WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Office of the Inspector General — TITLE-SERIES: 71-15

RULE TYPE: Legislative — Amendment to Existing Rule: No — Repeal of existing rule: No

RULE NAME: Nursing Home Licensure Rule

CITE STATUTORY AUTHORITY: W. Va. Code 16B-4-5, 16B-4-21(b)

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB300

Section W. Va. Code 16B-1-1 — Passed On 2/8/2024 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

May 28, 2025

This rule shall terminate and have no further force or effect from the following date:

August 01, 2026

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

Yes

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

TITLE 71
LEGISLATIVE RULE
OFFICE OF INSPECTOR GENERAL

SERIES 15
NURSING HOME LICENSURE

§71-15-1. General.

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

1.2. Authority. -- W. Va. Code §16B-4-5.

1.3. Filing Date. -- May 28, 2025.

1.4. Effective Date. -- May 28, 2025.

1.5. Sunset Provision. -- This rule will terminate and have no further force or effect upon August 1, 2026.

1.6. Application. This rule applies to nursing home residents and their legal representatives as well as every individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association, or political subdivision of the state that operates or applies to operate a nursing home as defined in this rule and W. Va. Code §§16B-4-1, *et seq*.

1.7. Variances From This Rule.

1.7.1. The director, in consultation with the Inspector General, may grant a variance from any provision of this rule if it determines that:

1.7.1.a. Strict compliance would impose a substantial hardship on the licensee;

1.7.1.b. The licensee will otherwise meet the goal of the rule; and

1.7.1.c. A variance will not result in less protection of the health, safety and welfare of the residents.

1.7.2. A variance shall not be granted from a provision pertaining to residents' rights.

1.7.2.a. Separate federal variance procedures may apply for provisions of this rule and are contained in the federal nursing home regulations.

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

1.7.3. A variance shall not be granted from a provision pertaining to a requirement in W. Va. Code §§16B-4-1, *et seq.*

1.8. Enforcement. This rule is enforced by the Inspector General. The Inspector General designates the Director of the Office of Health Facility Licensure and Certification to enforce the provisions of W. Va. Code §§16B-4-1, *et seq.*, and the provisions of this rule, except where otherwise stated.

§71-15-2. Definitions.

2.1. Definitions incorporated by reference. Those terms defined in W. Va. Code §§16B-4-1, *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 or services that are necessary to attain or maintain physical, mental, and psychological 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. As used in this definition, willful means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

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

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

2.5. Annual Inspection. For the purpose of this rule, annual inspection is defined as occurring during a time frame of nine to 15 months.

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

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

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

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

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

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

2.12. Chemical Restraint. Any drug that is used for discipline or staff convenience and not required to treat medical symptoms. As used in this definition, convenience means the result of any action that has the effect of altering a resident's behavior such that the resident requires a lesser amount of effort or care and is not in the resident's best interest. As used in this definition, discipline means any action taken by facility staff for the purpose of punishing or penalizing residents.

2.13. Competent Person. A person who has not been adjudicated incompetent by a court of law.

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

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

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

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

2.18. Exploitation. Taking advantage of a resident for personal gain through the use of manipulation intimidation, threats, or coercion.

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

2.20. Governing Body. The person or group of persons with the ultimate responsibility and authority for the conduct of the nursing home.

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

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

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

2.24. Institutional Setting. Any health care facility.

2.25. Involuntary Seclusion. The separation of a resident from other residents or from his or her room or confinement to his or her room, with or without roommates, against the resident's will, or the will of the resident's representative.

2.26. Legal Representative. A person appointed by an individual or by a duly authorized agency or court, or otherwise authorized by law to exercise some degree of control over a resident's affairs. Various types of legal representatives may not necessarily have the lawful authority to act on behalf of the resident in all matters that require action by the legal representative. For example, a conservator has responsibility for financial affairs, but not personal affairs such as medical care. Legal representatives include:

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

2.26.2. 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 appointing order;

2.26.3. A person appointed as committee or guardian prior to June 9, 1994, within limits set by the appointing order and W. Va. Code §§44A-1-1, *et seq.;*

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

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

2.26.6. A 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;

2.26.7. A person having a power of attorney pursuant to W. Va. Code §§39B-1-101, *et seq.*;

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

2.26.9. A parent or guardian of a minor; or

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

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

2.28. Licensed or Registered.

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

2.28.2. Nursing home. A nursing home licensed by the Office of Health Facility Licensure and Certification.

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

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

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

2.32. Mental Abuse. Is a form of abuse that includes, but is not limited to, the following:

2.32.1. Harassing a resident;

2.32.2. Mocking, insulting, or ridiculing;

2.32.3. Yelling or hovering over a resident, with the intent to intimidate;

2.32.4. Threatening a resident, including, but not limited to, depriving a resident of care or withholding a resident from contact with family and friends; and

2.32.5. Isolating a resident from social interaction or activities.

2.33. Misappropriation of Resident Property. The deliberate misplacement; exploitation; or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent.

2.34. Mistreatment. The inappropriate treatment or exploitation of a resident.

2.35. Neglect. The 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.

2.36. Next of Kin. In descending order of priority;

2.36.1. The resident's spouse;

2.36.2. The resident's adult children;

2.36.3. The resident's parents;

2.36.4. The resident's adult siblings;

2.36.5. The resident's adult grandchildren;

2.36.6. The resident's close friends; and

2.36.7. Any other person or entity, including guardians, public officials, and private corporations and other persons or entities which the department may from time to time designate in rules promulgated pursuant to W. Va. Code §§29A-3-1, *et seq*.

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

2.38. Nourishing Snack. Two or more food items from the basic food groups plus a beverage of milk, juice or the resident's preference.

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

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

2.41. Physical Restraint. Any manual method, physical, or mechanical device, equipment, or material that meets all of the following criteria:

2.41.1. Is attached or adjacent to the resident's body;

2.41.2. Cannot be removed easily by the resident; and

2.41.3. Restricts the resident's freedom of movement or normal access to his or her body.

2.41.4. As used in this definition, removed easily means the manual method, physical, or mechanical device, equipment, or material, can be removed intentionally by the resident in the same manner as it was applied by the staff.

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

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

2.44. Premises. A tract of land, together with all buildings, equipment, fixtures, and facilities erected, constructed, or situated on the land, and all rights, powers, easements, and rights-of-way, and all interests

in property, real, personal, or mixed, now owned or hereafter acquired by a licensed person and appurtenant to or used in connection with the nursing home.

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

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

2.47. Regulatory Deficiency. A set of directly related regulatory requirements.

2.48. Repeat Deficiency. A deficiency that meets all of the following conditions: is cited on the current inspection; was cited on the previous inspection or any intervening inspection between the current inspection and the previous inspection; has had a plan of correction submitted for the previous inspection or any intervening inspection that was accepted by the director; and is cited based on the same regulatory grouping.

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

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

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

2.52. Sexual Abuse. Non-consensual sexual contact of any type with a resident. Sexual abuse includes, but is not limited to:

2.52.1. Unwanted intimate touching of any kind;

2.52.2. All types of sexual assault or battery;

2.52.3. Forced observation of a sexual act of any kind; and

2.52.4. Taking sexually explicit photographs, audio or video recordings, or both of a resident or residents and maintaining, distributing, or both the same, including posting to social media. This includes, but is not limited to, nudity, fondling, intercourse, or any combination thereof involving a resident or residents.

2.53. Staff. Any person or persons who perform personal services for the nursing home in exchange for monetary compensation where such personal services, including the results to be accomplished as well as the details and the means by which the results are accomplished, are controlled and directed by

the nursing home, regardless of whether monetary compensation is effected through the nursing home's payroll system or the nursing home's accounts payable system.

2.54. Standard Quality of Care. Substantial compliance with this rule.

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

2.56. Transfer. Moving the resident from the nursing home to another legally responsible institutional setting.

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

2.58. Verbal Abuse. A form of abuse, including, but not limited to, the use of oral, written, or gestured communication or sounds, to residents within hearing distance, regardless of age, ability to comprehend, or disability. Verbal abuse may be considered a form of mental abuse.

§71-15-3. State Administrative Procedures.

3.1. General Licensure Provisions.

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

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

3.1.3. A licensee shall notify the director if there is a special unit within the same physical environment of the nursing home, or on the same campus or premise which has a different advertised name, including but not limited to, signage outside of the building.

3.1.3.a. A separate license is unnecessary for this special unit, and the separately named unit shall still be treated as part of the overall nursing home.

3.1.3.b. The director may require the licensee to provide additional information and designate a subclassification under the primary license for the separately named unit.

3.1.4. Separate buildings on the same premises, operated under the same ownership and management, are one nursing home unless the director determines otherwise.

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

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

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

3.1.8. The application for a license by the new owner has the effect of a valid license for three months from the date the application is received by the director.

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

3.1.10. An approved name change is reflected in a newly issued license at a charge of $50.

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

3.1.12. A license shall state:

3.1.12.a. The name of the nursing home to which it applies;

3.1.12.b. The name of the applicant who is the licensee;

3.1.12.c. The maximum bed capacity for which it is granted;

3.1.12.d. The date of issuance; and

3.1.12.e. The expiration date.

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

3.2. Exceptions.

3.2.1. Nothing contained in this rule applies to:

3.2.1.a. A hospital as defined in W. Va. Code §§16B-3-1, *et seq.*;

3.2.1.b. Institutions as defined in W. Va. Code §27-1-6;

3.2.1.c. A federally operated institution;

3.2.1.d. Institutions operated for the care and treatment of alcoholic patients;

3.2.1.e. Offices of physicians;

3.2.1.f. Hotels;

3.2.1.g. Assisted Living Residences, as defined under W. Va. Code §§16B-5-1, *et seq.*;

3.2.1.h. Boarding homes or similar places that furnish to their guests only room and board;

3.2.1.i. Extended care facilities operated in conjunction with a hospital;

3.2.1.j. Facilities, including intermediate care facilities for individuals with intellectual disabilities;

3.2.1.k. Residential Care Communities as defined under W. Va. Code §§16B-9-1, *et seq.*; and

3.2.1.l. Homes or asylums operated by fraternal orders pursuant to W. Va. Code §§35-3-1, *et seq.*

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

3.2.3. Nursing homes federally certified by the Centers for Medicare and Medicaid Services under 42 Code of Federal Regulations, Part 483, Subpart B are exempt from provisions of this rule addressed in applicable federal regulations, unless such provisions are part of an express state requirement intended to differ from the federal regulation.

3.2.3.a. The Office of Health Facility Licensure and Certification will develop a list of the non-exempted provisions of this rule with the assistance of the Nursing Home Advisory Council.

3.2.3.b. The Office of Health Facility Licensure and Certification will revise the non-exemption list when the Centers for Medicare and Medicaid Services makes modifications or amendments to 42 Code of Federal Regulations, Part 483, Subpart B.

3.3. Initial License.

3.3.1. An applicant shall submit an application to the director, on a form prescribed by the director, containing information sufficient to demonstrate that the nursing home is in compliance with the standards for nursing homes established in W. Va. Code §§16B-4-1, *et seq.*, and this rule.

3.3.2. The application shall be filed not less than 30 days and not more than 90 days prior to the date proposed for commencement of operation.

3.4. Renewal License.

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

3.4.2. A completed application for renewal of a license shall be submitted not less than 30 days and not more than 90 days prior to the expiration date of the current license.

3.4.3. The fee for renewal of a license, as determined by the director pursuant to W. Va. Code §16B-4-6(e) and §§16-4-1, *et seq.*, shall accompany the license renewal application.

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

3.4.4.a. The director finds the nursing home in substantial compliance with the provisions of W. Va. Code §§16-4-1, *et seq.*, and with this rule;

3.4.4.b. The licensee applied for a renewal within the time period specified in this subsection; and

3.4.4.c. The licensee submitted the correct renewal fee with the application.

3.4.5. A renewal license is valid for one year from the date of issuance.

3.5. Provisional License.

3.5.1. If the director finds that a nursing home applying for renewal of a license is not in substantial compliance with the requirements of this rule and the provisions of W. Va. Code §§16B-4-1, *et seq.*, the director may, at his or her discretion, issue a provisional license.

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

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

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

3.5.3. A provisional license shall not be issued for a period greater than six months.

3.5.4. No extensions or renewals shall be granted on provisional licenses.

3.6. Inspections of Licensed and Unlicensed Facilities.

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

3.6.2. The director shall conduct at least one unannounced inspection annually, to determine compliance with the provisions of W. Va. Code §§16B-4-1, *et seq.*, and this rule.

3.6.3. In accordance with W. Va. Code §§16B-4-1, *et seq.*, the director or designee has the right to enter the premises of a nursing home that the director has reason to believe is being operated or maintained as a nursing home without a license.

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

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

3.6.6. A nursing home which fails to apply for a license is subject to the penalties established by the provisions of this rule.

3.6.7. The director shall file an inspection report according to this rule and shall keep the report on file for five years.

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

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

3.7. License; Posting; Licensed Capacity.

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

3.7.2. The Office of Health Facility Licensure and Certification on behalf of the State of West Virginia shall maintain ownership of each license certificate issued to a licensee; upon the suspension or revocation of the license, or upon discontinuing operation of the home by voluntary action of the licensee, the owner shall return each license certificate to the director immediately.

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

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

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

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

3.8.2. For licensees planning a change in status as described in this rule:

3.8.2.a. This rule remains fully applicable until all residents have been discharged or transferred.

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

3.8.2.b.1. Documentation that adequate staff and resident care will be provided;

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

3.8.2.b.3. The placement action proposed to be taken for each resident.

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

3.8.2.d. The licensee shall not admit new residents after the date of the written notice required in this Section.

3.9. Nursing Home Licensing Advisory Council.

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

3.9.2. The composition of the council shall be determined by the director and be comprised of no less than 10 members and no more than 15 members.

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

3.9.4. The council shall hold a meeting not less than semiannually, at least one of which shall be held in a public setting and receive input from the public.

