

Arch A. Moore, Jr.
Governor



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David K. Heydinger, M.D.
Director

1985 JUN -7 AM 11:58

State of West Virginia
DEPARTMENT OF HEALTH
CHARLESTON 25305

SECRETARY OF STATE

NOTICE OF FINAL FILING

LEGISLATIVE RULE: Licensure of Medical Adult Day Care Centers,
West Virginia Board of Health Legislative Rules,
Chapter 16-5B, Series II, 1985

The attached legislative rule is hereby submitted for final filing with the Secretary of State by the West Virginia Board of Health as authorized by Senate Bill 399, Section 64-2-16(5b)(1).

David K. Heydinger M.D.
David K. Heydinger, M.D.
Director of Health

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H. B. 1635

(By Delegate Casey)

(Introduced March 6, 1985; referred to the
Committee on Health and Welfare with the direc-
tion that it later be referred to the Committee on
the Judiciary.

A BILL to amend article two, chapter sixty-four of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated
section sixteen (five-b)(one), relating to authorizing
the state board of health to promulgate legislative
rules relating to licensure of medical adult day care
centers.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty-four of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
be amended by adding thereto a new section, designated
section sixteen (five-b)(one), to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
LEGISLATIVE RULES.

§64-2-16(5b)(1). State board of health.

The legislative rules filed in the state register on the
twenty-first day of December, one thousand nine hundred

1635

1 eighty-four relating to the state board of health (licensure
2 of medical adult day care centers) are authorized.

3

4 NOTE: The purpose of this bill is to authorize the
5 state board of health to promulgate legislative rules
6 relating to licensure of medical adult day care centers.

7 This section is new; therefore, strike-throughs and
8 underscoring have been omitted.

SENATE BILL NO. 388

(By Mr. R. Williams

[Introduced March 6, 1985

referred to the Committee on Health and Human Resources; then
to the Committee on the Judiciary]

A BILL to amend article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen (five-b)(one), relating to authorizing the state board of health to promulgate legislative rules relating to licensure of medical adult day care centers.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section sixteen (five-b)(one), to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-16(5b)(1). State board of health.

The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred

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NOTICE OF FINAL FILING

LEGISLATIVE RULE: Licensure of Medical Adult Day Care Centers,
West Virginia Board of Health Legislative Rules,
Chapter 16-5B, Series II, 1985

The attached legislative rule is hereby submitted for final filing with the Secretary of State by the West Virginia Board of Health as authorized by Senate Bill 399, Section 64-2-16(5b)(1).

David K. Heydinger, M.D.
Director of Health

WEST VIRGINIA BOARD OF HEALTH
RULE PROMULGATION HISTORY ABSTRACT

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

RULE TITLE: Licensure of Medical Adult Day Care Centers, West Virginia Board of Health Legislative Rules, Chapter 16-5B, Series II, 1985.

TYPE: Legislative

APPROVED FOR PUBLIC HEARING: November 9, 1984

FILED NOTICE OF PUBLIC HEARING: November 9, 1984

PUBLIC HEARING HELD: December 10, 1984

APPROVED: December 19, 1984

FILED WITH SECRETARY OF STATE: December 21, 1984

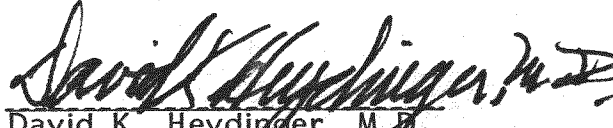
FILED WITH LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE: December 21, 1984

ACTION BY LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE: Approved January 8, 1985

LEGISLATIVE ACTION: Authorized in Senate Bill 399, §64-2-16(5b)(1).
Passed April 13, 1985; in effect from passage.

FINAL FILING WITH SECRETARY OF STATE: June 7, 1985

EFFECTIVE DATE: July 12, 1985


David K. Heydinger, M.D.
Director of Health

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA BOARD OF HEALTH
LEGISLATIVE RULES

Chapter 16-5B
Series II
1985

LICENSURE OF MEDICAL ADULT DAY CARE CENTERS

WEST VIRGINIA BOARD OF HEALTH
LEGISLATIVE RULES

FILED

1985 JUN -7 AM 11: 58

Licensure of Medical Adult Day Care Centers

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Chapter 16-5B
Series II
1985

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WEST VIRGINIA BOARD OF HEALTH
LEGISLATIVE RULES

FILED

Chapter 16-5B
Series II
1985

1985 JUN -7 AM 11: 58

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: Licensure of Medical Adult Day Care Centers

Section 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.

1.2. Authority - This rule is issued under the authority of Chapter 16, Article 5B of the West Virginia Code. This legislative rule is related to Chapter 16, Article 5B and Article 5D of the West Virginia Code.

1.3. Filing Date - June 7, 1985

1.4. Effective Date - July 12, 1985

1.5. Supersession and Repeal of Former Regulations - (Reserved)

Section 2. Application and Enforcement

2.1. Application - This rule shall apply to any 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 herein shall be evaluated independently from compliance with other licensure standards and sharing of staff, space, physical facilities and equipment or other shall be permitted only if the requirements of each applicable rule are satisfied in full.

2.2. Exceptions

2.2.1. 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 Board of Health Legislative Rules, Chapter 27-9, Series I, 1984 unless the behavioral health center program routinely offers medical treatment services in addition to those behavioral health services within the scope of the aforementioned rule.

2.2.2. 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 - The enforcement of this rule is vested with the director of the West Virginia department of health or his or her lawful designee.

Section 3. Definitions

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

3.2. Ambulatory Health Care Center - 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.

3.3. Committee - A person who is bonded and given the responsibility of proper use of an incompetent person's money.

3.4. Deficiency - A violation of this rule.

3.5. Director - Shall mean the director of the West Virginia department of health or other employee acting and behalf of the director with written designation and identification.

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

3.7. 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 facility is vested.

3.8. Guardian - One who has the legal responsibility for the care of a person or his or her property or both.

3.9. Imminent Danger - A danger which could reasonably be expected to cause death or serious physical harm or illness to participants or staff immediately or before the imminence of such danger can be eliminated through the precedures of Section 4.8. of this rule.

3.10. Legal Representative - For purposes of this rule, a committee appointed pursuant to the West Virginia Code §44-10A-1 et seq. or other provision of law, a power of attorney, or any other entity or individual, lawfully appointed or designated, which has been granted general or limited authority to act on behalf of a person who is, becomes or has been a participant in a medical adult day care center.

3.11. License - The document issued by the director of the department of health which constitutes the authority to perform services included within the scope of this rule.

3.12. Maintenance Therapy - Monitoring and therapeutic services provided to maintain an individual's health status.

3.13. 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.

3.14. 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, such procedures as: irrigations; catheterization; application of dressings; supervision of special diets; objective observation of changes in participant condition as a means of analyzing and determining nursing care required and the need for further medical diagnosis and treatment; special procedure 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.

3.15. Personal Care Services - Personal services, including, but not limited to, the following: help in walking, bathing, dressing, feeding, or getting in or out of bed, or supervision required because of the age or mental impairment of the participant.

3.16. Restorative Services - Services designed to assist an individual to achieve an optimum level of functioning and self-care.

3.17. Undue Hazards - A danger that could reasonably be expected to cause death or serious physical harm or illness.

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

Section 4. State Administrative Procedures

4.1. General Licensing Provisions

4.1.1. No person, association, partnership, corporation, whether for profit or not, local governmental unit or any division, department, board or agency thereof shall establish, operate, maintain within the state of West Virginia a medical adult day care center unless a license therefore has been obtained from the director.

