest or soft belt restraints, and only trained staff shall apply a restraint. Staff shall release the restraint every two hours for at least 10 minutes. Staff shall document in the resident record the reason for restraint use and all procedures followed. Only half-length bed side rails are permissible. (Class I)

5.2.3. The licensee or staff shall report neglect, abuse, or emergency situations immediately, in accordance with W. Va. Code §9-6-9, by contacting the adult protective services at the centralized reporting center utilizing the hotline number. In all situations of suspected abuse or neglect, the Department of Health and Human Resources adult protective services reporting form must be completed within 48 hours and sent to the appropriate parties as written follow-up to the immediate report. In addition, the licensee or staff shall contact the assisted living residence's licensing agency as provided in subdivision 5.2.6. of this rule. The Secretary may report alleged failures by a licensed health care professional to report alleged incidents of neglect, abuse, or emergency situations to the individual's licensing board. (Class I)

5.2.4. The licensee shall ensure that all allegations involving abuse, exploitation, or neglect are immediately and thoroughly documented and investigated by the licensee, or his or her designee, on receipt of the allegation. While the investigation is in progress, the licensee shall take measures to ensure that further abuse does not occur. (Class I)

5.2.5. If the allegation is substantiated, the licensee shall assure that appropriate sanctions are invoked, or actions are taken to prevent a reoccurrence of alleged abuse, exploitation, or neglect. (Class I)

5.2.6. The licensee shall notify the licensing agency within 72 hours of the date of an allegation of abuse, exploitation, or neglect. The licensee shall concurrently forward to the licensing agency documentation of the investigation, the results of the investigation and the response to the investigation. (Class III)

5.2.7. A resident has the right to refuse to participate in experimental research. A resident may participate in experimental research only when he or she has given prior written informed consent that conforms with applicable federal and state laws. (Class II)

5.2.8. A resident has the right to make choices regarding the activities of his or her daily life, ~~such as~~ including but not limited to when to retire at night or arise in the morning. (Class III)

5.2.9. A resident has the right to be free to leave the residence and grounds according to his or her needs and capabilities as documented in the service plan. (Class II)

5.2.10. A resident has the right to personal privacy and confidentiality, including accommodations, medical treatment, records, written and telephone, computer and other electronic communications, personal assistance, and visits and meetings of family and resident groups. (Class II)

5.2.11. The use of visual and auditory devices to monitor areas of the assisted living residence is restricted to common areas only. The licensee shall provide written notice to the resident or his or her legal representative of the use of these devices at the time of admission and also post a notice about their use in a prominent place in the residence. (Class III)

5.2.12. No person shall enter a resident's room without identifying himself or herself to the resident and receiving the resident's permission to enter. (Class III)

5.2.13. A resident has the right to voice grievances with respect to treatment or care provided without discrimination or reprisal for voicing the grievance. (Class II)

5.2.14. A resident has the right to prompt action by the licensee to resolve any complaints the resident has, including those with respect to the behavior of other residents. The licensee shall respond to the complainant in writing no later than four days after the complaint is filed. (Class III)

5.2.15. A resident has the right to be employed inside or outside the residence if the resident enters into the agreement voluntarily and the agreement to work in the residence is not a condition for admission or continued stay in the residence. A resident who performs staff duties shall meet the personnel and health requirements for that position and shall not perform work that creates conditions potentially hazardous for himself, herself, or others. (Class II)

5.2.16. A resident has the right to refuse to perform services for the residence. (Class III)

5.3. Access, Visitation, and Communication.

5.3.1. A resident has the right to participate in social, religious, and community activities of his or her choice. (Class III)

5.3.2. A resident has the right to meet and communicate privately with persons of his or her choice. (Class III)

5.3.3. A resident has the right to assemble and organize with other residents to solicit and recommend improvements in the assisted living residence's services and to resolve problems that arise between the residents and the licensee. (Class III)

5.3.4. A resident has the right to send and promptly receive unopened mail. A staff member shall only open and read correspondence when requested by a resident. (Class III)

5.3.5. A resident shall have access to stationery, postage, and writing tools. (Class III)

5.3.6. A resident shall have access to a telephone and privacy during its use. (Class III)

5.3.7. A resident has the right to receive visitors during established and mutually agreed upon visiting hours, but relatives, members of the clergy, and other individuals of the resident's choosing may visit at any time, subject to the resident's right to withdraw consent. No visitor's presence may infringe upon the rights of other residents. (Class II)

5.3.8. A resident has the right to receive information from agencies acting as client advocates, such as the state's long-term care ombudsman program, and to contact these agencies. (Class II)

5.3.9. All of the following shall have immediate access to any resident and the premises of the assisted living residence; any representative of the state acting in an official capacity related to assisted living residences; the resident's individual physician; the state and local long-term care ombudsmen; and agencies responsible for the protection and advocacy system for mentally retarded or developmentally disabled individuals and the mentally ill. (Class I)

§64-14-6. Health Care Standards.