3.10. Transfer Agreements.

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

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

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

3.11. Interpretive Guidelines. The director, in consultation with the Inspector General, may issue interpretive guidelines related to this rule and prior to the adoption and implementation of the guidelines, shall provide notice of a public comment period to all affected parties.

§71-15-4. Residents' Rights.

4.1. Nursing Home Policies and Procedures.

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

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

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

4.1.3.a. Residents or potential residents; and

4.1.3.b. Legal representatives.

4.2. Duties of Staff.

4.2.1. All members of the nursing home staff shall ensure that every resident under their care is accorded all rights set forth in this rule.

4.2.2. The nursing home staff shall at least annually receive training in the proper implementation of residents' rights policies under the provisions of this rule.

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

4.3. Legal Representatives.

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

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

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

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

4.3.5. The nursing home shall maintain in the residents' medical record verification of the authority of the legal representative and shall provide the legal representative with a general description of the scope of the legal representative's decision-making authority, as developed and approved by the Office of the Health Facility Licensure and Certification.

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

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

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

4.4. Confidentiality and Access to Records and Information.

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

4.4.2. Access to Records. Upon an oral or written request, the nursing home shall provide to each resident access to all of his or her records, including current clinical records, within 24 hours of the request. Records may only be available during normal business operating hours, excluding weekends and holidays.

4.4.3. The facility may charge a fee for labor, supplies, and postage for providing copies of the resident's medical record in accordance with W. Va. Code §§16-29-1, *et seq.* The nursing home will provide the photocopied materials to the resident within two working days of the request.

4.4.4. A nursing home shall make the results of surveys and inspections, as well as plans of correction, available for examination in a place readily accessible to residents or legal representatives and shall post a notice of their availability. A nursing home may charge an amount not to exceed 25 cents per page for copies of reports requested by any person.

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

4.5. Right for Information. A nursing home shall:

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

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

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

4.5.4. Inform a resident of the following:

4.5.4.a. The resident has the right to be informed of his or her medical condition. If a resident lacks capacity to make health care decisions, the appropriate legal representative shall also be informed.

4.5.4.b. The resident has the right to be informed of his or her care and treatment. If a resident lacks capacity to make health care decisions, the appropriate legal representative shall also be informed.

4.5.5. Resident Grievance. A resident has the right to voice grievances to the facility or other agency or entity that hears grievances without discrimination or reprisal and without fear of discrimination or reprisal.

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

4.6. Refusal of Treatment and Experimental Research.

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

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

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

4.6.1.a.2. When a refusal of treatment occurs, the nursing home shall assess the reasons for the resident's refusal, clarify and educate the resident, and in the case of incapacity to make health care decisions, the legal representative, as to the consequences of the refusal, and offer alternative treatments, and continue to provide all other services.

4.6.1.a.3. The nursing home shall maintain documentation in the resident's medical record of the resident's refusal and the actions taken.

4.6.1.b. Refusal of Experimental Research. The resident shall have the opportunity to refuse to participate in experimental research prior to the start of the research. The nursing home shall inform a resident being considered for participation in experimental research of the nature of the experiment and of the possible consequences for participation.

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

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

4.7.1. A description of the manner of protecting personal funds under the provisions of this rule;

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

4.7.3. A description of the requirements and procedures for Medicaid eligibility including information about the availability of asset assessments upon request at the county West Virginia Office of Human Services office;

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

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

4.8. Advance Directives.

4.8.1. The resident has the right to execute an advance directive.

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

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

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

4.8.3. A nursing home shall only admit residents for which it has the capacity to administer care in accordance with the resident's advance directives, but cannot require a resident to execute an advance directive as a condition of admission. The nursing home shall notify the resident or legal representative of its inability to honor a resident's advance directive executed after admission to the nursing home and assist in finding appropriate alternative placement if he or she desires.

4.9. Right to Choose a Personal Physician and Pharmacy.

4.9.1. Upon admission, the nursing home shall provide the resident with the names of the physicians who have attending privileges at the nursing home. The resident has the right to choose a personal physician.

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

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

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

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

4.10. Management of Residents' Personal Funds.

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

4.10.2. Upon written authorization of a resident, the nursing home shall hold, safeguard, manage, and account for the personal funds of the resident deposited with the nursing home under the provisions of this rule.

4.10.3. Deposit of funds.

4.10.3.a. Funds in excess of $50.

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

4.10.3.a.2. In pooled accounts, there shall be a separate accounting for each resident's share.

4.10.3.b. Funds less than $50. A nursing home shall maintain a resident's personal funds that do not exceed $50 in a non-interest-bearing account, interest-bearing account, or petty cash fund.

4.10.4. Accounting and records:

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

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

4.10.4.c. The individual financial record shall be provided through quarterly statements and on request to the resident or his or her legal representative.

4.10.4.c.1. For any transaction from a resident's account, the nursing home shall provide the resident with a receipt and retain a copy of the receipt.

4.10.4.c.2. The nursing home shall administer the funds on behalf of the resident in the manner directed by the resident or in the case of incapacity, the legal representative.

4.10.5. Notice of certain balances. A nursing home shall notify each resident who receives Medicaid benefits:

4.10.5.a. When the amount in the resident's account reaches $200 less than the Supplemental Security Income (SSI) resource limit for one person; and

4.10.5.b. The amount in the account, in addition to the value of the resident's other non-exempt resources, reaches the SSI resource limit for one person, and that the resident may lose eligibility for Medicaid or SSI.

4.10.6. Conveyance upon death or discharge.

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

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

4.10.7. Assurance of financial security. A nursing home shall purchase a bond or obtain and maintain commercial insurance with a company licensed in the state of West Virginia if the nursing home in any one month handles an amount greater than $35 per resident, per month in the aggregate.

4.10.7.a. The sum of the bond or insurance shall be at least 1.25 times the average amount of residents' funds deposited with the nursing home during the nursing home's previous fiscal year. Reference Table 71-15 .B. of this rule.

4.10.7.b. The insurance policy shall specifically designate the resident as the primary beneficiary or payee for reimbursement of lost funds.

4.10.7.c. A nursing home shall reimburse the resident, within 30 days, for any losses and seek its reimbursement through the bond or insurance.

4.10.7.d. A nursing home is responsible for any insurance deductible.

4.10.7.e. The director may require a nursing home to file an additional bond or purchase additional insurance in the following circumstances:

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

4.10.7.e.2. When the amount of the bond or insurance is impaired by recovery against it.

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

4.10.7.g. When a nursing home determines, on the basis of professional judgment, that a resident is unable to manage his or her financial affairs and does not have a legal financial representative, the nursing home shall notify the resident's next of kin to initiate guardianship or conservatorship. Prior to initiating an involuntary transfer or discharge based on non-payment, the nursing home shall notify the resident's nearest next of kin, if known, to initiate guardianship or conservatorship.

4.10.7.h. If a nursing home determines, on the basis of professional judgment, that a resident is unable to manage his or her financial affairs and that his or her financial representative is not using the

resident's funds to pay for his or her stay, prior to initiating an involuntary transfer or discharge based on non-payment, a nursing home shall notify the appropriate authorities.

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

4.11.1. The nursing home has documented the need or desire for work in the resident's plan of care;

4.11.2. The resident's plan of care specifies the nature of the services to be performed and whether the services are voluntary or paid;

4.11.3. Compensation for paid services is at or above prevailing rates for the services; and

4.11.4. The resident agrees to the work arrangement described in the resident's plan of care.

4.12. Bed-Hold and Readmission Rights.

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

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

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

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

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

4.13. Admission, Transfer, and Discharge.

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

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

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

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

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

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

4.13.2.c. The health or safety of persons in the nursing home is endangered;

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

4.13.2.e. The nursing home ceases to operate.

4.13.3. Documentation.

4.13.3.a. When the reason for the transfer or discharge is consistent with subdivision 4.13.2.a., the documentation must include the specific resident needs that cannot be met, the facility's attempt to meet the resident's needs, and the service available at the receiving facility to meet the resident's needs.

4.13.3.b. The documentation shall be made by the resident's physician when transfer or discharge is necessary under the provisions of this rule.

4.13.4. Notice before transfer or discharge. Before a nursing home transfers or discharges a resident, it shall provide written notice to the resident and his or her legal representative as appropriate, of the transfer or discharge. The notice shall be in a language the resident understands and shall include the following:

4.13.4.a. The reason for the proposed transfer or discharge;

4.13.4.b. The effective date of the proposed transfer or discharge;

4.13.4.c. The location or other nursing home to which the resident is being transferred or discharged;

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

4.13.4.e. The name, address, and telephone number of the State Long-Term Care Ombudsman;

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

4.13.4.g. For nursing home residents with a mental health diagnosis, the mailing address and telephone number of the agency responsible for the protection and advocacy of persons or individuals with mental illness.

4.13.4.h. A copy of the notice of proposed transfer or discharge shall be sent to the State Long-Term Care Ombudsman.

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

4.13.5.a. The safety of persons in the nursing home would be endangered;

4.13.5.b. The health of persons in the nursing home would be endangered;

4.13.5.c. The resident's health improves sufficiently to allow a more immediate transfer or discharge;

4.13.5.d. An immediate transfer or discharge is required by the resident's urgent medical needs; or

4.13.5.e. A resident has not resided in the nursing home for 30 days.

4.13.6. Orientation for Transfer or Discharge.

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

4.13.6.b. Involuntary Transfer. In the event of an involuntary transfer, the nursing home shall assist the resident, legal representative, or both in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge and by developing a plan designed to minimize any transfer trauma to the resident. The plan may include counseling the resident, legal representative, or both regarding available community resources and taking steps under the nursing home's control to assure safe relocation.

4.13.7. Discharge to a Community Setting.

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

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

4.13.7.c. Each resident shall be fully informed of the right to refuse a discharge.

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

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

4.13.8.a. Immediately inform the resident's attending physician;

4.13.8.b. Educate the resident, and the resident's legal representative, if appropriate, regarding the possible consequences for discharging to an inappropriate placement;

4.13.8.c. Provide information about and referral to appropriate community resources, if requested by the resident.

4.13.8.d. Make a referral, as appropriate, to the adult protective services agency to promote resident safety;

4.13.8.e. Document the resident's reason for discharging against medical advice, if known; and

4.13.8.f. Document all actions taken and the responses by the resident, legal representative, or both, in the resident's medical record.

4.14. Equal Access to Quality Care.

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

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

4.14.1.b. Is not contrary to a federal or state law, regulation, or rule:

4.14.1.b.1. That prohibits the discrimination; or

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

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

4.14.3. Civil Rights.

4.14.3.a. A nursing home shall not segregate a resident, give separate treatment, restrict the enjoyment of any advantage or privilege enjoyed by others in the nursing home, or provide any aid, care services, or other benefits that are different from or are provided in a different manner from those provided to others in the nursing home on the grounds of a resident's protected status based upon state and federal law.

4.14.3.b. A nursing home shall not deny admission to a prospective resident on the grounds of a resident's protected status based upon state and federal law.

4.15. Admissions and Payment Policy.

4.15.1. A nursing home shall not require:

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

4.15.1.b. Oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

4.15.2. Third Party Guarantee. A nursing home shall not require a third party guarantee of payment to the nursing home as a condition of admission or expedited admission or continued stay in the nursing home. A nursing home, however, may require for admission or for continued stay of the resident, that a person who has legal right and access to a resident's income or resources available to pay for care to sign a contract, without incurring personal financial liability, to provide payment from the resident's income or resources.

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

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

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

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

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

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

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

4.15.6. A nursing home shall give the resident a 30 day notice when changes are made to items and services under the provisions of this rule.

4.16. Freedom from Restraint and Abuse.

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

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

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

4.16.2. Restraints.

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

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

4.16.2.a.2. Identifying the causal factors;

4.16.2.a.3. Identifying, assessing, and attempting restraint free interventions that are appropriate for the person; and

4.16.2.a.4. The following, if alternatives to restraints are not found to be practicable:

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

4.16.2.a.4.B. Documentation that the use of the restraint will enhance the resident's quality of life and functional abilities and is clinically beneficial; and

4.16.2.a.4.C. An assessment of the resident to identify the least restrictive type of restraint that will provide for the resident's needs.

4.16.2.b. Physician's order. After a comprehensive restraint assessment indicates the need for a restrain and the resident's attending physician concurs, the resident's attending physician shall write an order to be included in the resident's plan of care specifying the type, precise application, circumstances, and duration of the restraint.

4.16.2.c. The resident's plan of care shall include, at a minimum:

4.16.2.c.1. The type and size of restraint that is to be used;

4.16.2.c.2. When the restraint is to be used;

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

4.16.2.c.4. A systematic and gradual process to reduce the restraint, eliminate it, or both.

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

4.16.2.e. Monitoring and release. Nursing home staff shall directly monitor a resident who has been restrained at least every half hour. The resident shall be released from the restraint at least every two hours and provided exercise, toileting, and skin care.

4.16.2.f. Policies and procedures. A nursing home shall establish and implement policies and procedures for restraint use.

4.16.2.g. Emergency.

4.16.2.g.1. In the case of an emergency, licensed nursing personnel authorized by the nursing home in writing may order the use of a physical restraint for a specified and limited period of time not to exceed 24 hours until the resident's attending physician can be notified of the resident's condition requiring the emergency application.

4.16.2.g.2. Continued use is subject to the same evaluation process described in this Subdivision and shall be ordered by the resident's attending physician.

4.16.2.h. Bed rails. The nursing home shall attempt to use appropriate alternatives prior to installing a side or bed rail. If a side or bed rail is used, the facility shall ensure correct installation, use, and maintenance of side or bed rails, including, but not limited to, the following elements:

4.16.2.h.1. Assess the resident for risk of entrapment from side or bed rails prior to installation;

4.16.2.h.2. Review the risks and benefits of side or bed rails with the resident or legal representative and obtain informed consent prior to installation;

4.16.2.h.3. Ensure that the bed's dimensions are appropriate for the resident's size and weight; and

4.16.2.h.4. Follow the manufacturer's recommendations and specifications for installing and maintaining side or bed rails.