4.1.2. Each new applicant must be at least eighteen years of age and must provide at least two letters of reference from reputable citizens with whom he is personally acquainted and who certify to his character and qualifications.

4.1.3. A license shall be valid only for the center and person or organization named in the application and shall not be transferable or assignable.

4.1.4. When the name of a center is changed, the director shall be notified within thirty days. The new name shall be shown on the next license issued.

4.1.5. A license shall state: (a) the name of the center; (b) the date of issuance; (c) the expiration date, and (d) the maximum number of participants.

4.1.6. All licenses shall expire on the thirtieth of June following the date of their issuance unless continued pursuant to the provisions of Section 4, Article 5-B, Chapter 16 of the Code of West Virginia.

4.1.7. The current license shall be prominently displayed at the center.

4.1.8. Applications for initial or renewal license shall identify the individuals legally responsible for the operation of the center.

4.1.9. If the ownership of a medical adult day care center with a valid unexpired license changes, the new owner shall immediately apply for a new license; the application of the new owner for a license shall have the effect of a valid license for three months from the date the application is received by the director.

4.1.10. An expired or otherwise invalid license shall be surrendered to the director on written demand.

4.1.11. No license shall be issued unless an inspection has been made.

4.1.12. Neither an original nor a renewal license shall be issued under this rule for a project reviewable under Chapter 16, Article 2D of the West Virginia Code unless the state health planning and development agency has issued a finding, after a final conformance review, that the completed project conforms to the terms of the certificate of need decision issued for the project. Evidence of compliance shall be supplied with licensure applications.

4.2. Construction, Renovation, Alterations

4.2.1. Plans for new construction or for renovations or alterations of existing physical facilities of a center shall be submitted to and approved by the director based on safety, sanitation, accessibility to the handicapped and similar considerations prior to the commencement of such new construction, renovations or alterations. A request for pre-opening inspection shall be made in writing thirty at least thirty days prior to the proposed opening date.

4.2.2. Centers in operation prior to the effective date of these regulations shall be required to institute modifications of buildings where undue hazards to the health or safety of participants or staff exist. Plans for modifications shall be submitted to and approved by the director prior to beginning any construction, alterations, or modifications.

4.2.3. Waivers or variances to the provisions of this rule may be granted by the director if the application of these standards clearly would be impractical and provided that any alternate arrangements are not detrimental to the health or safety of the participants or employees of the center. Such alternate arrangements shall comply as nearly as is practical with this rule.

4.2.4. Unless substantial construction is started within one year of the date of approval of final drawings, it will be necessary for the owner to secure written notification from the director that such plan approval for construction is still valid and in compliance with this section.

4.3. Initial License

4.3.1. An applicant shall submit an application to the director on forms supplied by the director not less than sixty days and not more than one hundred twenty days prior to the date proposed for the commencement of operation. A non-refundable fee of one hundred dollars (\$100) for centers with twenty or less participants or two-hundred dollars (\$200) for centers with more than twenty participants, made payable to the department of health, shall be submitted with the application.

4.3.2. The center shall identify the following as part of the application:

(a) name, address, principal occupation, and official position of all persons who have ownership interest in the center or the name, address, principal occupation, and official position of each member of the board of directors, if a corporation; and

(b) if a center is located on or in leased real estate, the name of the lessor and any direct or indirect interest of the applicant or licensee.

4.3.3. The director shall issue an initial license if the applicant is in compliance with or, in the case of proposed activities, supplies evidence of ability and intent to comply with this rule and has submitted a complete application and the application fee.

4.4. Renewal License

4.4.1. An applicant for a renewal license shall submit an application to the director on forms provided by the director not less than sixty days and not more than one hundred twenty days prior to the expiration date of the current license. A non-refundable fee of one hundred dollars (\$100) for centers with twenty or less participants or two hundred dollars (\$200) for centers with more than twenty participants, made payable to the department of health, shall be included with the application.

4.4.2. The director shall issue a renewal license if the applicant is in compliance with the provisions of this rule and has submitted a complete application and the renewal license fee.

4.5. Provisional License

4.5.1. If the director finds that a center applying for renewal of a license is not in compliance with the requirements of this rule, the director may, at his discretion issue a provisional license.

4.5.2. A provisional license may be issued only when the director makes the following findings: (a) that the care given in the center is adequate to meet participant needs; and (b) that the center has demonstrated improvement and potential for substantial compliance within the term of the license for which renewal is requested.

4.5.3. A provisional license shall not be issued for a period greater than twelve months.

4.5.4. A provisional license shall not be renewed.

4.6. Inspections

4.6.1. An unannounced on-site inspection of every center regulated pursuant to these rules shall be conducted no less frequently than once every year.

4.6.2. The director shall have the authority to conduct either announced or unannounced visits.

4.6.3. The director shall have access to the center, its staff, participants (with their permission), and records including, but not limited to, participant records.

4.6.4. The director may provide for such other inspections or investigations as he or she may deem necessary to carry out the intent and purpose of state law and rules for which he or she has enforcement authority.

4.6.5. The director shall have the right to enter upon the premises of any facility which he or she has reason to believe may be operating as a medical adult day care center.

4.7. Complaint Investigation

4.7.1. Any person may register a complaint with the director alleging violation of applicable laws or rules by a center. A complaint shall state the substance of the complaint and the center by name.

4.7.2. The director shall conduct an investigation of the complaint.

4.7.3. The director shall have the authority to conduct unannounced inspections of the center involved in the complaint and any other investigations necessary to determine the validity of the complaint.

4.7.4. The director shall notify the center director or the person in charge of the location involved in the complaint of the substance of the complaint only at the time of the investigation.

4.7.5. No later than fifteen working days after the completion of the investigation, the director shall prepare a written report of the results of the investigation and shall notify the complainant and the center in writing of the results of the investigation.

4.7.6. A description of the corrective action the center will be required to take and of any disciplinary action to be taken by the director shall be sent to the complainant on request.

4.7.7. The name of a complainant or of any participant named in the complaint shall be kept confidential and shall not be disclosed without the written authorization of the individual. Before any information is disclosed to the public regarding a complaint and its investigations, any information in the complaint or the report of investigation which could reasonably identify the

complainant or any participant shall be deleted, unless the public interest by clear and convincing interest requires disclosure in the particular instance.

4.7.8. If a complaint becomes the subject of a judicial processing, nothing in this subsection shall be construed to prohibit the disclosure of information which would otherwise be disclosed in a judicial proceeding.

4.7.9. Centers shall be prohibited from discharging or discriminating in any way against any participant by whom or on whose behalf a complaint has been submitted to the director or who has participated in a complaint investigation process for reason of such submission or assistance. Centers shall be prohibited from discharging or discriminating against any employee who has submitted a complaint or who has assisted the director or any other legal authority in a complaint-related investigation for reason of such submission or assistance.

4.7.10. Violation of the prohibitions of Subsection 4.7.9. of this rule shall be grounds for suspending or revoking a license.

4.7.11. All records of complaint investigation shall be retained for a period of five years, and shall remain in the center in the event of change of ownership or administration.

