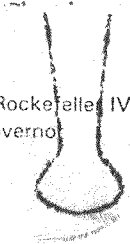


John D. Rockefeller IV  
Governor



L. Clark Hansbarger, M.D.  
Director

# State of West Virginia


DEPARTMENT OF HEALTH

CHARLESTON 25305

## Certification

Legislative Rule: Requirements for Licensure of Non-profit Corporations for Guardianship Service, Chapter 44-10A, Series I, (1983)

The above titled legislative rule constitutes the official rule approved by the West Virginia Board of Health on November 19, 1982 and filed pursuant to law in the Office of the Secretary of State, State of West Virginia.

  
\_\_\_\_\_  
L. Clark Hansbarger, M. D.  
Secretary  
West Virginia Board of Health

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE

THIS DATE 11-24-82

\_\_\_\_\_  
Entered

John D. Rockefeller IV  
Governor



L. Clark Hansbarger, M.D.  
Director

# State of West Virginia

DEPARTMENT OF HEALTH

CHARLESTON 25305

## Notice

Legislative Rule: Requirements for Licensure of Non-profit Corporations for Guardianship Service, Chapter 44-10A, Series I, (1983)

The above titled legislative rule is hereby submitted to the Legislative Rule-Making Review Committee.

A handwritten signature in cursive script, reading "L. Clark Hansbarger, M.D.", written over a horizontal line.

L. Clark Hansbarger, M. D.  
Secretary  
West Virginia Board of Health

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 11-24-82

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Entered

Summary of Comments Received at  
Public Hearing(s) in re

Title, Type and Number: Requirements for Licensure of Nonprofit Corporations  
for Guardianship Service, Chapter 44-10A, Series I, (1983)

Date(s) and Location(s): Wednesday, November 17, 1982, Building 3, Room 522,  
1800 Washington Street, East, Charleston, West Virginia

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1. Comment: All commenters stated that they were quite pleased with the regulation overall and that their comments/suggestions were not serious enough to warrant opposing the regulation as proposed. They strongly support the regulation going into effect as soon as possible. All expressed interest in examination of how the regulation is working and a possible revision within a relatively short time, perhaps two years.

Response: The department recognizes a need for study of the efficacy of this regulation in an entirely new area.

Proposed: No change.

2. Comment: The provision of Section 7.7.8 allowing corporations to advise and assist families in implementing guardianship procedures may involve a conflict of interest in that the corporation is a potential guardian. Appropriate resources in West Virginia may, however, be sufficiently inadequate to make this provision a practical necessity. This practice should be monitored carefully for improprieties and may necessitate revision of the regulation.

Response: True.

Proposed: No change at this time.

3. Comment: I hope that the required conflict of interest statement will not be overly complex and detailed, for example, requiring detailed financial statements.

Response: It will be a simple form, similar to one used for state employees, stating no conflict or identifying by name only any possible conflicts.

Proposed: No changed required.

4. Comment: Section 6.2 - Reference to Sec. 5.11 is unclear to me (also reference to 5.11 in Section 7.1.1.); do you mean Section 5 generally: Where a nonprofit corporate guardian is authorized to make arrangement with another entity for management of a ward's fiscal affairs, I suggest provision for a collective guardian of the property. For example, if a nonprofit corporation served as guardian of the person for several wards of modest means, a corporate fiduciary such as a trust department might be the best provider of financial management, but management would be more practical and costs more modest if such smaller estates could be combined for investment purposes. I suggest that a corporate fiduciary such as a trust department be allowed in that case to be formally appointed collective guardian of the property by the County Commission, rather than serving merely as investment agent for the nonprofit guardian; please see item 5. Would the word "financial" be broader and more descriptive than "fiscal"? It is foreseen that wards may have some private family funds or assets, not merely government benefits to which "fiscal" refers in common usage.

Response: The reference to 5.11 is a technical error; the reference should be to Section 5.17 as can be seen by reference to item content. Any provision for a different type of guardianship would require a change in law rather than regulation. The word "fiscal" was used in a general sense; we agree, however, that the word "financial" may be more explicit. The proposed changes are technical rather than substantive and would not require a public hearing.

Proposed: 6.2. The corporation may make arrangement for part of all of the activities required to be performed in the management of a ward's fiscal financial affairs to be executed by other lawful entities, provided that the corporation shall provide written evidence that it has reviewed and approved the activities of such entities for compliance with the requirements of relevant law and this rule at least annually. Such arrangements shall comply with the provisions of Section ~~5-77~~ 5.17 herein.

7.1.1. The corporation shall maintain an effective and direct role in the execution of its guardianship responsibilities. To this end, the corporation shall through its membership, employees, officers and directors be directly responsible for certain requirements as specified herein. The corporation may effectuate other responsibilities as specified in Section ~~5-77~~ 5.17 of this rule.

5. Comment: Section 6.6 - I suggest substitution of "commingling" for "common trust funds" because common trust funds has a special technical meaning, which I do not feel is meant in this section, under Regulation 9, Office of the Comptroller of the Currency, which regulates trust activities of the national banks.

In order to assure the most effective and prudent management of wards' estates which may be managed by corporate fiduciaries such as trust departments, such corporate fiduciary's formal appointment as collective guardian of the property would be most practical, since a trust department may invest a

fiduciary account, but not an agency account (where, for example, a non-profit corporation were Court-appointed guardian of both person and property, and the nonprofit corporation delegated financial management to a trust department as its agent) in common trust funds as defined by Comptroller of the Currency's Regulation 9. While such common trust funds may not always be desirable or appropriate, they often provide prudent diversification of investments in accounts too small to hold diversified individual investments (to spread investment risk, present to some degree in any investment, rather than using the "all eggs in one basket" approach). I believe the option to use such accounts (that is, making the trust department a fiduciary for ward's property) for a nonprofit corporation's wards is desirable. As a practical matter, if such a device were used, the guardian of the property who handled the assets would be directly responsible for their prudent management.