4.16.3. Abuse.

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

4.16.3.b. Staff treatment of residents. The nursing home shall develop and implement written policies and procedures that prohibit neglect of residents, abuse of residents, and misappropriation of resident property. The policy and procedures shall address the screening, training, prevention, identification, investigation, protection, reporting, and response of allegations of resident neglect, abuse, and misappropriation of resident property.

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

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

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

4.17. Complaint Procedures.

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

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

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

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

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

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

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

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

§71-15-5. Quality of Life.

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

5.2. Dignity.

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

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

5.3. Privacy.

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

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

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

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

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

5.3.6. Electronic Communications. The resident has the right to have reasonable access to and privacy in their use of electronic communications such as email and video communications and for internet research, provided that access is available to the nursing home. Access to electronic communications shall be at the resident's expense, if any additional expense is incurred by the nursing home to provide such access to the resident and such use must comply with state and federal law.

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

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

5.4.1. Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

5.4.2. Interact with members of the community both inside and outside the nursing home;

5.4.3. Make choices about aspects of his or her life in the nursing home that is significant to the resident;

5.4.4. Retain and use personal clothing and possessions and make his or her room as homelike as possible, according to his or her individual tastes and desires taking into consideration, space limitations, other residents' rights, and safety and sanitation issues. A nursing home may specify in the admission contract the nursing home's liability for a resident's personal clothing and possessions;

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

5.4.6. Participate in planning care and treatment.

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

5.5.1. Access and Visitation Rights.

5.5.1.a. A nursing home shall not deny a resident immediate access to, and shall provide immediate access to a resident by:

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

5.5.1.a.2. The ombudsman; and

5.5.1.a.3. Any other individual, whether the individual is a relative or a non-relative, of the resident's choosing.

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

5.5.1.b.1. Advise the administrator or other available agent of the nursing home of his or her presence upon entering the facility;

5.5.1.b.2. Not enter the living area of a resident without identifying himself or herself to the resident and without receiving the resident's permission to enter;

5.5.1.b.3. Terminate a visit with a resident upon request of the resident;

5.5.1.b.4. Be permitted to visit all areas of the nursing home except:

5.5.1.b.4.A. Living areas of a resident who objects;

5.5.1.b.4.B. Business records of the nursing home unless the administrator consents;

5.5.1.b.4.C. Personal and medical records of the resident, unless the resident or in case of incapacity to make health care decisions, the resident's legal representative, consents in writing;

5.5.1.b.4.D. Food service areas requiring sanitary conditions;

5.5.1.b.4.E. A pharmaceutical or secure area; or

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

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

5.5.2. Resident's Refusal.

5.5.2.a. The resident has the right to refuse a visit and the visit shall be terminated upon the resident's request.

5.5.2.b. In the case of an incapacitated person, the legal representative, consistent with the limits of his or her authority, may refuse visits on behalf of the resident only if the legal representative demonstrates that the visits have a harmful effect on the resident. All relevant information shall be documented in the resident's medical record.

5.5.3. Administration's Exclusion.

5.5.3.a. The administrator or designee in charge of the nursing home may refuse a visitor access or require the visitor to leave only if:

5.5.3.a.1. In the judgment of the administrator, or his or her designee, the presence of the visitor is detrimental to the health, safety, or welfare of the resident or other residents or the visitor or the functioning of the nursing home;

5.5.3.a.2. Access is sought for financial solicitation or commercial purposes, or;

5.5.3.a.3. A resident does not wish the visitor to stay.

5.5.3.b. The restriction and the reasons for it shall be documented and kept on file.

5.5.4. Resident and Family Groups and Councils.

5.5.4.a. Residents have the right to organize, maintain, and participate in resident groups in the nursing home.

5.5.4.b. A resident has the right to have family and friends meet in the nursing home with the families of other residents.

5.5.4.c. The nursing home shall provide a resident or family group with private space for meetings.

5.5.4.d. The nursing home shall provide assistance for resident or family group meetings, if requested.

5.5.4.e. Staff or visitors may attend resident or family group meetings only at the group's invitation.

5.5.4.f. The nursing home shall respond in writing to oral and written requests from resident and family council meetings. Resident councils and family councils shall be encouraged to make recommendations regarding nursing home policies.

5.5.4.g. The nursing home shall provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings.

5.5.4.h. When a resident or family group exists, the nursing home shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the nursing home.

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

5.7. Accommodation of Resident Needs.

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

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

5.8. Activities.

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

5.8.2. The activities program shall be directed by a person who:

5.8.2.a. Is a qualified therapeutic recreation specialist or activities professional who has two years experience in a social or recreational program within the last five years, one of which was a full-time in a resident activities program in a health care setting; or

5.8.2.b. Is a qualified occupational therapist or occupational therapy assistant or

5.8.2.c. Has demonstrated the ability to provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident; and has completed a training course approved by the state.

5.8.3. If the intended activities director does not meet the requirements above, he or she shall require regularly scheduled consultation by a person who meets the qualifications described in this rule. The consultation by a qualified consultant may continue until the time a candidate can meet the required qualifications, but not for more than a period of 12 months from the date of hire. A qualified activities consultant is a qualified professional who is a qualified therapeutic recreation specialist or activities professional who is licensed, registered or certified, if applicable, and has three years of experience in a social or recreational program. This person shall:

5.8.3.a. Visit the nursing home as indicated by the needs of the nursing home and its residents, but not less than eight hours quarterly; and

5.8.3.b. Provide a written, dated report, containing the time and duration of the visit and a summary of the findings with recommendations for improvements in the program to the administrator and the activities director, within 10 working days of the completion of the onsite visit.

5.8.4. The duties of the activities director shall include:

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

5.8.4.b. Designing an activities program to restore, maintain, and improve functioning and well-being in conjunction with the care plan for the individual resident.

5.9. Social Services.

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

5.9.2. A nursing home with 60 or more beds shall employ a qualified social worker on a full-time basis.

5.9.3. A qualified social worker is a person with:

5.9.3.a. A license to practice social work in the state of West Virginia; and

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

§71-15-6. Resident Assessment.

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

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

6.3. Comprehensive Assessments.

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

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

6.3.1.b. Describes the resident's capability to perform daily life functions and any significant impairments in functional capacity.

6.3.2. The comprehensive assessment shall include the resident's:

6.3.2.a. Identification and demographic information;

6.3.2.b. Customary routine;

6.3.2.c. Cognitive patterns;

6.3.2.d. Communication;

6.3.2.e. Vision;

6.3.2.f. Mood and behavior patterns;

6.3.2.g. Psychosocial well-being;

6.3.2.h. Physical functioning and structural problems;

6.3.2.i. Continence;

6.3.2.j. Disease diagnosis and health conditions;

6.3.2.k. Dental and nutritional status;

6.3.2.l. Skin conditions;

6.3.2.m. Activity pursuit;

6.3.2.n. Medications;

6.3.2.o. Special treatments and procedures;

6.3.2.p. Discharge potential;

6.3.2.q. Documentation and summary information regarding the additional assessment performed through the resident assessment protocols.

6.3.2.r. Documentation of participation in assessment.

6.3.3. Frequency. Comprehensive assessments shall be conducted:

6.3.3.a. No later than 14 days after the date of admission;

6.3.3.b. Within 14 days after the facility determines, or should have determined that there has been a significant change in the resident's physical and mental condition; and

6.3.3.c. In no case less often than every 366 days.

6.3.4. Review of Assessments. A nursing home shall examine each resident no less than once every 92 days, and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.

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

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

6.4. Accuracy of Assessments.

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

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

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

6.4.4. Civil money penalty for falsification. A person who willfully and knowingly certifies, or causes another person to certify, a material and false statement in a resident assessment is subject to civil money penalties.

6.4.5. Use of independent assessors. If the director determines, under an inspection or otherwise, that there has been a knowing and willful certification of false statements under the provisions of this rule the director, in consultation with the Inspector General, may require, for a period of time specified by the director, that resident assessments under this section be conducted and certified by persons who are independent of the nursing home and who are approved by the director.

§71-15-7. Comprehensive Care Plans.

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

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

7.1.2. Any services that would otherwise be required under the provisions of this rule, but are not provided due to the resident's exercise of rights including the right to refuse treatment.

7.2. Timing of the Care Plan and Participation Requirements. A comprehensive care plan shall be:

7.2.1. Developed within seven days after the completion of the comprehensive assessment;

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

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

7.3. Services Provided Under a Care Plan. The services provided or arranged by the nursing home shall:

7.3.1. Meet professional standards of quality; and

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

7.4. Plans for Care and Medical Records.

7.4.1. Plans for care.

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

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

7.4.1.c. The plan of care shall be in writing and contain at least the following:

7.4.1.c.1. The goals to be accomplished;

7.4.1.c.2. Individually designed activities to meet the goals;

7.4.1.c.3. Therapies;

7.4.1.c.4. Treatments, including diet requirements; and

7.4.1.c.5. A statement of which discipline or professional service person is responsible for each element prescribed in the plan.

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

7.4.1.e. Policies and procedures shall delineate the rules and responsibilities of each service in relation to the resident care plan.

7.4.1.f. The resident care plan shall be available for use by all personnel caring for the resident.

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

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

7.4.1.h.1. An initial assessment including discharge potential and goals, completed at admission or within no more than seven days after admission;

7.4.1.h.2. Relevant information concerning such areas as nursing assessment, social history, rehabilitation potential, resident's needs at discharge, and available community resources; and

7.4.1.h.3. Periodic review and re-evaluation on a monthly basis for the three months after admission and then at least quarterly.

7.4.2. Discharge.

7.4.2.a. General. When a resident is discharged to another nursing home or location or to his or her home, the nursing home shall prepare a discharge summary prior to the discharge. The summary

shall be conveyed to the receiving nursing home or location at the time of discharge. The summary shall include:

7.4.2.a.1. The resident's name and identifying number;

7.4.2.a.2. The name of the attending physician;

7.4.2.a.3. The date of admission;

7.4.2.a.4. The date of discharge;

7.4.2.a.5. A provisional and final diagnosis;

7.4.2.a.6. The course of treatment and care in the nursing home;

7.4.2.a.7. Pertinent diagnostic findings;

7.4.2.a.8. Essential information regarding the resident's illness or problems;

7.4.2.a.9. Restorative procedures;

7.4.2.a.10. Medication instructions; and

7.4.2.a.11. The nursing home, agency, or location to which the resident was discharged:

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

7.4.2.b.1. A recapitulation of the resident's stay;

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

7.4.2.b.3. Thirty day notification of the discharge as appropriate and in compliance with other provisions of this rule; and

7.4.2.b.4. If the resident is discharged to his or her home, the resident shall be given appropriate information concerning his or her needs for care and medications including a post-discharge plan of care that is developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

7.4.2.c. The death of a resident shall be reported immediately to the attending physician and to the resident's legal representative and family as relevant. The discharge summary shall include the requirements specified in this rule.

7.4.2.d. A nursing home shall complete medical records promptly within a time period specified in the nursing homes policies and procedures manual, not to exceed 30 days after the resident is discharged.

7.4.2.d.1. The discharge summary shall contain a dated physician's signature.

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

§71-15-8. Quality of Care.

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

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

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

8.2.1.a. Bathe, dress, and groom;

8.2.1.b. Transfer and ambulate;

8.2.1.c. Use the toilet;

8.2.1.d. Eat; and

8.2.1.e. Use speech, language, or other functional communication systems.

8.2.2. A resident is given the appropriate treatment and services to maintain or improve his or her abilities specified in this rule.

8.2.2.a. Assistive devices. The nursing home shall provide special eating equipment and utensils for residents who need them.

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

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

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

8.3.1. In making appointments; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.9. Accidents.

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

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

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

8.9.4. The report shall include the:

8.9.4.a. Date of the occurrence;

8.9.4.b. Time of the occurrence;

8.9.4.c. Place of the occurrence;

8.9.4.d. Details of the occurrence; and

8.9.4.e. Date and signature of the reviewing physician.

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

8.10. Nutrition. Based on a resident's comprehensive assessment, the nursing home shall ensure that a resident:

8.10.1. Maintains acceptable parameters of nutritional status, unless the resident's clinical condition demonstrates that this is not possible;

8.10.2. Receives a therapeutic diet when there is a nutritional problem; and

8.10.3. Who has an unplanned weight loss or gradual progressive unexplained weight loss shall have a thorough nutritional assessment, including appropriate laboratory studies. The unplanned or unexplained weight loss shall be assessed by the following parameters:

8.10.3.a. A significant weight loss of five percent or a severe weight loss of greater than five percent in a one month interval;

8.10.3.b. A significant weight loss of seven and a half percent or a severe weight loss of greater than seven and a half percent in a three month interval;

8.10.3.c. A significant weight loss of ten percent or a severe weight loss of greater than ten percent in a six month interval.

8.11. Hydration. A nursing home shall provide each resident with sufficient fluid intake to maintain proper hydration and health.

8.12. Special Needs. A nursing home shall ensure that residents receive proper treatment and care for the following special needs:

8.12.1. Injections;

8.12.2. Parenteral and enteral fluids;

8.12.3. Colostomy, ureterostomy, or ileostomy care;

8.12.4. Tracheostomy care;

8.12.5. Tracheal suctioning;

8.12.6. Respiratory care;

8.12.7. Foot care;

8.12.8. Prostheses; and

8.12.9. Skin conditions.

8.13. Medications and Drugs.

8.13.1. Each resident's drug regimen shall be free from unnecessary drugs. An unnecessary drug is any drug used in any of the following circumstances or combinations of circumstances:

8.13.1.a. In excessive doses (including duplicate therapy);

8.13.1.b. For excessive duration;

8.13.1.c. Without adequate monitoring;

8.13.1.d. Without adequate indications for its use; or

8.13.1.e. In the presence of adverse consequences that indicate the dose should be reduced or discontinued.

8.13.2. Antipsychotic Drugs. Based on a comprehensive assessment of a resident, the nursing home shall ensure that:

8.13.2.a. Residents who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record;

8.13.2.b. Residents who use antipsychotic drugs receive gradual dose reductions and behavioral interventions, unless clinically contraindicated, in an effort to discontinue these drugs;

8.13.2.c. Residents do not receive antipsychotic drugs pursuant to a PRN order unless that medication is necessary to treat a diagnosed specific condition that is documented in the clinical record.

