

John D. Rockefeller IV  
Governor



L. Clark Hansbarger, M.D.  
Director

# State of West Virginia

DEPARTMENT OF HEALTH  
CHARLESTON 25305

## NOTICE OF PUBLIC HEARING

Pursuant to Section five, Article three, Chapter twenty-nine-A of the Code of West Virginia, one thousand nine-hundred thirty-one, as amended, the West Virginia Department of Health shall convene a public hearing at 10:00 a.m. on January 19, 1985, in the Conference Center, Conference Room E, 1900 Washington Street, East, Charleston, West Virginia for the purpose of taking evidence pertaining to the filing of Personal Care Home Licensure, West Virginia Board of Health Legislative Rules, Chapter 16-5C, Series II (1985). The purpose of the proposed rule is to establish state licensure program administrative procedures and set standards for resident rights, services provided and the physical facility.

Any citizen or other interested party may appear in person to present evidence. Any citizen or other interested party may submit written evidence to the Regulatory Services Program of the West Virginia Department of Health, by mail to 1800 Washington Street, East, Charleston, West Virginia 25305 or in person at Room 7, Second Floor, P & G Building, 2019 Washington Street, East, Charleston, West Virginia not later than 4:30 p.m., January 21, 1985. All comments, written and oral, will be made part of the public record of comments received and will be considered as a part of the public hearing. The Department requests that parties wishing to comment make an effort to submit written copies of their comments in order to facilitate review of the comments.

The issues to be heard shall be limited to the proposed and above-mentioned rule. Copies of the proposed rule may be obtained from the address heretofore appearing or by telephoning 304-348-3223 or from the Office of the Secretary of State, Capitol Complex, Charleston, West Virginia 25305, telephone 345-4000.

*L. Clark Hansbarger*  
L. Clark Hansbarger, M.D.  
Director of Health

FILED  
1984 DEC 20 PM 3:02  
OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

ENTERED

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Personal Care Home Licensure

Type of Rule: X Legislative          Interpretive          Procedural

Agency Health Department Address 1800 Washington Street, East  
Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$ 31,500	\$
Personal Services				24,000	26,400
Current Expense				7,500	8,100
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates. It is anticipated that this new rule will require the addition of a surveyor and approximately fifty percent of a secretarial clerk position. Costs of the personal care home licensure under the present rule are approximately \$55,000 per year. Travel, fringe benefits and other office expense are included.

3. Objectives of these rules:

To bring personal care home licensure rules into compliance with state law. The rule is a major rewrite of the existing rule (see abstract).

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The additional cost of the licensure program will need to be appropriated from the general revenue fund.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

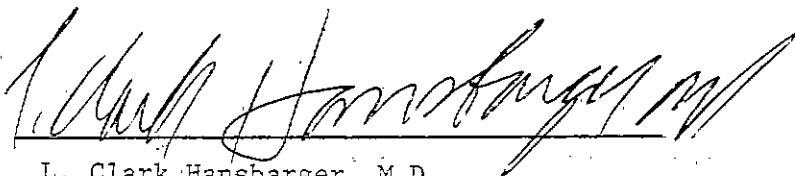
There will be increased costs for some personal care homes due to programmatic requirements. No estimate of these costs is available at this time. The more detailed and extensive physical facility standards will be applied to new construction only. Extensive data is not presently available.

C. Economic Impact on Citizens/Public at Large.

Some increase costs will likely be passed on to residents of personal care homes and also to the public to the extent that state funds are used for the support of personal care home residents. The rule is expected to result in improved care of individuals in personal care homes. Extensive data is not presently available.

Date December 18, 1984

Signature of Agency Head or Authorized Representative



L. Clark Hansbarger, M.D.,  
Director of Health

PROPOSED RULE ABSTRACT  
WEST VIRGINIA BOARD OF HEALTH

TITLE: Personal Care Home Licensure

TYPE: Legislative Rule

NUMBER: Chapter 16-5C, Series II (1985)

AUTHORITY: Chapter 16, Article 5C, Section 5

RELATED: Chapter 16, Article 5C, Section 1, et seq.

ABSTRACT: This proposed revision of the Personal Care Home Licensure Rule constitutes an entirely new rule rather than an amendment of the existing rule. This complete redrafting was necessary in order to bring the rule into compliance with the licensure statute, Chapter 16, Article 5C of the Code. Personal care homes, are defined in law as institutions or residences which provide accommodations and personal assistance, for a period of more than twenty-four hours, to six or more persons who are dependent upon the services of others by reason of physical or mental impairment, but who do not require nursing care. The new rule establishes state licensure program administrative procedures and sets standards for resident rights, services provided and the physical facility.