Response: The department feels that "commingle" tends to suggest non-separate accounting and prefers "consolidation." This constitutes a technical and non-substantive change.

Proposed: Section 6.6. When the corporation makes provision for the common trust funds the consolidation of the assets of wards for investment purposes, the corporation shall be responsible for assuring that funds are available as needed for the support and care of the ward.

6. Comment: Section 7.7.6 - I suggest a slight rephrasing of the first sentence: "The corporation shall monitor those persons who provide services to the ward to verify that such persons respect the rights and dignity of thier wards." The word "assure" seems somewhat vague to me for such an important part of a nonprofit guardian's function.

Response: The requirement for the corporation to "assure" that service providers respect the rights and dignity of its wards encompasses more than monitoring. While some degree of monitoring would be expected, depending on such factors as amount of experience with the service provider, other procedures such as providing information and even providing or requiring education and training may be a part of an assurance procedure. Future experience with the regulation may indicate a need for a more detailed description of the requirement. The proposed change, however, is limited in scope.

Proposed: No change.

7. Comment: A corporation such as a county or regional association for retarded citizens may see a need to open a service program such as a small group residential facility to serve retarded citizens. While we agree that it would represent an undesirable situation for the services to be provided to an individual who is a ward of the association, it would not seem a conflict of interest if the individuals receiving services were not wards. Often we start up service projects and then pass them on. Such a residential program would disqualify us for guardianship under the proposed regulation. This is not a problem at this time, but may require some future consideration and revision of the regulation.

Response: True. One solution to this perceived problem would be to organize the residential facility as a separate or subsidiary corporation to operate the facility. The nonprofit corporate guardianship law (West Virginia Code, Chapter 44, Article 10, Section 6) appears to prohibit the provision of residential services by a corporate guardian. The department also sees situations which could develop which could be detrimental to the best interests of wards generally even if service recipients were not wards. One would be the cross sharing of guardianships and service provision. Situations could arise where the only or the most desirable residence would be that provided by the corporate guardian, or at least such claims could be advanced. Furthermore, costs of maintaining and providing residential or other prohibited services could be accounted as general costs of the corporation and thus built into the general guardianship cost or fee structure and partly subsidized by wards.

Proposed: No change.

PUBLIC HEARING ATTENDANCE RECORD

In re Requirements for Licensure of Nonprofit  
Corporations for Guardianship Service

November 17, 1982 9:30 A.M.

P L E A S E P R I N T

Name ELLEN R ARCHIBALD

Address 1556 VIRGINIA ST E. CHAS

Representing ARC - Kanawha - Putnam Counties (Board member)

Do you wish to make a comment? yes written no \_\_\_\_\_

Name Charli Fulton

Address 1021 Quarrier St, Suite 407, Charleston

Representing WVADD

Do you wish to make a comment? yes ✓ no \_\_\_\_\_

Name Nancy Barnhart

Address 1021 Quarrier St. Rm 411, Charleston, W. Va.

Representing Assoc. for Retarded Citizens, in Kanawha - Putnam Co

Do you wish to make a comment? yes ✓ no \_\_\_\_\_

P L E A S E P R I N T

P L E A S E P R I N T

Name Debbie Birthisel - Outreach Social Worker

Address Rt 2 - Box 115 - Lesage, WV 25537

Representing Green Acres Regional Center, Inc

Do you wish to make a comment? yes \_\_\_\_\_ no \_\_\_\_\_

Name Virginia Lee Hastings

Address ~~127~~ P.O. Box 409

Representing Association for Retarded Citizens Cabell

Do you wish to make a comment? yes \_\_\_\_\_ no

Name \_\_\_\_\_

Address \_\_\_\_\_

Representing \_\_\_\_\_

Do you wish to make a comment? yes \_\_\_\_\_ no \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Representing \_\_\_\_\_

Do you wish to make a comment? yes \_\_\_\_\_ no \_\_\_\_\_

Guardianship Hearing  
11/17/82

P L E A S E P R I N T

Name JOAN ARNOLD (by Kay Howard)

Address \_\_\_\_\_

Representing WOOD COUNTY ARC

Do you wish to make a comment? yes X no \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Representing \_\_\_\_\_

Do you wish to make a comment? yes \_\_\_\_\_ no \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Representing \_\_\_\_\_

Do you wish to make a comment? yes \_\_\_\_\_ no \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Representing \_\_\_\_\_

Do you wish to make a comment? yes \_\_\_\_\_ no \_\_\_\_\_

P L E A S E P R I N T

PROPOSED

WEST VIRGINIA LEGISLATIVE RULES  
BOARD OF HEALTH

Chapter 44-10A  
Series I  
(1983)

Requirements for Licensure of Nonprofit Corporations  
for Guardianship Service

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November 23, 1982

WEST VIRGINIA LEGISLATIVE RULES  
BOARD OF HEALTH

Requirements for Licensure of Nonprofit Corporations  
for Guardianship Service

Chapter 44-10A  
Series I  
(1983)

INDEX

	Page
Section 1. General	1
Section 2. Application and Enforcement	1
Section 3. Definitions	2
Section 4. State Administrative Procedures	4
Section 5. General Organization and Management	11
Section 6. Fiduciary Responsibilities and Rights	16
Section 7. Management of Guardianship of the Person of a Ward	19
Section 8. Guardianship Records and Reporting	29
Section 9. Penalties	30
Section 10. Administrative Due Process	31
Section 11. Severability	31

WEST VIRGINIA LEGISLATIVE RULES  
BOARD OF HEALTH

Chapter 44-10A  
Series I  
(1983)

Subject: Requirements for Licensure of Nonprofit Corporations for Guardianship Service

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Section 1. General

1.1. Scope - These legislative rules establish general standards and procedures for the licensure of nonprofit corporations to serve as guardian, limited guardian and standby guardian of mentally retarded and other mentally handicapped persons. These rules are intended to protect and promote the rights and interests of those mentally retarded and otherwise mentally handicapped individuals of all ages for whom corporations are appointed to serve in a guardianship capacity. They adhere to the principle that when an individual's rights must be limited in order to protect that individual the individual has the right to the least restrictive and most beneficial environment appropriate to his capabilities and condition.