8.13.2.d. PRN orders for antipsychotic drugs are limited to 14 days. Except as provided in subdivision 8.13.2.e. of this rule, if the attending physician or prescribing practitioner believes that it is appropriate for the PRN order to be extended beyond 14 days, he or she should document their rationale in the resident's medical record and indicate the duration for the PRN order;

8.13.2.e. PRN orders for antipsychotic drugs are limited to 14 days and cannot be renewed unless the attending physician or prescribing practitioner evaluates the resident for the appropriateness of that medication;

8.13.2.f. Residents, and the resident's legal representative in the case of incapacity to make health care decisions, receive a full explanation of the reasons for using the psychotropic drug, including the benefits and risks of the psychotropic drug; and

8.13.2.g. Residents, and the resident's legal representative in the case of incapacity to make health care decisions, provide written consent to the use of the psychotropic drug. The nursing home shall maintain documentation of the information provided and consent received in the resident's medical record.

8.13.3. Medication Errors. The nursing home shall ensure that:

8.13.3.a. It is free of medication error rates of five percent or greater; and

8.13.3.b. Residents are free of any significant medication errors.

8.13.4. Controlled Drugs Policy. The nursing home shall have policies and procedures regarding the procurement, storage, dispensing, administration, and disposition of controlled substances that conforms to the Uniform Controlled Substances Act, W. Va. Code §§60A-1-101, *et seq.*, federal regulations and the rules of the West Virginia Board of Pharmacy.

8.14. Nursing Services Staffing.

8.14.1. A nursing home shall have sufficient nursing personnel to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. Staffing shall not, other than during short unforeseeable emergencies, be less than an average of 2.25 hours of nursing personnel time per resident per day.

8.14.a.1. Minimum hours of resident care personnel to residents are outlined in Table 71-15.A. of this rule.

8.14.a.2. Facilities with fewer than 51 beds are staffed at higher hours as outlined in table 71-15.A. of this rule.

8.14.2. A nursing home shall provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

8.14.2.a. Licensed nurses; and

8.14.2.b. Other nursing personnel. Based on the residents' needs and the nursing home services, the nursing home may determine the combination of licensed nurse time and nurse aide time if the total meets the minimum 2.25 hours nursing personnel time requirement.

8.14.3. Charge Nurse. A nursing home shall designate a licensed nurse to serve as a charge nurse on each shift;

8.14.4. Registered Nurse. A nursing home shall have a registered nurse on duty in the facility for at least eight consecutive hours, seven days a week. In facilities with fewer than 60 beds, the director of nursing may serve to meet this requirement.

8.14.5. Nurse on Call. If there is not a registered professional nurse on duty, there shall be a registered professional nurse on call.

8.14.6. Director of Nursing. A nursing home shall designate in writing a registered nurse to serve as the director of nursing services on a full-time basis, who shall be on duty at least five days a week, eight hours a day during the day shift.

8.14.7. The director may require staffing ratios above the specified minimum ratios if necessary to meet the residents' needs.

8.14.8. Paid Feeding Assistants. Paid feeding assistants are authorized to feed residents who have no feeding complications, under the direct supervision of a registered professional nurse (RN) or a licensed practical nurse (LPN).

8.14.8.a. Paid feeding assistants may set up a resident's meal tray for dining, assist in feeding the resident, and record the resident's intake at the meal.

8.14.8.b. Paid feeding assistants are to be used in accordance with the Office of Inspector General, Office of Health Facility Licensure and Certification Guidelines for Paid Feeding Assistants which can be located on the Office of Inspector General website at oig.wv.org.

8.14.9. Posting of Nurse Staffing Information. The nursing home shall post the following information on a daily basis.

8.14.9.a. The current date, resident census, and the total number and actual hours worked by the following categories of licensed and unlicensed nursing staff directly responsible for resident care per shift, including:

8.14.9.a.1. Registered nurses;

8.14.9.a.2. Licensed practice nurses; and

8.14.9.a.3. Registered nurse aides.

8.14.9.b. The nursing home must post this information in a clear and readable document; and in a prominent place readily accessible to residents and visitors.

8.14.9.c. The nursing home shall, upon oral or written request, make the nurse staffing data available to the public for review. Copies of the nurse staffing data is subject to a charge not to exceed 25 cents per page.

8.14.9.d. The nursing home shall maintain the posted nurse staffing data for a minimum of 18 months.

8.15. Dietary Services.

8.15.1. Dietary Staffing.

8.15.1.a. Dietitian. A nursing home shall employ a qualified dietitian either full-time, part-time, or on a consultant basis.

8.15.1.a.1. A qualified dietitian is one who is registered by the Commission on Dietetic Registration and licensed by the West Virginia Board of Licensed Dietitians; or

8.15.1.a.2. Is qualified as defined by the West Virginia Board of Licensed Dietitians, and is licensed by that board to provide professional nutritional services in West Virginia.

8.15.1.a.3. Consultation shall be based upon the residents' needs and shall occur at intervals of no less than 37 days and for no less than eight hours.

8.15.1.b. A dietary manager shall be employed if a dietitian is not employed full-time and shall be one of the following:

8.15.1.b.1. A dietetic technician, registered by the Academy of Nutrition and Dietetics;

8.15.1.b.2. A certified dietary manager, as certified by the Association of Nutrition and Foodservice Professionals;

8.15.1.b.3. A graduate of an associate or baccalaureate degree program in foods and nutrition or food service management; or

8.15.1.b.4. A person enrolled in an approved program to become a certified dietary manager within 60 days of accepting responsibility for the position. This person shall successfully complete the program within the specific timeframes outlined by the enrolled program and shall successfully pass the Certified Dietary Manager (CDM) examination within no more than two months of completing the approved program.

8.15.1.c. The dietary manager, under the direction of the dietitian, is responsible for the daily operation of the dietetic service;

8.15.2. Sufficient staff. A nursing home shall employ sufficient support personnel competent to carry out the functions of the dietary service.

8.15.3. Menus and Nutritional Adequacy. A nursing home shall meet the nutritional needs of residents in accordance with the Reference Dietary Intake (RDI) of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.

8.15.4. Food. A nursing home shall provide each resident with:

8.15.4.a. Food prepared by methods that conserve nutritive value, flavor, and appearance;

8.15.4.b. Meals shall be prepared and served the same day;

8.15.4.c. Food that is palatable, attractive, and at the proper temperature;

8.15.4.d. At the time of receipt by the resident, foods shall be at a temperature of no less than 120° F for hot foods and at no more than 50° F for cold foods;

8.15.4.e. Food prepared in a form designed to meet individual needs;

8.15.4.f. Food substitutes of similar nutritive value for food the resident refuses;

8.15.4.g. Food prepared with seasoning, unless contraindicated by a physician's order; and

8.15.4.h. Iodized salt, if used.

8.15.5. Diets including regular diets. All residents shall have a physician's order for the specific type of diet he or she is to receive as set forth in the nursing home's diet manual.

8.15.5.a. Therapeutic and texture modified diets shall be served to residents in accordance with physician's orders.

8.15.5.b. Nursing personnel shall advise food service in writing of each resident's diet order, and a copy of the order shall be kept on file for at least one year.

8.15.5.c. Therapeutic Diets. Therapeutic diets shall be prescribed by the attending physician. A current therapeutic diet manual that is not more than five years old and is approved by the dietitian shall be available for nursing personnel and physicians.

8.15.5.d. Recognizing that the resident has the right to refuse medical treatment, all residents have the right to request substitute foods even when this violates the physician's orders.

8.15.5.d.1. A nursing home shall provide education to the resident regarding the benefits of the prescribed diet and consequences of his or her refusal to eat the prescribed diet.

8.15.5.d.2. A nursing home shall document the informed decision in the resident's clinical record.

8.15.6. Frequency of meals.

8.15.6.a. A nursing home shall provide at least three meals daily at regular times, or in accordance with residents' preferences and customary routines.

8.15.6.b. No more than 14 hours shall elapse between a substantial evening meal and breakfast the following day. Breakfast shall not be served before 7:00 a.m., unless by a resident's request.

8.15.6.c. A nursing home shall offer a nourishing snack at bedtime daily, as determined by the resident's needs.

8.15.6.c.1. The amount of the snacks consumed by the resident shall be recorded in the resident's medical record.

8.15.6.c.2. The amount of supplement consumed by the resident shall be recorded in the resident's medical record.

8.15.7. Sanitary conditions. A nursing home shall:

8.15.7.a. Procure food from sources approved or considered satisfactory by federal, state, or local authorities;

8.15.7.b. Store, prepare, distribute, and serve food under sanitary conditions;

8.15.7.b.1. Hold hot foods at or above 135° F and cold foods at or below 40° F, or the current Food and Drug Administration Food Code located at www.fda.gov.

8.15.7.b.2. Temperatures of foods are taken and documented prior to placement in the hot or cold food holding area.

8.15.7.c. Dispose of garbage and refuse properly.

8.15.8. Emergency supplies.

8.15.8.a. A nursing home shall have a planned three day disaster menu that correlates with the emergency food supply.

8.15.8.b. The emergency food supply shall be maintained on the premises with non-perishable foods and disposable supplies to meet all resident needs for three days.

8.15.8.c. The emergency food supply may be incorporated with the regular stock of food supplies.

8.15.9. A nursing home shall maintain a dietetic service that is organized either directly by a nursing home or through a written agreement with a contractor who complies with the standards of this rule.

8.15.10. The dietetic service shall be in substantial compliance with the Department of Health's Legislative Rule, Food Establishments, W. Va. Code R. §§64-17-1, *et seq.*

8.16. Physician and Physician Extender Services.

8.16.1. A physician shall personally approve in writing a recommendation that a person be admitted to a nursing home. Each resident shall remain under the care of a physician.

8.16.2. Physician supervision. A nursing home shall ensure that:

8.16.2.a. The medical care of each resident is supervised by a physician; and

8.16.2.b. Another physician supervises the medical care of residents when their attending physician is unavailable.

8.16.3. Physician visits. The physician shall:

8.16.3.a. Review the resident's total program of care, including medications and treatments, and examine the resident personally at each visit required under the provisions of this rule;

8.16.3.b. Write, sign, and date progress notes at each visit; and

8.16.3.c. Sign and date all orders.

8.16.4. Frequency of physician visits. The resident shall be seen face-to-face by a physician:

8.16.4.a. Within five days prior to admission or within 72 hours following admission; and

8.16.4.b. At least every 30 days for the first 90 days after admission, and as the resident's condition warrants. A nursing home shall assure that physician visits occur as clinically indicated for the resident.

8.16.4.c. After the 90 day requirement has expired, the physician shall visit every 60 days and as the resident's condition warrants.

8.16.5. Except as provided under the provisions of this rule, all required physician visits shall be made by the physician personally.

8.16.6. After the initial visit, at the option of the physician, the required visit every 60 days may be alternated between personal visits by the physician and visits by a physician's assistant, nurse practitioner, or clinical nurse specialist under the provisions of this rule.

8.16.7. Availability of physicians for emergency care. A nursing home shall provide or arrange for the provision of physician services 24 hours a day, in case of an emergency.

8.16.8. Physician delegation of tasks. Except as specified under the provisions of this rule, a physician may delegate tasks to a physician assistant, nurse practitioner, or clinical nurse specialist who:

8.16.8.a. Is licensed by the state;

8.16.8.b. Is acting within the scope of practice as defined by W. Va. Code §§30-3-1, *et seq.*; and

8.16.8.c. Is under the supervision of the physician.

8.17. Specialized Rehabilitative Services.

8.17.1. Provision of services. If specialized rehabilitative services such as, but not limited to, physical therapy, speech-language pathology, occupational therapy, and psychological or psychiatric rehabilitative services, are required in the resident's comprehensive plan of care, a nursing home shall:

8.17.1.a. Provide the required services; or

8.17.1.b. Obtain the required services from an outside resource, in accordance with subsection 10.7. of this rule, from a provider of specialized rehabilitative services.

8.17.2. Qualifications. Specialized rehabilitative services shall be provided under the written order of a physician by qualified personnel as determined by licensing boards of those personnel.

8.18. Dental Services.

8.18.1. A nursing home shall provide, or obtain from an outside resource in accordance with section 10.7. of this rule, the following dental services to meet the needs of each resident:

8.18.1.a. Routine dental services, to the extent the resident is covered under the State Medicaid Plan; and

8.18.1.b. Emergency dental services 24 hours a day.

8.18.2. A nursing home shall assist a resident in need of dental services by:

8.18.2.a. Making dental appointments;

8.18.2.b. Arranging for transportation to and from the dentist's office; and

8.18.2.c. Referring residents with lost or damaged dentures to a dentist.

8.19. Pharmacy Services.

8.19.1. A nursing home shall provide routine and emergency drugs and biologicals to its residents, or obtain them under an agreement described under the provisions of this rule.

8.19.2. All drugs shall be provided in conformance with the requirements of federal, state, and local laws, regulations, and rules.

8.19.3. Procedures. A nursing home shall provide pharmaceutical services, including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals, to meet the needs of each resident.

8.19.4. Service consultation. A nursing home shall employ or obtain the services of a licensed pharmacist who:

8.19.4.a. Provides consultation on all aspects of the provision of pharmacy services in the nursing home;

8.19.4.b. Establishes a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation; and

8.19.4.c. Determines that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled.

8.19.5. Drug regimen review.

8.19.5.a. The drug regimen of each resident shall be reviewed, by a licensed pharmacist, at least every 37 days.

8.19.5.b. The drug regimen review shall include substances that are regarded as herbal products or dietary supplements.

8.19.6. The nursing home shall conduct a drug regimen review on the premises.

8.19.7. The pharmacist shall report any irregularities in the drug regimen review to the attending physician and the director of nursing, who shall act upon these reports.