CONTACT PERSON: Kay Howard, Regulatory Services Division, 348-3223

RESPONSIBLE DIVISION: Health Facilities Evaluation Division, 348-0050  
John J. Jarrell, Director

[PROPOSED]

WEST VIRGINIA LEGISLATIVE RULES  
BOARD OF HEALTH

Personal Care Home Licensure

Chapter 16-5C  
Series II  
(1985)

For Public Hearing  
January 19, 1985

[PROPOSED]  
WEST VIRGINIA LEGISLATIVE RULES  
BOARD OF HEALTH

Personal Care Home Licensure

Chapter 16-5C  
Series II  
(1985)

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PROPOSED  
WEST VIRGINIA LEGISLATIVE RULE  
BOARD OF HEALTH

Chapter 16-5C  
Series II  
(1985)

Subject: Personal Care Home Licensure

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Section 1. General

1.1. Scope - This legislative rule establishes general standards and procedures for the licensing of personal care homes. This rule must be read in conjunction with Chapter 16, Article 5C, Section 1 et seq. of the West Virginia Code in order to determine the complete procedures and requirements for licensing of personal care homes.

1.2. Authority - This rule is issued under the authority of Chapter 16, Article 5C, Section 5 and is related to Chapter 16, Article 5C, Section 1 et seq. of the West Virginia Code.

1.3. Filing Date - This rule was promulgated on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and was filed on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in the Secretary of State's office.

1.4. Effective Date - This rule became effective on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Section 2. Supersession and Repeal of Former Rules - This rule supersedes and repeals Personal Care Home Licensure, West Virginia Board of Health Legislative Rules, Chapter 16-5C, Series II (1983), which was originally filed in 1971 and was refiled on December 31, 1982.

Section 3. Application and Enforcement

3.1. Application - This rule shall apply to every individual and every form of organization, whether incorporated or unincorporated, for profit or not for profit, including any partnership, corporation, trust, association, or political subdivision of the state which shall establish, maintain or operate a

personal care home as defined in Chapter 16, Article 5C, Section 2(d) of the West Virginia Code and this rule, as follows:

3.1.1. Operational standards shall apply to all personal care homes.

3.1.2. Construction and physical facility standards may be modified for existing personal care homes, if their application clearly would be impractical in the judgement of the director, and provided that alternate arrangements are not, in the opinion of the director, considered to be detrimental to the health or safety of the residents and employees of the facility. Such modification shall conform as nearly as is practicable to this rule.

3.1.3. Equipment standards may be modified for existing personal care homes, if their application would require construction of new physical facilities or alteration or remodeling of the physical plant of the personal care home and if their application clearly would be impractical in the judgement of the director, and provided that alternate arrangements are not, in the opinion of the director, considered to be detrimental to the health or safety of the residents and employees of the facility. Such modification shall conform as nearly as is practicable to this rule.

3.1.4. A personal care home maintained and operated by or in conjunction with a hospital, nursing home 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, equipment and any other facilities shall be permitted only if the requirements of each applicable rule are satisfied in full. A separate license and licensure fee shall be required for the personal care home.

3.2. Enforcement - This rule shall be enforced by the director of the

West Virginia department of health.

Section 4. Definitions

4.1. Activities of Daily Living - The range of activities that individuals generally perform regularly in the course of maintaining their existence, such as but not limited to: eating, dressing, walking, personal grooming, getting in and out of bed, using public transportation, writing letters, making telephone calls, participating in recreational and leisure activities, and other similar activities.

4.2. Ambulatory - Able to walk without assistance.

4.3. Animals - For purposes of this rule shall include animals and other creatures which are kept as pets, such as dogs, cats, fish, birds and others.

4.4. Annually - At intervals of not less than eleven months and not more than thirteen months.

4.5. Applicant - The person who submits an application for a license or renewal of a license to operate a personal care home.

4.6. Bed capacity - The maximum number of beds the personal care home is licensed to offer for resident occupancy.

4.7. Boarding Home - An establishment which is held forth to the public as providing, or which is operated to provide, only room and board to persons not in need of medical or nursing treatment or personal supervision. In contrast to nursing homes or personal care homes, a boarding home does not provide personal assistance in eating, dressing, ambulation or any other daily living activities, any type of medical or nursing care, or any degree of personal supervision.

