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**TITLE 64  
LEGISLATIVE RULE  
BUREAU FOR PUBLIC HEALTH**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**SERIES 2  
LICENSURE OF MEDICAL ADULT DAY CARE CENTERS**

**§ 64-2-1. General.**

1.1. Scope. - This legislative rule establishes general standards and procedures for the licensure of medical adult day care centers as a special type of ambulatory health care center. The W. Va. Code is available in public libraries and on the Legislature's web page, <http://www.legis.state.wv.us/>.

1.2. Authority. --W. Va. Code §16-5B; 16-1-4(k)

1.3. -Filing Date. --

1.4. Effective Date. --

1.5. Repeal and Replace Former Rule -- This rule repeals and replaces Division of Health rule, Licensure of Medical Adult Day Care Centers 64CSR2, effective July 12, 1985.

**§64-2-2. Application and Enforcement.**

2.1. Application. This rule applies to any individual person, association, partnership, corporation, whether for profit or not, local governmental unit or any division, department, board or agency thereof which shall establish, maintain or operate a medical adult day care center. A day care program maintained and operated by a nursing home, hospital or other licensed health care facility shall comply with this rule. Compliance with the standards in this rule shall be evaluated independently from compliance with other licensure standards and sharing of staff, space, physical facilities and equipment or other may be permitted only if the requirements of each applicable rule are satisfied in full.

2.2. Exceptions.

2.2.a. This rule shall not apply to three to eight hour service programs carried out by a behavioral health center licensed under Licensure of Behavioral Health Centers, West Virginia Department of Health Legislative Rules, Series 11, 1984, unless the behavioral health center program routinely offers medical treatment services in addition to those behavioral health services within the scope of that rule.

2.2b. This rule shall not apply to day care programs for adults which are primarily social and recreational in nature, but which may occasionally offer medical screening clinics.

2.3. Enforcement. This rule is enforced by the Secretary of the Department of Health and Health and Human Resources; or his or her designee.

**§64-2-3. Definitions.**

3.1. Abuse. - The infliction or threat to inflict injury, unreasonable confinement, misuse of physical or chemical restraints, intimidation, or punishment with resulting physical harm, pain, or mental anguish, including the following:

3.1.a. Mental Abuse. - Includes, but is not limited to, humiliation, harassment, threats of punishment or deprivation;

3.1.b. Physical Abuse. - Includes, but is not limited to, hitting, slapping, pinching, kicking or, use of controlling behavior through corporal punishment;

3.1.c. Sexual Abuse. - Includes, but is not limited to, harassment, coercion, or assault of a sexual nature; and

3.1.d. Verbal Abuse. - Includes, but is

not limited to, the use of oral, written or gestured language in communicating with a participant or used within the participant's hearing regardless of the participant's age, ability to comprehend or disability that contains disparaging and derogatory terms.

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

3.3 Adult - An individual eighteen years of age or older or who other-wise qualifies as an adult under West Virginia law.

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

3.5. Ambulatory Health Care Facility- Any facility which provides health care or mental health care to noninstitutionalized persons on an outpatient basis. This definition does not include the legally authorized practice of medicine by any one or more persons in the private office of any health care providers.

3.6. Center - Medical adult day care center as defined in this rule.

3.7 Conservator - A person appointed pursuant to the West Virginia Legal Guardianship and Conservatorship Act, W. Va. Code §44A-1-1 *et seq.*, within the limits set by the order, responsible for managing the estate and financial affairs of another individual who has been determined by the court to be incompetent and therefore no longer able to handle those affairs independently.

3.8. Committee - A person who is bonded and given the responsibility of proper use of an incompetent person's money who was appointed prior to June 9, 1994, within the limits set by the appointing order and W. Va. Code §44A-1-2(d).

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

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

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

3.12. Deficiency - A violation of this rule.

3.13. Director - The owner or individual selected by the licensee to be responsible for the day-to-day operation of the medical adult day care program.

3.14. Durable Power of Attorney - A person appointed by another person to make decisions on his or her behalf pursuant to W. Va. Code §39-4-1, or a power of attorney under common law, within the limits of the appointment.

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

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

individual's condition is unstable and unpredictable.

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

3.18. Governing Body - The individual, agency, group or corporation appointed, elected or otherwise designated in which the ultimate responsibility and authority for the conduct of the center is vested.

3.19. Guardian - A person appointed pursuant to the West Virginia Guardianship and Conservatorship Act, W. Va. Code §44A-1-1 *et seq.*, within the limits set by the order, responsible for the personal affairs of another individual who has been determined by the court to be incompetent and therefore no longer able to handle these affairs independently.

3.20. Health Care Surrogate - A person appointed by a health care professional pursuant to the West Virginia Health Care Decisions Act, W. Va. Code §16-30-1 *et seq.*, within the limits set by the appointment, to make health care decisions for another individual who has been determined to lack the capacity to independently make those decisions.

3.21. Immediate and Serious Threat. - A situation that presents a high probability of serious harm or injury to one (1) or more program participants. An immediate or serious threat need not result in actual harm to any participant.

3.22. Legal Representative. - A person lawfully invested with the power and charged with the duty of taking care of another person or with managing the property or rights of another person, including a committee, conservator, guardian, health care surrogate, durable power of attorney, medical power of attorney, representative payee, trustee or other duly appointed person.

3.23. License - The document issued by the Secretary of the Department of Health and Human Resources or his or her designee which constitutes the authority to perform services included within the scope of this rule.

3.24. Licensed Capacity. - The number of participants a medical adult day care program is licensed to serve at one time.

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

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

3.26.a. A fall, an accident or another event that results in fracture or serious injury or threatens the life of the participant;

3.26.b. A participant's death occurring from other than natural causes;

3.26.c. A missing participant who is likely to injure himself or herself or who needs medication or treatment on a regular basis, and who is likely to have difficulty returning to the medical adult day care program on his or her own;

3.26.d. Assault on a participant resulting in injury; or

3.26.e. Other suspected criminal activity or events that cause the disruption of normal medical adult day care program activity, including threats or occurrences of extreme violence, explosions, fire or natural disasters.

3.27. Medical Adult Day Care Center- An ambulatory health care facility which provides an organized day program of therapeutic, social,

and health maintenance and restorative services and whose general goal is to provide an alternative to twenty-four hour long term institutional care to elderly or disabled adults who are in need of such services by virtue of physical and mental impairment.

3.28. Medical Power of Attorney - A document naming a person eighteen years of age or older to make health care decisions for another person pursuant to the West Virginia Health Care Decisions Act, W. Va. Code §16-30-1 *et seq.*, within the limits set by law and the appointment.

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

3.30. Multi-disciplinary team – A service planning team comprised of representation from at least the following: the center director, a registered nurse, the activity director, direct care staff, the participant and the participant’s family. Representation from other disciplines such as nutrition, physical therapy, occupational therapy and speech therapy may be included as applicable.

3.31. Neglect. - Failure to provide for the necessities of daily living or the lack of care.

3.32. Nursing Care - Those procedures commonly employed in providing for the physical, emotional and rehabilitational needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, procedures such as: irrigations; catheterization; application of dressings; supervision of special diets; objective observation of changes in a participant’s condition as a means of analyzing and determining the nursing care required and the need for further medical diagnosis and treatment; special procedures contributing to rehabilitation; administration of medication by any route ordered by a physician, such as parenterally, rectally, or orally; and carrying out

other treatments prescribed by a physician which involve a like level of complexity and skill in administration.

3.33. Participant – An individual who has been accepted for participation in the services and activities offered by a licensed medical adult day care program.

3.34. Personal Care Services - Personal services designed to assist an individual to achieve an optimum level of functioning and self-care., including, but not limited to, the following: help with activities of daily living or supervision required because of the age or physical or mental impairment of the participant.

3.35. Representative Payee - A person or organization that receives Social Security and/or Supplemental Security Income (SSI) payments for someone who cannot manage or direct the management of his or/her money appointed under the U.S. Social Security Act, Title 42 US Code §301 *et seq.*, within the limits of the payee's legal authority.

3.36. Restraint. - Any physical or chemical means used for the purpose of limiting or restricting a person’s movement or mobility including.

3.36.a. Any manual method or physical or mechanical device, material or equipment that the participant cannot remove at will and that physically limits, restricts, or deprives the participant of movement or mobility including but not limited to lapbelts, vests, gates, or locked doors; or

3.36.b. Any drug used to limit movement or mental capacity of a participant beyond the requirements of therapeutic treatment.