4.8. Plans of Correction

4.8.1. A center found on the basis of inspection or other investigation to have deficiencies in compliance with this rule shall develop a plan for correction of the deficiencies and shall submit such plan to the director within fifteen working days of receipt of the report of the inspection or other investigation.

4.8.2. The director may require an immediate correction in the case of a deficiency causing imminent danger to the health or safety of a participant or employee.

4.8.3. The plan of correction shall specify:

- (a) the deficiencies to be corrected;
- (b) action taken or proposed to correct the deficiencies and procedures to prevent its reoccurrence;
- (c) a calendar date by which the deficiency will be corrected. The date shall allow the shortest possible time within which the center may reasonably be expected to correct the deficiencies.

4.8.4. The plan of correction shall be approved, modified or rejected in whole or in part by the director in writing within fifteen working days of receipt.

4.8.5. In accepting, modifying, or rejecting the plan for correction, the director shall consider:

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

(b) the seriousness of the deficiency;

(c) the time proposed for implementing the correction; and

(d) any other relevant factors.

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

4.8.7. When the director rejects a plan of correction, a reasonable amount of time, but not more than fifteen working days shall be allowed for submission of a revised plan.

4.8.8. The director shall employ such procedures as are reasonable and necessary to verify the correction of any deficiencies identified during a routine licensure inspection or any other investigation that has been made.

4.9. Department Reports and Records

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

4.9.2. Reports shall specify the nature of each deficiency and indicate the provisions of this rule being violated.

4.9.3. Reports and records related to this rule shall be treated as public information, except as specified herein regarding complaints, from the time they are received by or completed by the director, except that, before releasing a report or record deemed public information, the director shall delete any information which could reasonably be expected to permit identification of a participant and any information of a personal nature such as that kept in a medical, personnel or similar file, or other information required to be kept confidential by state and federal law and regulations.

4.9.4. When an inspection report is released prior to the center's submission of or the director's review of a plan of correction, such fact shall be identified with the release.

4.9.5. The director shall provide copies of materials available for public information, upon written request, at a reasonable fee to cover the cost of materials, staff time, and equipment, according to law and department policy or regulation.

Section 5. Physical Facility and Safety

5.1. General

5.1.1. A medical adult day care center site must be located in an environment that is free of architectural barriers and is designed to meet the specialized needs of handicapped persons.

5.1.2. Curb cuts, gradients, handrails, steps, and ramps must be designed or adapted to offer easy accessibility to the site by the specialized population being served.

5.1.3. The site must be designed or adapted to provide adequate turning space for wheelchairs. Light switches, control panels, counters, sinks, and door handles must be within easy reach of a wheelchair-bound person. Door frames must be wide enough for easy entering and exiting of wheelchairs, and thresholds must be eliminated.

5.1.4. Toilet facilities must be designed or adapted to provide access and maneuverability for handicapped or wheelchair-bound individuals. The toilet areas must be equipped with grab bars and siderails.

5.1.5. The center must comply with West Virginia Code Chapter 18, Article 10F relating to accessibility to the handicapped.

5.1.6. The site must be designed with adequate space for the provision of required services. Each center must include the following:

(a) a dining area;

(b) a group activity and project area equipped with adequate table and seating space (a dining area may be used);

(c) a treatment/examination room, equipped with one hospital type bed for every ten participants, with provisions for privacy for each bed, for use by participants who are ill or who need rest.

(d) a rest area equipped with at least two reclining chairs or chaise lounges for every ten participants; and

(e) other space and equipment as needed for services provided.

5.1.7. Furniture should be designed for the elderly and disabled. Furniture should be of sturdy construction that will not easily tip or move when used for support while walking or in seating. Chairs should have arms for leverage.

5.1.8. A minimum of forty square feet of space must be available for each participant, excluding offices, toilets, hallways, storage areas, treatment/examination rooms, food preparation areas, and other areas not used for the provision of services.

5.1.9. Accessibility shall be facilitated by all-weather, hard-surfaced walks and parking areas.

5.1.10. There shall be adequate electricity, telephone, air conditioning, heating, and a water supply approved by the department according to rules and design standards of the board of health. These systems shall be maintained in safe, working order.

5.1.11. All centers shall be served by an approved public sewage system

or by a sewage disposal system that has been approved by the department according to the design standards and rules of the West Virginia board of health.

5.1.12. Sewage and excreta disposal systems shall be kept in good repair and properly maintained and operated.

5.1.13. Drinking fountains, if provided, shall be of the angle-jet type with a non-oxidizing mouthguard. Such fountains shall be properly regulated and easily accessible to the participants.

5.1.14. Single service drinking cups, if used, must be dispensed from an approved dispenser.

5.1.15. Local building codes and zoning restrictions shall be observed. Evidence of compliance signed by building and zoning officials shall be available.

5.1.16. Where local codes or regulations permit standards lower than those required by this rule, the center shall meet the standards set forth therein.

5.1.17. Entrances shall be covered so participants can arrive and depart with protection against inclement weather.

5.1.18. There shall be safety rails on at least one side of all entrances, passageways and exits.

5.1.19. There shall be at least two exits from the facility that can be used as disaster escape routes, and at least one of the exits must be at ground level. These exits shall be wide enough to accommodate wheelchairs and other apparatus.

5.1.20. Activities that are part of a day care program shall be held on the ground or first floor of the center or shall be accessible by elevator.

5.2. Equipment and Furnishings for a Bathroom

5.2.1. The center shall provide two bathrooms, one for each sex, which may be shared by the staff provided the number of participants does not exceed twelve. If the number of participants exceeds twelve, separate facilities shall be provided.

5.2.2. One stall with a commode and safety rails shall be provided for every ten participants. Stalls shall be separated by partitions.

5.2.3. One sink with mirror, disposable towels and soap dispenser shall be provided for every ten participants.

5.2.4. A shower-bath equipped with a shower seat and safety rails, shall be provided to aid in maintaining the personal hygiene of participants.

5.2.5. Each person using bathing facilities shall be provided with in-

dividual towels and wash cloths.

5.2.6. Handwashing facilities, with soap and disposable towels, shall be provided in the treatment/examination room and in the participant activities area.

5.3. Life Safety - The center shall be in compliance with the lawfully promulgated rules and regulations of the state fire commission.

Section 6. Center Governance and Management

6.1. The governing body shall designate a center director to administer the center in accordance with the policies and procedures established by the governing body.

6.2. The governing body shall adopt a plan of operation which shall include a statement of purpose, program goals, and description of basic services.

6.3. The center shall develop and implement written policies and procedures to assure the provision of the service and programs described in its plan of operation.

6.4. The center shall have a table of organization which shows the current operations of the center, and personnel responsible for the programs and services.

6.5. The center shall carry liability and any other insurance in order to protect the center from foreseeable liabilities arising from the operations of the center.

6.6. Incident reports, including but not limited to medication errors, falls, arguments, allegations of abuse or neglect, shall be maintained by the center.

Section 7. Staff Development and Training

7.1. The center shall maintain a job description for each position which includes a job title, minimum training and experience qualifications, general description of duties, responsibilities, and designation of supervisor.

7.2. All personnel shall be qualified by training and experience to carry out their assigned responsibilities. These qualifications shall be documented by detailed statements of experience and training, references and any other material related to training and experience.

7.3. All personnel and consultants of the center shall be in compliance with any state professional licensure requirements.

7.4. The center shall develop and implement policies and procedures for the provision of staff development which update and expand skills. Staff shall be provided with training when their assignments change to include new duties and skills. A record of participation in staff development and training act-

ivities shall be maintained.