4.8. Class I Standard - A standard which when violated would present either an imminent danger to the health, safety or welfare of residents or a

substantial probability that death or serious physical harm would result.

4.9. Class II Standard - A standard which when violated would have a direct or immediate relationship to health, safety or welfare of any resident but which would not create imminent danger if violated.

4.10. Class III Standard - A standard which if violated would have an indirect or a potential impact on the health, safety or welfare of any resident.

4.11. Construction Standard - A provision of this rule which relates to the building structure, built-in conveniences, large equipment which is permanently affixed to the physical structure or which by virtue of its size or nature requires certain physical characteristics of the building, and to the physical site.

4.12. Deficiency - A failure to comply fully with a standard. The term violation shall constitute a synonym.

4.13. Department - The West Virginia department of health.

4.14. Director - The director of the West Virginia department of health or his or her lawful designee.

4.15. Equipment Standard - A provision of this rule which relates to equipment of the facility which is not a part of the physical structure of the building or site or which does not by its nature require specific physical characteristics of the building or site. Does not include maintenance.

4.16. Existing Personal Care Home - A facility having a valid personal care home license as of the effective date of this rule or a facility having a valid nursing home license as of the effective date and up to a period of one year from the effective date of this rule.

4.17. Governing Body - The person or group of persons with legal responsibility for the conduct of a personal care home.

4.18. Home - As used in this rule, a personal care home.

4.19. Imminent Danger - As applied to a violation of this rule, a danger which could reasonably be expected to cause death or serious physical harm or illness to participants or staff.

4.20. Legal Representative - For purposes of this rule, a committee appointed pursuant the West Virginia Code §27-11-1 et seq. a guardian 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 resident in an personal care home.

4.21. License - The document issued by the director which indicates approval for the operation of a personal care home.

4.22. Licensee - The person or body to whom the license is issued to conduct a personal care home.

4.23. Mobile-Nonambulatory - Unable to walk without assistance, but able to move from place to place with the use of a device such as a walker, crutches, a wheelchair or a wheeled platform.

4.24. Nonambulatory - Unable to walk without assistance.

4.25. 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; applications of dressings; supervision of special diets; objective observation of changes in patient condition as a means of analyzing and determining nursing care required and the need for further

medical diagnosis and treatment; special procedures contributing to rehabilitation; administration of medication by any method ordered by a physician such as hypodermically, rectally, or orally and carrying out other treatments prescribed by a physician which involve a like level of complexity and skill in administration.

4.26. Nursing Home - A facility licensed as a nursing home under the West Virginia board of health rules for the licensure of nursing homes.

4.27. Operational Standard - A provision of this rule which is not a construction or equipment standard.

4.28. Owner - The person or persons who own a personal care home which is not a corporation or trust or operated by a political subdivision of this State.

4.29. Owner-Operator - An individual who owns and works in a personal care home.

4.30. Patient - An individual under care in a personal care home. See Resident.

4.31. Person - An individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of the state.

4.32. Personal Assistance - 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 resident. Personal assistance, as used in this rule, shall include both performing services for individuals and assisting them to perform activities of daily living for themselves.

4.33. Personal Care Home - Any institution, residence or place, or any

part or unit thereof, however named, in this state, which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and personal assistance, for a period of more than twenty-four hours, to six or more persons who are dependent upon the services of others by reason of physical or mental impairment but who do not require nursing care.

4.34. Premises - A tract of land, together with all buildings, equipment, fixtures, and facilities erected, constructed or situated thereon, now owned or hereafter acquired by a licensee and appurtenant to or used in connection with the licensed personal care home.

4.35. Resident - An individual under care in a personal care home.

4.36 Resident Care Employees - Those employees whose responsibilities include the provision of personal assistance and supervision to residents. This may include housekeeping staff. One hundred percent of the administrator's time may be included in homes having twenty-nine beds or less, not to exceed fifty-six hours per week. Fifty percent of the administrator's time may be included in facilities of thirty or more beds, not to exceed twenty-eight hours per week. Food service staff may be included if their responsibilities include assisting residents with meals, however, time spent only in the preparation of food and in other kitchen operations shall not be included.

4.37. Sponsor - The person or agency legally responsible for the welfare and support of a patient.

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

activities as the guidance of an individual; being aware of the individuals general whereabouts, although he or she may travel independently in the community; monitoring, through observation, the activities of the resident while on the premises of the home to ensure his or her health, safety and well-being; reminding the resident to carry out the activities of daily living; reminding the resident of any important activities, including appointments; and other similar activities.