3.37. Secretary – means the Secretary of the Department of Health and Human Resources or his or her designee.

3.38. Self-administration of Medications. - The act of a participant, who is independently capable of reading and understanding the labels

of prescribed medication, in opening and accessing a prepackaged container of medication, accurately identifying and taking the correct dosage of the medication, at the correct time and under the correct circumstances as prescribed by a licensed health care professional with prescriptive authority.

3.39. Substantial compliance. The Medical Adult Day Care Center has no violation of which, as the secretary determines, would present an imminent danger to the health, safety or welfare of any resident or a probability that death or serious physical harm could result, and has no ongoing violation of a regulation where there is a direct or immediate relationship to the health, safety or welfare of the resident(s).

3.40. Supervision of self administration of medication - a personal service which includes reminding participants to take medications, opening medication containers for participants, reading the medication label to participants, observing participants while they take medications, checking the self-administered dosage against the label on the container and reassuring participants that they have obtained and are taking the dosage as prescribed.

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

3.42. Specialty services - Specialized services offered to participants in addition to regular medical adult day care services including physical therapy, occupational therapy, speech therapy and services specifically targeted to special populations such as individuals with Alzheimer's disease, developmental disabilities, traumatic brain injury, mental illness and HIV/AIDS.

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

3.43.a. Being aware of the participant's whereabouts, to the extent identified as a need

by the participant's assessment or service plan;

3.43.b. Monitoring the activities of a participant while on the premises of the medical adult day care program to ensure the participant's health, safety and well-being; and,

3.43.c. Reminding the participant of any important activities of daily living.

3.44. Volunteer - A person who offers his or her time to provide services to the center without pay.

3.45. Waiver - An exemption from compliance with a requirement set forth in this rule.

#### **§64-2-4. State Administrative Procedures.**

##### 4.1. General Licensing Provisions.

4.1.a. Before establishing, maintaining, offering, operating or advertising a medical adult day care center a person shall obtain a license authorizing the operation from the Secretary.

4.1.b. Each new applicant must be at least twenty-one years of age and must provide at least two letters of reference from reputable citizens with whom he or she is personally acquainted and who certify to his or her character and qualifications. If the applicant is an association, corporation or governmental unit, evidence shall be submitted to its members and the persons in charge.

4.1.c. A license is valid only for the person or organization and for the center named in the application and on the license, and is not transferable. After a license is issued, if there is any change in the name of the licensee or the name of the medical adult day care center, the licensee shall notify the Secretary immediately and no later than within fifteen (15) days.

4.1.d. If the licensee owns more than one medical adult day care center, each center shall have a separate license.

4.1.e. The words 'clinic,' 'hospital,'

“residence” or any other words that suggest a type of facility other than a medical adult day care center may not be used in the name or the advertising of the center.

4.1.f. The licensee is responsible for compliance with this rule, the terms of the medical adult day care center’s license, W. Va. Code §16-5B-1 *et seq.*, and other relevant federal, state, and local laws and agency policies and procedures.

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

4.1.g.1. The thirtieth of June following the date of issuance unless continued pursuant to this rule and W. Va. Code §16-5B-1 *et seq.*;

4.1.g.2. The date of a revocation or suspension of the license pursuant to this rule and W. Va. Code §16-5B-1 *et seq.*, or

4.1.g.3. The date of issuance of a new license, whichever date occurs first.

#### 4.2. Initial Licensure Application.

4.2.a. An applicant for initial licensure shall submit a completed application to the office of health facility licensure and certification, along with a non refundable fee of one hundred (100) dollars and any additional information the Secretary may require.

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

4.2.c. The applicant shall provide to the Secretary a preliminary operating plan that includes a proposed budget with projected

monthly income, a balance sheet showing all expenses and income on forms provided by the Secretary, including but not limited to, reimbursement of the owners, lease payment, and monthly fees charged. The Secretary shall determine the licensed capacity.

4.2.d. The applicant shall submit the application and fee at least ninety (90) days prior to the date proposed for the commencement of operations.

4.2.e. After a satisfactory inspection to ensure compliance with this rule, the Secretary shall issue an initial license.

4.2.f. An initial license shall not be issued under this rule for a project reviewable under W.Va. State Code §16-2D unless the state health planning and development agency has issued a finding, after a final conformance review, that the project conforms to the terms of the certificate of need decision issued for the project. Evidence of compliance shall be supplied with the licensure application.

#### 4.3. License Renewal.

4.3.a. The licensee shall postmark or hand deliver applications for renewal of a license, along with a non-refundable fee of one hundred (100) dollars, to the Secretary at least ninety (90) days before the expiration date of the current license.

4.3.b. For an increase in the licensed capacity, the licensee shall obtain prior written approval of the Secretary. In addition to the renewal application, the applicant shall submit a plan of operation to the Secretary for approval, and the Secretary shall determine the increased licensed capacity.

4.3.c. Except as specified in Subsection 4.4. of this rule, the Secretary shall issue a renewal license to a medical adult day care center when the following conditions are met:

4.3.c.1. The center is found to be in substantial compliance with this rule; and

4.3.c.2. The applicant has submitted a completed application, applicable fee and all requested financial information.

4.4. Non-Issuance of Initial or Renewal License.

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

4.4.a.1. The applicant or licensee has a lack of financial stability to operate, such as insufficient capital, delinquent accounts, checks returned because of insufficient funds, and nonpayment of taxes, utility expenses and other essential services;

4.4.a.2. The applicant or licensee has a personal history that has evidence of abuse, fraud, or substantial and repeated violations of applicable laws and rules in the operation of any health care facility or service organization or in the care of dependent persons;

4.4.a.3. The applicant or licensee has a personal history that has evidence of a conviction of crimes related to the provision of care to a dependent population as a result of a criminal investigative background check by the West Virginia state police, through the central abuse registry or is listed on any abuse registry established by the state;

4.4.a.4. The applicant or licensee has been denied a license or has had a license to operate a health care facility or medical adult day care center revoked in West Virginia or any other jurisdiction during the previous five (5) years;

4.4.a.5. The applicant or licensee has a record of noncompliance with lawful orders of the department or other licensing or certification agency for any jurisdiction in which the applicant has operated, directed or participated in the operation of a health care facility or medical adult day care center;

4.4.a.6. The applicant, licensee or

person in charge of the center has refused the Secretary entry and access to participants and records for an inspection or survey;

4.4.a.7. The applicant or licensee has converted the property of a participant for his or her own use, or has secured property, or a bequest of property, from a participant by undue influence;

4.4.a.8. The applicant, licensee or director has submitted false information to the Secretary during the licensure process or during the course of an inspection or survey of the center;

4.4.a.9. The applicant or licensee has moved the medical adult day care program to another location owned or operated by the applicant or licensee without prior approval of the location by the Secretary;

4.4.a.10. The applicant or licensee has built or renovated a center without complying with the requirements of this rule;

4.4.a.11. The applicant or licensee has failed to be in substantial compliance with the requirements of this rule;

4.4.a.12. The center has failed to receive a recommendation for licensure from the state fire marshal; or

4.4.a.13. For a project reviewable under W.Va. state Code §16-2D, the center has failed to receive a finding by the state health planning and development agency that the project conforms to the terms of the certificate of need decision issued for the project.

4.5. Inspections.

4.5.a. The Secretary shall inspect a medical adult day care center as necessary to carry out the intent of W. Va. Code §16-5B-1 *et seq.* and this rule.

4.5.b. The Secretary shall conduct at least one inspection of a center prior to issuing

an initial license, but shall not conduct an inspection until after the following conditions are met:

4.5.b.1. The application and application fee have been received and the application has been determined to be complete; and

4.5.b.2. All requested documentation has verified the readiness of the center for an inspection.

4.5.c. The Secretary shall conduct periodic unannounced inspections at least once every twelve (12) months to determine the center's continued compliance with this rule.

4.5.d. The Secretary has the right to enter a structure that is believed to be operating or maintained as a medical adult day care center without a license to conduct inspections without prior notice. If the operator or person in charge of the suspected medical adult day care center refuses entry, the Secretary may apply to the circuit court in the county in which the suspected center is located or the circuit court of Kanawha County for a warrant to authorize an inspection or to compel admittance to the premises of the suspected center.