8.19.8. Labeling of drugs and biologicals. Drugs and biologicals used in the nursing home shall be labeled in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, with the expiration date when applicable.

8.19.9. Storage of drugs and biologicals.

8.19.9.a. In accordance with state and federal laws, the nursing home shall store all drugs and biologicals in locked compartments under proper temperature controls and permit only authorized personnel to have access to the keys.

8.19.9.b. A nursing home shall provide separately locked, permanently affixed compartments for the storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 42 U.S.C. § 812, and other drugs subject to abuse, except when the nursing home uses single unit package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.

8.20. Infection Control.

8.20.1. A nursing home shall establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

8.20.2. Infection control program. A nursing home shall establish and implement an infection control program under which it:

8.20.2.a. Investigates, controls, and prevents infections in the nursing home;

8.20.2.b. Determines what procedures, such as isolation, shall be applied to a resident and isolates only to the extent that is required to protect the resident and others; and

8.20.2.c. Maintains a record of incidents, investigations, and corrective actions related to infections. The records shall provide for analysis of causal factors and identification of preventative actions to be implemented.

8.20.3. Preventing spread of infection.

8.20.3.a. Policies and Procedures. A nursing home shall establish and implement policies and procedures consistent with current accepted standards of practice regarding the administration of pneumococcal vaccine, influenza vaccine, and screening for tuberculosis.

8.20.3.b. Isolation. When the nursing home staff determines by means of the infection control program that a resident needs isolation to prevent the spread of infection, the nursing home shall isolate the resident or make arrangements to have the resident transferred to a nursing home which can better meet the needs of the resident if the nursing home is unable to provide the required degree of isolation.

8.20.3.c. A resident who is transferred under the provisions of this rule and desires to return to the original nursing home shall be readmitted immediately to the first available bed in a semi-private room when the need for isolation has abated, provided that the resident still requires the care provided by the original nursing home and that nursing home is able to meet the resident's needs.

8.20.3.d. Employee restrictions. A nursing home shall prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease.

8.20.3.e. Hand-washing. A nursing home shall require staff to wash their hands after each direct resident contact and after engaging in any activity for which hand washing is indicated by accepted standards of professional practice.

8.20.4. Linens. Personnel shall handle, store, process, and transport linens in order to prevent the spread of infection.

8.21. Trauma-informed care. The nursing home shall ensure that residents who are trauma survivors receive culturally competent, trauma-informed care in accordance with professional standards of practice and accounting for residents' experiences and preferences in order to eliminate or mitigate triggers that may cause re-traumatization of the resident.

8.22. Pain management. The facility must ensure that pain management is provided to residents who require such services, consistent with professional standards of practice, the comprehensive person-centered care plan, and the resident's goals and preferences.

§71-15-9. Physical Facilities, Equipment, and Site Information.

9.1. Applicability; Construction; Additions; Renovations; Other Standards.

9.1.1. If the director determines that changes necessary for compliance with this section of this rule would create an undue hardship for a nursing home in existence at the time this rule becomes effective, the nursing home may be governed by rules which were in effect prior to the effective date of this rule.

9.1.2. The standards for construction, renovations, and alterations are the relevant sections of the latest edition of "The Guidelines for Design and Construction of Hospitals and Health Care Facilities," according to Facilities Guidelines Institute (FGI) and published by the American Society for Healthcare Engineering (ASHE) with assistance from the U.S. Department of Health and Human Services which can be located at www.hhs.gov.

9.1.3. A nursing home shall comply with the most current edition of the National Fire Protection Association (NFPA) of "NFPA 99 Standards for Health Care Facilities" as adopted by the Centers for Medicare and Medicaid Services (CMS).

9.1.4. A nursing home shall comply with the current edition of the state building code as adopted by the State Fire Marshal.

9.1.5. A nursing home shall comply with all applicable provisions of the Americans with Disabilities Act (ADA).

9.1.6. A nursing home shall submit a complete set of architectural, structural, and mechanical drawings, drawn to scale not less than one-eighth inch equals one foot, and shall be approved by the director before construction begins. This requirement applies to new construction, additions, renovations, or alterations to existing nursing homes.

9.1.7. The submitted drawings and specifications shall be prepared, signed, and sealed by a person registered to practice architecture in the state of West Virginia. The project shall be inspected during the construction phase by a registered professional architect or his or her representative.

9.1.8. The requirement for a registered architect may be waived by the director depending on the scope of the project.

9.1.9. A nursing home shall submit complete architectural drawings and specifications for any alterations, renovations, and equipment modifications or additions which may necessitate changes to the nursing home floor plan, impact on safety, or require the services of a design professional, and shall be approved by the director prior to beginning any construction.

9.1.10. Minor renovations that do not alter floor plans, impact on safety or require the services of a design professional may not require approval of the director.

9.1.11. A performance statement shall be obtained by the owner from the building and design professional of a proposed nursing home stating that in constructing the nursing home the builder has followed the plans which are on file with and approved by the director.

9.1.12. All new facilities, additions, and alterations shall be inspected by the director and shall have the director's approval in writing prior to admitting residents. A nursing home shall request in writing a pre-opening inspection no less than 30 days prior to the proposed opening date.

9.1.13. All fees specified in the Department of Health's Legislative Rule, Fees for Services, W. Va. Code R. §§64-51-1, *et seq.*, for site inspections of new construction or major renovations, architectural review of drawings and specifications, and inspections of new projects prior to opening are the responsibility of the nursing home or design professional.

9.1.14. Unless substantial construction is started within one year of the date of approval of final drawings, the owner or architect shall secure written notification from the director that the plan approval for construction is still valid and in compliance with this rule.

9.2. Site Characteristics and Accessibility.

9.2.1. Sites for all new nursing homes and sites for additions to existing nursing homes shall be inspected by the director prior to site development and the completion of final drawings ad specifications.

9.2.2. The site shall be located in an environment that is free from flooding and excessive noise sources such as railroads, freight yards, traffic arteries, and airports. The site shall not be exposed to excessive smoke, foul odors, or dust.

9.2.3. The site shall have good drainage, approved sewage disposal, an approved potable water supply, electricity, telephone, and other necessary utilities available on or near the site.

9.2.4. The site shall be accessible to physicians, emergency services, and other necessary services.

9.2.5. Accessibility and transportation to the site and the nursing home shall be facilitated by paved, hard surfaced, all weather roads, which are kept passable at all times.

9.2.5.a. The road shall connect directly to a paved hard surface highway.

9.2.5.b. Grades to all sites shall permit access for emergency vehicles and firefighting equipment in all weather conditions.

9.2.6. Parking areas shall be sufficient according to latest edition of the Guidelines for Design and Construction of Health Care Facilities according to the Facilities Guidelines Institute (FGI) and published by the American Society for Healthcare Engineering (ASHE) which can be located at www.ashe.org.

9.2.7. Hard surface walks, a minimum of 48 inches wide with a slip resistant surface, shall be provided at all entries and exits, and connect into the main walk or parking area.

9.2.8. Soil conditions shall be reviewed as necessary by a qualified soils engineer and if conditions require, earth core boring shall be conducted. The design professional shall supply the director with copies of soil test reports if engineered fill is installed or if other soil tests are conducted.

9.2.9. Local building codes and zoning restrictions shall be followed. The owner, or his or her designee, shall maintain documentation certifying compliance signed by local fire, building, and zoning officials, and this documentation shall be available for review.

9.3. Increase in Bed Capacity. Bed capacity may be increased after the director has determined that the nursing home physical facilities will support the increase and there is compliance with other requirements including certificate of need requirements.

9.4. Equipment and Furnishings in Resident Rooms.

9.4.1. A nursing home shall provide each resident with a bed that accommodates his or her individual needs.

9.4.2. A nursing home shall provide each resident with a night stand that has a drawer for toilet articles and utensils.

9.4.3. The nursing home shall provide a chair for each resident that accommodates the resident's individual needs.

9.4.4. The nursing home shall provide each resident with reasonable closet and drawer space for clothing and personal items. Shelves and drawers shall be positioned at a height that accommodates the needs of the individual resident.

9.4.5. Nursing home shall provide cubicle curtains or other physical barriers that assure visual privacy for each resident.

9.4.6. A nursing home shall provide window dressings and curtains or draperies, maintained in good condition.

9.4.7. The provisions of this subsection shall be liberally construed to allow the nursing home to provide reasonable accommodations in accordance with the individual needs and preferences of each resident.

9.5. Laundry and Linens.

9.5.1. A nursing home shall have written procedures for handling, storing, processing, and transporting linens and other laundered goods in a manner to prevent the spread of infection.

9.5.2. A nursing home shall provide at least one clean, comfortable pillow for each bed and additional pillows shall be available.

9.5.3. A nursing home shall provide clean waterproof mattress or mattress covers that are non-absorbent.

9.5.4. Sufficient supplies of linens shall be available to nursing personnel to assure the cleanliness and comfort of each resident.

9.5.5. The nursing home shall provide each resident with individual towels, wash cloths, and blankets.

9.5.6. When electric blankets are used, they shall be UL approved and checked periodically by the nursing home's staff for safety.

9.6. Nursing Equipment and Sterile Supplies.

9.6.1. A nursing home shall have the sufficient quantity and type of nursing equipment to meet the individual care needs for each resident.

9.6.2. All electrical resident care equipment shall be maintained, inspected and tested in accordance with the manufacture recommendations, and the applicable sections of the "National Fire Protection Association NFPA 99 Standard for Health Care Facilities".

9.6.3. All non-electrical equipment used for inhalation therapy (oxygen) shall be stored and maintained in accordance with the applicable sections of the "National Fire Protection Association NFPA 99 Standard for Health Care Facilities."

9.6.4. If a nursing home provides electrical life support services, all electrical equipment used to sustain life shall be connected to an emergency generator, through a critical branch electrical system. The generator and all critical branch electrical circuits shall comply with the standards as identified in the "National Fire Protection Association NFPA 99 Standard for Health Care Facilities."

9.6.5. All equipment shall be maintained in accordance with the provisions of this rule.

9.6.6. Clean nursing equipment and sterile supplies shall be stored in a clean work room or storeroom that does not permit resident contact.

9.6.7. Sterile supplies shall not be stored under sink drains, in soiled utility rooms or in areas where contamination may occur.

9.6.8. Sterile supplies shall not be stored nor used beyond their dated shelf life.

9.6.9. Damaged supplies and utensils shall not be used.

9.7. General Maintenance and Housekeeping.

9.7.1. A nursing home shall be constructed, maintained, and equipped to protect the health and safety of residents, personnel, and the public.

9.7.2. All new nursing homes shall establish and maintain the nursing home and equipment in accordance with the most recent edition of the Guidelines for Design and Construction of Hospitals and Health Care Facilities. All new nursing homes shall establish and maintain the nursing home and equipment in accordance with the most recent edition of the Guidelines for Design and Construction of Hospitals and Health Care Facilities.

9.7.3. A nursing home shall establish and implement a maintenance program that assures that:

9.7.3.a. All equipment is operable in a safe working condition;

9.7.3.b. The interior and exterior of the building is safe; and

9.7.3.c. The grounds are maintained in a presentable condition free from rubbish and other health hazards of a similar nature.

9.7.4. A nursing home shall establish and implement a housekeeping program and services that assures a clean, sanitary environment.

9.7.5. A nursing home shall provide a comfortable, home-like environment for residents.

9.7.6. A nursing home shall be kept free of insects, rodents, and vermin by an effective pest control program.

9.7.7. Pesticides shall be applied only by an applicator certified by the West Virginia Department of Agriculture or a registered technician operating under the supervision of a certified applicator.

9.7.8. A nursing home shall have sufficient supplies for housekeeping and maintenance properly stored and conveniently located to permit frequent cleaning of floors, walls, woodwork, windows, and screens, and to facilitate building and grounds maintenance.

9.8. Solid Waste and Bio-Hazard Waste Disposal.

9.8.1. A nursing home shall have procedures and contracts for disposing of bio-hazardous waste. Chain of custody receipts and forms shall be maintained by the nursing home for one year.

9.8.2. A nursing home shall have procedures for disposing of non-hazardous, medical waste and similar waste that is not considered hazardous in a safe sanitary manner.

9.8.3. Solid waste, including garbage and refuse, shall be removed from the building daily or more often as necessary.

9.8.4. All garbage and refuse shall be stored in durable, covered, leak-proof, and vermin-proof containers or dumpsters. The containers and dumpsters shall be kept clean of all residue accumulation.

9.8.5. All garbage and refuse shall be disposed of in accordance with the applicable provisions of state and local law and rules governing the management of garbage and refuse.

9.9. Water Supply.

9.9.1. A nursing home shall have a water supply that is safe and of sufficient capacity to meet the residents' needs and the requirements of the sprinkler system.

9.9.2. A nursing home shall have as its source of water a public water system that complies with West Virginia Department of Health's Legislative Rule, Public Water Systems, W. Va. Code R. §§64-3-1-, *et seq.*, or a water well that complies with West Virginia Department of Health's Legislative 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.*

9.9.3. A nursing home shall have hot and cold running water in sufficient supply to meet the needs of the residents.

9.9.4. Hot water distribution systems serving resident care areas shall be recirculating to provide continuous hot water at each hot water outlet. The temperatures shall be appropriate for comfortable use but shall not exceed 110 degrees.

9.9.5. A nursing home shall have written agreements with water suppliers to deliver water when there is a loss of the normal supply.

9.10. Sewage Disposal.

9.10.1. Sewage disposal shall be in accordance with West Virginia Department of Health's Legislative Rules, Sewage 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.*

9.10.2. The sewage system shall be adequate to meet the nursing home's needs.

9.10.3. Sewage systems shall be kept in good working order and shall be properly operated and maintained.

9.11. Fire Safety, Disaster, and Emergency Preparedness.

9.11.1. A nursing home shall provide evidence of compliance with applicable rules of the State Fire Commission. Any variation to compliance with the fire code shall be coordinated with the department and approved in writing by the State Fire Marshal.

9.11.2. A nursing home shall have a written internal and external disaster and emergency preparedness plan approved by the director that sets forth procedures to be followed in the event of an internal or external disaster or emergency that could severely affect the operation of the nursing home.