6.1. Admission and Discharge.

6.1.1. The licensee shall not admit to the assisted living residence individuals requiring ongoing or extensive nursing care and shall not admit or retain individuals requiring a level of service that the residence is not licensed to provide or does not provide. (Class I)

6.1.2. A resident whose condition declines after admission and is receiving services coordinated by a licensed hospice or certified home health agency, may receive these services in the residence if the residence has a backup power generator for services using equipment that requires auxiliary electrical power in the event of a power failure. The licensee shall ensure that a resident who requires ongoing or extensive nursing care is provided the care and services necessary to meet his or her needs. The provision of services to the residence receiving nursing care or hospice care shall not interfere with the provision of services to other residents. (Class I)

6.1.3. If a resident exhibits symptoms of a mental or developmental disorder that pose a risk to self or others, and the resident is not receiving behavioral health services, the licensee shall advise the resident or his or her legal representative of the behavioral health service options within the community. The resident shall have 30 days to obtain necessary services. If the resident or his or her legal representative fails to seek treatment in a timely manner and the risk persists, then the licensee after consultation with the resident's physician, shall refer the resident to a licensed behavioral health provider. (Class II)

6.1.4. The licensee shall seek immediate treatment for a resident or may refuse to admit or retain a resident if there is reason to believe that the resident may suffer serious harm, or is likely to cause serious harm to himself, herself or to others, if appropriate interventions are not provided in a timely manner. (Class I)

6.1.5. If a resident has care needs that exceed the level of care for which the residence is licensed or can provide, the licensee shall inform the resident, or his or her legal representative in writing, of the need to move to a health care facility that can provide the needed level of care. (Class III)

6.1.6. The licensee shall assist the resident, or his or her legal representative, to secure placement in another health care facility and shall document in the resident's record the efforts made to obtain placement. (Class III)

6.1.7. Prior to transfer or discharge of a resident, the licensee shall prepare a summary to accompany the resident that includes the resident's medical history, functional needs assessment and service plans, the current physician's orders, the resident's advanced directives, any allergies and pertinent progress notes. The licensee shall retain a copy of such documentation in the resident's record. (Class II)

6.2. Records.

6.2.1. The licensee shall retain residents' records in a secure area in the residence and shall make the records available for inspection by the Secretary. (Class III)

6.2.2. Upon a resident's admission, the licensee shall start a record for him or her that includes:

6.2.2.a. The resident's name, social security number, date of birth, sex, marital status, and religious preference, if any;

6.2.2.b. The names, addresses, and telephone numbers of the following, if applicable: the resident's physician, dentist, legal representative, person or agency responsible for the resident's support payments, next of kin or person to be notified in case of an emergency, and any case management agency involved in the resident's care.

6.2.2.c. All agreements or contracts entered into between the resident and the licensee;

6.2.2.d. Advanced directives; allergies; the dates of appointments with physicians, dentists, or other health care providers; all contacts by the residence's staff with the residence's physician; and observations by licensed nurses, physicians, and others authorized to care for the resident; and

6.2.2.e. Copies of all documents granting legal authority to a representative.

6.2.2.f. Any other information as required in subsections 6.3., 6.4., 6.5., 6.6., 6.7., and 8. of this rule. (Class III)

6.2.3. The licensee shall keep in each resident's record current documentation regarding the resident's health status, any changes in health status, and staff responses to the changes. (Class II)

6.3. Assessments and Service Plans.

6.3.1. Each resident shall have a written, signed, and dated health assessment by a physician or other licensed health care professional, authorized under state law to perform this assessment, not more than 60 days prior to the resident's admission, or no more than five working days following admission, and at least annually after that. The admission and annual health assessment shall include screening for tuberculosis and other communicable diseases if indicated by exposure, prevalence, or risk according to current medical practice to congregate living situations as indicated by the Secretary. The licensee shall maintain documentation of the assessment in the resident's medical record. (Class II)

6.3.2. Within five days of admission, each resident shall have an individualized functional needs assessment completed in writing by a licensed health care professional which is maintained in the resident's medical record. At a minimum, the resident's assessment shall include a review of health status and functional, psycho-social, activity, and dietary needs. (Class II)

6.3.3. Within seven days of admission, each resident shall have a service plan based upon his or her functional needs assessment and individual needs that includes, but is not limited to, the type of assistance needed to perform activities of daily living; the ability to receive prescribed medications and treatments; the ability to follow any planned diet, rest, or activity regimen; the ability to engage in activities and programs appropriate to the individual's level of functioning; and the ability to use equipment such as hearing aids, glasses, and canes. Staff shall have access to the service plan, use it as a guide for providing resident care, and maintain it as a part of the resident's medical record. (Class II)

6.3.4. The licensee shall ensure that the functional needs assessment and service plans reflect the resident's current needs and are updated annually or as indicated by a significant change in the resident's condition. (Class II)

6.4. Medications and Treatments.

6.4.1. The licensee shall ensure that resident care is provided by appropriately licensed health care professionals, and that medications and treatments given to residents are administered as required by applicable federal and state law, including W. Va. Code §§16-50-1, *et seq.* and Department of Health and Human Resources rule, "Medication Administration and Performance of Health Maintenance Tasks by Approved Medication Assistive Personnel," W. Va. Code R. §§64-60-1, *et seq.* (Class I)

6.4.2. A prescription or written or verbal order from a professional authorized by state law to prescribe medications is required for obtaining, altering, discontinuing, and administering or self-administering prescription and over-the-counter medications, treatments, and therapies. The licensee shall keep copies of the prescriptions or written orders in the resident's record. (Class I)

6.4.3. A licensed health care professional shall determine whether or not a resident is capable of self-administration of medications in accordance with subsection 2.35. of this rule and shall document it in the resident's medical record prior to the resident self-administering medications, and also on a significant change of the resident's condition. (Class II)

6.4.4. The prescribing health care professional who gives a verbal order shall review and sign the order within 30 working days of the original order date. (Class II)

6.4.5. The attending physician, prescribing health care professional, or a consulting pharmacist shall review the medication regimen of each resident as needed, and at least annually. The resident's record shall contain documentation of this review. (Class II)