#### 4.6. Complaint Investigation.

4.6.a. Any person may register a complaint with the Secretary alleging a violation of this rule by a medical adult day care center or an individual alleged to be unlawfully operating a medical adult day care center, by stating the complaint and identifying the name and address of the center.

4.6.b. The Secretary may conduct investigations as necessary to determine the validity of the complaint and shall notify the licensee of the center or the individual alleged to be operating an illegal medical adult day care center of the complaint at the time of the completion of an investigation.

4.6.c. The Secretary shall notify the licensee or the operator of a medical adult day care center of any corrective action required, the

time frame for completion of the corrective action, and any disciplinary action to be taken by the Secretary.

4.6.d. Except as provided in Subdivision 4.6.e. of this subsection, the Secretary shall keep the names of a complainant and of any participant named in the complaint confidential and shall not disclose the names to the public without written or verbal permission of the complainant and the participant, and his or her legal representative, if any, unless there is an immediate risk to the participant. The Secretary shall delete the name of a complainant or participant named in a complaint or information contained in the report of an investigation that could reasonably identify the complainant or any participant. Information contained in any report of abuse, neglect, or an emergency situation made in accordance with W. Va. Code §9-6-8 shall be confidential and shall not be released except as provided in that article.

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

4.6.f. Any type of discriminatory treatment of a participant or employee by whom or on whose behalf a complaint has been submitted to the Secretary; within one hundred twenty (120) days of the filing of the complaint or the institution of the action, raises a rebuttal presumption that the discriminatory treatment action was taken by the licensee in retaliation for the complaint or action.

4.6.g. If, after an investigation, the Secretary determines that the complaint has merit, he or she shall advise any injured party of the possibility of a civil remedy. In addition, participants, a participant's family, or a legal representative or advocate, may also independently pursue civil remedies for violations of this rule.

#### 4.7. Waivers.

4.7.a. The Secretary may waive a

requirement of this rule if after a thorough investigation, he or she determines that the waiver will not adversely affect the health, safety, welfare or rights of the participants.

4.7.b. The licensee shall submit a completed waiver form to the Office of Health Facilities Licensure and Certification.

#### 4.8. Reports and Records.

4.8.a. The Secretary shall prepare a written report of any inspection or investigation made pursuant to this rule within fifteen (15) days of the completion of the inspection and shall transmit to the licensee or director, as applicable, a statement of deficiencies that contain the violations of this rule.

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

4.8.c. The Secretary shall make copies of the following available at a reasonable cost for public inspection and upon request:

4.8.c.1. Applications and exhibits;

4.8.c.2. Inspection reports; and

4.8.c.3. Reports of the results of investigations conducted in response to complaints.

#### 4.9. Plans of Correction.

4.9.a. The licensee of a medical adult day care center, found on the basis of inspection or other investigation to have violations of requirements in this rule, shall develop, sign and date a plan of correction, and submit it to the

Secretary within fifteen (15) working days of receipt of the statement of deficiencies.

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

4.9.c. For deficiencies other than those constituting immediate and serious threats, the licensee shall comply with the rule within sixty (60) days of the inspection, unless the Secretary waives this requirement and allows more time to correct certain types of deficiencies.

4.9.d. The plan of correction shall specify:

4.9.d.1. The violations to be corrected;

4.9.d.2. The actions taken or proposed to correct the violations and procedures to prevent their recurrence; and

4.9.d.3. The dates on which each violation is corrected or by which each will be corrected, that allows the shortest possible time to reasonably correct each specific violation.

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

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

4.9.g. If the Secretary rejects the plan of correction, the licensee has up to fifteen (15) working days from the receipt of the Secretary's rejection to submit a revised plan.

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

#### **§64-2-5. Site Location, New Construction,**

## **Additions, Renovations and Alterations.**

5.1. The requirements of this section apply in total to all proposed medical adult day care facilities.

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

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

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

5.2.c. The Secretary shall inspect sites for all proposed centers and sites of additions or renovations to existing centers, prior to the applicant starting site development or initiating construction. Sites shall:

5.2.c.1. Have adequate drainage to divert surface water and be located in an area above the one hundred (100) year flood plain;

5.2.c.2. Have a water supply that is safe and sized to meet all center needs. Water supplies shall be installed, constructed, maintained, operated and monitored in compliance with Division of Health rules, Water Supply Regulations, 64CSR3, Water Well Regulations, 64CSR19, and Cross-Connection and Backflow Prevention Regulations, 64CSR15, as applicable; and

5.2.c.3. Have precautions to assure the participants' safety, if located near railroads, freight yards, traffic arteries or airports.

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

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

5.5. The applicant is responsible for paying all fees for site inspections of new construction or major renovations, architect reviews of drawings and specifications and inspections of new projects before they begin.

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

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

5.8. The center shall comply with the international building code, 2003 edition, or the most current edition adopted as the State Building Code 87CSR4.

5.9. The center shall comply with the Fire

Commission rule, Fire Code, 87CSR1.

5.10. The center shall comply with the Americans with Disabilities Act (ADA) and the American National Standards Institute (ANSI) codes ACT 42.U.S.C.12101, *et seq.*

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

5.12. The center shall have an all weather hard surface road that connects directly to a highway.

5.13. The center shall have parking areas with:

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

5.13.b. Adequate vehicular parking spaces for all staff on duty and space to accommodate family and visitors at a ratio of one parking space to every five (5) participants.

5.13.c. A designated area for loading and unloading participants that provides a covered walkway from the loading and unloading area to the facility entrance, to provide protection from inclement weather.

5.14. The center shall have hard, slip resistant surface concrete walks at all exits that connect to the main walk or parking area, that are a minimum of forty-eight (48) inches wide.

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

5.16. Outdoor areas used by participants shall be enclosed by a fence or barrier to create a boundary that prevents participant elopement.

5.17. The center shall have an audible staff

call system in all areas occupied by participants where direct visual contact is not possible by staff at all times. These areas include toilet and bathing areas or private rest areas used by participants.

5.18. The center's toilet and bathing facilities shall provide the following:

5.18.a. A minimum of two (2) toilet rooms for participant use and thereafter, toilet rooms shall be provided at a ratio of no less than one toilet and lavatory for every ten (10) participants. At least one toilet room shall be equipped to accommodate a two person assisted transfer between wheelchair and toilet. Each toilet room shall contain a flushing toilet and hand washing sink; with a mirror over the sink;

5.18.b. A minimum of one (1) handicapped accessible toilet room for use by staff and visitors;

5.18.c. A minimum of one (1) fully handicapped accessible bathing facility with a toilet, lavatory, and a bath tub or shower, equipped with non-slip surfaces, a shower seat and safety rails to aid in maintaining the personal hygiene of participants;

5.18.d. Grab-bars at toilets, tubs, and showers that are securely mounted to the finished wall with a steel plate or a two (2) inch by six (6) inch wood plate backing behind the wall. Grab bar brackets shall be spaced to support two hundred and fifty (250) pounds of a concentrated load at any point on the grab bar; and

5.18.e. Toilet room and bathroom doors with locking type hardware that swing outward and can be opened from outside in the event of an emergency.

5.19. The center shall have a minimum of 500 square feet of space for dining, leisure and activities for the first five (5) participants. Thereafter, there shall be a minimum of thirty-five (35) square feet per participant, excluding toilet rooms, bathing facilities, offices, and storage areas.

5.19.a. The dining area shall provide no less than fifteen (15) square feet per participant and be equipped with tables and seating to accommodate each participant.

5.19.b. The leisure and activity area shall provide no less than twenty (20) square feet per participant.

5.19.c. If specialty services and treatments are provided increased square footage is required to assure sufficient space for treatment and equipment storage at the following rate:

5.19.c.1. For Alzheimer's and dementia, forty (40) square feet per participant;

5.19.c.2. For physical therapy rehabilitation therapy, fifty (50) square feet per participant; and

5.19.c.3. For developmental disability, seventy (70) square feet per participant.

5.20. The center shall provide a minimum of one private treatment/examination room for use by participants who require individualized treatment. Treatment/examination rooms shall be equipped with a minimum of one bed or examination table, provisions for privacy for each bed or examination table if there is more than one (1) and hand washing facilities.

5.21. The center shall provide a private rest area for participants who are ill or need to rest. The rest area shall provide no less than 120 square feet of clear floor space and be located near a toilet room.