1.2. Authority - These legislative rules are issued under the authority of and are related to Chapter 44, Article 10A, Section 1 et seq of the West Virginia Code of 1931, as amended.

1.3. Filing Date - These legislative rules were promulgated on the 19th day of November 1982, and were filed on the \_\_\_\_ day of \_\_\_\_\_ 19\_\_, in the Secretary of State's office.

1.4. Effective Date - These legislative rules became effective on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_.

Section 2. Application and Enforcement

2.1. Application - These legislative rules shall apply to any non-

profit corporation seeking appointment as guardian, limited guardian or standby guardian for a mentally retarded or mentally handicapped person.

2.2. Enforcement - These legislative rules shall be enforced by the West Virginia department of health.

Section 3. Definitions

3.1. Board of Directors - those who are vested with the management of the affairs of the corporation, by whatever name they may be called.

3.2. Bylaws - the code of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are called.

3.3. Case Management - a process which shall include, but not be limited to: 1) assessing individually an individual's situation and identifying services necessary to meet those needs; 2) development of a service plan; 3) arranging for the implementation of the service plan; 4) monitoring and evaluating the impact of services on the individual; and 5) providing for the continuity of services and care.

3.4. Corporation - shall for the purposes of this rule refer to nonprofit corporations only, and may be taken within context to refer to the corporation as a whole or to its members, directors, officers and employees.

3.5. Department - the West Virginia department of health.

3.6. Director - a member of the board of directors.

3.7. Employee - shall include officers but not directors. A director may accept duties which make him an employee.

3.8. Family - one or more persons related to the ward by blood or by marriage, who maintain contact with and interest in the ward.

3.9. Gender - the pronoun "he" shall denote both the masculine and feminine gender. The use of any word denoting the masculine gender shall be taken to apply to both females and males.

3.10. License - the document issued by the department which constitutes the approval for appointment to serve as guardian, limited guardian and standby guardian.

3.11. Licensee - a corporation duly licensed by the health department to serve as guardian, limited guardian or standby guardian for individuals who are mentally retarded or mentally handicapped.

3.12. Member - one having membership in the nonprofit corporation in accordance with the provisions of its articles of incorporation or bylaws.

3.13. Mentally Handicapped Person - an individual with a condition medically determined which results in a substantial mental impairment of general intellectual functioning and which results in that person's inability to function normally in society for his own best interests.

3.14. Mentally Retarded Person - an individual with significantly subaverage intellectual functioning which manifests itself in a person during his developmental period and which is characterized by inadequacy in adaptive behavior.

3.15. Person - an individual and every form of organization, whether incorporated or unincorporated, including any partnership corporation for profit or not, trust, association or political subdivision of the state.

3.16. Staff - employees of the corporation.

3.17. Ward - an individual for whom a corporation has been appointed guardian, limited guardian or standby guardian.

Section 4. State Administrative Procedures

4.1. General Licensure Provisions

4.1.1. No corporation shall be appointed to serve as guardian, limited guardian or standby guardian for a mentally retarded or mentally handicapped person unless the corporation shall first obtain a valid license.

4.1.2. A license shall be valid only for the corporation named in the license and shall not be transferable or assignable.

4.1.3. A licensed corporation shall notify the department ninety days in advance of any pending merger or consolidation with another corporation, submitting with the notification a copy of the plan for merger or consolidation.

4.1.4. In the event that the surviving or the new corporation proposes to continue as guardian, limited guardian or standby guardian to any of the wards of the licensed corporation, the incorporators of the proposed corporation shall prepare an application as for an initial license, supplying relevant information or documentation of intent where official documents are unavailable. The official documents, such as a copy of the corporation charter shall be filed with department immediately upon receipt. The new or surviving corporation shall upon the granting of the new license file notice with the fiduciary commissioner or supervisor and with the county clerk of the continuation of all existing guardianships, limited guardianships and standby guardianships. The county commission shall have and retain general jurisdiction over the wards and may entertain and adjudicate any additional proceedings relating to such transfer of guardianship as it may deem proper for the welfare of the wards for whom notice of such transfer is filed.

4.1.5. In the event that the new corporation does not propose, is not granted a license, or is not approved by the county commission to continue as guardian, limited guardian or standby guardian, the licensed corporation shall dissolve itself from its guardianships according to law, these rules and the procedures of the corporation as approved by the department.

4.1.6. A corporation shall notify the department in advance of any proposed amendment to the articles of incorporation, requesting a decision from the department as to whether the proposed amendment will affect the status of the license. In the event that the proposed amendment will adversely affect the status of the license, the corporation shall either: (a) abandon the proposed amendment and any proposals for associated activity; or (b) if the amendment is adopted, shall dissolve itself from its guardianships according to law, these rules and the procedures of the corporation as approved by the department.

4.1.7. The corporation shall notify the department of any changes in the ownership and management of the corporation specified in Section 4.2.3 of these rules within thirty days following the change.

4.1.8. An expired or otherwise nonvalid license shall be surrendered to the director on written demand.

4.1.9. A license shall state the name of the nonprofit corporation, the type of license, the date of issue, and the date of expiration of the license.

#### 4.2. Initial License

4.2.1. An applicant shall submit an application to the director on forms provided by the director not less than thirty days and not more than

ninety days prior to the date proposed for commencement of operation. A nonrefundable fee of one hundred dollars shall be submitted with the application.