4.39. Type I Residents - Residents who are receiving housing and food and who require only personal supervision in activities of daily living.

4.40. Type II Residents - Residents who require personal assistance.

4.41. Unit - A part of the personal care home which can be identified as separate structurally.

4.42. Violation - See deficiency.

## Section 5. State Administrative Procedures

### 5.1. General Licensing Provisions

5.1.1. No person may establish, operate, maintain, offer or advertise within the state of West Virginia, a personal care home as defined in §16-5C-2(d) of the West Virginia Code and this rule unless a license therefor has been obtained from the director.

5.1.2. A separate license shall be required for personal care homes maintained or operated on separate premises even though maintained or operated under the same ownership or management. Separate buildings on the same premises operated under the same ownership and management shall constitute one personal care home, unless the director determines otherwise.

5.1.3. A license shall be valid only for the premises and persons named in the application, is not transferable or assignable and shall be surrendered to

the director upon written demand.

5.1.4. If the ownership of a personal care home 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.

5.1.5. The name of a personal care home shall be changed only with the director's approval, and an approved name change shall be shown on the next license issued.

5.1.6. The words "clinic", "hospital", "nursing home", or any other word which suggests a type of facility other than the proposed personal care home shall not appear in the name of the home.

5.1.7. A license shall state:

- (a) the name of the personal care home to which it applies;
- (b) the maximum bed capacity for which it is granted;
- (c) the rating assigned to the personal care home pursuant to this rule;
- (d) any modifications granted according to Section 3;
- (e) the type or care given and residents accepted;
- (f) whether or not the home is approved for intermittent nursing care as described in this rule;
- (g) the date of issuance; and
- (h) the expiration date.

5.1.8. If an owner or governing body owns and manages more than one personal care home, the name used on the license, application forms and all other correspondence shall be a name which specifically identifies the personal care home.

5.2. Initial License

5.2.1. Application for an initial license shall be submitted to the director, on forms prescribed by the director, not less than thirty days and not more than ninety days prior to the date proposed for commencement of operation and shall be accompanied by a nonrefundable fee in the amount of fifty dollars (\$50) and shall provide information in conformance with State law. Where information requested pertains to activities proposed to be undertaken by the applicant, the applicant shall provide information on plans for such proposed activities.

5.2.2. The director shall issue an initial license if he or she finds, after inspection: (a) that the individual applicant, and every partner, trustee, officer, director and controlling person of an applicant which is not an individual is a person responsible and suitable to operate, direct or participate in the operation of a personal care home by virtue of the following: (1) financial capacity; (2) appropriate business or professional experience; (3) a record of compliance with any lawful orders of the department or other licensing agency for any jurisdiction in which the applicant or any individual identified in §16-5C-6(a) of the Code of West Virginia, has operated, directed, or participated in the operation of a personal care home; and (4) lack of revocation of a license to operate a nursing or personal care home in West Virginia or any other jurisdiction during the previous five years; (b) that the personal care home has attained at least a "C" rating according to this rule; (c) that the application is complete; and (d) receipt of the application fee.

5.2.3. An initial license issued after the effective date of this rule shall be valid for one year from the date of issuance.

5.3. Renewal License

5.3.1. An application for renewal of a license shall be submitted to the director on forms prescribed by the director not less than thirty days and not more than ninety days prior to the scheduled expiration date of the current license, shall be accompanied by a nonrefundable fee of two dollars (\$2) per bed, determined according to the requested licensed bed capacity of the personal care home, and shall provide information in conformance with State law. If the facility's most recent full fiscal year ends less than four months prior to the license expiration date, a balance sheet and statement of operations for the immediately preceding fiscal year shall be accepted.

5.3.2. The director shall issue a renewal license when the following conditions are met: (a) the director finds that the personal care home is in compliance with the provisions of §16-5C-1 et seq. of the West Virginia Code and this rule; (b) the licensee applied for a renewal within the time period specified in this section; and (c) the licensee has submitted a complete application and the correct renewal fee.

5.3.3. A renewal license shall be valid for one (1) year from the date of issuance.

#### 5.4. Provisional License

5.4.1. If the director finds that a personal care home applying for renewal of a license has not attained at least an overall "C" rating according to the provisions of §16-5C-1 et seq. of the West Virginia Code and the requirements of this rule, the director may, at his or her discretion, issue a provisional license.

5.4.2. A provisional license may be issued only when the director finds that: (a) the care given in the personal care home is adequate to meet resident needs as indicated by ratings of at least "C" on Sections 8, 9, 10, 11,

12 and 13 of this rule; and (b) the personal care home has demonstrated improvement or potential for at least an overall "C" rating within the term of the license for which renewal is requested.