6.4.6. The licensee shall keep a record of all medications given to each resident indicating each dose administered. The record shall include the resident's name; the name of the medication; the dosage to be administered and route of administration; the time or intervals at which the medication is to be administered; the date the medication is to begin and end; the printed name, initials, and signature of the individuals who administered the medication; and any special instructions for handling or administering the medication, including instructions for maintaining aseptic conditions and appropriate storage. (Class I)

6.4.7. The licensee shall keep medications in a locked room, cabinet, or other storage receptacle, accessible only to the staff responsible for medications. If a resident is capable of self-administration of medication, the licensee shall provide him or her resources to store medications in a manner to be inaccessible to other residents. (Class I)

6.4.8. The licensee shall store all medications in their original containers, legally dispensed, and labeled in accordance with the rules of the West Virginia Board of Pharmacy, for the resident for whom it has been prescribed, including the name and strength of medication, manufacturer name, lot number, and expiration date. Only a licensed pharmacist shall re-label medications. If the prescribing health care provider changes medication directions, the licensee shall have a written, signed, and dated order for the change in the resident's record. (Class I)

6.4.9. If refrigeration of medication is required, the licensee shall provide: a refrigerator in a locked room, a locked refrigerator, or a locked box within the refrigerator for storage. A thermometer is required in a refrigerator storing medications. The licensee shall store refrigerated medications within the recommended temperature range on the medication package. (Class II)

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6.4.10. If Schedule II drugs of the Uniform Controlled Substances Act W. Va. Code §§60-A-1-101, *et seq.* are administered, a copy of the written prescription signed by the physician shall be in the resident's record and a proof of use record shall be maintained. Schedule II drugs shall be stored in a manner so that they are securely protected by two locks. The key to the separately locked Schedule II drugs shall not be the same key that is used to gain access to the non-scheduled drugs. (Class I)

6.4.11. The licensee shall not return unused, discontinued, or outdated drugs listed in Schedules II, III, IV or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 801, *et seq.*, to the pharmacy, but shall destroy them in the presence of a pharmacist and a registered nurse; and keep a record for at least two years that contains the resident's name that was on the prescription, the name and strength of the drug, the prescription number, the amount destroyed, the date of destruction, and the signatures of the witnesses. (Class III)

6.4.12. The licensee shall have a policy regarding unused over-the-counter and non-scheduled drugs of a resident no longer at the facility.

6.4.13. When a resident requires oxygen, the licensee shall ensure there is a portable source available for out-of-room activities and in the event of power failure.

6.4.14. The licensee shall provide all resident care and services in accordance with current standards of practice using appropriate infection control techniques. (Class I)

6.5. Accident, Illness, and Major Incident Procedures.

6.5.1. The licensee shall have readily available at all times a standard first-aid kit, or its equivalent, to provide emergency aid for commonly occurring household injuries. (Class III)

6.5.2. When a resident has an illness or accident that results in an injury or a resident complaint, the staff shall contact an appropriately licensed health care professional to assess the severity and cause of the illness or accident, advise of the treatment needed related to the accident or illness, and record actions taken in the resident's record. If the resident needs emergency assistance, the staff on duty shall first obtain the necessary assistance. (Class I)

6.5.3. Staff shall monitor and document the resident's condition at least once every eight hours for a period of 24 hours following the accident or the onset of the illness, more frequently if specified by the licensed health care professional, or at least every four hours if the resident suffers from Alzheimer's disease or a related dementia and cannot communicate his or her condition or needs. (Class II)

6.5.4. When a major incident or any significant change in the resident's condition occurs, the staff shall promptly notify the resident's physician or other appropriately licensed health care professional, such as emergency medical personnel, and the responsible party or next of kin, and document this notification in the resident's record. (Class I)

6.5.5. If an epidemic occurs or a reportable disease is diagnosed, the licensee shall comply with the recommendations of the local public health authority in handling and reporting it. (Class I)

6.6. Limited and Intermittent Nursing Care.

6.6.1. The licensee shall arrange for a registered professional nurse to assume responsibility for the oversight of nursing care and services. Arrangements for nursing services may be made by contract with a registered nurse or a nursing service with a management entity; or the licensee may employ a registered nurse. Arrangements with a home care agency will satisfy the requirement for nursing oversight if they meet all the requirements of this section. (Class I)

6.6.2. The licensee shall ensure that the registered nurse is notified immediately when a resident with nursing care needs is admitted or readmitted, and immediately when a nursing care need for a current resident is identified. Documentation of the notification shall be in the resident's record. (Class I)

6.6.3. The licensee shall implement the recommendations of the registered nurse regarding care, services, and staff training. (Class I)

6.6.4. Unless the licensee employs a full-time registered nurse, he or she shall ensure that the registered nurse maintains a record with an entry for each visit which shall include at least the date, time in, and time out; a list of duties performed during each visit; a brief statement regarding identified concerns and recommended actions taken to resolve them; and a complete signature. (Class III)

6.6.5. The licensee shall develop a plan that provides for 24-hour accessibility between the residence, the registered nurse, and other emergency personnel. (Class I)

6.6.6. A registered nurse shall perform and document a nursing assessment for each resident with nursing needs within 24 hours following admission and update the assessment at the time of any significant, temporary, or permanent change in the resident's condition. (Class I)

6.6.7. A registered nurse shall develop and document a service plan to meet any identified nursing and medical needs of the resident within seven days after admission and shall update the plan at the time of a significant temporary or permanent change in condition. (Class I)