4.2.2. Information required may include affirmative evidence of ability to comply with these rules and regulations.

4.2.3. The following information pertaining to ownership and management shall be submitted to the department: (a) the names, addresses and place of employment of all officers and directors of the corporation; (b) the name and address of the individual to receive notices and orders; (c) the address of the principal office of the corporation; (d) the names and addresses of all other offices or locations of the corporation where activities related to the guardianship services are performed; and (e) the name and address of any parent or subsidiary corporation and the names and addresses of its officers and directors.

4.2.4. The application shall include a copy of: (a) the articles of incorporation filed with the West Virginia secretary of state; (b) the ruling or determination of the federal government regarding the corporation's status as a tax-exempt nonprofit corporation under federal income tax statutes and regulations; and (c) the letter of approval for nonprofit status under the tax laws of West Virginia issued by the State tax commissioner.

4.2.5. The department shall issue an initial license if it finds that: (a) the corporation is in conformance with or, in the case of proposed activities supplies evidence of ability and intent to conform to, these rules and with applicable law and (b) has submitted a complete application and the application fee.

4.2.6. An initial license shall be issued for a term of two years from the date of issuance, subject to the conditions and penalties specified herein.

4.3. Renewal License

4.3.1. An applicant for a renewal license shall submit an application to the director on forms provided by the director not less than thirty days and not more than sixty days prior to the expiration date of the current license. A nonrefundable fee of one hundred dollars shall be included with the application.

4.3.2. The department shall issue a renewal license when it finds that: (a) the corporation is in compliance with the provisions of these rules and with applicable law and (b) the corporation has submitted a complete application and the renewal license fee.

4.3.3. A renewal license shall be issued for a term of two years from the date of issuance subject to the conditions and penalties specified herein.

4.4. Provisional License

4.4.1. If the department finds that a corporation applying for a renewal license is not in compliance with the requirements of these rules, the department may issue a provisional license.

4.4.2. A provisional license may be issued only when the corporation has demonstrated improvement in deficiencies and the potential for compliance within the term for which the provisional license is issued.

4.4.3. The term of a provisional license shall be at the discretion of the department but in no case shall be longer than twelve months.

4.4.4. A provisional license shall not be renewed.

4.5. Inspections

4.5.1. The department shall conduct at least one on-site survey of the corporation and its activities annually. Such surveys shall include one or more of the locations from which the corporation provides services. Surveys shall include inspections of individual ward guardianship and financial records and corporation records required by law and these rules except those materials confidential under attorney-client privilege. Surveys may include visits and interviews with clients, employees, contractors for services and others as relevant. In the event that materials of record qualify as privileged attorney-client information, the corporation shall make available for department inspection that information of record not related to the matter under attorney-client privilege.

4.5.2. A report of any initial or renewal license inspection shall be sent to the corporation within fifteen working days of the completion of the inspection.

4.6. Complaint Investigation

4.6.1. Any person may register a complaint with the department alleging violation of applicable laws or rules by the corporation. A complaint shall state the substance of the complaint and the corporation by name.

4.6.2. The department shall conduct an investigation of the complaint and shall prepare a report of its investigation.

4.6.3. Within ten working days after the completion of its investigation the department shall notify the corporation and the county commission

of the complaint, the results of its investigation and any corrective action required to be taken by the corporation.

4.7. Plans of Correction

4.7.1. A corporation found on the basis of inspection or other investigation to have deficiencies in compliance with these rules shall develop a plan for correction of the deficiencies and shall submit such plan to the department within thirty days of receipt of the report of the inspection or other investigation.

4.7.2. The plan of correction shall specify:

(a) the deficiency to be corrected;

(b) action taken or proposed to correct the deficiency and procedures proposed to prevent its recurrence;

(c) the time within which the deficiency will be corrected. Such time shall be the shortest possible time within which the corporation may reasonably be expected to correct the deficiency.

4.7.3. The plan of correction shall be approved, modified or rejected in whole or in part by the department in writing within ten working days of receipt.

4.7.4. In accepting, modifying or rejecting the plan for correction, the department shall consider:

(a) the adequacy of the actions and procedures taken or proposed to correct the deficiency;

(b) the seriousness of the violation;

(c) the number of wards affected;

(d) the time proposed for effectuating the correction;

(e) any other relevant factors.

4.7.5. In modifying or rejecting a proposed plan of correction, the reasons for the modification or rejection shall be specifically stated.

4.7.6. When the department rejects a plan of correction, a reasonable time for submission of a revised plan shall be allowed, provided, however, the department may require an immediate correction in the case of a violation severely jeopardizing the health or safety of a ward.

4.7.7. The department shall conduct such procedures as are reasonable and necessary to ensure the correction of any deficiencies identified during a routine licensure inspection or any other investigation.

4.8. Department Reports and Records

4.8.1. A report of any inspection or investigation made by the department shall be in writing and shall be on file with the department.

4.8.2. Reports of the department shall specify the nature of each deficiency in compliance with these rules and indicate specifically the rule or law violated.

4.8.3. The department shall make available for public inspection the following:

- (a) applications and exhibits;
- (b) inspection reports;
- (c) reports of any other investigations;
- (d) any records of hearings, decisions and declaratory rulings; and
- (e) any responses of the corporation requested to be made part of the public record.

4.8.4. The department shall provide copies of materials available for public information at a nominal cost upon written request.

4.8.5. The department shall treat a report of inspection of a corporation as public information from the time a written plan of correction is submitted.

4.8.6. If the corporation does not submit a written plan of correction within the time specified by the department or these rules, reports pertaining to the corporation shall be made public at the expiration of the specified time.