5.4.3. A provisional license shall not be issued for a period greater than twelve months and shall not be renewed.

5.4.4. A provisional license shall not be issued to a facility with uncorrected violations of a Class I standard of this rule.

5.5. Submission of Construction and Equipment Plans; Request for Inspection

5.5.1. Two copies of detailed plans for construction of new facilities or for additions, renovations or alterations of existing buildings or physical facilities planned to be used as a personal care home or of facilities already licensed as a personal care home, drawn to scale of not less than one-eighth inch equals one foot, shall be submitted to and approved by the director before construction is started. These plans and specifications shall be signed by the person preparing the plans who shall be a builder or other individual knowledgeable in the preparation of such plans and specifications and shall show, properly identified, the general arrangement and construction of the building and location of all fixed equipment. The director may require the use of an architect who shall be registered in West Virginia if indicated by the nature and complexity of the project.

5.5.2. Preliminary drawings and outline specifications shall be submitted for approval prior to preparation of working drawings.

5.5.3. A performance statement must be obtained by the owner from the builder of a proposed personal care home stating that in constructing the personal care home the builder has followed the plans which are on file with

and approved by the director.

5.5.4. A request for a pre-opening inspection shall be made in writing thirty days prior to the proposed opening date.

5.5.5. 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 approval for construction is still valid.

5.5.6. Plans for addition, removal or modification of equipment which is of the type which is permanently affixed to the building or which may otherwise involve or necessitate new construction, alternation of, or addition to the facility shall be submitted to and approved by the director, prior to beginning any construction, alterations, removal or modification. Additionally, certain other changes involving equipment, which may or may not require physical changes in the personal care home, but which may relate to other standards and requirements of these regulations may require the director's approval. Personal care homes may request judgment and approval in advance from the director regarding a particular change of rearrangement. Areas in which changes are likely to require approval include, but are not limited to: kitchen, laundry, and heating equipment.

5.6. Initial, Annual and Other Inspections of Licensed and Unlicensed Facilities

5.6.1. The director shall conduct at least one unannounced inspection of a licensed personal care home and shall inspect all relevant records annually to determine compliance with this rule.

5.6.2. An initial license shall be issued only after an inspection. Residents shall be admitted only upon approval of the director.

5.6.3. The director shall have the authority to conduct unannounced inspections as part of a complaint investigation.

5.6.4. The director shall have the right to enter upon and into the premises of a facility which the director has reason to believe is being operated or maintained as a personal care home without a license in accordance with §16-5C-9 of the West Virginia Code and this rule.

5.6.5. If the owner or person in charge of an unlicensed facility refuses entry pursuant to the aforementioned section of the Code, the director shall apply to the circuit court of the county in which the facility is located for a warrant authorizing inspection.

5.6.6. If the director finds on the basis of inspection that the facility is operating as a personal care home without a license, the facility shall apply within ten days for a license, in accordance with the provisions of this rule, accompanied by a plan stating how the facility will proceed to attain at least an overall "C" rating according to the provisions of this rule or plans for reducing its resident census. Such plans shall be reviewable as described for plans of correction in this rule. Such facilities shall be subject to civil penalties as described in this rule. Procedures to reduce the number of residents which cause undue hardship to individuals or which endanger their health, safety or welfare shall be subject to civil penalties as described herein and may be subject to other state law.

5.6.7. A report of any inspection made pursuant to this rule shall be made in writing and shall be maintained on file by the director.

5.6.8. An inspection report shall list each deficiency in the personal care home's compliance with this rule, indicating for each deficiency specifically which provision has not been met.

5.6.9. The director shall send a copy of the report of an inspection to the personal care home within fifteen working days after the inspection or as otherwise specified in this rule.

5.7. Complaint Investigation

5.7.1. Any person may register a complaint with the director alleging violation of applicable laws or regulations by the personal care home. A complainant shall state the substance of the complaint and shall identify the personal care home involved.

5.7.2. Upon receipt of a complaint, the director shall make a determination as to whether the complaint is willfully intended to harass a licensee or is without reasonable basis. The director shall notify a complainant presenting a complaint determined either as intended to harass a licensee or as without reasonable basis that no further investigation will be conducted. A complaint which is viable after initial determination pursuant to this Subsection shall be investigated.

5.7.3. The director shall have the authority to conduct an unannounced inspection of the facility to determine the validity of the complaint and shall conduct such other investigation as is necessary to determine the validity of the complaint.