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

5.23. The center shall have at least one housekeeping closet or room that contains a service sink for a sanitary means of disposal of

waste water in an area inaccessible to participants.

5.24. The center shall have sewage disposal in accordance with Division of Health rules, Sewage System Rules, 64CSR9, and Sewage Treatment and Collection System Design Standards, 64CSR47.

5.25. Heating, ventilation and air conditioning systems shall comply with the State Building Code 84CSR4 and the American Society for Heating Refrigeration and Air Conditioning Guidelines.

5.26. The center shall be a single story structure or have access and services on ground floor level.

#### **§64-2-6. Administrative Requirements.**

##### **6.1. -General Administrative Requirements.**

6.1.a. The licensee shall establish regular hours of operation of not less than four (4) hours per day and not more than fourteen (14) hours per day, a minimum of five (5) days per week. The center's hours of operation shall be during times that encompass a normal work week for participant's caregivers.

6.1.b. The licensee shall develop and adopt written policies and procedures that are consistent with this rule and specific to the medical adult day care center, governing the care and safety of participants, and all other policies and procedures required by this rule.

6.1.c. The licensee shall review all policies and procedures at least annually and shall sign and date the policies and procedures at the time of adoption, modification, and review.

6.1.d. The licensee shall have a copy of the policies and procedures available for review on request by employees, participants and the general public.

6.1.e. The licensee shall have a participant bill of rights, and rules of participation governing participant behavior and

responsibilities, that are both in writing and consistent with this rule.

6.1.f. Unless otherwise approved in writing by the Secretary, a licensee shall not rent, lease or use any part of the center for any purpose other than the operation of a medical adult day care center.

6.1.g. Any individual, including an employee, or his or her spouse having a financial interest in the center shall not serve as a participant's legal representative.

## 6.2. The Licensee.

6.2.a. The licensee shall comply with this rule, the terms of the medical adult day care center's license, W. Va. Code §16-5B-1 *et seq.*, other applicable federal, state or local laws, and with the center's policies.

6.2.b. The licensee shall protect the physical and mental well-being of participants.

6.2.c. The licensee shall maintain the accurate records and reports required by this rule.

6.2.d. The licensee shall administer the center on a sound financial basis consistent with good business practices and shall maintain fiscal records that accurately identify, summarize, and classify funds received and disbursed for the operation of the center. The issuance of bad checks or accumulation of delinquent bills constitutes evidence that the licensee lacks satisfactory proof of financial ability to operate the center as required.

6.2.e. The licensee shall notify the Secretary in writing immediately and no later than within ten (10) days of any permanent change in the director and in the supervising registered professional nurse of the center. The center shall not operate more than thirty (30) days without a qualified director or supervising registered professional nurse.

6.2.f. The licensee shall report major incidents, as defined in Subsection 3.26 of this

rule, to the office of health facility licensure and certification as soon as possible, and no later than the next business day.

## 6.3. Director.

6.3.a. The center shall employ a qualified director who is at least twenty-one (21) years of age and has completed at least two (2) years of post secondary education or has a high school diploma or the equivalent and a minimum of five (5) years experience and training in a social service or health care field with elderly or disability populations, at least two (2) years of which is in a supervisory and administrative capacity.

6.3.b. The director shall have a personal history that is free of evidence of abuse, fraud, or substantial and repeated violations of applicable laws and rules in the operation of any health or social care facility or service organization, or in the care of dependent persons; or conviction of crimes related to the care to a dependent persons as evidenced by a criminal investigative background check by the West Virginia state police through the central abuse registry.

6.3.c. The director shall participate in eight (8) hours of training related to the operation of a center annually and a record of this training shall be available for review.

6.3.d. The director shall know the requirements of this rule, develop and execute all policies and procedures required by this rule, ensure compliance with all applicable laws, and ensure the adequacy and appropriateness of services delivered to the participants.

6.3.e. The director or a responsible employee, designated in writing and with the authority to make decisions in the director's absence, shall be present and in charge of the center at all times.

## 6.4. Staffing Requirements.

6.4.a. The center shall have a nurse on duty during all primary hours of operation, and

on call during all other hours of operation. The nurse shall be responsible for provision of nursing services, medication administration and oversight of all participant care needs. Back-up coverage must be arranged in the event of absence due to illness or vacation.

6.4.b. The center shall employ or contract with a registered professional nurse to provide oversight of nursing services and participant care. The registered nurse shall possess a valid license to practice in West Virginia and at least two years experience or specialized training and one year experience in direct care of elderly or disability populations. The center shall maintain verification of required credentials on file.

6.4.c. The registered professional nurse shall be in the center a minimum of eight (8) hours per week. The supervising registered nurse shall:

6.4.c.1. Provide or supervise provision of nursing services to each participant;

6.4.c.2. Coordinate development and on-going review of participant care plans;

6.4.c.3. Note any significant changes in the participant's behavior and condition and report these to the participant's family;

6.4.c.4. Ensure the availability of needed medications;

6.4.c.5. Assist in obtaining emergency treatment and consultation;

6.4.c.6. Ensure documentation of a nursing note for each participant at least monthly, or more frequently if indicated by the participant's condition, that addresses change in condition, special needs including dietary compliance, medication administration, assistance with personal care and other health related issues as appropriate. If the monthly nursing note is completed by a licensed practical nurse, the registered nurse shall review and co-sign the monthly note;

6.4.c.7. Supervise the storage, handling and administration of all participant medications; and

6.4.c.8. Assist as necessary in the delivery of other center services.

6.4.d. If licensed practical nurses are employed, they shall work under the supervision of a registered professional nurse who is either on staff or under contract with the center. The licensed practical nurse shall possess a valid license to practice in West Virginia and at least one year experience or specialized training in direct care of elderly or disability populations. The center shall maintain verification of required credentials on file. The licensed practical nurse shall:

6.4.d.1. Provide nursing services to each participant under the supervision of the center's registered nurse;

6.4.d.2. If delegated by the registered nurse, write at least monthly, a nursing note for each participant in the participant record; and

6.4.d.3. Assist as necessary in the delivery of other center services.

6.4.e. The center shall employ a qualified professional to be responsible for planning and implementing an activity program to meet the needs of all participants. The activity director shall:

6.4.e.1. Be certified by the national certification council for activity professionals; (NCCAP) through any of the NCCAP's approved certification tracks as an activities director certified (ADC);

6.4.e.2. Be a qualified therapeutic recreation specialist who has two (2) years of experience in a social or recreational program within the last five (5) years, one of which was full-time in an activities program in a health care setting;

6.4.e.3. Be an occupational

therapist or occupational therapy assistant currently licensed to practice in the state of West Virginia; or

6.4.e.4. Have a high school diploma or equivalent and a demonstrated ability to provide for an ongoing program of activities designed to meet the interests and the physical, mental and psychosocial needs of varied individuals and have completed an NCCAP approved ninety (90) hour modular education program for activity professionals (MEPAP) (part I) and the ninety (90) hour practicum. An activities director, who is qualified by virtue of having completed a NCCAP-approved training course and practicum shall complete ten (10) hours of activity related continuing education annually, with written evidence of continuing education -maintained on file.

6.4.f. The activities director shall:

6.4.f.1. Complete activity assessments for participants;

6.4.f.2. Develop, consistent with participant plans of care, activity programs that meet individual participant needs;

6.4.f.3. Supervise the activity program and any assistants or volunteers;

6.4.f.4. Participate in the quarterly review of each participant's care plan;

6.4.f.5. Document monthly in the participant record regarding the participant's involvement in activities; and

6.4.f.6. Develop and maintain a weekly calendar of planned activities, posted in the center, that includes each activity, and the time and duration of each.

6.4.g. Direct care staff shall have a minimum of a tenth grade education, at least one year of full-time or part-time equivalent paid or volunteer experience working with adults in a health care or social service setting, and be able to read and write. The direct care staff shall:

6.4.g.1. Assist participants as needed with personal care, including dressing, grooming, personal hygiene, use of special aids, accident prevention and activities of daily living;

6.4.g.2. Assist participants at meal time including cutting foods and feeding participants as needed;

6.4.g.3. Continually monitor and supervise participants; and,

6.4.g.4. Assist and encourage activity involvement and provide individualized activities as needed.

6.4.h. If the center prepares meals on-site, the director shall designate a staff member to serve as food service supervisor. Prior to assuming these duties, this individual shall receive specialized training in food management and preparation, including preparation of therapeutic diets. The food service supervisor shall:

6.4.h.1. Oversee the daily operation of food preparation in accordance with menus prepared or approved by a registered dietician; and

6.4.h.2. Ensure that therapeutic diets are served as ordered by the physician.