4.8.7. Other records and reports shall be treated as public information from the time they are submitted to or issued by the director; provided, however, that nothing contained in these rules shall be construed to require or permit the public disclosure of confidential medical, social, personal or financial records of any ward of the corporation.

4.8.8. Before releasing a report or record deemed public information the department shall delete any confidential information regarding a ward which could reasonably permit identification of the ward.

4.8.9. The department shall delete from complaints made available to the public under this section any information required to be held confidential under these rules or state or federal law.

#### Section 5. General Organization and Management

5.1. The corporation shall have a valid West Virginia charter to conduct business as a nonprofit corporation.

5.2. A major purpose of the corporation shall be to aid and assist and to promote the rights and well-being of the mentally retarded and mentally disabled. The corporation may have purposes other than the provision of guardianship services as specified herein; provided, however, that such

purposes shall not conflict with the corporation's responsibilities as guardian, limited guardian or standby guardian.

5.3. Except as provided herein, no corporation licensed under these rules, nor any officer, agent, director, servant or any employee of the corporation shall do business with or in any way profit, either directly or indirectly, from the estate or income of any mentally retarded or mentally handicapped person for whom such corporation serves as guardian or limited guardian.

5.4. Each director, officer, agent and employee of the corporation shall file with the department an annual written statement under oath regarding conflict of interest under these rules in a format specified by the department.

5.5. No corporation licensed under these rules shall provide educational, vocational, residential or medical services to its wards or to other mentally retarded or mentally handicapped persons.

5.6. The corporation shall have a duly constituted board of directors and officers as prescribed by law.

5.7. The corporation shall have bylaws in accordance with state laws and these rules which shall provide for at least the following:

- (a) specification of the powers and duties of the board of directors, the officers and the committees;
- (b) the number and the length of term of the members of the board of directors and of the officers;
- (c) the qualifications and the method of selection of the members of the board of directors;

- (d) the frequency of board and of corporation meetings;
- (e) the classes of members and their voting privileges;
- (f) an annual audit by an accredited auditor; and
- (g) an annual report of all activities of the corporation.

5.8. The corporation shall have written policies and procedures consistent with these rules which shall include at a minimum:

(a) the distribution of the assets of wards in the event the corporation ceases to be licensed by the health department or may otherwise become unable to act as guardian;

(b) the nomination of and the application to the county commission for the appointment of a standby guardian in the event the corporation ceases to be licensed by the health department or otherwise becomes unable to act as guardian; and

(c) other policies and procedures required by these rules.

5.9. The corporation shall have an executive director who:

(a) is responsible for the operation and the administration of the corporation on a day-to-day basis;

(b) is supervised and evaluated by the board of directors of the corporation; and

(c) is responsible for the supervision and evaluation of staff.

5.10. The corporation shall not discriminate in any matter of employment on the basis of race, color, national origin, ancestry, religion, physical handicap or sex and shall abide by all provisions of applicable local, state and federal law and regulations regarding employment.

5.11. The corporation shall not discriminate among wards or refuse to

accept as wards any individual on grounds of race, color, religion, national origin, sex or financial resources.

5.12. The corporation may limit the types of individuals for which it will accept appointment as guardian, limited guardian or standby guardian; provided that the corporation shall identify and distinguish by characteristics, needs and capabilities those specific classes of individuals not acceptable as wards. Acceptable distinguishing characteristics shall include but not be limited to age and type of mental handicap. Physical disability shall not be an acceptable characteristic for refusal of guardianship unless the corporation shall demonstrate that the particular type or types of physically handicapping condition of potential wards are of a nature to require special knowledge and experience not present within the corporation staff.

5.13. If the corporation limits by type the classes of individuals for which it will accept appointment as guardian, limited guardian or standby guardian, it shall file with the department and with the county commissions of those counties wherein its wards and potential wards reside a current description of its policies regarding acceptance of classes of wards.

5.14. The corporation shall maintain the confidentiality of all ward-identifiable records in its custody or accessible to the corporation in the performance of its duties as guardian, limited guardian or standby guardian.

5.15. The corporation shall maintain separate financial and guardianship records for wards for whom it serves as both guardian of the estate and

guardian of the person.

5.16. The corporation shall develop and implement such employee procedures and sanctions and such office procedures as are necessary and appropriate to protect the confidentiality of the records of wards and to effectuate the release of such records to proper interested parties.

5.17. Where state law or this rule requires the provision of services by the corporation in executing responsibilities as full, limited or standby guardian of the the person or the financial affairs of a ward, the corporation may, unless specified otherwise by these rules, contract for or accept as a donation the services to be provided, provided that the contractor and the donor shall agree to comply with the provisions of these rules and relevant state and federal law and rules and regulations and shall agree to undergo survey and inspection procedures regarding compliance with these rules. When services are to be donated or provided on a volunteer basis there shall be a written specification of the extent and the nature of services to be provided and activities to be performed by the donor or volunteer. In the event that such services are performed by entities other than the corporation, the corporation shall be held responsible for the adequacy and effectiveness of those services.

5.18. The corporation shall have on file all orders, authorizations and directions of the county commission and the fiduciary commissioner or supervisor regarding the ward.

5.19. The corporation shall not exceed the authority of any such orders, authorizations or directions of the county commission and the fiduciary commissioner or supervisor.

5.20. The corporation shall carry liability and other insurance to protect the corporation from foreseeable liabilities arising from the performance of its guardianship duties and responsibilities.

5.21. The corporation shall retain legal counsel to assist in making arrangements for and in performing its guardianship duties and responsibilities.

5.22. The license shall be displayed in a conspicuous and public place in plain view of all wards, clients and visitors to the office of the corporation and a copy of the license shall be displayed in a like manner in every office and location of the corporation.