7.5. The center shall provide orientation and training to all new employees and volunteers. The orientation and training shall include at least the following:

- (a) special problems of the elderly and disabled;
- (b) participant rights;
- (c) the use of emergency procedures;
- (d) infection control;
- (e) safety and accident prevention, such as wheelchair safety and transfer techniques;
- (f) feeding techniques; and
- (g) assistance in activities of daily living.

7.6. Each staff member shall produce a statement from a licensed physician dated within thirty days prior to the date of employment assuring that the person is free of communicable diseases and able to perform the required duties. This statement shall be required upon initiation of employment and annually thereafter.

7.7. The center shall maintain a confidential personnel record for each employee, which shall contain at least a job title, a record of employment, education, other training, and when applicable, evidence of compliance with state licensure, certification or registration requirements or other certification requirements stated in this rule, and periodic evaluations.

7.8. An employee shall have access to his or her personnel record and shall have the right to designate others to have access to the record by written authorization.

7.9. The center shall not discriminate in any matter of employment on the basis of race, color, national origin, ancestry, religion, physical handicap or sex and shall operate under written personnel policies and procedures that: (1) comply with federal and state laws and regulations; and (2) are available to each employee.

7.10. If the center utilizes volunteers, it shall establish written policies and procedures concerning recruitment, selection, training, and assignment and supervision.

7.11. Volunteers shall meet all health and personnel requirements of regular staff, and documentation must be on record.

Section 8. Admission Procedures

8.1. Prior to an individual's first attendance day as a participant, the

center shall obtain, in writing, the following information from a physician:

(a) the individual's medical history, which shall indicate that a physical examination has taken place within the past three months. If the individual has been hospitalized or released from a nursing home in the preceding three months, a complete discharge summary may be used to fulfill the physical examination requirements;

(b) a list of current medications and treatments;

(c) any special dietary requirements;

(d) a statement indicating any contraindications or limitations to the individual's participation in program activities;

(e) orders for therapy, when applicable; and

(f) other information as required for the participants care.

8.2. A preadmission interview shall be conducted with the individual, and his or her family, if applicable, by the center director, nursing staff or social worker.

8.3. The interview should be designed to provide the center with information on the general health characteristics, psychosocial condition, and nutritional habits of the individual; the nature of the individual's home or community support system; and any other relevant data.

8.4. The interview should be designed to acquaint the individual and his or her family with the services, activities, and requirements of the center. A printed description of the services, activities and requirements shall be available for distribution.

8.5. The center's registered nurse and the social worker, if feasible, shall carefully assess the physician's documentation and the information obtained in the preadmission interview.

8.6. Only those individuals who can benefit from the medical adult day care program shall be admitted to the program.

8.7. The center shall conclude a written agreement with the participant or, if appropriate, with the participant's legal guardian or committee.

8.8. The agreement shall specify the basic services offered by the center, the cost of these services, and any nonfinancial obligations of the participant and his or her family to the program, such as a commitment from the individual to attend the program a specified number of days per week.

8.9. The agreement shall also specify the days and hours during which the program operates, a schedule of holidays when the program is closed, and procedures for the announcement of unexpected closing of the program due to disaster or inclement weather.

Section 9. Participant Care Plan

9.1. The center shall complete an initial admission form on the participant's first attendance day.

9.2. Within six program days after a participant's first attendance day, the interdisciplinary team composed of the registered nurse, social worker, activities director and therapists shall complete a participant care plan for that individual. The program's registered nurse shall coordinate the development of the participant care plan.

9.3. The participant care plan shall include the following:

(a) a health treatment plan based on orders of the participant's physician, including dietary requirements, rest period needs, a nursing assessment and care plan, including hours spent at the center, and, if applicable, recommendations of therapists for prescribed services; and

(b) a supportive-service and activity plan designed to meet the psychosocial and therapeutic needs of the participant.

9.4. The center shall forward a copy of the initial participant's care plan to the participant's physician and every three months inform the physician of any subsequent change or lack of change in the participant's care plan.

9.5. It is required that each participant receive an annual physical examination.

9.6. The registered nurse and therapists shall independently review and reevaluate the plan monthly and shall record in it any changes in the participant's treatment or condition. The activities director and social worker shall record any changes in the participant's treatment or condition quarterly.

9.7. A review shall be made on a quarterly basis by all members of the interdisciplinary team, and the results documented in the participant's record.

Section 10. Participant Services Requirements

10.1. Nursing Services - A registered nurse who is at the center daily as required by Section 11.2.(4) shall provide or supervise nursing services. If a nurse is employed by a center located within a hospital or nursing home, his or her sole responsibility during the hours that he or she is employed by the center will be to meet the needs of the participants. Nursing services shall be provided in accordance with the particular needs of each participant and must include the following:

(1) supervision of the administration of medications and treatments as prescribed by the participant's physician;

(2) coordination of the development of the participant care plan;

(3) on-going monitoring of each participant's health status;

- (4) maintenance-therapy treatment as recommended by a therapist;
- (5) restorative services; and
- (6) coordination among the participant, his or her family, and program staff members of orders from the participant's physician.

10.2. Case Management - If a participant needs services from other community agencies, and if no other agency has been identified and designated as a coordinator of services for that participant, the center shall assume the role of coordinator to ensure that the participant's service needs are being met. Case management services shall include, but not be limited to: 1) assessing individually an individual's situation and identifying services necessary to meet those needs; 2) development of a services plan; 3) arranging for the implementation of the service plan; 4) monitoring and evaluating the impact of services on the individual; and 5) providing for the continuity of services and care.

10.3. Restorative Services

10.3.1. Medical adult day care centers shall provide or coordinate restorative services as needed for each participant, when recommended by therapists and prescribed by a physician. Restorative services may include occupational, physical, and speech therapy.

10.3.2. The center shall assure the provision of physical therapy as needed and document the arrangements.

10.4. Maintenance Therapy Services - Medical adult day care centers shall provide maintenance therapy to meet the particular needs of each participant when indicated by the therapy consultants or the participant's physician. The center's registered nurse shall supervise the administration of maintenance therapy to participants.

10.5. Personal Care Services - Medical adult day care centers shall provide personal care services as necessary, and shall offer training and assistance in dressing, grooming, personal hygiene, use of special aids, accident prevention, and activities of daily living.

10.6. Nutrition Services

10.6.1. A hot meal, and two snacks shall be provided to every participant each day he or she attends the center for a period of five to eight hours.

10.6.2. Participants attending the center for four hours or less daily shall be served one meal or a snack equivalent to at least one-third of the recommended daily allowance.

10.6.3. Participants attending the center for more than eight hours shall be offered two meals and snacks unless records document alternate meal arrangements.

10.6.4. The center shall develop written meal and snack schedules which shall be posted in the center. Schedules shall be kept on file for at least one year.

10.6.5. The hot meal shall be equivalent to at least one-third of the recommended daily dietary allowance established by the most current daily dietary requirements of the National Academy of Sciences, National Research Council.

10.6.6. The center shall provide for special diets, if required by a participant and prescribed by his or her physician.

10.6.7. The center shall provide nutrition counseling, consumer shopping advice, and menu planning to the participant and, if necessary, to his or her family or other caretaker.

10.6.8. The nutrition service may be provided either directly by the center or through written agreement with a contractor who complies with the standards of this rule.