6.4.i. Drivers used to transport participants shall possess a valid West Virginia driver's license or chauffeur's license, if required under the provisions of §17B-2-1, *et. seq.*, current first aid and cardiopulmonary resuscitation certification, and training in emergency procedures. The driver shall have experience in transporting passengers.

6.4.j. Volunteers used in the program shall serve as an adjunct to staff and shall possess qualifications and experience appropriate to the services they render. They shall receive orientation to the program and training on the specific tasks to be performed prior to working with participants and are subject to the same regulations on confidentiality as are paid staff members.

6.4.k. The center shall maintain a sufficient number of staff at all times to meet the care and service needs of all participants in the center. A minimum staffing level of one (1) full-time staff member involved in direct services to participants for each six (6) participants shall be maintained. Additional staff shall be added to meet participant needs. Volunteers shall not be used to meet the required staff ratio unless they are professionally trained and/or certified in a health occupation and oriented and trained as other staff. If a participant experiences a poor outcome related to a lack of supervision or unmet care needs, the Secretary may require the licensee to add staff.

6.4.l. The center shall have sufficient staff to meet the laundry, food service, housekeeping and maintenance requirements of this rule.

6.4.m. The licensee shall maintain staffing records that accurately reflect the actual employees on duty in the center at any given time, including the hours they have worked, and provide them to the Secretary upon request.

#### 6.5. Personnel Records.

6.5.a. The licensee shall maintain a confidential personnel record for each employee, including the director, and a record for volunteers who provide personal assistance to more than one (1) participant. Each personnel record shall contain at least the following:

6.5.a.1. The employee's date of employment or volunteer's start date, current home address and telephone number, social security number and proof of compliance with age requirements of applicable federal and state laws;

6.5.a.2. Documentation of a screening by all required abuse registries completed prior to hiring. The licensee shall not hire or maintain as an employee any individual who is listed on these registries. If there is a break in employment of one (1) year or greater, the abuse registry screenings shall be repeated;

6.5.a.2.A. Prior to hiring an individual, the licensee shall submit the required information for a screening through the West Virginia state police central abuse registry regarding previous convictions involving abuse, mistreatment or neglect of dependent populations, or theft of the property of those populations. The center shall maintain written documentation of the information submitted and the results of the screening;

6.5.a.2.B. Documentation of the results of a screening by the state nurse aide abuse registry to determine if the individual is listed on the nurse aide abuse registry;

6.5.a.2.C For licensed personnel, documentation of the results of a screening by the applicable licensing board; and,

6.5.a.2.D. Documentation of the results of a screening by the Bureau for Children and Families for substantiated abuse or neglect.

6.5.a.3. A position title and proof of any required education or license; and

6.5.a.4. A health record containing the results of a tuberculosis skin test - (purified protein derivative PPD) or chest x-ray as indicated by exposure, prevalence or currently accepted medical practice in settings that serve vulnerable populations as indicated by the Secretary. The tuberculosis skin test or chest x-ray shall be completed prior to the employee working with participants. Thereafter, a tuberculosis screening shall be completed annually in accordance with current Center for Disease Control (CDC) guidelines.

6.5.b. The licensee shall maintain personnel records on file at the center for at least three (3) years following the termination of an employee and shall document the date of the termination.

#### 6.6. Employee Orientation and Training.

6.6.a. The licensee shall provide and maintain a record of training to new employees

prior to scheduling them to work unsupervised, and no later than within the first fourteen (14) days of employment and annually thereafter. Training shall include:

6.6.a.1. At a minimum, emergency procedures and disaster plans; the center's policies and procedures; participant rights; confidentiality; abuse prevention and reporting requirements; complaint procedures; specialty care based on individualized participant needs and service plans; the provision of group and individual participant activities; infection control; and needs of the elderly and disability populations;

6.6.a.2. Training on Alzheimer's disease and related dementias at least two (2) hours in duration that includes: basic understanding about Alzheimer's disease and other dementias; communication approaches and techniques for use when interacting with persons with Alzheimer's disease or a related dementia; prevention and management of problem behaviors, and activities and programming appropriate for these individuals; and,

6.6.a.3. For new employees, a minimum of five (5) days of supervised on the job training.

6.6.b. The licensee shall maintain a record of training provided to all staff that identifies at a minimum, the name of each participant, the name of the trainer, the date of the training and detailed content for the training.

6.6.c. All employees shall have current first aid training and current cardiopulmonary resuscitation (CPR) training. A record of this training shall be available for review.

#### 6.7. Administrative Admission and Discharge.

6.7.a. The licensee shall not discriminate against participants or a prospective participant on the basis of race, national origin, religion, age, gender, sexual orientation or disability.

6.7.b. The licensee shall develop an admission packet to be given to the prospective participant that includes, at a minimum:

6.7.b.1. Admission criteria;

6.7.b.2. Information required for admission including but not limited to the participant's medical history, recent hospital and nursing facility admissions, current medications, dietary requirements, functional needs, limitations to participation in program activities, and special therapies, when applicable;

6.7.b.3. Discharge criteria, including notification policies;

6.7.b.4. How to file a complaint;

6.7.b.5. Medication storage, handling, distribution, and disposition, responsibility for payment and ensuring availability of medications;

6.7.b.6. The requirements for assuring availability of a portable source of oxygen for participants who require oxygen;

6.7.b.7. The days and hours the program is in operation, a schedule of holidays when the program is closed and procedures used for unplanned program closure due to disaster or inclement weather;

6.7.b.8. Rules governing participant behavior and responsibilities including but not limited to the minimum number of hours per week, if applicable;

6.7.b.9. The participant's bill of rights;

6.7.b.10. How the participant's personal belongings will be protected from loss and theft;

6.7.b.11. The requirements for medical examinations and treatment orders;

6.7.b.12. How participant confidentiality will be ensured, during treatment,

participant records, etc.;

6.7.b.13. Whether or not the participant will be assisted in making appointments for medical, dental, nursing or mental health services, and if so, how transportation to and from these services will be arranged;

6.7.b.14. Applicable policies and procedures not otherwise addressed;

6.7.b.15. Notification of the use of visual and auditory devices to monitor common areas of the medical adult day care center, if applicable; and

6.7.b.16. A statement that employees or volunteers of the center shall not manage personal funds for participants.

6.7.c. The licensee shall enter into a written contract with the participant on admission to the center that specifies, at a minimum, the following information:

6.7.c.1. The type of client population that the center is licensed to serve and will serve;

6.7.c.2. The various services that the center will provide to meet the participant's needs, including cardiopulmonary resuscitation, and how they will be provided;

6.7.c.3. An hourly, daily, weekly or monthly contract price, full disclosure of all costs including what changes in care needs will result in increases, additions or modifications to the costs, the refund policy when the service period paid for is more than the service received and an assurance that the participant shall not be held liable for any cost that was not disclosed; and,

6.7.c.4. Whether or not the center provides transportation, and if so, the associated cost.

6.7.d. The licensee shall provide a copy

of the contract to each party in the contract.

6.7.e. Thirty (30) days prior to any increase, addition or other modification of the rates of the participant's care or services, the licensee shall give the participant a written notice of the proposed change.

6.7.f. The licensee shall give the participant notice of and file a copy of the notice in the participant's record of the thirty (30) day written notice prior to discharge.

6.7.g. The licensee shall maintain documentation of all agreements or contracts entered into between the participant and the licensee.

6.7.h. The licensee shall maintain a register of all participants in order by the dates of the participants' admissions. The register shall include each participant's name, the date of admission, and the date of his or her last day at the center.

#### **§64-2-7. Participant Rights.**

##### **7.1.- General Rights.**

7.1.a. The licensee shall post in a conspicuous place the medical adult day care center's license, a copy of the participants' rights, the participant's responsibilities, and the phone numbers for the abuse hotline and the office of the licensing agency.

7.1.b. If a legal representative has been appointed for, or designated by, any participant as having the authority to exercise one (1) or more of the participants' rights for the participant, the licensee shall permit the legal representative to exercise the authority. If the legal representative exercises the authority for a participant, it shall be in a manner consistent with applicable federal and state laws. The licensee shall keep a copy of the document granting legal authority to a legal representative in the participant's record.