#### Section 6. Fiduciary Responsibilities and Rights

6.1. The corporation shall provide evidence that it has sufficient fiscal and administrative resources to perform the fiduciary duties and to make the fiduciary accountings and reports required by law and these rules. Such evidence shall include at a minimum:

(a) an annual report of the corporation for the corporation's fiscal year which shall include a complete statement of all assets, liabilities, income and expenses of the corporation for the period covered;

(b) a record of bond given as required by law and an estimate of requirements for the next year;

(c) a statistical summary of reports and records submitted to the fiduciary commissioner or supervisor and a projection for the ensuing year estimating the number of wards, the number and type of reports required and the employees available to effectuate these reports; and

(d) a statistical summary report of any other activities effectuating

the provisions of law and these rules concerning estate management and the securing of financial support for the ward.

6.2. The corporation may make arrangement for part of all of the activities required to be performed in the management of a ward's financial affairs to be executed by other lawful entities, provided that the corporation shall provide written evidence that it has reviewed and approved the activities of such entities for compliance with the requirements of relevant law and this rule at least annually. Such arrangements shall comply with the provisions of Section 5.17 herein.

6.3. A blanket bond encompassing some or all of the estates of wards of the corporation shall be acceptable for the purposes of these rules, provided such blanket bond is ruled acceptable by the county commission making the appointment of the corporation as guardian, limited guardian or standby guardian.

6.4. The corporation shall manage the income, property and any assets of each ward for the benefit of the ward and shall provide evidence that any expenditures of income or from the estate of the ward for which it has lawful authority are used for the benefit of the ward.

6.5. The corporation shall implement procedures to facilitate that any ward receives maximum support for his needs by:

(a) annually reviewing the status of the ward's eligibility for any public support programs;

(b) enrolling the ward in any public support programs for which his disability, age or any other conditions meet eligibility criteria; and

(c) intervening as needed to ensure that any financial or other support continues.

6.6. When the corporation makes provision for the consolidation of assets of wards for investment purposes, the corporation shall be responsible for assuring that funds are available as needed for the support and care of the ward.

6.7. The corporation shall maintain detailed individual financial accounts and records for each ward. Such accounts shall show payments and compensation for services performed for the ward by the corporation and for all other services received by the ward.

6.8. The corporation shall have on file all financial reports submitted to the fiduciary commissioner or supervisor.

6.9. The department shall have the authority to require the certification of specified reports and accounts of wards and of the corporation by the corporation's auditor or by an independent accountant.

6.10. Any corporation licensed under these rules and serving as guardian or limited guardian shall be entitled to reasonable compensation as provided by law for services provided as guardian of the person as well as guardian of the estate.

6.11. The corporation shall submit no less than annually a schedule of its compensation rates and fees to the department and to the fiduciary commissioner or supervisor of any county in which it is serving as or proposes to serve as guardian, limited guardian or standby guardian.

6.12. The department shall review such schedules of compensation rates and fees and shall have the right to make recommendations to the fiduciary commissioner or supervisor and the county commission as to the reasonableness and appropriateness of the rates and fees. The department

shall, in making any such recommendations, take into consideration at least the following: a) average and customary rates and fees of all corporations licensed under these rules; and b) any special and extraordinary circumstances impacting upon the costs of services provided.

Section 7. Management of Guardianship of the Person of a Ward

7.1. Services Generally

7.1.1 The corporation shall maintain an effective and direct role in the execution of its guardianship responsibilities. To this end, the corporation shall through its membership, employees, officers and directors be directly responsible for certain requirements as specified herein. The corporation may effectuate other responsibilities as specified in Section 5.17 of this rule.

7.1.2. Although the corporation shall not provide the educational, vocational, residential and medical services services required by law and these rules, it shall be responsible for assuring that its wards are receiving these services as appropriate and in the setting least restrictive of the ward's personal liberty as required by law and as provided in these rules.

7.1.3. Services shall be provided to each ward according to the needs, characteristics and capabilities of the individual ward.

7.1.4. In the event that the ward is a resident of a health department inpatient facility, the corporation shall be required to represent the ward and to participate actively with health department staff in the planning of care and in other activities in which family members are generally expected to participate. The corporation shall also be required to repre-

sent the interests of the ward with state and county departments of education.

7.1.5. In the event that a ward is not enrolled in a program or a resident in a facility which provides care and supervision of the ward twenty-four hours a day, the corporation shall provide or shall make arrangements for the availability of emergency support outside of the normal business day suitable to the needs, characteristics, capabilities and circumstances of the ward and as might be expected to be provided by a responsible concerned family member. Such support availability requirements shall be satisfied by the following: a) the existence of a twenty-four hour a day community crisis intervention service with liaison to the corporation or caretaker of the ward; b) the availability of corporation staff, directors, members or volunteers through telephone or other form of direct contact during weekends and evenings; c) enrollment of the ward in case management or care programs with weekend and evening availability; d) any other arrangements or combination of arrangements which the department determines to be reasonably adequate to ensure the health and safety of the ward: provided, however, that the corporation shall document that it has: a) informed the ward of the availability of the emergency support service; b) provided any training or practice needed by the ward; c) documents that it has meet the information and training requirements; and d) documents the capability of the ward to make use of the emergency service.

7.1.6. The corporation shall provide or make arrangements for each ward to be provided an emergency identification information card unless the ward is resident in a twenty-four hour a day residential facility and shall

encourage the ward to carry the card when not in his place of residence. The emergency identification card shall specify at least: a) the name, address and telephone number of persons to be notified in case of emergency or accident; b) any special conditions of the ward which might interfere with normal communication, such as but not limited to deafness; and c) identification of any medical conditions or treatments of note in an emergency medical situation, such as but not limited to medications being taken, medication allergies, or potential for seizures.