5.7.4. The director shall provide the facility with notice of the substance of the complaint at the completion of the complaint investigation.

5.7.5. No later than fifteen working days after completing an investigation of a complaint, the director shall notify the complainant and the personal care home in writing of the results of the investigation.

5.7.6. A description of the corrective action the personal care home will be required to take and of any disciplinary action to be taken by the director

will be sent to the complainant upon receipt of written request.

5.7.7. If a complaint has been found to have merit, the director shall, as required by Chapter 16, Article 5C, Section 8 of the West Virginia Code, advise any injured party of the possibility of a civil remedy under Chapter 16, Section 5C of the West Virginia Code.

5.7.8. The name of a complainant or of any resident or person named in a complaint shall be safeguarded by the department and shall not be disclosed without the individual's written authorization. If a complaint becomes the subject of a judicial proceeding, nothing in this Section shall be construed to restrict disclosure of information which would otherwise be disclosed in a judicial proceeding.

5.7.9. Before any complaint or complaint investigation report is disclosed to a personal care home or to the public pursuant to this rule, any information in the complaint which could reasonably identify the complainant, a resident or any other person shall be deleted.

#### 5.8. Plans of Correction

5.8.1. A personal care home found on the basis of an inspection to have deficiencies in compliance with this rule shall develop a plan of correction and submit it to the director within fifteen days of receipt of a report of inspection.

5.8.2. A plan of correction shall propose corrective action and a reasonable time within which the personal care home shall correct each violation cited in the inspection report. The proposed time shall be the shortest possible time within which the personal care home reasonably can be expected to correct the violation and shall be subject to approval or modification by the director. In determining whether to approve the proposed time, the director

shall consider the following factors: (a) the seriousness of the violation; (b) the number of residents affected; (c) the availability of required equipment or personnel; (d) the estimated time required for delivery and installation of required equipment; and (e) any other relevant circumstances.

5.8.3. A plan of correction submitted by a personal care home shall be approved, modified or rejected by the director. The director shall notify each personal care home within fifteen working days as to whether a plan of correction has been modified or rejected. If the director rejects or modifies the plan, the reasons for the action shall be stated. When the director rejects a plan of correction, a revised plan shall be submitted within fifteen days.

5.8.4. When the director rejects a plan of correction, a reasonable time for submission of a revised plan may be allowed before civil penalties are assessed, except: the director shall not allow time for submission of a revised plan where the deficiency to be corrected is a Class I deficiency.

#### 5.9. Point System

5.9.1. A Class I standard shall be assigned a value of 10 points if the personal care home fully complies with the standard. If the personal care home fails to comply fully with the standard but does demonstrate near compliance a score of 9 points may be assigned to the standard. If the personal care home fails to demonstrate full or near compliance with the standard but partial compliance is in evidence, a score of 4 points may be assigned to the standard. If the personal care home fails to demonstrate partial compliance or if the violation is a repeat of a deficiency cited during the previous annual survey a partial score shall not be assigned and the standard shall be scored as a zero.

5.9.2. A Class II standard shall be assigned a value of 9 points if the

personal care home fully complies with the standard. If the personal care home fails to comply fully with the standard but does demonstrate near compliance a score of 8 points may be assigned to the standard. If the personal care home fails to demonstrate full or near compliance with the standard but partial compliance is in evidence, a score of 4 points may be assigned to the standard. If the personal care home fails to demonstrate partial compliance or if the violation is a repeat of a deficiency cited during the previous annual survey a partial score shall not be assigned and the standard shall be scored as a zero.

5.9.3. A Class III standard shall be assigned a value of 8 points if the personal care home fully complies with the standard. If the personal care home fails to comply fully with the standard but does demonstrate near compliance a score of 7 points may be assigned to the standard. If the personal care home fails to demonstrate full or near compliance with the standard but partial compliance is in evidence, a score of 4 points may be assigned to the standard. If the personal care home fails to demonstrate partial compliance or if the violation is a repeat of a deficiency cited during the previous annual survey a partial score shall not be assigned and the standard shall be scored as a zero.