10.7. Emergency Services

10.7.1. The center shall have written procedures for providing emergency services which include at last the following:

(a) Provision for emergency transport services for participants.

(b) Provision for emergency admission of participants to a hospital by at least one of the following methods: (a) the attending physician or the physician advisor shall have admitting privileges at the hospital to be utilized for emergency transfer; or (b) there shall be a written agreement with a hospital for emergency services and admissions. A hospital policy statement concerning emergency procedures and admission may, at the director's discretion, be accepted as satisfying this requirement.

(c) Instructions relative to contacting the participant's physician, case manager, family or guardian.

(d) Provisions for communication with the nearest emergency medical service, hospital and police.

(e) Circumstances under which definitive care should not be provided and procedures which should be followed in referring an individual to a more appropriate facility.

(f) Use of emergency restraints.

10.7.2. If the participant is immediately dangerous to himself or herself or to others and less restrictive methods do not work, restraints may be used as an extreme resort if necessary to control the emergency. Such restraints shall only be used until the participant is transferred to a more appropriate facility and shall not be used for a period that exceeds two hours.

10.7.3. Restraints shall be applied only with the dated and signed approval of a physician, the nurse on duty or the center director. The center director shall be notified when restraints are used.

10.7.4. Supervision of participants in restraints shall be on a one to one basis for the duration of the time the restraints are in place.

10.7.5. There shall be a conspicuously posted notice indicating emergency fire procedures in accordance with state and local fire regulations.

10.7.6. All staff members, as well as drivers of program vehicles, shall have training in emergency procedures, cardiopulmonary resuscitation (CPR), and basic first aid. Records of completed training must be kept on file.

10.7.7. A complete description of all emergencies shall be immediately entered in the participant's record and include staff actions and rationale for each method employed and the resolution of the emergency.

10.8. Social Worker Services

10.8.1. A center shall provide social worker services to participants and their families, including individual counseling and assistance with personal, social, family, and adjustment problems.

10.8.2. If specialized counseling is necessary for a participant or his family, the center shall refer the participant or family to the appropriate community resource.

10.9. Activities and Recreation

10.9.1. Medical adult day care centers shall provide individual and group activity programs that offer social, recreational, and educational events designed to improve each participant's self-awareness and level of functioning. The dignity, interests, and therapeutic needs of individual participants must be considered in the development of activity programs.

10.9.2. There shall be a written plan for the center's recreation and activities program which shall address the following types of activities as they may be appropriate to the needs of the participants:

(1) Social and interpersonal activities which provide opportunity for fun, enjoyment and the development of friendships.

(2) Diversional and recreational activities designed to emphasize individual accomplishment, provide diversion and aid in adjustment to long-term rehabilitation.

(3) Opportunities for participation in volunteer service activities.

(4) Intellectual activities designed to provide mental stimulation.

(5) Exercise and physical activities to assist participants to keep active

and alert.

(6) Provision of rest periods in accordance with participant needs.

10.9.3. Recreation and activity staff shall participate in the development of participant's plans of care.

10.9.4. The recreation and activity coordinator shall ascertain from each participant's plan of care any physician's orders limiting participation in the activities program.

10.10. Transportation

10.10.1. The center shall provide for transportation of participants to and from the center who have no other sources of transportation, and to and from medical appointments and activities in accordance with the plan of care.

10.10.2. The center shall make every effort to have families transport the participant.

10.10.3. The center shall coordinate the utilization of other transportation resources within the community, for example, volunteers and church groups.

10.10.4. The center shall manage upkeep and operations of vehicles which it owns or maintains.

10.10.5. Center owned or maintained vehicles utilized by the center for the transportation of participants shall be in compliance with the vehicle inspection requirements of the West Virginia department of motor vehicles.

10.10.6. There shall be sufficient staff to ensure the safety of participants being transported by facility vehicles.

Section 11. Staffing Requirements

11.1. There shall be a minimum of two professional staff members for each medical adult day care center, with the registered nurse occupying one of the two positions. Additional personnel shall be added to maintain a ratio of one full-time staff member involved in direct services to participants for each six participants. The medical director, dietician, consulting therapists, food services supervisor, driver, secretaries, cooks, accountants, and other staff members who do not have direct contact with participants shall not be considered in calculating this one-to-six ratio. Aides may be used to meet the one-to-six ratio.

11.2. The center shall meet the staffing requirements specified below.

(1) The center shall employ a center director or designate one of the professional staff members as the center director.

(2) The center shall designate one of the professional staff members as

assistant center director to act in the absence of the center director.

(3) The center shall have available a staff physician.

(4) The center shall employ a nurse who shall be on the site daily for all hours the center is open. If the center's daily enrollment is eighteen or more participants, the center shall employ a registered nurse who will be on site daily for eight hours a day. If the daily enrollment is fewer than eighteen participants, a registered nurse and a licensed practical nurse shall each be on site daily for a minimum of four hours. Such hours must be arranged to ensure full-day nursing coverage. Backup coverage must be arranged for the nurse in the event of his or her absence due to illness or vacation.

(5) The center shall employ an activities director who shall be on site daily for a minimum of ten scheduled hours per week.

(6) The center shall employ a social worker who shall be on site a minimum of one hour each week for each two participants.

11.3. Without compromising the one-to-six ratio, functions may be combined within one person, i.e., the center director may be a social worker or nurse, performing dual functions of the director/social worker or director/nurse. In centers with sixty or more participants, the director may not serve a dual function.

11.4. Staff requirements herein are considered to be minimums, and the director shall have the authority to require additional staff or consultants if inadequate to meet service requirements.

Section 12. Staff Qualifications and Responsibilities

12.1. Center Director

12.1.1. The center director shall be a qualified health professional, such as a nursing home administrator, registered nurse, social worker, physician, licensed physical, occupational or speech therapist.

12.1.2. The center director shall have management experience and be experienced in the physical, social and medical needs in care of the elderly and disabled.

12.1.3. It is the responsibility of the center director to do the following:

- (a) direct and supervise all activities of the center;
- (b) supervise all paid and voluntary staff members;
- (c) perform program and staff-member evaluations;
- (d) assume the role of coordinator in the admission process;
- (e) respond to reporting requirements;

(f) be responsible for the fiscal administration of the center including billing, budget preparation, and required financial reports;

(g) direct the coordination of transportation services;

(h) establish necessary professional relationships with other institutions and agencies; and

(i) establish requirements, in conjunction with a staff member assigned to this program, for the selection of volunteers and their orientation to the center.

12.1.4. If the center is a program operated by a licensed health care facility or other organization, fiscal administration may be assigned to a central financial unit.

12.2. Physician Advisor

12.2.1. The physician advisor shall possess a valid license to practice in the state of West Virginia.

12.2.2. The physician advisor shall perform at least the following functions:

(a) provide medical consultation and supervision of the total health care program provided to participants;

(b) assist with the development of the center's health policies;

(c) assist with development of procedures for providing care to participants in the event of a medical or psychiatric emergency;

(d) consult with the participant's personal physician, as needed;

(e) function as personal physician for those participants who do not have a personal physician, if this is agreeable with the participant; and

(f) advise the center director regarding health and related problems.

12.3. Registered Nurse

12.3.1. Registered nurses shall have a valid license to practice in West Virginia.

12.3.2. If the center has only one registered nurse, he or she shall have at least two year's experience in direct care of elderly or chronically disabled persons or shall have specialized formal training in the care of elderly and disabled persons plus one year of such experience.