6.6.8. A registered nurse shall see the resident weekly, if the resident has nursing care needs, and more often if indicated by the needs of the resident, and document a progress note in the resident's record reflecting the status of the resident and any changes in his or her condition. (Class II)

6.6.9. A registered nurse shall provide needed training or recommend to the licensee appropriate training for staff, including when to contact the registered nurse regarding changes in a resident's condition. (Class II)

6.6.10. A registered nurse shall participate in the decision to admit or discharge a resident with nursing care needs. (Class II)

6.7. Resident Death.

6.7.1. Staff shall immediately report the suspected death of a resident to the resident's physician, to the resident's next of kin or legal representative, and hospice staff, if applicable. Any death suspected to be the result of abuse or neglect shall be immediately reported to the coroner. (Class III)

6.7.2. Upon the death of a resident, the following information shall be entered in the resident's record:

6.7.2.a. A record of the date and time of the notification of the resident's physician or hospice staff, the resident's representative or next of kin; and

6.7.2.b. The date, time, and circumstance of death, including the name of person to whom the body was released and any other details specific to the death. (Class III)

6.7.3. Upon a resident's death, the licensee shall release all of the resident's belongings and funds to the estate administrator or executor. Documentation of release to the estate administrator or executor shall be maintained by the assisted living residence. (Class III)

§64-14-7. Activities.

7.1. The licensee shall provide an activity program designed to meet the interests of, and promote the highest level possible of well-being in, all dimensions of life including physical, psychological, social, and spiritual, of each resident.

7.2. The program shall:

7.2.1. Provide information and referral services and facilitate opportunities for using the social, recreational, and vocational activities within the community;

7.2.2. Provide a minimum of seven hours per week, one hour per day, unless the residents request more, of various types of scheduled activities, including activities appropriate for residents with Alzheimer's disease or a related dementia; and

7.2.3. Provide a monthly calendar that lists the type, time, and duration of all social and recreational activities for the residents and documentation that activities did or did not take place. (Class III)

§64-14-8. Dietary Services.

8.1. The licensee shall provide meals that are in substantial compliance with current Recommended Dietary Allowances of the Food and Nutrition Board of National Academy of Sciences, National Research Council, or as specified in this rule, except as ordered by a physician. (Class II)

8.2. The licensee shall ensure that each resident is offered at least three freshly prepared meals seven days a week, and also special diets and snacks that meet the resident's needs and choices, as identified in his or her needs assessment. The meals shall provide a variety of foods as follows:

8.2.1. Breakfast: fruit or juice, cereal, whole-grain or enriched bread products, and Grade A vitamin D milk.

8.2.2. Noon and evening meals: protein sources, such as meat, poultry, fish, eggs, cooked dried legumes, cheese, or peanut butter; vegetables or fruit; whole-grain or enriched grain food products; and Grade A vitamin D milk. (Class II)

8.3. When therapeutic or modified diets are provided by the residence, the licensee shall maintain on file a physician's order for each diet. The licensee shall prepare therapeutic or modified diets, as ordered by the physician, according to written instructions that includes types and amounts of food to be

served, obtained from the resident's physician or a dietician. At no time shall a resident be offered less than 1,400 calories daily, unless specifically ordered by a physician. (Class I)

8.4. The licensee shall provide each resident with the amount of food and fluid on a daily basis necessary to maintain his or her appropriate minimum average weight. Staff shall weigh residents upon admission and monthly thereafter and document the resident's weight in his or her record. If the staff notes an unplanned weight loss or gain of five pounds or more in the resident's record, the staff shall report it to the resident's physician. (Class III)

8.5. The licensee shall encourage resident participation in menu planning and shall serve meals at times mutually agreed upon by residents in the assisted living residence with consideration of individual resident preferences. (Class III)

8.6. The licensee shall accommodate residents who are unable to eat at the planned mealtime and provide for a meal substitution if the resident does not tolerate or like the foods planned for the meal. (Class III)

8.7. The licensee shall maintain a daily record of actual foods served for each meal and vary the menu content. (Class III)

8.8. The licensee shall keep grocery receipts and records of actual food served to the residents on file in the assisted living residence for at least 30 days. (Class III)

8.9. The licensee's food service facilities shall comply with Bureau for Public Health rule, "Food Establishments," W. Va. Code R. §§64-17-1, *et seq.* (Class II)

§64-14-9. Fire Safety, Disaster and Emergency Preparedness and Training.

9.1. Fire Safety.

The licensee shall provide evidence of compliance with applicable rules of the state fire commission. The state fire marshal's and Secretary's written approval are required for any variation from compliance with the fire code. (Class I)

9.2. Disaster and Emergency Preparedness Plan.

9.2.1. The assisted living residence shall have a written disaster and emergency preparedness plan with procedures to be followed in any emergency that could severely affect the operation of the residence. (Class II)

9.2.2. The disaster and emergency preparedness plan shall have procedures with specific tasks and responsibilities for each class of employee in the event of missing residents, high winds, tornadoes, floods, bomb threats, utility failure, and severe winter weather. (Class II)

9.2.3. The disaster and emergency preparedness plan shall include a minimum of an emergency alternate shelter agreement, an emergency transportation policy, and a three-day food and drinking water supply. (Class II)

9.2.4. The licensee shall provide copies of the disaster and emergency preparedness plan at all staff stations; and staff shall know the location of the plan at all times. (Class I)

9.2.5. The licensee or administrator shall review and update the disaster and emergency preparedness plan on an annual basis and shall sign and date the plan to verify review. (Class III)

9.2.6. The licensee shall conspicuously post emergency call information near each telephone in the residence, excluding telephones in residents' rooms, with the telephone numbers of the fire department, the police, an ambulance service, and other appropriate emergency services, and key staff telephone numbers. (Class I)

9.2.7. The licensee shall rehearse the disaster and emergency preparedness plan with all staff from each shift annually and shall keep documentation of the rehearsal that includes verification of participation by each employee's signature and a critique of the rehearsal by the licensee or administrator. (Class I)

9.2.8. The licensee shall within 24 hours of admission, show all new residents how to evacuate the residence in an emergency, and shall document this in the residents' records. (Class I)

§64-14-10. Physical Facilities.