5.9.4. Certain standards are available for extra credit, if, in the opinion of the director, the personal care home performs significantly in excess of the minimum standards set by this rule. No more than one extra credit point shall be assigned to any individual standard for which extra credit is available. Extra credit points are not permitted to offset zero scores. Standards for which extra credit is available are identified below:

6.2. Administrator (Class II)

Board of Health  
Legislative Rule 16-5C  
Series II

- 6.6. Fiduciary Responsibilities of the Personal Care Home (Class III)
- 7.2. Minimum Staff (Class I)
- 8.1. General Health and Safety Requirements (Class I)
- 8.4. Emergency Training, Rehearsals and Reports (Class II)
- 9.2. Rights to Communication and Personal Property (Class II)
- 9.6. Internal Complaint Procedures (Class II)
- 9.8. Residents to be Informed (Class II)
- 10. Personal Care, Assistance and Supervision (Class I)
- 11.1. General Health Care (Class I)
- 12.2. Recreation and Activities Program (Class II)
- 13.2. Meal Assistance (Class III)
- 13.3. Food Service Management (Class II)
- 14. Resident Care Records (Class I)
- 15.4. General Interior Comfort and Safety (Class I)
- 15.5. Bedrooms (Class I)
- 16.1. Interior Comfort and Safety (Class I)
- 16.2. Resident Living and Activity Areas (Class II)
- 16.6. General Maintenance and Housekeeping (Class I)

5.9.5. Certain material within the text of this rule is explanatory or otherwise necessary linguistically but will not enter into the scoring system.

5.9.6. If a standard is not applicable for a particular personal care home, a full compliance value shall be assigned for that item for scoring and rating purposes. This method discounts that particular standard, but does not require a separate set of scoring and rating values.

5.9.7. Whenever a provision of this rule requires a general type or category and additionally lists examples of the type or category, introduced by

phrases such as "such as" or "for example" or similar language, evaluation of compliance shall not be based solely on examples given, but shall rather include evaluation of alternate means of complying with the general type or category.

5.9.8. If a facility has been granted permission for a modification of a construction, site or equipment standard, the scoring of the standard shall be based on the permitted modification, provided, however, the license shall state that a modification has been granted.

5.10. Facility Rating

5.10.1. The director shall assign a rating to each facility licensed under this rule based on the results of the annual survey.

5.10.2. Scores and ratings for individual categories are shown in the table below.

SCORES REQUIRED FOR A, B AND C RATINGS  
 IN EACH CATEGORY OF THE REGULATIONS

Sec. No.	Category	Rating			
		F Less than or equal:	C	B	A
6	Administration	37	38-42	43-47	48-55
7	Personnel Management and Staffing	29	30-32	33-34	35-39
8	General Health and Safety	51	52-56	57-61	62-69
9	Resident Rights	50	51-57	58-62	63-66
10	Personal Care	7	8	9	10-11
11	Health Care	24	25-26	27-28	29-31
12	Social Work and Recreational Services	12	13-14	15-16	17-19
13	Food Service	21	22-23	24-25	26-29
14	Resident Care Records	7	8	9	10-11
15	Construction and Site	48	49-55	56-62	63-70
16	Equipment, Furnishings and Maintenance	50	51-56	57-61	62-69

A personal care home must obtain the number of points indicated in the

above table within each category to obtain a particular category rating. Points scored in any individual category shall not be permitted to offset deficiencies within another category. Therefore, no total of value points is to be computed. An overall rating for the personal care home cannot be determined solely on the basis of total points earned.

5.10.3. For purposes of assigning an overall rating, a category rating of "A" shall be assigned a score of four; a category rating of "B" shall be assigned a score of three; a category rating of "C" shall be assigned a score of two; and a category rating of "F" shall be assigned a score of zero. These category rating scores shall be totaled and an average category rating score shall be computed. An overall personal care home rating shall be assigned based on the average category rating score and the number of categories rated "F" as follows: (a) if a personal care home is given a rating of "F" on as many as one category or has an average category rating score of less than 2.0, an overall rating of "F" shall be assigned; (b) for an average score of 2.0 through 2.59, an overall rating of "C" shall be assigned; (c) for an average score of 2.6 through 3.59, an overall rating of "B" shall be assigned; and (d) for an average score of 3.6 through 4.0, an overall rating of "A" shall be assigned.

5.10.4. A personal care home with an overall rating of "F" may be issued a provisional license as described in this rule and in Chapter 16, Article 5C, Section 6 of the West Virginia Code or may be subject to other actions by the director as authorized by this rule and Chapter 16, Article 5C of the West Virginia Code.

5.11. Availability of Reports and Records

5.11.1. The director shall make available for public inspection and, upon

request, provide at a nominal cost copies of the following documents: (a) applications and exhibits; (b) inspection reports; (c) reports of investigations conducted in response to complaints; and (d) any other reports filed with or issued by the director pertaining to the compliance of a personal care home with applicable laws and regulations. If the director determines it is in the best interests of the public, the director may provide copies of records and reports free of charge to nonprofit community organizations upon written request.