7.1.7. There shall be documented regular contact between the corporation and its wards as frequently as indicated by the needs, characteristics, capabilities, living circumstances and any other pertinent conditions of the ward and as feasible to the fiscal resources of the ward and the corporation; provided, however, there shall be no less than one person-to-person contact between the corporation membership or staff and the ward per year.

7.1.8. The corporation shall develop and keep on file a guardianship plan for the person of any ward for which it has such responsibilities which shall include at a minimum: a) a statement in detail of the particular characteristics, needs, abilities, disabilities and developmental potential of the ward; b) a statement in detail of the resources necessary to foster, to the fullest extent possible, his development and maintenance as a human being; c) a plan of specific actions to be undertaken by the corporation to protect the health, welfare and safety of the ward by securing for him services as required by law and this rule and other necessary and desirable social, habilitative, and other services as feasible.

7.1.9. The guardianship plan shall be reviewed and updated as indicated by the characteristics, needs, abilities, disabilities and living circumstances of the ward but not less than annually at a minimum. Such review and update shall be documented in writing.

7.1.10. The corporation shall encourage its wards to participate to the maximum of their abilities in all decisions affecting them.

7.1.11. The corporation shall encourage wards to act on their own behalf in all matters in which they are able to do so.

7.1.12. The corporation shall assist the ward in increasing his capabilities for self-help, independent living and adjustment to his residential and other community circumstances.

7.1.13. The corporation shall allow the ward freedom of choice in living circumstances and life styles unless there shall be documented evidence that such freedom of choice would be detrimental to the individual's health, safety and general welfare.

## 7.2. Staffing

7.2.1. Each ward of the corporation shall have a specific guardian representative. This responsibility shall not be satisfied through contract or arrangement with another entity.

7.2.2. Guardian representatives shall have the responsibility for:  
a) assuring the development of guardianship plans as required herein and by the county commission; b) assuring the implementation of such guardianship plans. Development and implementation of the plan may be satisfied through arrangement with another agency as specified herein; provided, however, the guardian representative shall be responsible for reviewing activities and

progress relevant for the development and implementation of the plan.

7.2.3. The guardian representative shall be responsible for maintaining continuity of the corporation's relationship to the individual and shall be personally familiar with the ward and his circumstances. This responsibility shall be maintained within the corporate structure unless the ward is a client of a case management system recognized and approved by the health department.

7.2.4. Guardian representatives shall be qualified for their jobs by virtue of training, experience or a combination of both. The corporation shall develop detailed statements of the experience and training requirements for guardian representatives and shall document through detailed statements of experience and training, references and any other relevant materials how the individual's training and experience relate to his capability and competence to effectuate the responsibilities of the guardian representative. Either personal experience with a family member of the same general characteristics and service needs as wards for whom the individual may be designated as the guardian representative, or employment experience shall be acceptable. The corporation may provide or arrange for training where needed to supplement deficiencies in the individual's capabilities to perform the job, if an individual is not fully qualified at the time employment begins. The individual shall be given supervision or consultation by an individual who is appropriately qualified until training is sufficient.

7.2.5. The ratio of staff to wards shall be adequate to meet ward needs. In determining the adequacy of staff, the department shall take into

account at least the following: (a) the number of and intensity of services provided by the corporation; (b) the number of and intensity of services required by the wards; (c) the experience and efficiency of the corporation; (d) documentation in records that the corporation has fulfilled its obligations under law and this rule; and (e) documentation regarding the implementation of the guardianship plan.

7.2.6. Volunteer workers may be utilized provided that such volunteers are qualified for the work they perform by virtue of professional training or by experience or are oriented and trained to perform those activities for which they will be responsible.

7.2.7. The corporation shall maintain an employee and volunteer training program which shall provide at a minimum:

(a) orientation and training for new employees and volunteers to acquaint them with the philosophy, organization, programs, practices and goals of the corporation;

(b) orientation to talking competently with wards for purposes of a routine contact basis; and

(c) additional initial and continued training needed specific to the duties, the responsibilities and the competency of the employee or volunteer.

### 7.3. Health Services

7.3.1. The corporation shall implement activities and procedures to ensure that the ward receives necessary physical, dental, behavioral and other health services needed as determined by such characteristics as, but not limited to age, general physical condition, and special physical and mental problems.

7.3.2. Each ward shall have a complete physical examination and evaluation within one month prior to or subsequent to the initiation of the guardianship or limited guardianship and an annual reevaluation thereafter, or more frequently if indicated by the physician, as determined by the individual's age, general health and any other relevant considerations.

7.3.3. Each ward shall have a comprehensive preventive dentistry program.

7.3.4. Health services shall be provided by individuals with valid current West Virginia licenses.

7.4. Residential and Partial Care Services

7.4.1. The corporation shall screen and evaluate proposed and existing client residences, considering ward capabilities for self-care and management and shall evidence consideration of a continuum of both existing and desirable residential circumstances.

7.4.2. Residential settings shall comply with any applicable health department licensure requirements and, in the absence of any applicable licensure standards, shall meet reasonable standards of sanitation, habitability and fire safety. Residential facilities shall also be in compliance with rules and regulations of the West Virginia fire commission and any other applicable local, state and federal laws, standards and rules and regulations.

7.4.3. Whenever in the judgment of the department a ward is housed in an unsuitable residence, the department shall direct the corporation, upon written notice from the department, to place the ward in an alternate residential setting within ten days of receipt of the notice; provided

however, that the department shall have the authority to effectuate immediate removal and alternate placement of a ward when the residence jeopardizes the health or safety of the ward.

7.4.4. When existing residential facilities are determined to be unsuitable the corporation shall make alternative placements.

7.4.5. The corporation shall encourage friends and relatives to visit the place of residence.

7.4.6. When the ward is capable of some degree of independent living circumstances, but is in need of day, evening or recreational and social activities or supervision, the corporation shall make arrangements for the individual to participate in such partial care programs.