7.1.c. Nothing in this rule shall in any way be construed to diminish or deprive any

individual of his or her rights under federal and state laws.

7.1.d. A participant has the right to be free from restraint, interference, coercion, discrimination or reprisal from the licensee in exercising his or her rights.

7.1.e. A participant has the right to be free from discriminatory practices related to admission or services on the grounds of race, religion, national origin, age, gender, sexual orientation or disability.

7.1.f. A participant has the right to view the results of inspections and complaint investigations conducted by the licensing agency. The licensee shall make available, in a place accessible to participants, the deficiencies cited during the most recent survey, any complaint investigation conducted within the preceding twelve (12) months, and the center's plan of correction.

## 7.2. Treatment.

7.2.a. A participant has the right to participate in planning his or her overall care, to use the physician of his or her choice, to be fully informed in advance about care and treatment that may affect him or her, to make advanced directives about his or her medical care and to refuse treatment.

7.2.b. The licensee shall ensure that no participant is abused, exploited, neglected, mistreated, or restrained by physical or chemical means. Staff shall only use physical restraints in an emergency under physician's order, for the safety of the participant or others in the medical adult day care center until the participant is transferred to a more appropriate setting and shall not be used for a period exceeding two (2) hours. Restraints used during emergencies are limited to a cloth vest or soft belt restraints, and only trained staff may apply a restraint. One on one staff supervision shall be provided during the duration of the time the restraints are in place.

7.2.c. The licensee or staff shall report

neglect, abuse or emergency situations immediately, in accordance with W. Va. Code §9-6-9, to the local adult protective services office or contact the adult protective services hotline number. In all situations of suspected abuse or neglect, the WV department of health and human resources adult protective services reporting form shall be completed within forty-eight (48) hours and sent to the appropriate parties as written follow-up to the immediate report. In addition, the licensee or staff shall contact the medical adult day care center's licensing agency as provided in Subdivision 7.2.f. of this subsection. The Secretary may report alleged failures by a licensed health care professional to report alleged incidents of neglect or abuse or emergency situations to the individual's licensing board.

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

7.2.e. If the allegation is substantiated, the licensee shall assure that appropriate sanctions are invoked or actions are taken to prevent a recurrence of alleged abuse, exploitation or neglect.

7.2.f. The licensee shall notify the licensing agency within seventy-two (72) hours of the date of an allegation of abuse, exploitation, or neglect. The licensee shall concurrently forward to the licensing agency documentation of the investigation, the results of the investigation and the response to the investigation.

7.2.g. A participant has the right to refuse to participate in experimental research. A participant may participate in experimental research only when he or she has given prior written informed consent that conforms with applicable federal and state laws.

7.2.h. A participant has the right to

make choices regarding the activities of his or her daily life.

7.2.i. A participant has the right to be free to leave the center and grounds according to his or her needs and capabilities as documented in the service plan.

7.2.j. A participant has the right to personal privacy and confidentiality, including accommodations, treatment, records, written and telephone communications, personal assistance, and visits and meetings of family members.

7.2.k. The use of visual and auditory devices to monitor areas of the medical adult day care center is restricted to common areas only. The licensee shall provide written notice to the participant or his or her legal representative of the use of these devices at the time of admission and also post a notice about their use in a prominent place in the center.

7.2.l. A participant has a right to privacy in treatment and care. No person shall enter a treatment area where a participant is receiving treatment without identifying himself or herself to the participant and receiving the participant's permission to enter.

7.2.m. A participant has the right to voice grievances with respect to treatment or care provided without discrimination or reprisal for voicing the grievance.

7.2.n. A participant has the right to prompt action by the licensee to resolve any complaints the participant has, including those with respect to the behavior of other participants. The licensee shall respond to the complainant in writing no later than four (4) days after the complaint is filed.

7.2.o. A participant has the right to refuse to perform services for the center.

### 7.3. Access, Visitation and Communication.

7.3.a. A participant has the right to participate in social and religious activities of his or her choice.

7.3.b. A participant has the right to meet and communicate privately with persons of his or her choice.

7.3.c. A participant has the right to assemble and organize with other participants to solicit and recommend improvements in the medical adult day care center's services and to resolve problems that arise between the participants and the licensee.

7.3.d. A participant has the right to receive information from agencies acting as client advocates, such as the West Virginia Advocates program, and to contact these agencies.

7.3.e. All of the following shall have immediate access to any participant and the premises of the medical adult day care center: any representative of the state acting in an official capacity related to medical adult day care centers; the participant's individual physician; and agencies responsible for the protection and advocacy system for mentally retarded or developmentally disabled individuals and the mentally ill.

## §64-2-8. Participant Services.

### 8.1. Admission and Discharge.

8.1.a. The licensee shall not admit to the medical adult day care center individuals requiring ongoing or extensive nursing care and shall not admit or retain individuals requiring a level of service that the center is not licensed to provide or does not provide.

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

8.1.c. If a participant has care needs that exceed the level of care for which the center is licensed or can provide, the licensee shall inform

the participant, or his or her legal representative, of the need for discharge from the center.

## 8.2. Participant Records.

8.2.a. The licensee shall retain participants' records in a secure area in the center and shall make the records available for inspection by the Secretary.

8.2.b. Upon a participant's admission, the licensee shall start a record for him or her that includes:

8.2.b.1. The participant's name, social security number, date of birth, gender, marital status, and religious preference, if any;

8.2.b.2. The names, addresses and telephone numbers of the following, if applicable: the participant's physician, legal representative, person or agency responsible for the participant's payments, next of kin or person to be notified in case of an emergency, and any case management or service agency involved in the participant's care; and

8.2.b.3. Advanced directives, allergies, all contacts by the center's staff with the participant's physician and observations by licensed nurses, physicians and others authorized to care for the participant as related to care and services provided to the participant by the center.

8.2.c. The licensee shall keep in each participant's record current documentation regarding the participant's health status, any changes in health status and staff responses to the changes including but not limited to:

8.2.c.1. An initial and annual health assessment;

8.2.c.2. A functional needs assessment;

8.2.c.3. A service plan;

8.2.c.4. A daily record of attendance;

8.2.c.5. A daily record of medications, treatments and services provided;

8.2.c.6. Physician's orders for medications and treatments;

8.2.c.7. An activity assessment;

8.2.c.8. Specialty evaluations;

8.2.c.9. Progress notes, signed and dated by relevant staff; and,

8.2.c.10. A current photograph.

8.2.d. The licensee shall keep participant records in safe storage for at least five (5) years from the date of discharge of the participant. If the center ceases to operate, the licensee shall procure a holding area for the participant records that will ensure the confidentiality and safety of the records from loss, destruction or unauthorized use.

## 8.3. Health Assessments and Service Plans.

8.3.a. The center's director or the registered professional nurse shall conduct a pre-admission interview with the individual and his or her family if applicable, to determine eligibility for participation in the medical adult day care program.

8.3.b. An initial health assessment shall be obtained for each participant. The initial health assessment shall be in writing, signed and dated by a physician or other licensed health care professional, authorized under state law to perform this assessment, not more than sixty (60) days prior to the participant's admission, or no more than five (5) working days following admission. This assessment shall be completed at least annually thereafter. The admission and annual health assessment shall include a tuberculosis skin test (purified protein derivative PPD) or chest x-ray as indicated by exposure, prevalence or risk according to current medical practice in settings serving vulnerable populations as indicated by the Secretary. Thereafter, a tuberculosis screening shall be completed annually.

8.3.c. A licensed health care professional employed by the center shall complete an individualized functional needs assessment for each participant in writing within seven (7) attendance days. At a minimum, the participant's assessment shall include a review of health status and functional, psycho-social, activity and dietary needs.

8.3.d. The registered professional nurse shall complete an initial service plan on the participant's first day of attendance to direct the provision of treatment and services until the regular service plan is developed by the multi-disciplinary treatment team.

8.3.e. The multi-disciplinary treatment team shall develop a service plan for each participant within fourteen (14) attendance days of admission. Development of the service plan shall be coordinated by the registered professional nurse and shall:

8.3.e.1. Be available to staff to use as a guide for providing participant care;

8.3.e.2. Be based upon the participant's functional needs assessment and individual needs;

8.3.e.3. Include, at a minimum, the type of assistance needed from staff to provide personal care services, to administer prescribed medications and treatments, to follow any planned diet, rest or activity regimen, to engage in activities and programs appropriate to the individual's level of functioning, and to use equipment such as hearing aides, glasses, canes, wheelchairs, and other assistive devices; and

8.3.e.4. Specify the hours to be spent by the participant at the center.