10.1. Physical Facilities and Equipment.

10.1.1. The licensee of an assisted living residence built, renovated, or altered after the effective date of this rule shall maintain the residence in accordance with the requirements of subsection 3.12. of this rule. (Class I)

10.1.2. The licensee shall provide maintenance and housekeeping to the interior and exterior of the residence that maintains a safe, sanitary, and accident-free living environment. (Class I)

10.1.3. The licensee shall establish and conduct a program of preventative maintenance for all equipment as recommended by the manufacturer. (Class III)

10.1.4. The licensee shall keep the interior and exterior of the residence clean and in good repair. (Class II)

10.1.5. The licensee shall keep the residence free of insects, rodents, and vermin. (Class III)

10.1.6. Any method of extermination of insects, rodents, and vermin used by the licensee in the residence shall not create a fire or health hazard. (Class I)

10.1.7. The residence shall have a heating system capable of maintaining a temperature in all rooms used by residents of at least 72 degrees Fahrenheit. (Class II)

10.1.8. The residence shall have cooling devices or a system so that inside temperatures do not exceed 80 degrees Fahrenheit. Acceptable cooling devices include, but are not limited to, air conditioners, electric fans, and heat pumps. (Class II)

10.1.9. The residence shall have a call system that is audible to staff and can be accessed from each bed and other areas as necessary for the safety of residents. (Class II)

10.1.10. The Secretary may require the licensee to provide alarm systems for resident safety if a resident exhibits potentially harmful behaviors such as wandering from the residence. (Class I)

10.1.11. The residence shall have space for the storage of linens, maintenance and housekeeping supplies, equipment, and food supplies. (Class II)

10.2. Bedrooms.

10.2.1. The licensee shall provide each resident with a bed in a bedroom and shall not place beds in corridors, living rooms, kitchens, dining rooms, a basement, attic, or any other area not commonly used as a bedroom. (Class II)

10.2.2. In an existing large assisted living residence, bedrooms shall contain at least 80 square feet of floor area per resident. In an existing small assisted living residence, semi-private bedrooms shall contain at least 60 square feet of floor area per resident and private rooms shall contain 80 square feet. (Class III)

10.2.3. In a newly constructed or renovated residence no more than two persons shall occupy a bedroom. In an existing residence no bedroom shall be occupied by more residents than the bed capacity approved by the Secretary on the effective date of this rule. (Class III)

10.2.4. Staff of the residence shall not share bedrooms with residents and shall not use resident bedrooms for any purpose other than to house residents. (Class III)

10.2.5. At least three feet of space shall separate beds. (Class III)

10.2.6. The licensee shall ensure that each resident has a bed and mattress at least 36 inches wide that are substantially constructed, in good repair, comfortable, and able to accommodate the resident's needs and promote independence. (Class III)

10.2.7. Each bed shall have a clean, comfortable pillow, pillow case, two sheets, a bed spread or other type of covering, and additional bed covering to keep residents warm during emergencies and cold weather. (Class III)

10.2.8. The licensee shall ensure that there is a supply of sheets, pillow cases, bed coverings, towels, wash cloths, and other linens necessary to provide a minimum of two changes per bed, and clean bed linens for each resident at least once a week and more often if needed. (Class III)

10.2.9. The licensee shall ensure that every closet door latch can be readily opened from inside in case of emergency. (Class II)

10.2.10. The licensee shall ensure that windows have curtains, shades, or blinds that may be opened and closed and are kept clean and in good repair. (Class III)

10.2.11. The licensee shall ensure that each bedroom has at least the following furniture for each resident:

10.2.11.a. A night stand or the equivalent;

10.2.11.b. A closet, locker, or wardrobe space with a minimum dimension of 20 inches by 22 inches by 60 inches, excluding shelf and storage space;

10.2.11.c. A chest of drawers, or the equivalent, with at least three drawers for the storage of clothing and personal items; and

10.2.11.d. A chair suitable to the resident's needs and an adequate light source for reading. (Class III)

10.2.12. The licensee shall provide bedroom furnishings that are in good repair, reasonably attractive and comfortable, of a nature to suggest a private home setting, and with residents' individual tastes taken into consideration. When space permits, residents' personal furniture may be used. (Class III)

10.3. Toilets, Hand Washing, and Bathing Facilities.

10.3.1. An existing residence's toilet and bathing facilities shall consist of the following:

10.3.1.a. A bathroom containing a flushing toilet and hand washing sink, with a mirror over the sink, at a ratio of one toilet and lavatory for every six residents; and

10.3.1.b. A minimum of one bathing facility per floor, with a bath tub or shower, equipped with non-slip surfaces, a flushing toilet, and a hand washing sink; at a ratio of one per 10 residents. (Class III)

10.3.2. The licensee shall ensure that toilet and bathing facilities are provided with liquid soap, toilet tissue, and a sanitary method for drying hands. (Class III)

10.3.3. The licensee shall provide towel bars either in the residents' bedroom or the bathroom. Space for towel bars shall accommodate the number of residents using the bathing facility.