7.4.7. Suitability of a residential setting or of a day, evening or other partial care program as required herein shall be evaluated considering factors such as but not limited to the ward's capability for self-care and management as related to the degree of supervision and care provided by the residence or partial care program and the habitability and safety of the residence or partial care facility.

#### 7.5. Educational Services

7.5.1. The guardianship plan shall provide for the placement of wards in the most suitable educational setting available, in accordance with the needs and capabilities of the ward as determined by an individual trained and experienced in special education.

7.5.2. The corporation shall receive and have on file reports from the ward's educational program no less frequently than reports are issued by the public school system.

7.5.3. Based on reports, interviews with the education program staff and with the ward and any other relevant information available, the corporation shall evaluate the effectiveness of the educational program.

7.5.4. If necessary, the corporation shall place the ward in an alternate educational program.

7.6. Vocational and Employment Services

7.6.1. The corporation shall make reasonable efforts to assist the ward in obtaining employment suitable to his capabilities by locating and contacting prospective employers.

7.6.2. The corporation shall arrange for programs to prepare the ward for an employment setting if there is potential for employment.

7.6.3. The corporation shall implement procedures to prevent the exploitation of its wards by employers. Such procedures shall be directed toward accomplishing that wards receive training, compensation and privileges commensurate with their duties and comparable to other employees in similar circumstances.

7.6.4. The corporation shall assess the adequacy and appropriateness of the job placement annually.

7.6.5. The corporation shall attempt to arrange for alternative employment if the existing employment is unsuitable.

7.7. Protection and Advocacy

7.7.1. The corporation shall inform and train the ward and any family and friends concerning the exercise of his civil and other legal rights.

7.7.2. The corporation shall investigate and document alleged violations of ward's rights.

7.7.3. The corporation shall document such investigation and actions taken to intervene in such alleged violations.

7.7.4. The corporation shall define procedures for the procuring or provision of legal counsel to represent the interests of the ward and shall procure such legal counsel when it is in the best interests of the ward.

7.7.5. The corporation shall inform the ward and friends and family regarding the procedures for terminating or changing the type of guardianship or the guardian.

7.7.6. The corporation shall assure that those persons who provide services to the ward respect the rights and dignity of its wards. Statements of service provider policies regarding client or patient rights shall be on file with the corporation and shall be provided to the ward and, upon request, to family and friends of the ward.

7.7.7. The corporation shall not perform any guardianship function for any individual in the absence of lawful proceedings appointing the corporation as guardian, limited guardian or standby guardian.

7.7.8. The corporation may advise and assist families in implementing procedures to initiate guardianship.

7.7.9. Each nonprofit corporation shall establish a guardianship review committee to perform the following duties:

- (a) review and otherwise pass upon all applications for guardianship;
- (b) oversee the administration of those guardianships accepted; and
- (c) review each case on a periodic basis to determine that guardianship is in the best interest of each client and, if not, to petition for termination of the guardianship.

Section 8. Guardianship Records and Reporting

8.1. The corporation shall maintain a guardianship record for each ward for whom it has responsibility for full or limited guardianship of the person. The guardianship record shall document all information and activities pertinent to the guardianship and as required by law and these rules.

8.2. The guardianship record shall contain at a minimum the following information concerning the ward:

(a) a summary of all orders and directions of the county commission concerning the ward and the guardianship;

(b) demographic identifying information;

(c) a picture of the ward sufficiently current for purposes of identification;

(d) the guardianship plan;

(e) the medical, dental and psychological evaluations;

(f) a current record of the ward's address;

(g) a current record of the ward's place of employment, if any; and

(h) a current record of the ward's educational and vocational training programs, if any.

8.3. The guardianship record shall contain at least the following information concerning activities with respect to the ward;

(a) a record of all contacts between the corporation staff and the ward;

(b) a record of services provided by the corporation staff and volunteers;

(c) a summary report of any services provided under contract;

- (d) evaluations of services provided to the ward;
- (e) copies of any reports provided to the county commission;
- (f) a record of any other activities undertaken on behalf of the ward;

and

(g) an annual summary report regarding the ward and the corporation's performance of its guardianship responsibilities.

8.4. The corporation shall maintain on file a current summary list of the names and addresses of all wards for whom it is acting as guardian of the person or of the estate or both. Such list shall also show the age and condition of mental retardation or mental handicap of each ward and such other information as the department shall require.

8.5. The corporation shall provide the department with an annual statistical summary report to include the number of wards, the type of guardianships, the ages and characteristics of wards, the number of visits, emergency contacts, services provided and such other information as the department may reasonably require in a format designated by the department.

#### Section 9. Penalties

9.1. The department shall have the power to suspend or revoke a license if it finds that: a) the corporation is in substantial violation of these rules; b) the corporation charges fees in excess of those authorized by the county commission or the fiduciary commissioner; or c) the corporation is found by due process of law to be in violation of the provisions of Chapters 31, 44 or 27 of the Code of West Virginia of 1931, as amended.

9.2. The department may refuse to grant a license or may revoke a license if it determines that there has been subterfuge or other dishonest

action in applying for an initial or a renewal license.

9.3. Any director, officer, agent or employee of the corporation who shall intentionally file a false statement regarding conflict of interest shall be guilty of a misdemeanor and, upon conviction, shall be fined a sum not less than one hundred and not more than five hundred dollars.

Section 10. Administrative Due Process - Those persons adversely affected by the enforcement of these legislative rules desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the West Virginia Procedural Rules, Board of Health, Chapter 16-1, Series I, 1981, Rules of Procedure for Contested Case Hearings and Declaratory Rulings. The aforementioned procedural rules are incorporated herein by reference.

Section 11. Severability - If any provisions of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or the application of these rules which can be given effect without the invalid provisions or application, and to this end the provisions of these rules are declared to be severable.