12.3.3. If the center has a staff of more than one registered nurse, one registered nurse shall be designated as the nursing service supervisor and shall meet the requirements of Section 12.3.2.

12.3.4. It is the responsibility of the registered nurse to do the following:

- (a) provide or supervise nursing services to each participant;
- (b) coordinate the development and on-going review of the participant care plans;
- (c) note any significant changes in the participant's behavior and condition and report them to the staff physician, who will notify the participant's personal physician, if he or she has one;
- (d) encourage and coordinate the keeping of scheduled physician appointments and having prescriptions filled promptly and assist in arranging a means for completing these tasks;
- (e) assist in obtaining regular and emergency treatment and consultation with ophthalmologists and dentists;
- (f) write, at least monthly or more often if indicated by the participant's condition, nursing notes in the participant's record or delegate this task to a licensed practical nurse;
- (g) supervise the distribution, administration and storage of all medication; and
- (h) assist as necessary in the delivery of other center services.

12.4. Licensed Practical Nurse

12.4.1. Licensed practical nurses shall have a valid license to practice in West Virginia. It is the responsibility of the licensed practical nurse to do the following:

- (a) provide nursing services to each participant under the supervision of the center's registered nurse;
- (b) if so delegated by the registered nurse, write, at least monthly, nursing notes in the participant's records; and
- (c) assist as necessary in the delivery of other center services.

12.5. Activities Director

12.5.1. The activities director shall have a minimum of a high school education or equivalent and one or more years' full-time paid experience or equivalent part-time or volunteer experience in the field of health, physical education or recreation. The activities director shall have the ability to develop and to implement therapeutic activity programming both for specific individuals and for groups.

12.5.2. It is the responsibility of the activities director to do the following:

ing:

- (a) develop, in conjunction with the plan of care, activity programs that meet the individual needs of each participant;
- (b) supervise the activity program and any assistance or volunteers;
- (c) develop educational programs and schedule events;
- (d) participate in the quarterly review of each participant's care plan;
- (e) write quarterly notes in the participant's record regarding the participant's involvement in activities as part of his or her care plan;
- (f) provide written monthly schedules of planned activities that are posted in the facility;
- (g) maintain a current record of community services, resources, programs and center materials accessible to the staff and participants, and
- (h) assist as necessary in the delivery of other center services.

12.6. Social Worker

12.6.1. The social worker must have at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and be duly licensed or specifically exempt under the provisions of Chapter 30, Article 30 of the West Virginia Code relating to the licensing of social workers, and shall have at least one year's recent experience working with adults in a professional capacity.

12.6.2. It is the responsibility of the social worker to do the following:

- (a) coordinate and provide individual, group, and family counseling in conjunction with plan of care goals;
- (b) inform participants and their families of available community services and refer participants as necessary to agencies providing such services;
- (c) participate in the quarterly review of each participant's care plan;
- (d) write quarterly notes in the participant's records;
- (e) document the follow-up of all absences;
- (f) make and receive recommendations in the plan of care;
- (g) participate in preadmission contact and assessment, including the exploration of alternative types of care or services with both the participant and the family;
- (h) provide orientation at admission; and

- (i) assist as necessary in the delivery of other center services.

12.7. Consulting Therapists

12.7.1. It is the responsibility of the therapists to do the following:

- (a) document all treatments in accordance with the plan of care;
 - (b) participate in the quarterly review of the participant's care plan;
- and
- (c) write quarterly progress notes in the participant's record.

12.8. Aides

12.8.1. Aides shall have a minimum of a tenth grade education, and have 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.

12.8.2. Aides shall assist professional program staff members as required in implementing the center services and meeting the needs of individual participants.

12.8.3. Aides shall perform at least the following duties:

- (a) observation, assistance and training in personal hygiene;
- (b) assistance in activities of daily living;
- (c) assistance with personal care;
- (d) assistance with meals; and
- (e) assist as necessary in the delivery of other center services.

12.9. Drivers

12.9.1. If the center owns or maintains its own transportation service, drivers shall possess a valid West Virginia driver's license or chauffeur's license, if required under the provisions of Chapter 17B, Article 2, of the West Virginia Code. The driver shall have experience or training in transporting passengers and shall be sensitive to the needs of aged or handicapped persons. Training may be provided by the center.

12.9.2. The driver shall be trained in emergency procedures, cardiopulmonary resuscitation (CPR), and basic first aid.

12.10. Dietitian

12.10.1. A part-time or full-time dietitian shall be hired or contracted with to provide dietary consultation and supervision of the dietary program provided to the participants.

12.10.2. A qualified dietitian must be registered, or eligible for registration, as determined by the Commission on Dietetic Registration of the American Dietetic Association.

12.10.3. The dietitian shall perform at least the following duties:

(a) plan and review the delivery of meals and snacks to participants according to the dietary plan of care;

(b) review and sign menus to ensure meals and snacks are meeting daily nutritional requirements;

(c) provide or supervise individual nutritional assessment and counseling, as needed; and

(d) liaison with staff serving and preparing meals.

12.11. Food Service Supervisor

12.11.1. If the center maintains its own food preparation service, a food service supervisor shall be employed.

12.11.2. A qualified food service supervisor shall be:

(a) a qualified dietitian; or

(b) a graduate of a dietetic technician or dietetic assistant training program approved by the American Dietetic Association;

(c) trained and experienced in food service supervision and management in a military service and equivalent in content to the requirements specified in paragraph (b) of this section.

12.11.3. The food service supervisor, under the direction of the consultant dietitian, shall be responsible for at least the following:

(a) daily operation of the food preparation service;

(b) ensuring that therapeutic diets are served as ordered by a physician, and that no participant receives a therapeutic diet except as ordered by a physician; and

(c) recommending the quantity, kinds and variety of food and supplies to be purchased.

12.11.4. The food preparation service shall have sufficient supportive personnel trained in the preparation and service of food to carry out the functions of the food preparation service.

12.12. Volunteers

12.12.1. Professional and nonprofessional volunteers may be recruited to

assist the center staff, to enrich the program, and to provide meaningful work experience to individuals from the community.

12.12.2. Volunteers shall:

(a) have the qualifications and experience appropriate to the services they render or shall be trained by center staff, such training to be documented in writing;

(b) be subject to the same regulations on confidentiality as are the paid staff members; and

Section 13. General Health and Safety

13.1. Meals

13.1.1. Menus will be planned at least two weeks in advance, dated, maintained on file, and posted in the facility. Meals and snacks shall be served in accordance with approved menus.

13.1.2. Special diet meals ordered by the participant's physician and developed by the dietician will be labeled with the participant's name and by type of diet, and recorded in the participant's care plan.

13.1.3. Food service personnel, whether on the premises or contracted, shall be advised in writing of special diet orders.

13.1.4. Self-help feeding devices, food texture modification (such as meats ground or vegetables mashed) and food management (such as cartons opened, lids removed or bread buttered) shall be provided as appropriate.

13.1.5. All rooms where food or drink is stored, prepared, or served or where utensils are washed, shall be protected from dust, flies, vermin, rodents, or other contamination.

13.1.6. Garbage shall be placed in covered, leakproof, nonabsorbent containers.

13.1.7. When food service is provided by a third party, the provider shall meet all conditions stated herein and there shall be a formal contract between licensee and provider containing assurances that the provider will meet all food service and dietary standards imposed by this rule.