10.3.4. Bath tubs, showers, and sinks shall not be used for storage of linens and clothing to be laundered or for laundering of soiled linens and clothing. (Class III)

10.4. Dining Area and Leisure Area.

10.4.1. The residence shall have a dining area of at least 15 square feet per resident. (Class III)

10.4.2. The residence shall have an area of at least 15 square feet per resident for leisure space that is equipped for reading and recreational purposes. The leisure area shall have furniture that provides good lower back support, arm rests, and that is clean, odor free, and in good repair. (Class III)

10.4.3. The dining room may serve as part of the leisure room. A combined dining and leisure room shall have a minimum of 30 square feet per resident. (Class III)

10.5. Water Supply and Sewage.

10.5.1. The residence shall have hot and cold running water in sufficient supply to meet the needs of the residents, household members, and employees. (Class I)

10.5.2. The licensee shall maintain hot water temperatures above 105 degrees Fahrenheit and no higher than 115 degrees Fahrenheit at all hot water sources, except for dishwashers and laundry facilities. (Class II)

10.5.3. Hot water temperatures exceeding 120 degrees Fahrenheit shall be considered an immediate and serious threat. (Class I)

10.5.4. The licensee shall use a thermostatic mixing valve to control the temperature of hot water tanks exceeding 80-gallon capacity. (Class II)

10.5.5. The residence shall have a sewage system that is adequate to meet the residents' needs, kept in good working order, and properly operated and maintained. (Class II)

10.6. Laundry.

10.6.1. The licensee shall ensure that all laundry is dried mechanically in an electric or gas clothes dryer that is vented to the outside, or that a chemical sanitizing agent is added to the rinse water, and the laundry air-dried. (Class II)

10.6.2. The licensee shall ensure that soiled and clean laundry are not stored together at any time; that soiled laundry is stored in non-absorbent, easily cleanable covered containers, or disposable plastic bags; that table and kitchen linens are laundered separately from other washable goods; and that sanitizing agents are used when laundering kitchen, bath, and bed linens. (Class II)

10.6.3. The licensee shall use locked storage facilities, separate from food and drugs, for laundry supplies, housekeeping supplies, insecticides, work supplies, and any other toxic or hazardous material or equipment. (Class I)

10.7. Pets and Other Animals.

10.7.1. Pets are permitted at assisted living residences, provided that all residents are advised prior to admission that pets are kept on the premises. If pets are added after the admission of residents, all residents shall agree to the addition of the pets. (Class III)

10.7.2. Wild, dangerous, or obviously ill animals are prohibited. (Class I)

10.7.3. The licensee shall keep animals and the animals' quarters in a clean condition at all times. (Class I)

10.7.4. The licensee shall maintain proof that dogs and cats kept in the assisted living residence or on the grounds are properly vaccinated. For dogs, this includes rabies, leptospirosis, distemper, and parvo; and for cats, this includes rabies. (Class II)

§64-14-11. Licensure Denials, Revocations, and Suspensions.

11.1. An assisted living provider licensed by the Department of Health and Human Resources adversely affected by an order or citation of a deficient practice may request an informal dispute resolution process. A licensee may contest a cited deficiency as contrary to rule, regulation, or law or unwarranted by the facts, or any combination thereof.

11.2. The informal dispute resolution process is not a formal evidentiary proceeding and utilization of the informal dispute resolution does not waive the right of the licensee to request a formal hearing with the Secretary.

11.3. The informal dispute resolution process shall consist of the following:

11.3.1. The Secretary shall transmit to the licensee a statement of deficiencies attributed to the licensee and request that the licensee submit a plan of correction addressing the cited deficiencies no later than 10 working days following the last day of the survey or inspection, or no later than 10 working days following the last day of a complaint investigation. Notification of the availability of the informal dispute resolution process and an explanation of the process shall be included in the transmittal.

11.3.2. When the licensee returns its plan of correction to the Secretary, the licensee may request, in writing, to participate in the informal dispute resolution process to protest or refute all or part of the cited deficiencies within 10 working days. The Secretary may not release the final report until the informal dispute process is final.

11.3.3. The informal dispute resolution must be held, unless additional time is requested by either the licensee or the Secretary, within 10 working days of receipt of the written request for the informal dispute resolution process by a licensee. The licensee or the Secretary may submit additional information before the informal dispute resolution conference.

11.3.4. Neither the Secretary nor the licensee may be accompanied by counsel during the informal dispute resolution conference. The manner in which the informal dispute resolution conference is held is at the discretion of the licensee, but is limited to:

11.3.4.a. A review of written information submitted by the licensee;

11.3.4.b. A telephonic conference; or

11.3.4.c. A face-to-face conference held at a mutually agreed upon location.

11.3.5. If the informal dispute resolution determines the need for additional information, clarification, or discussion at the conclusion of the informal dispute resolution conference, the Secretary and the licensee shall present the requested information.

11.3.6. The informal dispute resolution committee, consisting of qualified individuals who have no involvement in the investigation or survey being reviewed, shall make a determination within 10 working days of receipt of any additional information as provided or the conclusion of the informal dispute resolution conference, based upon the facts and findings presented, and shall transmit a written decision containing the rationale for its determination to the Secretary.

11.3.7. If the Secretary disagrees with the determination, the Secretary may reject the determination made by the informal dispute resolution process and shall issue an order setting forth the

rationale for the reversal of the informal dispute resolution's decision to the licensee within 10 working days of receiving the independent review provider's determination.