9.11.3. The disaster and emergency preparedness plan shall have procedures to be followed in the event of the following: fire, missing resident, high winds, tornadoes, bomb threats, utility failure, flood, and severe winter weather.

9.11.4. The disaster and emergency preparedness plan shall include at least an alternate shelter agreement, an emergency transportation policy, and an emergency food supply list and menu that will provide nutrition for all persons residing in the nursing home for a minimum of 72 hours.

9.11.5. The disaster and emergency preparedness plan shall be developed and maintained with the assistance of qualified fire safety and other emergency response teams.

9.11.6. There shall be copies of the disaster and emergency preparedness plan at all staff stations or emergency control stations. The disaster and emergency preparedness plan shall be located in an area that allows visual contact at all times. The nursing home staff shall know the location of the plan at all times.

9.11.7. The local fire department shall be provided with a floor and disaster plan and be given opportunities to become familiar with the nursing home.

9.11.8. A nursing home shall have a written plan and procedures for transferring casualties and uninjured residents. These procedures shall include the transfer of pertinent resident records including identification information, diagnoses, allergies, advance directives, medications and treatments, and other records needed to ensure continuity of care.

9.11.9. A nursing home shall have written instructions regarding the location and use of alarm systems, signals, and firefighting equipment.

9.11.10. A nursing home shall have information regarding methods of fire containment.

9.11.11. A nursing home shall have written instructions regarding accessibility for evacuation routes.

9.11.12. The disaster and emergency preparedness plan shall be reviewed and updated by the administrator or his or her designee on an annual basis and signed and dated by the administrator or his or her designee to verify the plan was reviewed.

9.11.13. Emergency call information shall be conspicuously posted near each telephone in the nursing home, exclusive of telephones in resident rooms. This information shall include at least the following:

9.11.13.a. The telephone numbers of the fire department, the police, ambulance service, and other appropriate emergency services; and

9.11.13.b. Key personnel telephone numbers, including at least the following:

9.11.13.b.1. The administrator;

9.11.13.b.2. The director of nursing or nurse on call;

9.11.13.b.3. The maintenance director or safety director;

9.11.13.b.4. The physician on call; and

9.11.13.b.5. Other appropriate personnel.

9.11.14. A nursing home shall have at least one non-coin operated telephone or one extension on each resident occupied unit and additional telephones and extensions if needed to summon help in case of an emergency.

9.11.15. A nursing home shall provide an area of sufficient space too hold the congregate population of the nursing home with a heat source that is supplied with emergency electrical power from the emergency power source.

9.12. Disaster Training.

9.12.1. A nursing home shall operate an internal disaster preparedness program that includes orientation and ongoing training and drills in procedures and specific assignments.

9.12.2. The internal disaster plan shall be rehearsed at least annually.

9.12.3. Fire drills shall be held at least quarterly for each shift.

9.12.4. Disaster Rehearsal and Fire Drill Reports. A nursing home shall keep on file for at least two years, a dated written report and an evaluation of each disaster rehearsal and fire drill conducted on the premises.

9.13. Animals. Any nursing home where animals visit or are boarded shall have policies that assure the general well-being of residents as approved by the director. The policies shall comply with local health ordinances.

§71-15-10. Administration and Human Resources.

10.1. A nursing home shall be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

10.2. Licensure.

10.2.1. A nursing home shall be licensed under the provisions of this rule.

10.2.2. A nursing home shall operate and provide services in compliance with all applicable federal, state, and local laws, rules, and codes and with accepted professional standards and principles that apply to professionals providing services in a nursing home.

10.3. Governing Body.

10.3.1. A nursing home shall have a governing body.

10.3.2. The governing body shall adopt and enforce rules governing the health care and safety of residents, the protection of their personal and property rights, and the operation of the nursing home.

10.3.3. The governing body shall develop a written nursing home plan that will be reviewed annually. In addition to the other requirements described in law and in this rule, the nursing home plan shall include:

10.3.3.a. An annual operating budget, including all anticipated income and expenses; and

10.3.3.b. A capital expenditure plan for at least a three year period.

10.3.4. The governing body shall assure the development and maintenance of written policies and procedures that govern the services the nursing home provides.

10.3.4.a. The policies and procedures shall include at a minimum all policies and procedures required by this rule.

10.3.4.b. A copy of each written policy and procedure shall be available for inspection on request by the nursing home's staff and residents and by members of the public.

10.4. Professional Staff. A nursing home shall employ on a full-time, part-time, or consultant basis those professionals necessary to carry out the provisions of this rule.

10.5. Professional Qualifications. Professional staff shall be licensed, certified, or registered in accordance with applicable laws.

10.6. Criminal Background Checks.

10.6.1. All direct access personnel, as defined in W. Va. Code §§16B-15-1, *et seq.*, of a nursing home shall be subject to the provisions of the West Virginia Clearance for Access: Registry and Employment Screening Act, W. Va. Code §§16B-15-1, *et seq.*, and W. Va. Code R. §§71-11-1, *et seq.*

10.6.2. All direct access personnel, as defined in W. Va. Code §§16-49-1, *et seq.*, of a nursing home shall have received an eligibility fitness determination or variance from the West Virginia Clearance for Access: Registry and Employment Screening.

10.6.3. The nursing home shall maintain documentation that each direct access personnel, as defined in W. Va. Code §§16B-15-1, *et seq.*, has received an eligibility fitness determination or variance from the West Virginia Clearance for Access: Registry and Employment Screening.

10.7. Use of Outside Resources.

10.7.1. If a nursing home does not employ a qualified professional person to furnish a specific service to be provided by the nursing home, the nursing home shall have that service furnished to residents by a person or agency outside the nursing home under an arrangement or an agreement as described in 42 U.S.C. § 1395x(w) or an agreement as described within this rule, and services shall meet the ongoing identified needs of residents to ensure implementation of the plan of care and to avoid unnecessary duplication of services.

10.7.2. Under arrangements as described in 42 U.S.C. § 1395x(w) or written agreements pertaining to services furnished by outside resources, the nursing home is responsible for the following:

10.7.2.a. Obtaining services that meet professional standards and principles that apply to professionals providing services in a nursing home; and

10.7.2.b. The timeliness of the services.

10.8. Staff Development.

10.8.1. All personnel shall attend and participate in regularly scheduled in-service training programs developed for the staff by either nursing home personnel or outside resources. The purpose of the in-service program shall be to:

10.8.1.a. Plan and organize a system of training that begins with an orientation program and continues throughout employment with scheduled in-service training programs;

10.8.1.b. Develop in each employee an awareness of his or her abilities and limitations in providing care for residents; and

10.8.1.c. Develop the abilities of each employee by an in-depth review of operational policies and procedures, instruction of methods, and procedures to follow in implementing assigned duties as it relates to a specific job description, and to provide current information that will assist in providing quality care.

10.8.2. A nursing home shall maintain records of attendance, and if absences occur shall schedule a make-up class to be completed.

10.8.3. A nursing home shall complete a performance review of every employee at least once every 12 months and provide regular in-service education based on the outcome of these reviews. The in-service training shall:

10.8.3.a. Be sufficient to ensure the continuing competence of registered nurse aides, but shall be no less than 12 hours per year;

10.8.3.b. Address areas of weakness as determined in the employee's evaluation and may address the special needs of residents as determined by the nursing home staff;

10.8.3.c. For nursing staff providing services to residents with cognitive impairments, also address the care of the cognitively impaired; and

10.8.3.d. Include in-service instruction to all personnel on the following:

10.8.3.d.1. The problems and needs of the aged, ill, and disabled;

10.8.3.d.2. The prevention and control of infections;

10.8.3.d.3. Disaster preparedness and fire and safety rules;

10.8.3.d.4. Accident prevention;

10.8.3.d.5. Confidentiality of resident information;

10.8.3.d.6. Protection of a resident's privacy and personal property rights, and dignity and protection of residents' rights; and

10.8.3.d.7. Complaint procedures, abuse, neglect, and misappropriation of personal property.

10.8.3.e. The nursing home shall provide training to all new employees, staff, and independent health contractors used by the nursing home, within 30 days of employment or the next regularly scheduled orientation program, whichever occurs first, on Alzheimer's disease and other dementias. The training shall be a minimum of two hours in duration and shall include all of the following: a basic explanation of how the disease process affects persons with Alzheimer's disease and other dementias, communication approaches and techniques for use when interacting with persons with

Alzheimer's disease or other dementias, prevention and management of problem behaviors, and activities and programming appropriate for these individuals.

10.8.3.f. The nursing home shall provide training on Alzheimer's disease and other dementias to all employees, staff, and independent health contractors used by the nursing home each calendar year. The training shall be a minimum of two hours in duration and shall include all of the following: a basic explanation of how the disease process affects persons with Alzheimer's disease and other dementias, communication approaches and techniques for use when interacting with persons with Alzheimer's disease or other dementias, prevention and management of problem behaviors, and activities and programming appropriate for these individuals.

10.9. Personnel Records. A nursing home shall maintain a confidential personnel record for each employee containing the following information:

10.9.1. A dated application;

10.9.2. Reference verification;

10.9.3. Results indicating a satisfactory health status for the employees' current job assignment as required within the provisions of this rule;

10.9.4. Evaluations of work performance;

10.9.5. Current license, registration, or certification status if applicable to the job;

10.9.6. A summary of each employee's in-service training for the previous two years;

10.9.7. Any nursing home specific required forms;

10.9.8. A job description signed by the employee; and

10.9.9. Records required to be retained for criminal background checks as defined by the provisions of this rule.

10.10. Medical Director. A nursing home shall designate, in writing, a physician accountable to the governing body to serve as medical director to ensure that medical care provided to residents is adequate and appropriate. The medical director is responsible for:

10.10.1. Reviewing policies, procedures, and guidelines to ensure adequate, comprehensive services;

10.10.2. Coordinating medical care provided, including the attending physician, in the nursing home so it is adequate and appropriate;

10.10.3. Assisting in the evaluation of credentialing and re-credentialing of licensed independent practitioners, physicians' assistants and nurse practitioners to determine whether they will be authorized to practice within the organization by recommendation;

10.10.4. Approving in-service training programs;

10.10.5. Reviewing and evaluating incident reports or summaries of incident reports, identifying hazards to health and safety, and making recommendations as needed; and

10.10.6. Providing or arranging for medical coverage of residents who do not have an attending physician.

§71-15-11. Laboratory, Radiology, and Other Diagnostic Services.

11.1. Laboratory Services.

11.1.1. A nursing home shall provide or obtain laboratory services to meet the needs of its residents. The nursing home is responsible for the timeliness of the services.

11.1.2. If a nursing home provides its own laboratory services, the services shall meet the requirements in the federal regulation, 42 CFR Part 493.

11.1.3. If a nursing home arranges for outside laboratory services, the nursing home shall ensure that the laboratory services meet the requirements in the federal regulation, 42 CFR Part 493.

11.1.4. If a nursing home provides blood bank and transfusion services, the nursing home shall ensure that the services are federally certified in the appropriate specialties and sub-specialties of services in accordance with the requirements to which it is subject.

11.1.5. A nursing home shall:

11.1.5.a. Provide or obtain laboratory services only when ordered by a physician;

11.1.5.b. The facility must promptly notify the ordering physician, physician assistant, nurse practitioner, or clinical nurse specialist of laboratory results that fall outside of clinical reference ranges in accordance with facility policies and procedures for notification of a practitioner or per the ordering physician's orders;

11.1.5.c. Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

11.1.5.d. File laboratory reports in the resident's clinical record that are dated and contain the name and address of the testing laboratory.

11.2. Radiology and Other Diagnostic Services.

11.2.1. A nursing home shall provide or obtain radiology and other diagnostic services to meet the needs of its residents. The nursing home is responsible for the timeliness of the services.

11.2.2. If a nursing home provides its own diagnostic services, the services shall meet the applicable licensing and certification requirements established for those services.

11.2.3. If a nursing home does not provide its own diagnostic services, it shall have an agreement to obtain these services from a provider or supplier that meets all applicable licensing and certification requirements established for those services.

11.2.4. A nursing home shall:

11.2.4.a. Provide or obtain radiology and other diagnostic services only when ordered by the attending physician;

11.2.4.b. Promptly notify the ordering physician, physician assistant, nurse practitioner, or clinical nurse specialist of results that fall outside of clinical reference ranges in accordance with facility policies and procedures for notification of a practitioner or per the ordering physician's orders;

11.2.4.c. Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

11.2.4.d. File in the resident's clinical record signed and dated reports of x-ray and other diagnostic services, with the name and address of the provider of the service.

§71-15-12. Clinical Records.

12.1. Records Maintenance and Retention.

12.1.1. A nursing home shall maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

12.1.1.a. Complete;

12.1.1.b. Accurately documented;

12.1.1.c. Readily accessible; and

12.1.1.d. Systematically organized.

12.1.2. All of a resident's clinical records shall be retained for the longer of the following time periods:

12.1.2.a. Five years from the date of discharge or death; or

12.1.2.b. For a minor, three years after a resident reaches 18 years of age.

12.1.3. A nursing home shall safeguard clinical record information against loss, destruction, or unauthorized use.

12.1.4. A nursing home shall ensure that each clinical record contains a photograph of the resident, unless the resident objects.

12.2. Confidentiality. A nursing home shall keep all information contained in the resident's clinical record confidential, unless the resident, or applicable legal representative, authorizes disclosure or when release is required by:

12.2.1. Transfer to another health care institution;

12.2.2. Law;

12.2.3. Third party payment contract; or

12.2.4. The resident.

12.3. Contents. The clinical record shall contain:

12.3.1. Sufficient information to identify the resident;

12.3.2. All the resident's assessments;

12.3.3. The resident's plan of care and services provided;

12.3.4. The results of any pre-admission screening conducted by the state;

12.3.5. Progress notes;

12.3.6. Physician orders; and

12.3.7. Documents describing the authority of any legal representative.

§71-15-13. Quality Assessment and Assurance.