8.3.f. The licensee shall ensure that the assessment and service plans reflect the participant's current needs and are updated periodically.

8.3.f.1. The participant's health assessment shall be updated annually by a physician or other licensed health care professional, authorized under state law –or as

indicated by a significant change in the participant's condition;

8.3.f.2. The nurse and therapists, if applicable, shall independently review and re-evaluate the service plan and shall update the plan to reflect any changes in the participant's treatment or condition; and

8.3.f.3. The service plan shall be reviewed quarterly by the full multi-disciplinary treatment team and updated to reflect any changes in the participant's treatment or condition.

#### 8.4. Medications and Treatments.

8.4.a. The licensee shall ensure that all participant care and treatment is provided by appropriate individuals as required by state and federal law.

8.4.b. The licensee shall provide all participant care, treatment and services in accordance with current standards of practice using appropriate infection control techniques.

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

8.4.d. A licensed health care professional shall determine whether or not a participant is capable of self-administration of medications or requires supervision of self administration of medications in accordance with Subsection 3.39 of this rule and shall document it in the participant's medical record prior to the participant self administering medications.

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

8.4.f. The attending physician or prescribing health care professional shall review the medication regimen of each participant at least annually. The participant's record shall contain documentation of this review.

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

8.4.h. The licensee shall keep medications in a locked room, cabinet or other storage receptacle, accessible only to the appropriately licensed staff responsible for medications. If a participant is capable of self administration of medication, the licensee shall provide him or her resources to store medications in a manner to be inaccessible to other participants.

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

8.4.j. If refrigeration of medication is required, the licensee shall provide: a refrigerator in a locked room; a locked refrigerator; or a locked box within the refrigerator for storage. A thermometer is required in a refrigerator storing medications.

The licensee shall store refrigerated medications within the recommended temperature range on the medication package.

8.4.k. If Schedule II drugs of the Uniform Controlled Substances Act W. Va. Code §60A-1-101 *et seq.* are administered, these drugs shall be stored in a manner so that they are securely protected by two (2) locks. The key to the separately locked Schedule II drugs shall not be the same key that is used to gain access to non-scheduled drugs.

8.4.l. When a participant requires oxygen, the licensee shall assure there is an appropriate storage area for extra tanks. The licensee shall post no smoking signs conspicuously and prohibit smoking in any location when oxygen is in use.

8.4.m. The licensee may provide or coordinate restorative services for participants as ordered by their physician, including occupational, physical and speech therapy. If restorative services are provided, documentation must be maintained in the participant record about the participant progress and the service provider shall be included as a member of the participant's multi-disciplinary treatment team responsible for development and review of the participant's service plan.

8.5. Accident, Illness and Major Incident Procedures.

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

8.5.b. When a participant has an illness or accident that results in an injury or a participant complaint, the nurse shall assess the severity and cause of the illness or accident, advise staff of the treatment needed related to the accident or illness, and record actions taken in the participant's record. If the participant needs emergency assistance, the staff on duty shall first obtain the necessary assistance.

8.5.c. Staff shall monitor and document

the participant's condition at least once every two (2) hours while at the center following the accident or the onset of the illness or more frequently if specified by the registered nurse or other licensed health care professional.

8.5.d. When a major incident or any significant change in the participant's condition occurs, the staff shall promptly notify the participant's responsible party or next of kin, and document this notification in the participant's record.

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

#### **§64-2-9. Activities.**

9.1. The licensee shall provide an activity program designed to promote the highest level possible in all dimensions of life including physical, psychological, social, and spiritual, for each participant and shall consider individual differences in age, health status, sensory deficits, ethnicity, religious affiliation, values, needs, interests, abilities, and skills by providing opportunities for a variety of types and levels of involvement.

9.2. The activity director shall complete an assessment of each participant within fourteen (14) attendance days of admission to determine the participant's needs, capabilities, and interests and develop an individualized activity plan for the participant based on the results of this assessment. The activity director shall review participant activity needs at least quarterly and update the activity assessment as needed.

9.3. The center shall have a written plan for the center's activity and recreation program that shall include a variety of activities as appropriate to meet the individual needs of participants including but not limited to:

9.3.a. Social and interpersonal activities that provide opportunities for enjoyment and

development of social relationships;

9.3.b. Diversional and recreational activities designed to emphasize individual accomplishment, provide diversion and aid in adjustment to long-term rehabilitation;

9.3.c. Opportunities for participation in volunteer service activities;

9.3.d. Intellectual activities designed to provide mental stimulation, learning and foster creativity;

9.3.e. Physical activities and exercise to promote physical functioning, mobility, strength and endurance;

9.3.f. Individual and group activities;

9.3.g. Activities appropriate for participants with Alzheimer's disease or a related dementia; and,

9.3.h. Rest periods in accordance with participant needs.

9.4. The activity program shall:

9.4.a. Provide a minimum of twenty (20) hours per week, four (4) hours per day, of various types of scheduled activities;

9.4.b. Provide alternative programming for participants unable or unwilling to take part in a scheduled group activity;

9.4.c. Provide a weekly calendar in large print that lists the type, the time and duration of all social and recreational activities for the participants. The activity calendar shall be posted in the center in a conspicuous location and be provided to participants at least one (1) week in advance; and

9.4.d. Maintain written documentation about activities provided and at least quarterly documentation of a participant's involvement in activities as part of his or her service plan.

#### **§64-2-10. Dietary Services.**

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

10.2. The licensee shall ensure that each participant is provided freshly prepared meals and snacks:

10.2.a. Each meal shall be equivalent to at least one third of the recommended daily dietary allowance as established by the Food and Nutrition Board of the National Academy of Sciences, National Research Council;

10.2.b. Participants attending four (4) hours or less shall be provided one (1) meal;

10.2.c. Participants attending the center five (5) to eight (8) hours per day shall be provided one (1) hot meal and two (2) snacks daily;

10.2.d. Participants attending the center more than eight (8) hours per day shall be provided two (2) hot meals and two (2) snacks daily;

10.2.e. Meals shall meet participant requirements for special diets, participant's needs and choices, as identified in his or her needs assessment.

10.3. Meals shall provide a variety of foods as follows:

10.3.a. Breakfast, if served: fruit or juice, cereal, whole-grain or enriched bread products, and Grade A vitamin D milk; and

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

10.4. The licensee shall provide therapeutic

or modified diets, as ordered by the participant's physician, according to written instructions that includes types and amounts of food to be served.

10.5. The licensee shall encourage participant involvement in menu planning with consideration of individual participant preferences.

10.6. The licensee shall have a written menu prepared or approved by a registered dietician that includes all meals and snacks and that offers a variety of foods. Menus shall be prepared at least two (2) weeks in advance. Alternate food selections shall be available to allow for individual preferences and food allergies. The menu shall be posted in the center.

10.7. The licensee shall maintain a daily record of actual foods served for each meal provided and this record shall be kept on file at the center for at least thirty (30) days.

10.8. The licensee's food service and facilities shall comply with Division of Health rule, Food Establishments, 64CSR17.

10.9. If meals are provided by an outside contractor, the center shall have a written agreement with the contractor, the contractor must meet all requirements set forth in section ten (10) of this rule, and foods must be transported in acceptable containers and maintained at acceptable temperatures.

#### **§64-2-11. Transportation**

11.1. If the center provides transportation, all vehicles used for the transportation of participants shall be maintained in good operating condition in accordance with all applicable local, state and federal requirements.

11.2. There shall be sufficient staff present to ensure the safety of participants being transported by program vehicles.

#### **§64-2-12. Fire Safety and Emergency Operations.**

12.1. Fire Safety.

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

## 12.2. Emergency Operations.

12.2.a. The medical adult day care shall have a written emergency operations plan with procedures to be followed in any emergency that could severely affect the operation of the center.

12.2.b. The emergency operations plan shall have procedures with specific tasks and responsibilities for each class of employee in the event of missing participants, high winds, tornadoes, floods, bomb threats, utility failure, severe winter weather and other applicable plans based on risk assessment for the location of the center.

12.2.c. The emergency operations plan shall include at a minimum, the immediate action steps to ensure the safety and protection of participants, an emergency alternate shelter agreement, an emergency transportation policy, and notification of legal representative or next of kin.