13.1.8. Any catered food service or on-premises food service provided by the center shall be in compliance with the West Virginia board of health food service sanitation rules.

13.2. Infectious and Communicable Diseases

13.2.1. A center shall notify family members and other caretakers if there is suspicion of infectious or communicable disease.

13.2.2. An employee or participant known to have an infectious or communicable disease will be allowed to return to the center only by after a physician gives written approval.

13.2.3. The center shall develop written policies and procedures on at least the following: (a) preventing and controlling infection in the facility; (b) maintaining a sanitary environment; (c) indentifying infections within the facility; (d) reviewing the health status of employees; and (e) ensuring staff compliance with infection control policies and procedures.

13.3. Domestic Animals

13.3.1. The use and presence of animals as part of a controlled and supervised therapeutic program is permitted, unless medically contraindicated, provided that participants are protected from unwanted exposure to such animals.

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

13.3.3. The staff physician shall approve of the presence of any animals in writing.

13.3.4. Dogs, cats, or other animals maintained by the center shall be appropriately confined and maintenance of animals shall be consistent with applicable local ordinances. Animals and their quarters shall be kept in a clean condition at all times.

13.3.5. Wild, dangerous or obviously ill animals are prohibited within the center premises.

13.3.6. All dogs and cats permitted in the center shall have been properly vaccinated (for dogs this includes rabies, leptospirosis, distemper, hepatitis and parvo and for cats this includes rabies) and documentation of such vaccination or preventive measures shall be available in the center.

13.3.7. If animals are present in the center, they shall not be permitted in food preparation areas, any storage areas, or treatment rooms.

13.3.8. Animals may be permitted in recreation areas or rooms, areas especially set aside for such usage, and halls, if leashed or caged, in transit to and from permissable areas. Animals shall not be displayed or transported during meal or snack times.

13.4. Medication Administration

13.4.1. Participants shall be allowed to self-administer their own medication provided their attending physician has certified, in writing, that they are capable of doing so.

13.4.2. Medications and treatments that are not self-administered shall be administered only by a nurse or physician. The same person who prepared

the doses for administration shall administer drugs to those participants who do not self-administer their medication.

13.4.3. All medication will be administered as ordered by the participant's physician and documented in the center's records.

13.4.4. Each participant shall have an individual medication record. The dose administered and the route (method) of administration shall be properly recorded by the person who administers the drug. The medication record shall indicate which medications are self-administered and shall contain documentation of reminder and response. All entries are to be properly dated and signed. Initials may be used provided the entire signature appears on each page on which initials are used. If the center is prompting the self-administration of medication, or is evaluating medication effects at physician or family request, or if the center suspects a problem associated with medication, the medication record shall contain the same information as would be the case for medications which are not self-administered.

13.4.5. All medications will be properly labeled and stored under lock in accordance with established federal and state laws and regulations, except for self-administered drugs, which may be kept by the participant on his or her person or in his or her individually locked personal storage compartment.

13.4.6. If the center is responsible for medication storage, administration, prompting or evaluation, the center shall require that the medications to be administered at the center be prepared and packaged by a pharmacist. In the case of fully independent self-administration of medication, the center shall encourage that the participant have separate supplies prepared by a pharmacist, one for use at the center and one for use elsewhere.

13.4.7. The medications of each participant must be stored in their original containers. Transferring between containers is prohibited.

13.4.8. A locked medicine cabinet, container or compartment shall be available for the storage of medications prescribed for participants. If refrigeration is needed, the center shall provide a locked refrigerator or a locked box within a refrigerator for storage. Refrigerators used for medication storage shall maintain temperatures required for safe storage of the medication and shall be equipped with a thermometer for temperature monitoring.

13.4.9. Medications requiring refrigeration must be stored in a locked refrigerator used only for medicine storage or kept in a separate, permanently attached, locked medication storage box in a refrigerator.

13.4.10. Poisons and medications for external use only must be locked in a medication room or cabinet and kept separate from other medications.

13.4.11. Medications stored in the center which are discontinued by a physician's orders shall be destroyed no more than thirty days after the date of discontinuance, unless prepared in unit dose form, in which case, the medications may be returned to the participant, except that any drugs which are scheduled under Chapter 60(A) of the West Virginia Code shall be de-

stroyed. Medications of deceased participants shall be destroyed immediately, unless prepared in unit dose form, in which case they may be returned to the participant's estate, except that scheduled drugs shall be treated as specified in this Subsection. Destruction of medications shall be carried out by two persons, one of whom shall be a registered nurse. A record of the destruction shall be kept, which shall include signatures of the individuals accomplishing the destruction, the date, the participant's name, and the name and a count of the drug. The date, name of drug, and amount of any drug returned must be documented in the participant's record and signed by the center nurse.

13.5. Supplies and Equipment

13.5.1. The center shall maintain a sufficient supply of thermometers, sterile dressings, syringes, a scale, blood pressure cuff, and other supplies necessary for routine and acute medical care.

13.5.2. At least one wheelchair shall be available for emergency use.

13.5.3. The center shall maintain a sufficient supply of clean, soft sheets, pillows, blankets and waterproof mattress covers for each bed. Sheets shall be changed after each use.

13.6. General Maintenance

13.6.1. The center shall establish a program of preventive maintenance to ensure that equipment is operative and that the interior and exterior of the building is in good repair, clean, orderly and free from hazards to health and safety. Maintenance and housekeeping services may be provided by another organization under written contract.

13.6.2. Stairwells and corridors shall be kept free from obstruction at all times.

13.6.3. The grounds shall be kept in good repair, clean, orderly and free from hazards to health and safety.

13.6.4. A center shall be kept free from insects, rodents and vermin through operation of a pest control program.

13.6.5. Pesticides shall be applied so as to prevent contamination to participants and food.

13.6.6. All essential mechanical, electrical and patient care equipment shall be maintained in safe operating condition.

13.6.7. Accumulated waste or refuse shall be kept in sanitary, covered refuse containers and shall be removed from the building daily or more often as necessary.

13.6.8. A center shall have procedures for disposing of soiled dressings and similar items in a safe and sanitary manner.

13.6.9. A center shall have sufficient supplies and equipment, properly stored and conveniently located, to permit frequent cleaning of floors, walls, woodwork, windows, screens and to facilitate all necessary building and grounds maintenance.

13.6.10. The center shall have written procedures, storage areas and containers for handling, storing, processing and transporting of towels, sheets, blankets and soiled clothing in such a manner to prevent the spread of infection.

13.6.11. All areas used by participants shall be well lit and ventilated and maintained at temperatures suitable to the needs and comfort of participants but not more than 85°F. or less than 70°F. Lighting shall be installed and maintained at levels of illumination equivalent to standards for nursing homes as set forth in Nursing Home Licensure, West Virginia Board of Health Legislative Rules, Chapter 16-5C, Series I, 1983.

13.6.12. Floor coverings shall be maintained in a clean, odor free, sanitary and safe condition and free from protrusions. Floors shall be covered with non-skid material.

13.7. Fire Drills and Disaster Training

13.7.1. The center shall have a written disaster plan approved by the director which states procedures to be followed in the event of fire, explosion or other internal disaster or occurrence which severely affects the functioning of the center.

13.7.2. Brief instructions and guidelines regarding procedure shall be available at a location most accessible to participants and employees.