13.1. Quality Improvement Committee.

13.1.1. A nursing home shall maintain a quality improvement and assessment committee consisting of:

13.1.1.a. The director of nursing services;

13.1.1.b. The medical director; and

13.1.1.c. At least three other members of the nursing home's staff.

13.1.2. The quality improvement and assessment committee shall:

13.1.2.a. Meet at least quarterly to identify issues of quality assessment and improvement activities;

13.1.2.b. Develop and implement appropriate plans of action to correct identified quality deficiencies;

13.1.2.c. Continuously measure, assess, and improve all important resident care and nursing home functions;

13.1.2.d. Collect and review outcome data and use it to systematically benchmark the level of quality with that of other extended care providers; and

13.1.2.e. Collect and review resident satisfaction.

13.2. Disclosure of Records. The administrator may not require disclosure of the quality improvement committee records, insofar as the disclosure is related to the compliance with the requirements of this section.

13.3. Sanctions. The administrator shall not use good faith attempts as documented by a nursing home's committee to identify and correct areas of concern or deficiencies as a basis for citing a new deficiency or as a basis for sanctions.

§71-15-14. Inspections and Investigations.

14.1. Regular Inspections.

14.1.1. The director shall make or cause to be made inspections by his or her authorized representatives as necessary to carry out the intent of W. Va. Code §§16B-4-1, *et seq.*, and this rule.

14.1.2. All licensed nursing homes shall be inspected annually, or in accordance with the provisions of this rule, to determine the nursing homes' compliance with applicable statutes and rules. Nursing homes with the greatest number of deficiencies shall be investigated with greater frequency as determined by the director.

14.1.3. The director shall provide a nursing home with a written description of its deficiencies within ten working days of the last day of the inspection.

14.2. Complaint Investigation.

14.2.1. Any person may register a complaint with the director alleging violation of applicable statutes and rules by a nursing home. Nursing homes with the greatest number of deficiencies shall be investigated with greater frequency as determined by the director.

14.2.2. A complaint that the director determines is willfully intended to harass a nursing home or is without any reasonable basis shall not be investigated. The director shall notify a complainant presenting a complaint determined either as intended to harass a nursing home or as without reasonable basis that no further investigation will be conducted.

14.2.3. The director shall conduct an unannounced inspection of the nursing home to determine the validity of the complaint. The director shall provide the nursing home with general notice of the substance of the complaint only at the time of the inspection.

14.2.4. The director shall conduct other investigations necessary to determine the validity of the complaint.

14.2.5. No later than 20 working days after investigating and completing a complaint, the director shall notify the complainant and the nursing home in writing of the results of the investigation.

14.2.6. The names of a complainant or of any person named in a complaint shall not be disclosed by the department without that person's written authorization. If a complaint becomes the subject of a judicial proceeding, nothing in this section shall be construed to restrict disclosure of information that would otherwise be disclosed in a judicial proceeding.

14.2.7. Before any complaint is disclosed to a nursing home or the public pursuant to the provisions of this rule, the director shall redact any information in the complaint that could reasonably identify the complainant or a resident.

14.2.8. A director shall make investigations of complaints involving immediate jeopardy to resident health or safety within 24 hours of the date of receipt of the complaint.

14.2.8.a. A director shall make investigations of complaints involving harm that does not present immediate jeopardy, within ten days of the date of the complaint.

14.2.8.b. A director shall make investigations of complaints involving no harm, but with potential for greater than minimal harm, that are not immediate jeopardy, within 45 days of the date of the complaint.

14.2.8.c. A director shall make investigations of complaints involving no harm with potential for minimal harm and all other complaints at the time of the next inspection.

14.2.9. If within 120 days of an inspection or a complaint investigation, a nursing home fails to comply with the requirements of this rule, the director shall inform all residents of the nursing home's non-compliance.

14.2.9.a. If the non-compliance results in an action against the license of the nursing home, the director shall notify residents of the time period during which residents may relocate if they wish prior to the deficient nursing home being reported to the Social Security Administration if the nursing home is certified under the Medicare or Medicaid programs.

14.2.9.b. The director shall provide all residents with a list of nursing homes and agencies to assist them in moving if they wish to relocate.

14.2.10. Upon written request, any person shall have the right to request the most recent and past state and federal inspection and complaint reports with the nursing home's plan of correction. The director shall treat any inspection or complaint report as public information from the time an acceptable plan of correction is submitted. Before releasing an inspection or complaint report considered to be public information, the director shall delete any confidential information regarding a resident that reasonably permits identification of the resident. The director shall make copies of all inspection reports available to the State Long-Term Care Ombudsman, the local office of adult protective services, and the Social Security regional offices.

14.2.11. Within 210 days of an inspection or complaint investigation after which deficiencies are not timely corrected, the director shall send the name and address of the deficient nursing home to the

appropriate regional office of the Social Security Administration and identify it as a deficient nursing home.

14.2.12. The director shall provide the State Long-Term Care Ombudsman with the following within 90 days:

14.2.12.a. A statement of deficiencies reflecting nursing home noncompliance; and

14.2.12.b. Reports of adverse actions imposed on a nursing home.

14.3. Dispute Resolution. The director shall offer a nursing home an opportunity for an informal dispute resolution process and an independent informal dispute resolution process so a nursing home may contest a cited deficiency.

14.3.1. Informal Dispute Resolution.

14.3.1.a. Documentation for an informal dispute resolution shall be submitted with, but separate from, the plan of correction for existing deficiencies.

14.3.1.b. The request for an informal dispute resolution shall be submitted at the time the plan of correction is submitted for existing deficiencies.

14.3.1.c. The director shall write policy and procedures addressing the manner in which an informal dispute resolution shall be conducted.

14.3.1.d. The policy and procedures for an informal dispute shall be available to the public upon written request.

14.3.1.e. If the director fails to complete an informal dispute resolution in a timely manner, it does not delay the effective date of any enforcement action against the nursing home.

14.3.1.f. If during the informal dispute resolution process a nursing home is successful in demonstrating that deficiencies should not have been cited, the director shall remove the deficiencies from the statement of deficiencies and rescind any enforcement action imposed solely as a result of those cited deficiencies.

14.3.1.g. All communications during an informal dispute resolution are confidential and cannot be used by or against the license or the director in the event a formal hearing takes place.

14.3.2. Independent Informal Dispute Resolution. The independent informal dispute resolution process shall be implemented as defined in W. Va. Code §§16B-4-1 , *et seq.*

§71-15-15. Enforcement and Due Process.

15.1. Enforcement. Director's Powers, Duties, and Rights. The director, in consultation with the Inspector General, may invoke penalties against a nursing home violating the provisions of this rule in accordance with the provisions of this rule.

15.2. Enforcement Generally. The director, in consultation with the Inspector General, may assess civil penalties, and may suspend, revoke, or deny renewal of the license of a nursing home for cause after notice as required by this rule and the provisions of W. Va. Code §§16B-4-1, *et seq.*, or take any other action contemplated by this rule. Cause may include one or more of the following:

15.2.1. Failure to provide standard quality of care for residents;

15.2.2. Willfully and knowingly falsifying the material content of resident assessments;

15.2.3. Failure to submit a plan of correction required by W. Va. Code §§16B-4-1, *et seq.*;

15.2.4. Failure to submit a plan of correction that is approved by the director;

15.2.5. Failure to correct deficiencies within the time frame specified in an approved plan of correction;

15.2.6. Repeat noncompliance within the same regulatory grouping as defined in this rule;

15.2.7. Failure to cooperate with or interference with the director or an authorized representative of the director in the inspection of the nursing home;

15.2.8. Failure to comply with this rule;

15.2.9. Violation of any provision of this rule that produces immediate jeopardy to the health or safety of residents;

15.2.10. Violation of the provisions of this rule relative to the discharge of residents or employees because of complaints against the nursing home;

15.2.11. Use of subterfuge or other dishonest action in applying for an original or renewal license;

15.2.12. Use of subterfuge or other dishonest action in obtaining the time, date, and location of any inspection;

15.2.13. Abuse of residents;

15.2.14. Neglect of residents;

15.2.15. Misappropriation of residents' property; or

15.2.16. Attempted bribery of any employee or contracted person of the department.

15.3. Formal Hearings and Due Process for Actions of Enforcement.

15.3.1. All formal hearings shall be conducted pursuant to Office of Inspector General's Procedural Rule, Rules for Hearings Under the Administrative Procedures Act, W. Va. Code R. §§69-1-1, *et seq.*

15.3.2. An applicant for a license or a licensee or any other person aggrieved by an order or other action by the director pursuant to this rule or to W. Va. Code §§16B-4-1, *et seq.*, shall have the opportunity for a formal hearing by the director, upon written request to the director in a manner prescribed in Office of Inspector General's Procedural Rule, Rules for Hearings Under the Administrative Procedures Act, W. Va. Code R. §§69-1-1, *et seq.*

15.3.3. A formal hearing pursuant to this rule shall be conducted in accordance with the pertinent provisions of W. Va. Code §§29A-4-1, *et seq.*, and §§29A-5-1, *et seq.*

15.3.4. A nursing home may request a formal hearing and seek judicial review pursuant to W. Va. Code §16B-4-12 and §16B-4-13 to contest the deficiencies issued by the director, irrespective of whether the deficiency results in the imposition of civil money penalty.

15.3.4.a. The director shall begin an enforcement action to ensure compliance with W. Va. Code §§16B-4-1, *et seq.*, or any rule or order issued thereunder, whenever the director determines that any person:

15.3.4.a.1. Has engaged in, or is engaging in, an act or practice in violation of W. Va. Code §§16B-4-1, *et seq.*, or any rule or order; or

15.3.4.a.2. When it appears to the director that any person has aided, abetted, or caused, or is aiding, abetting, or causing such an act or practice; or

15.3.4.a.3. That no action is being taken under federal regulation or that the action does not adequately protect the residents' health or safety.

15.3.4.b. The director shall impose one or more of the following remedies:

15.3.4.b.1. License termination;

15.3.4.b.2. Reduction of bed capacity;

15.3.4.b.3. Ban on new admissions;

15.3.4.b.4. Temporary management;

15.3.4.b.5. Civil money penalties; or

15.3.4.b.6. Closure of the nursing home in emergency situations, transfer of residents, or both.

15.3.5. A nursing home may not avoid cited deficiencies or enforcement actions because it has undergone a change of ownership.

15.4. Ban on New Admissions and Reduction in Licensed Bed Capacity.

15.4.1. The director shall by order place a ban on new admissions, reduce the licensed bed capacity of a nursing home, or both, when on the basis of inspection he or she makes the following findings:

15.4.1.a. The licensee is not providing adequate care under the nursing home's existing bed capacity; and

15.4.1.b. A reduction in licensed bed capacity, a ban on new admissions, or both, would place the nursing home in a position to render adequate care.

15.4.2. A reduction in licensed bed capacity, a ban on new admissions, or both remains in effect until the nursing home is determined by the director to be in substantial compliance with this rule.

15.4.3. If the residents of the nursing home are in immediate jeopardy regarding their health, safety, welfare, or rights, the director may seek an order to transfer residents out of the nursing home as provided for under the provisions of this rule.

15.4.4. Any notice to a licensee of reduction in licensed bed capacity or a ban on new admissions shall include the terms of the order, the reasons for the order and a date set for compliance.

15.5. Revocation or Suspension of License.

15.5.1. If the director suspends a nursing home's license, he or she shall also specify the conditions giving rise to the suspension that are to be corrected by the licensee during the period of suspension to entitle the licensee to apply for reinstatement of his or her license. If the director revokes a license, he or she may stay the effective date of the revocation by not more than 90 days upon a showing that the stay is necessary to assure appropriate placement of residents.

15.5.2. The director's order is final unless vacated or modified by court order.

15.6. Immediate Jeopardy or Repeat Deficiency.

15.6.1. The director may enforce this rule, administratively or in court, without first affording an opportunity to correct a deficiency when the director finds either of the following:

15.6.1.a. Violation of this rule jeopardizes the health or safety of a resident; or

15.6.1.b. The violation is a repeat deficiency which has caused harm to a resident.

15.6.2. The suspension, expiration, forfeiture, or cancellation by operation of law or order of the director of a license issued by the director shall not deprive the director of the authority as provided by law and this rule to take any of the following actions:

15.6.2.a. Institute or continue a disciplinary proceeding;

15.6.2.b. Institute or continue a proceeding for the denial of license application;

15.6.2.c. Enter an order denying a license application; or

15.6.2.d. Take any other disciplinary action as provided by state law or rules.

15.6.3. Withdrawal of a license application shall not deprive the director of the right to penalize the applicant on any other ground using any authority otherwise provided by law or this rule.

15.7. Procedure for the Assessment and Application of Civil Penalties.

15.7.1. The director shall assess and apply penalties for violations of this rule in accordance with the provisions of W. Va. Code §§16B-4-1, *et seq.*, and this rule.

15.7.2. Upon completion of a report of inspection, the director shall determine what civil money penalties he or she shall assess.

15.8. Notice of Civil Money Penalty. The director shall send to the nursing home a certified written notice of intent to impose a civil money penalty including the basis for imposing the civil money penalty. The notice shall include:

15.8.1. The nature of the noncompliance;

15.8.2. The statutory basis for the civil money penalty;

15.8.3. The amount of the civil money penalty;

15.8.4. Any factors that were considered when determining the amount of the civil money penalty;

15.8.5. When the civil money penalty is due; and

15.8.6. Instructions for responding to the notice, including a statement of the nursing home's right to a hearing, and the implications of waiving a hearing.

15.9. Amount of Civil Money Penalty.

15.9.1. Civil money penalty assessed against licensed nursing homes may not be less than $50 nor more than $8,000. The director may not assess a civil money penalty against a nursing home that corrects the violation of the rule within 20 days of receipt of written notice of the violation, unless it is a repeat deficiency or the nursing home is a poor performer when a civil money penalty can be assessed immediately.