12.2.d. The licensee shall maintain a copy of the emergency operations plan at a central location in the center, and staff shall know the location of the plan at all times.

12.2.e. The licensee or director shall review and update the emergency operations plan on an annual basis and shall sign and date the plan to verify the review.

12.2.f. The licensee shall conspicuously post emergency call information near each telephone in the center, with the telephone numbers of the fire department, the police, an ambulance service and other appropriate emergency services, and key staff telephone numbers.

12.2.g. The licensee shall rehearse the emergency operations plan with all staff

annually and shall keep documentation of the rehearsal that includes verification of participation by each employee's signature and a critique of the rehearsal by the licensee or director.

12.2.h. The licensee shall, on the first day of attendance, show all new participants how to evacuate the center in an emergency and shall document this in the participants' records.

## §64-2-13. Physical Facilities.

### 13.1. Physical Facilities and Equipment.

13.1.a. The licensee of a medical adult day care center built, renovated or altered after the effective date of this rule shall maintain the center in accordance with the requirements of Subsection 5 of this rule.

13.1.b. The licensee shall maintain the building, grounds and equipment in a clean, safe and sanitary condition at all times.

13.1.c. The licensee shall provide storage facilities that prevent contamination of food and supplies intended for human consumption.

13.1.d. The licensee shall store only those articles necessary for the operation and maintenance of the center on the premises.

13.1.e. The licensee shall establish and conduct a program of preventive maintenance for all equipment as recommended by the manufacturer.

13.1.f. The licensee shall keep the center free of insects, rodents and vermin.

13.1.g. Any method of extermination of insects, rodents and vermin used by the licensee in the center shall not create a fire or health hazard.

13.1.h. The center shall have a heating system capable of maintaining a temperature in all rooms used by participants of at least

seventy-two degrees Fahrenheit (72°F).

13.1.i. The center shall have cooling devices or a system so that inside temperatures do not exceed eighty degrees Fahrenheit (80°F). Acceptable cooling devices include, but are not limited to, air conditioners, electric fans and heat pumps.

13.1.j. The staff call system shall be maintained operational at all times.

13.1.k. The Secretary may require the licensee to provide alarm systems for participant safety if a participant exhibits potentially harmful behaviors such as wandering from the center.

13.1.l. The center shall have space for the storage of linens, maintenance and housekeeping supplies, and equipment.

13.1.m. The center shall provide a storage area for individualized storage of participant clothing and personal belongings.

13.1.n. The center shall assure that oxygen being stored, handled or delivered for participant use complies with the safety requirements as specified by the National Fire Protection Association (NFPA) 99.

13.1.o. The licensee shall ensure that every closet door latch can be readily opened from inside in case of emergency.

13.1.p. The licensee shall ensure that windows have curtains, shades, or blinds that may be opened and closed and are kept clean and in good repair.

### 13.2. Rest Area.

13.2.a. The rest area shall be equipped with at least one (1) bed and one (1) recliner.

13.2.b. At least three (3) feet of space shall separate recliners or beds.

13.2.c. Each bed shall have a mattress with a moisture proof surface, at least thirty-six

(36) inches wide that is substantially constructed, in good repair, comfortable, and able to accommodate the participant's needs.

13.2.d. Each bed shall have a clean comfortable pillow, pillow case, two (2) sheets, and a bed spread or other type of covering.

13.2.e. The licensee shall ensure that there is a supply of sheets, pillow cases, bed coverings, and other linens necessary to provide a minimum of two (2) changes per bed. Bed linens must be changed after every use.

### 13.3. Treatment /Examination Area

13.3.a. The treatment/examination area must be equipped with a minimum of one (1) bed or examination table and if there is more than one (1) bed or examination table, there must be at least three (3) feet of space between each.

13.3.b. The treatment/examination area handwashing facilities shall be supplied with liquid soap and a sanitary means of drying hands.

### 13.4. Toilets, Hand Washing and Bathing Facilities.

13.4.a. Toilet and bathing facilities shall contain the following:

13.4.a.1. Doors equipped with locking type hardware that swing outward and can be opened from outside in the event of an emergency;

13.4.a.2. Toilet rooms and handwashing facilities supplied with liquid soap, toilet tissue and a sanitary method for drying hands.

13.4.a.3. Bathing facilities shall be supplied with individual towels and washcloths for use by participants.

13.4.b. Bath tubs, showers and sinks shall not be used for storage of linens and clothing to be laundered or for laundering of soiled linens and clothing.

### 13.5. Dining Area and Leisure Area.

13.5.a. The leisure area shall have furniture that is sturdy and secure so that it cannot easily tip if used for support by participants while walking or sitting, that is scaled so that it is easily used by persons with limited agility and that is comfortable, clean, odor free and in good repair.

13.5.b. The dining area shall be equipped with sturdy tables and seating to accommodate each participant that is clean and in good repair.

### 13.6. Laundry.

13.6.a. If the center provides laundry services, the laundry room shall have separation between the soiled and clean laundry, mechanical ventilation in the soiled area, and a clean area large enough for folding linens.

13.6.b. Soiled laundry shall be stored in non-absorbent, easily cleanable covered containers or disposable plastic bags; table and kitchen linens shall be laundered separately from other washable goods; and sanitizing agents shall be used when laundering kitchen, bath, and bed linens.

13.6.c. Soiled and clean laundry shall not be stored together at any time. All laundry shall be dried mechanically in an electric or gas clothes dryer that is vented to the outside or by using a chemical sanitizing agent added to the rinse water and then air-dried.

13.6.d. The center shall have at least one housekeeping closet or room that contains a service sink for a sanitary means of disposal of waste water in an area inaccessible to participants.

13.6.e. The licensee shall use locked storage facilities, separate from food and drugs, for laundry supplies, housekeeping supplies, insecticides, work supplies and any other toxic or hazardous material or equipment.

### 13.7. Water Supply and Sewage.

13.7.a. The center shall have hot and cold running water in sufficient supply to meet the needs of the participants and employees.

13.7.b. The licensee shall maintain hot water temperatures above one hundred five degrees Fahrenheit (105°F) and no higher than one hundred fifteen degrees Fahrenheit (115°F) at all hot water sources, except for dishwashers and laundry facilities.

13.7.c. Hot water temperatures exceeding one hundred twenty degrees Fahrenheit (120°F) shall be considered an immediate and serious threat.

13.7.d. The licensee shall use a thermostatic mixing valve to control the temperature of hot water tanks exceeding eighty (80) gallon capacity.

13.7.e. The center shall have a sewage system that is adequate to meet the participants' needs, kept in good working order, and properly operated and maintained.

### 13.8. Pets and Other Animals.

13.8.a. Pets are permitted at medical adult day care centers, provided that all participants are advised prior to admission that pets are kept on the premises. If pets are added after the admission of participants, all participants shall agree to the addition of the pets.

13.8.b. Seeing eye and hearing ear dogs shall be permitted unless medically contraindicated.

13.8.c. Wild, dangerous or obviously ill animals are prohibited.

13.8.d. The licensee shall keep animals and the animal's quarters in a clean condition at all times.

13.8.e. The licensee shall maintain proof that dogs and cats kept in the medical adult day care center or on the grounds are

properly vaccinated. For dogs this includes rabies, leptospirosis, distemper and parvo, and for cats this includes rabies.

**§64-2-14. Penalties, License Restrictions and Revocations.**

14.1. The Secretary may suspend or revoke a medical adult day care center license according to the provision of Chapter 16, Article 5B, Section 6 or the West Virginia Code.

14.2. The Secretary may refuse to grant a license or may revoke a license if he or she determines that there has been subterfuge or other dishonest action in applying for an initial or renewal license.

14.3. When the Secretary takes action pursuant to the suspension or revocation of a license issued under this rule, he or she shall comply with the requirements and procedures specified by Chapter 16, Article 5B, Section 6 of the West Virginia Code.

14.4. Anyone who violates the provisions of W. Va. Code §16-5B-1 *et seq.* and this rule is subject to the penalties provided in W. Va. Code §16-5B-11.

**§64-2-15. Administrative Due Process.**

15.1. Administrative due process and remedies for actions taken pursuant to this rule or W. Va. Code 16-5B-1 *et seq.* are as provided by this rule, by applicable statutes, and in the West Virginia Division of Health Procedural Rules, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR1.