13.7.3. Fire drills shall be held at least quarterly. A dated written report of each fire drill shall be maintained.

13.7.4. Personnel shall be assigned and trained for specific tasks and responsibilities during emergency situations.

13.7.5. Evacuation routes shall be posted as appropriate.

13.7.6. All staff members shall receive training in the actual use of fire extinguishers by the appropriate agent and in basic knowledge of accident prevention measures, as well as first aid techniques.

Section 14. Participant Rights

14.1. Basic Rights - Each participant shall have:

14.1.1. The right to treatment and services under conditions that support the participant's personal liberty and restrict such liberty only as necessary to comply with treatment needs.

14.1.2. The right to ongoing participation in the planning of services to

be provided and in the development and periodic revision of the plan of care and the right to be provided with a reasonable explanation of all aspects of one's own condition and treatment.

14.1.3. The right to refuse treatment.

14.1.4. The right to freedom from restraint. Restraint may only be used in emergency situations as described in 10.7. The participant must be transferred to the appropriate setting and shall not be restrained for more than two hours.

14.1.5. The right to a humane treatment environment that affords reasonable protection from harm, appropriate privacy, and freedom from verbal or physical abuse.

14.1.6. The right to confidentiality of records.

14.1.7. The right to access, upon request, to his or her own records in accordance with state law.

14.1.8. The right to be informed, in appropriate language and terms, of the rights described in this section.

14.1.9. The right to assert grievances with respect to infringement of these rights, including the right to have such grievances considered in a fair, timely, and impartial procedure.

14.2. Rights Devolvment

14.2.1. If a legal representative has been appointed for or designated by any resident, with authority to exercise on behalf of the participant one or more of the individual rights specified this rule, the center shall afford such legal representative full opportunity for the exercise of such individual rights. A legal representative so appointed or designated shall exercise his authority in a manner consistent with all applicable state and federal laws and regulations.

14.2.2. Nothing in this rule shall be construed to diminish or deprive any individual of rights recognized and established under other laws and rules of the State of West Virginia or of the United States.

14.3. Medications

14.3.1. All participants receiving services in the center have a right to be free from unnecessary or excessive medication.

14.3.2. Medication shall not be used for the convenience of the staff, as a substitute for program, or in quantities that interfere with the participant's treatment program.

14.4. Violation of Participant's Rights

14.4.1. A report shall be made within twenty-four hours to the center director of all violations, or suspected violations, of a participant's rights, except immediate notification shall be made in the case of physical abuse. A complaint may be made by a participant, employee, or any other individual.

14.4.2. The center director shall initiate a thorough investigation within twenty-four hours. A written report shall be completed and placed on file within a reasonable period of time and shall include his or her findings and actions taken to preclude a repetition of such violations, or suspected violations, relative to the specific participants involved, or any other participant. The participant shall be identified by case number only.

14.4.3. A succinct notation of the incident and the effect of the incident on the participant's illness or treatment shall be made in the participant's record.

14.4.4. If the action of the center director taken on behalf of a participant regarding a violation of the participant's rights is unfavorable, insufficient, or not forthcoming within a reasonable time, the participant or his or her representative may appeal to the governing body of the center or to the department.

14.4.5. Center staff whose conduct constitutes abuse, neglect, or fraud of a participant shall be immediately terminated from employment.

Section 15. Discharge and Referral Procedures

15.1. A participant shall be discharged from the program if he or she:

- (a) demonstrates sufficient improvement to enable him or her to live more independently;
- (b) requires specialized institutional care, due to illness;
- (c) develops behavioral problems that may endanger or seriously disrupt other participants or staff members; or
- (d) wishes to discontinue participation in the program.

15.2. The center shall establish, in writing, and implement the following procedures for discharge and referral:

- (a) a discharge summary;
- (b) post-discharge goals;
- (c) recommendations for sources of continuing care (e.g., home care corporations or home health agencies); and
- (d) referral to community service agencies for appropriate services, if the participant is returning to a more independent living situation.

15.3. The center shall discuss and agree upon the discharge plan with the participant and his or her family as far in advance of discharge as possible.

Section 16. Participant Records

16.1. Each participant's record shall contain at least the following information:

- (a) Plan of care signed by a physician.
- (b) A daily record of attendance.
- (c) The initial health assessment.
- (d) A daily record of all medications and treatments.
- (e) Maintenance of pertinent medical records.
- (f) Medical care and social services provided.
- (g) Progress notes dated and signed by relevant staff.
- (h) Physician's evaluations and notes as indicated by the participant's condition.
- (i) Orders for medications and treatments signed and dated by a physician.
- (j) Significant changes in the participant's condition.
- (k) A complete description of all emergencies, staff actions and rationale for each method employed and the resolution of the emergency.
- (l) Summary of any hospital or nursing home stay while enrolled.
- (m) All other pertinent and identifying information necessary for a complete participant health and social record.
- (n) An easily located file on each participant, listing address, social security number, birthdate, name, address and telephone number of guardian, if any, and the name and telephone number of the participant's physician, treatments or medications for a participant's special disabilities, and the name and telephone number of a family member, sponsor, or friend to be notified in case of emergency. A recent snapshot shall be included in the file.
- (o) A record of any health or supportive services that the participant is receiving outside the center (e.g., homemaker, home health, visiting nurse, and therapy services).

16.2. Participant records shall be legible and in ink or typewritten. Computer-printed records shall be acceptable.

16.3. All participant records shall be retained for a period of five years, and shall remain in the center in the event of change of ownership or administration.

16.4. Confidentiality of Medical Records

16.4.1. The center shall safeguard a participant's record information against loss, destruction or unauthorized use.

16.4.2. The center shall establish written policies and procedures specifying who may use the records, under what conditions they may be removed from the center and under what conditions information from them may be released.

16.4.3. Access to a participant's records shall be limited to:

- (a) staff for care, treatment and internal review purposes;
- (b) the participant;
- (c) the attorney of the participant;
- (d) physicians and other providers of health, social, educational or welfare services involved in caring for the participant, provided that such information shall be kept confidential and used solely for the benefit of the participant;
- (e) agencies or organizations requiring information necessary to make payments to or on behalf of the participant pursuant to contract or in accordance with law, provided that only such information shall be released to third party payors as is required to certify that covered services have been provided; and
- (f) others obtaining the written consent of the participant.

16.4.4. Nothing in this rule shall be construed to interfere with the right of the director to examine participant records in the course of executing his or her responsibilities to administer this rule or other appropriate state and federal law or regulations.

16.4.5. The center may charge copying fees to cover the actual cost of copies.

16.4.6. All records shall be filed in a manner that permits easy retrieval of the record when needed.

Section 17. Penalties

17.1. The director is authorized to suspend or revoke an adult day care center license according to the provisions of Chapter 16, Article 5B, Section 6 of the West Virginia Code, if he or she finds upon inspection that there has been a substantial failure to comply with the provisions of this rule or with

the laws of this state or with any order or final decision of the director.

17.2. The director 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 a renewal license.

17.3. When the director 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.

Section 18. Administrative Due Process - Those persons adversely effected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the West Virginia procedural rules, Board of Health, Chapter 16-1, Series I, 1983, Rules of Procedure for Contested Case Hearings and Declaratory Rules. The aforementioned procedural rules are incorporated by reference.

Section 19. Severability - If any provisions of this rule or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or the application of this rule which can be given effect without the invalid provisions or application, and to this end the provisions of this rule are declared to severable.