15.9.2. Hearing and Due Process for a Civil Money Penalty.

15.9.2.a. A nursing home shall, within 60 days from receipt of the notice of an initial, reconsidered, or revised determination of the director, submit any request for a hearing on the determination of the noncompliance that is the basis for imposition of the civil money penalty. For good cause shown, a hearing examiner may extend the time for filing the request for hearing.

15.9.2.b. If a nursing home requests a hearing within the time specified in this rule, the director shall collect the civil money penalty within 15 days of a final adjudication that upholds the director's determination of non-compliance.

15.9.2.c. If a nursing home waives its right to a hearing in accordance with this rule, the director shall collect the civil money penalty within 75 days of the notice of determination of the director.

15.9.2.d. If the nursing home waives its right to a hearing, the civil money penalty shall be reduced by 35 percent by the director.

15.9.3. Cumulative Remedies.

15.9.3.a. The civil money penalties and remedies provided by W. Va. Code §§16B-4-1, *et seq.* are cumulative and are in addition to all other penalties and remedies provided by law. For a violation that presents immediate jeopardy to the health, safety, or welfare of one or more residents, the director may impose a civil money penalty of not less than $3,000 nor more than $8,000.

15.9.3.b. For a violation that actually harms one or more residents, the director may impose a civil money penalty of not less than $1,000 nor more than $3,000.

15.9.3.c. For a violation that has the potential to harm one or more residents, the director may impose a civil money penalty of not less than $50 nor more than $1,000.

15.9.3.d. For a repeat deficiency, the director may impose a civil money penalty of up to 150 percent of the penalties under the provisions of this rule.

15.9.3.e. If no plan of correction is submitted as established in this section, the director may assess a civil money penalty in the amount of $100 a day unless the nursing home has provided a reasonable explanation for the violation that has been accepted by the director.

15.9.3.f. If a deficiency for which an acceptable plan of correction has been provided to the director is not corrected upon revisit to the nursing home, the deficiency shall be regarded as a repeat deficiency.

15.9.3.g. Residents, residents' families or legal representatives, and ombudsmen may also independently pursue violations of this rule in court. Any waiver by a resident or his or her legal representative of the right to commence an action under W. Va. Code §§16B-4-1, *et seq.*, whether oral or in writing, is void as contrary to public policy.

15.10. Civil Money Penalty Procedures After Termination of a License.

15.10.1. In the case of termination of a nursing home license, the director shall send the civil money penalty information after the:

15.10.1.a. Final administrative decision is made;

15.10.1.b. Nursing home has waived its right to a hearing; or

15.10.1.c. Time for requesting a hearing has expired and the director has not received a hearing request from the nursing home.

15.10.2. A civil money penalty payment is due 15 days after:

15.10.2.a. A final administrative decision;

15.10.2.b. The time period for requesting a hearing has expired;

15.10.2.c. Receipt of the written request to waive a hearing; or

15.10.2.d. The effective date of termination of a license.

15.11. Civil Money Penalty for Notification of Inspection. The director shall assess a civil money penalty not to exceed $2,000 against any person who notifies, or causes to be notified, a nursing home of the time or date on which an inspection is scheduled to be conducted.

15.12. Interest on Civil Penalties.

15.12.1. The assessment for penalties and for costs of actions taken under W. Va. Code §§16B-4-1, *et seq.*, shall accrue interest at the rate of five percent per annum beginning 30 days after receipt of notice of the assessment or after receipt of the director's final order following a hearing, whichever is later.

15.12.2. All assessments against a nursing home that are unpaid shall be added to the nursing home's licensure fee and may be filed as a lien against the property of the licensees or operators of the nursing home.

15.13. Action for Recovery of Civil Penalties. The director shall, in a civil judicial proceeding, recover any unpaid civil money penalty that has not been contested within 30 days of receipt of the director's final order, or that has been affirmed on judicial review, as provided in W. Va. Code §§16B-4-1, *et seq.* All money collected by assessments of civil penalties or interest shall be paid into a special resident benefit account and shall be applied by the director for:

15.13.1. The protection of the health or property of the nursing home's residents;

15.13.2. Long-term care educational activities;

15.13.3. The costs arising from the relocation of residents to other facilities when no other funds are available;

15.13.4. In an emergency situation when no other funds available, the operation of the nursing home pending correction of deficiencies or closure; and

15.13.5. The reimbursement of residents for personal funds lost.

15.14. Immediate Jeopardy. If there is immediate jeopardy to the residents' health, safety, welfare, or rights the director shall petition the circuit court. The circuit court may issue an Order to:

15.14.1. Close the nursing home;

15.14.2. Transfer the residents in the nursing home to other nursing homes; or

15.14.3. Appoint temporary management to oversee the operation of the nursing home and to assure the health, safety, welfare, and rights of the nursing home's residents.

15.15. Temporary Management.

15.15.1. Upon petition of the director, a circuit court may divest the licensee or operator of a nursing home of possession and control of a nursing home and appoint temporary management.

15.15.1.a. The temporary management is responsible to the court and has any powers and duties granted by the court to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare, and rights of the residents of the nursing home.

15.15.1.b. These powers include, but are not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the nursing home or to repair or improve the nursing home to return it to compliance with applicable requirements and the power to receive, conserve, and expend funds, including payments on behalf of the licensee or operator of the nursing home.

15.15.1.c. The temporary management shall give priority to expenditures for current direct resident care or the transfer of residents.

15.15.2. The person charged with temporary management shall be an officer of the court, is not liable for conditions at the nursing home that existed or originated prior to his or her appointment and is not personally liable, except for his or her own gross negligence and intentional acts for situations that result in injuries to persons or damage to property at the nursing home during the temporary management.

15.15.3. No person shall impede the operation of the temporary management. There shall be an automatic stay for a 90-day period subsequent to the establishment of a temporary management of any action that would interfere with the functioning of the nursing home, including, but not limited to, cancellation of insurance policies, termination of utility services, attachments to working capital costs, foreclosures, evictions, and repossessions of equipment used in the nursing home.

15.15.4. The temporary management established for the purpose of making improvements to bring a nursing home into compliance with applicable requirements shall not be terminated until the court has determined that the nursing home has the management capability to ensure continued compliance with all applicable requirements.

15.15.4.a. If the court has not made the determination within six months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the nursing home shall be closed.

15.15.4.b. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court.

15.15.4.b.1. This accounting will be based on receipts and shall consist of the deduction of the cost of temporary management, expenditures and civil penalties and interest no longer subject to appeal in that order; and

15.15.4.b.2. The nursing home shall pay any excess to the licensee or operator of the nursing home.

15.15.5. The temporary manager shall bill the nursing home on a bi-weekly basis and the nursing home shall pay any amounts due within 15 days. The amount paid to the temporary manager for a 30 day period may not exceed the seventy-fifth percentile of the allowable administrators' salary reported on the most recent cost report for the nursing home's peer group as determined by the director.

15.16. Corrective Action.

15.16.1. The director shall enforce these provisions to protect residents of nursing homes.

15.16.2. A nursing home, found on the basis of an inspection to have deficiencies, shall develop a plan of correction and submit it to the director within ten working days of receipt of a report of inspections. The director may allow three additional days in the event of a documented extenuating circumstance.

15.16.3. A plan of correction shall specify the time when the nursing home shall correct each violation cited in the report.

15.16.4. The time specified shall be the shortest possible time within which the nursing home can reasonably be expected to correct the violation.

15.16.5. The time stated is subject to approval or modification by the director.

15.16.6. In determining whether to approve the time submitted by the nursing home, the director shall consider the following factors:

15.16.6.a. The seriousness of the violation;

15.16.6.b. The number of residents affected;

15.16.6.c. The availability of required equipment or personnel;

15.16.6.d. The estimated time required for delivery and installation of required equipment; and

15.16.6.e. Any other relevant circumstances.

15.16.7. A plan of correction shall contain:

15.16.7.a. The corrective actions that the nursing home will accomplish for those residents found to have been affected by the deficiency;

15.16.7.b. How the nursing home will identify other residents having the potential to be affected by the same deficiency and what corrective action will be taken;

15.16.7.c. What measures the nursing home will put into place or what systematic changes will be made to ensure that the deficiency does not recur; and

15.16.7.d. How the nursing home will monitor the corrective actions put in place to ensure the deficiency will not recur, i.e., what quality assurance program will be put into place.

15.16.8. A plan of correction submitted by a nursing home shall be approved, modified, or rejected by the director.

15.16.9. The director shall notify each nursing home within ten working days as to whether a plan of correction has been approved, modified, or rejected.

15.16.10. If the director rejects or modifies the plan, the reasons for the action shall be stated in the notice.

15.16.11. When the director rejects a plan of correction, a revised plan shall be submitted by the nursing home to the director within seven working days of receipt of the rejection.

15.16.12. A nursing home with a repeat deficiency or with deficiencies resulting in immediate jeopardy or causing harm to a resident may not submit a revised plan of correction.

15.16.13. If the nursing home fails to submit a plan of correction that is accepted by the director or to correct any deficiency within the time specified in an accepted plan of correction, the director may assess civil money penalties as provided in this rule or may initiate any other legal or disciplinary action available to him or her in accordance with state law and this rule.

TABLE 71-15.A.
Minimum Ratios of Resident Care Personnel to Residents

	Total Resident Care Personnel			Total Resident Care Personnel			Total Resident Care Personnel			Total Resident Care Personnel	
No. of Residents	Hours per Day	#Pers per Day	No. of Residents	Hours per Day	#Pers per Day	No. of Residents	Hours per Day	#Pers per Day	No. of Residents	Hours per Day	#Pers per Day
3 to 10	48	6	91	205	26	136	306	38	181	408	51
11 to 20	56	7	92	207	26	137	309	39	182	410	51
21 to 30	72	9	93	210	26	138	311	39	183	412	52
31 to 40	90	11	94	212	27	139	313	39	184	414	52
41 to 50	113	14	95	214	27	140	315	39	185	417	52
51	115	15	96	216	27	141	318	40	186	419	52
52	117	15	97	219	27	142	320	40	187	421	53
53	120	15	98	221	28	143	322	40	188	423	53
54	122	15	99	223	28	144	324	41	189	426	53
55	124	16	100	225	28	145	327	41	190	428	54
56	126	16	101	228	29	146	329	41	191	430	54
57	129	16	102	230	29	147	331	41	192	432	54
58	131	16	103	232	29	148	333	42	193	435	54
59	133	17	104	234	29	149	336	42	194	437	55
60*	135	17	105	237	30	150	338	42	195	439	55
61	138	17	106	239	30	151	340	43	196	441	55
62	140	18	107	241	30	152	342	43	197	444	56
63	142	18	108	243	30	153	345	43	198	446	56
64	144	18	109	246	31	154	347	43	199	448	56
65	147	18	110	248	31	155	349	44	200	450	56
66	149	19	111	250	31	156	351	44	201	453	57
67	151	19	112	252	32	157	354	44	202	455	57
68	153	19	113	255	32	158	356	45	203	457	57
69	156	20	114	257	32	159	358	45	204	459	57
70	158	20	115	259	32	160	360	45	205	462	58
71	160	20	116	261	33	161	363	45	206	464	58
72	162	20	117	264	33	162	365	46	207	466	58
73	165	21	118	266	33	163	367	46	208	468	59
74	167	21	119	268	34	164	369	46	209	471	59
75	169	21	120	270	34	165	372	47	210	473	59
76	171	21	121	273	34	166	374	47	211	475	59
77	174	22	122	275	34	167	376	47	212	477	60
78	176	22	123	277	35	168	378	47	213	480	60
79	178	22	124	279	35	169	381	48	214	482	60
80	178	22	125	282	35	170	383	48	215	484	61
81	180	23	126	284	36	171	385	48	216	486	61
82	183	23	127	286	36	172	387	48	217	489	61
83	185	23	128	288	36	173	390	49	218	491	61

84	187	23	129	291	36	174	392	49	219	493	62
85	189	24	130	293	37	175	394	49	220	495	62
86	194	24	131	295	37	176	396	50	221	498	62
87	196	25	132	297	37	177	399	50	222	500	63
88	198	25	133	300	38	178	401	50	223	502	63
89	201	25	134	301	38	179	403	50	224	504	63
90	203	25	135	302	38	180	405	51	225	507	63

*60 and less may include director of nurse
Number of personnel per day are full-time personnel equivalents based on 40 hours per week.

TABLE 71-15.B.
Surety Bond Schedule

AVERAGE RESIDENTS 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
$5,901 to $6,000	$7,500
$6,001 to $6,100	$7,625
$6,101 to $6,200	$7,750
$6,201 to $6,300	$7,875

$6,301 to $6,400	$8,000
$6,401 to $6,500	$8,125
$6,501 to $6,600	$8,250
$6,601 to $6,700	$8,375
$6,701 to $6,800	$8,500
$6,801 to $6,900	$8,625
$6,901 to $7,000	$8,750
$7,001 to $7,100	$8,875
$7,101 to $7,200	$9,000
$7,201 to $7,300	$9,125
$7,301 to $7,400	$9,250
$7,401 to $7,500	$9,375
$7,501 to $7,600	$9,500
$7,601 to $7,700	$9,625
$7,701 to $7,800	$9,750
$7,801 to $7,900	$9,875
$7,901 to $8,000	$10,000
$8,001 to $8,100	$10,125
$8,101 to $8,200	$10,250
$8,201 to $8,300	$10,375
$8,301 to $8,400	$10,500
$8,401 to $8,500	$10,625
$8,501 to $8,600	$10,750
$8,601 to $8,700	$10,875
$8,701 to $8,800	$11,000
$8,801 to $8,900	$11,125
$8,901 to $9,000	$11,250
$9,001 to $9,100	$11,375
$9,101 to $9,200	$11,500
$9,201 to $9,300	$11,625
$9,301 to $9,400	$11,750
$9,401 to $9,500	$11,875
$9,501 to $9,600	$12,000
$9,601 to $9,700	$12,125
$9,701 to $9,800	$12,250
$9,801 to $9,900	$12,375
$9,901 to $10,000	$12,500
$10,001 or more	Calculate

*Calculate 1.25 times the prior year’s average monthly balance of client’s funds.