11.3.8. If the Secretary accepts the determination, the Secretary shall issue an order affirming the informal dispute review's determination within 10 working days of receiving the review determination.

11.3.9. If the review determines that the original statement of deficiencies should be changed as a result of the informal dispute resolution process and the Secretary accepts the determination, the Secretary shall transmit a revised statement of deficiencies to the licensee within 10 working days of the review determination.

11.3.10. The licensee shall submit a revised plan to correct any remaining deficiencies to the Secretary within 10 working days of receipt of the Secretary's order and the revised statement of deficiencies.

11.4. Establishment of the informal dispute resolution process does not preclude licensees from utilizing other processes provided by statute or rule in lieu of the informal dispute resolution process.

11.5. Administrative and judicial review of a decision rendered through the informal dispute resolution process may be made in accordance with provisions of this rule.

11.6. Any decision issued by the Secretary as a result of the informal dispute resolution process shall be made effective from the date of issuance.

11.7. The pendency of administrative or judicial review does not prevent the Secretary or a licensee from obtaining injunctive relief as provided by statute or rule.

11.8. Grounds for Denial, Revocation, or Suspension.

11.8.1. The Secretary may deny, revoke, or suspend a license issued pursuant to this rule if any provisions of subdivision 11.8.2. are violated. The Secretary may revoke a license based upon the findings and results of an annual, periodic, complaint, or other inspection and evaluation. The period of suspension for the license of an assisted living residence shall be prescribed by the Secretary but may not exceed one year.

11.8.2. The Secretary may deny, revoke, or suspend an assisted living residence license for one or more of the following reasons:

11.8.2.a. The Secretary makes a determination that fraud or other illegal action has been committed by any owner of the assisted living residence;

11.8.2.b. The assisted living residence has violated federal, state, or local law relating to licensure, building, health, fire protection, safety, sanitation, or zoning;

11.8.2.c. The assisted living residence engages in practices that jeopardize the health, safety, welfare, or clinical treatment of a resident;

11.8.2.d. The assisted living residence has failed or refused to submit reports or make records available as requested by the Secretary;

11.8.2.e. An assisted living residence has refused to provide access to its location or records as requested by the Secretary;

11.8.2.f. An assisted living residence's administrator or owner has knowingly, and intentionally misrepresented actions taken to correct a violation;

11.8.2.g. An administrator or owner of an assisted living residence concurrently operates an unlicensed assisted living residence;

11.8.2.h. An administrator or any owner knowingly operates, owns, or manages an unlicensed assisted living residence that is required to be registered;

11.8.2.i. The owners of an assisted living residence fail to apply for a new license for the residence upon a change of ownership and operate the residence under the new ownership;

11.8.2.j. An administrator or any owner acquires or attempts to acquire a license for an assisted living residence through misrepresentation or fraud or procures or attempts to procure a license for an assisted living residence for any other person by making or causing to be made any false representation; or

11.8.2.k. The assisted living residence fails to have an administrator at the residence location as required by this rule.

11.9. Effect of Denial, Revocation, or Suspension.

11.9.1. If a license for an assisted living residence has been revoked, the Secretary may stay the effective date of the revocation if the owner or owners or administrator of the assisted living residence can show that the stay is necessary to ensure appropriate referral and placement of residents.

11.9.2. If the license of an assisted living residence is denied, revoked, or suspended, no person, firm, association, or corporation may operate the residence as an assisted living residence as of the effective date of the denial, revocation, or suspension. The owners of the assisted living residence are responsible for removing all signs and symbols identifying the premises as an assisted living residence within 30 days from the date of the denial, revocation, or suspension.

11.9.3. If a license for an assisted living residence has been denied, revoked, or suspended the residence must supply, at a minimum, a copy of the following information to the Secretary;

11.9.3.a. A closure notice to be provided to all residents;

11.9.3.b. The date the closure notice will be provided to all residents;

11.9.3.c. The number of residents to receive the closure notice;

11.9.3.d. A Class II legal advertisement that complies with the requirements of W. Va. Code §§59-3-1, *et seq.*, regarding the residence closure, including the dates the notice will appear and the name of the newspaper; and

11.9.3.e. Contact information the assisted living residence has supplied to residents who may need help locating a new assisted living residence.

11.9.4. Upon the effective date of the denial, revocation, or suspension the administrator or owner of the assisted living residence shall advise the Secretary and the West Virginia Board of Pharmacy of the disposition of all drugs located at the premises. The disposition is subject to the supervision and approval of the Secretary and the Drug Enforcement Agency. Drugs that are purchased or held by an unlicensed assisted living residence may be deemed adulterated.

11.9.5. If the license of an assisted living residence is revoked or suspended, no persons owning or operating the assisted living residence, may apply to own, license, or operate another assisted living residence for five years after the date of revocation or suspension, either individually or as part of a group, firm, association, or corporation.

11.9.6. If an assisted living residence license is denied or revoked, a new application for licensure shall be considered by the Secretary, if, when, and after the conditions upon which denial or revocation were based have been corrected and evidence of this fact has been furnished. A new license may then be granted after proper inspection has been made and the Secretary makes a written finding that all provisions of this rule have been satisfied.

§64-14-12. Penalties and Equitable Relief.

12.1. Grounds for Penalties and Injunctions.

12.1.1. Any person, partnership, association, or corporation which establishes, conducts, manages, or operates an assisted living residence without first obtaining a license therefore or which violates any provisions of this law or rule may be assessed a civil money penalty by the Secretary in accordance with this rule, and, if applicable, W. Va. Code §16-5D-10. Each day of continuing violation after notification of the infraction may be considered a separate violation and may be subject to an additional civil money penalty.

12.1.2. If the assisted living residence's owner or owners or administrator knowingly and intentionally misrepresent actions taken to correct a violation, the Secretary may impose a civil money penalty not to exceed \$10,000, and revoke or deny the assisted living residence's license.

12.1.3. If an owner or owners of an assisted living residence concurrently operates an unlicensed assisted living residence, the Secretary may impose a civil money penalty upon the owner or owners or administrator, or both, not to exceed \$5,000. If the owner or owners continue to operate the unlicensed assisted living residence 10 days after notification of the infraction, the Secretary may impose a civil monetary penalty not to exceed \$5,000 per day.

12.1.4. If the owner of an assisted living residence that requires a license under this article fails to apply for a new license for the residence upon a change of ownership and operates the residence under the new ownership, the Secretary may impose a civil money penalty not to exceed \$5,000.

12.1.5. If an owner knowingly operates, owns, or manages an unlicensed assisted living residence that is required to be licensed pursuant to this article; knowingly dispenses or causes to be dispensed, controlled substances in an unlicensed assisted living residence that is required to be licensed; or obtains a license to operate an assisted living residence through misrepresentation or fraud; procures or attempts to procure a license for an assisted living residence for any other person by making or causing to be made any false representation, the Secretary may assess a civil money penalty of not more than \$20,000. The penalty may be in addition to or in lieu of any other action that may be taken by the Secretary or any other board, court, or entity.

12.2. The Secretary may deny an assisted living residence's application for licensure or application for renewal licensure; revoke or suspend a license; order an admissions ban or reduction in patient census for one or more of the following reasons:

12.2.1. The Secretary makes a determination that fraud or other illegal action has been committed;

12.2.2. The residence has violated federal, state, or local law relating to building, health, fire protection, safety, sanitation, or zoning;

12.2.3. The residence conducts practices that jeopardize the health, safety, welfare, or clinical treatment of a resident;

12.2.4. The residence has failed or refused to submit reports, comply with the documentation requirements of this rule, or make records available as requested by the Secretary or his or her designee; or

12.2.5. A residence has refused to provide access to its location or records as requested by the Secretary, or his or her designee.

12.3. Notwithstanding the existence or pursuit of any other remedy, the Secretary may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, or corporation to restrain or prevent the establishment, conduct, management, or operation of any assisted living residence or violation of any provisions of this rule without first obtaining a license therefore in the manner hereinbefore provided.

12.3.1. The Secretary may also seek injunctive relief if the establishment, conduct, management, or operation of any assisted living residence, whether licensed or not, jeopardizes the health, safety, or welfare of any or all of its residents.

12.3.2. In determining whether a penalty is to be imposed and in fixing the amount of the penalty, the Secretary shall consider the following factors:

12.3.2.a. The gravity of the violation, including the probability that death or serious physical or emotional harm to a resident has resulted, or could have resulted, from the assisted living residence's actions or the actions of the administrator or any licensed practitioner employed by or associated with the residence, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated.

12.3.2.b. What actions, if any, the administrator or licensed professional took to correct the violations;

12.3.2.c. Whether there were any previous violations at the assisted living residence; and

12.3.2.d. The financial benefits that the assisted living residence derived from committing or continuing to commit the violation.

12.4. Upon finding that a licensed professional has violated the provisions of this rule, the Secretary shall provide notice of the violation to the applicable professional licensing board.

§64-14-13. Administrative Due Process.

13.1. Before any assisted living residence is denied, suspended, penalized, or revoked, written notice shall be given to the owner or owners of the residence stating the grounds of the denial, suspension, revocation, or penalty and the date set for any enforcement action.

13.1.1. The notice shall be sent by certified mail to the address where the assisted living residence concerned is located.

13.1.2. Within 30 days of receipt of the notice, the owner or owners may submit a request for an administrative hearing or an informal meeting to address and resolve the findings.

13.1.3. The assisted living residence and its owner or owners shall be entitled to be represented by legal counsel at the informal meeting or at the hearing at their own expense.

13.1.4. All of the pertinent provisions of W. Va. Code §§29A-5-1, *et seq.*, and W. Va. Code R. §§69-1-1, *et seq.*, shall apply to and govern any hearing authorized by this rule.

13.1.5. If an owner fails to request a hearing within the time frame specified, he or she shall be subject to the full penalty imposed.

13.1.6. The filing of a request for a hearing does not stay or supersede enforcement of the final decision or order of the Secretary. The Secretary may, upon good cause shown, stay such enforcement.

§64-14-14. Administrative Appeals and Judicial Review.

14.1. Any owner of an assisted living residence who disagrees with the final administrative decision as a result of the hearing may, within 30 days after receiving notice of the decision, appeal the decision to the Circuit Court of Kanawha County.

14.1.1. The filing of a petition for appeal does not stay or supersede enforcement of the final decision or order of the Secretary. An appellant may apply to the circuit court for a stay of or to supersede the final decision or order.

14.1.2. The Circuit Court may affirm, modify, or reverse the final administrative decision. The owner or owners, or the Secretary may appeal the court's decision to the West Virginia Supreme Court of Appeals.

Table 64-14 A 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
\$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

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\$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	\$8,00
\$6,401 to \$6,500	\$8,125
\$6,501 to \$6,600	\$8,250
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\$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
\$9,901 to \$10,000	\$12,500
\$10,001 or more	Calculate