5.11.2. The director shall treat a report of inspection of a personal care home as public information from the time a written plan of correction is submitted. If the personal care home does not submit a written plan of correction within the time specified by the director pursuant to this rule, reports pertaining to the personal care home shall be made public at the expiration of the specified time.

5.11.3. Other records and reports shall be treated as public information from the time they are submitted to or issued by the director.

5.11.4. Nothing contained in this Section shall be construed to require or permit the public disclosure of confidential medical, social, personal or financial records of any resident. Before releasing a report or record deemed public information the director shall delete any confidential information regarding a resident which could reasonably permit identification of the resident. The director shall delete from complaints made available to the public under the Section any information required to be held confidential under Section 5.10 of this rule.

5.12. Registry of Organizations with Right of Access

5.12.1. The director shall maintain a register of all organizations and

groups approved for access to personal care homes under the provisions of this rule and Chapter 16, Article 5C, Section 5, Paragraph (b), Subsection (1)(i) of the West Virginia Code. The primary function of such groups shall be to improve or enhance the quality of life for residents in the personal care home. Such groups shall render assistance to residents without charge. Eligible groups shall include, but not be limited to, such groups as ombudsman programs, long-term care advocates and legal service organizations.

5.12.2. Any organization or group desiring approval shall apply in writing to the director, stating the name, address and general purpose of the organization or group and reasons why access privilege should be granted. The director may in his or her sole discretion require additional information. The director shall review any such application and shall notify the applicant in writing within fifteen working days of the receipt of all information requested whether access rights have been approved or denied.

5.12.3. The director shall have the right to revoke such approval of a group or organization or of a particular representative, upon presentation of evidence that any organization, group, or particular representative has failed to comply with the provisions of this rule.

5.12.4. The director shall publish annually a list of any approved groups and organizations other than the Commission on Aging and its affiliate agencies which are hereby granted such access. Copies of the list shall be distributed to personal care homes annually. Copies may be obtained upon request.

## Section 6. Administration of the Personal Care Home

### 6.1. Policies and Procedures (Class II )

6.1.1. The personal care home shall adopt policies and procedures

governing the personal care and safety of residents, the protection of their personal and property rights, the operation of the personal care home, the services provided and all other policies and procedures required by this rule.

6.1.2. All policies and procedures shall be in writing, kept current and shall be reviewed at least annually, which review shall be indicated by a dated signature of the administrator.

6.1.3. A copy of each policy shall be available for inspection on request by employees, residents and members of the public.

6.1.4. A personal care home is prohibited from advertising, asserting, representing or otherwise implying in any manner that it may render care or services other than those specifically within the scope of its license, except the use of the category "nursing home" in the yellow pages of the telephone directory in areas where a more appropriate category such as "personal care home" or "rest home" is not available shall not be deemed a violation of this provision.

6.1.5. A personal care home is prohibited from renting, leasing or using its premises for any purposes that may disrupt the activities of the residents.

6.1.6. Residence in a personal care home is restricted to residents, owner-operators, and employees, unless otherwise approved in writing by the director.

6.1.7. The personal care home shall post its license in a conspicuous and public place in plain view of all residents in and visitors to the facility.

6.2. Administrator (Class II)

6.2.1. A personal care home shall have an administrator who:

(a) is at least twenty one-years of age;

(b) shall have completed high school or shall have a general education

development (GED) certificate;

(c) shall be qualified by a combination of education, training and experience in the skills appropriate to the functions and responsibilities required for the administration of a personal care home;

(d) shall be of good character;

(e) shall possess mature judgment; and

(f) has a compassionate regard for the best interests of personal care home residents.

In making a judgment as to the suitability of an administrator, the director shall consider the following factors to the extent they are relevant to the administration of the personal care home:

(1) the individual's record and reputation for honest and lawful conduct in business and personal affairs, which may include, but not be limited to, consideration of any criminal record;

(2) record for financial responsibility;

(3) management experience or training, including the capacity to manage the financial operations and staff of the size and characteristics of the personal care home;

(4) successful experience in the field of health care, social services or other areas related to the provision of personal care home services;

(5) information which relates to the ability, willingness or disposition towards compliance with applicable laws and rules; and

(6) any other information related to the individual's ability to provide safe and compassionate personal care home services.

The owner of a personal care home may serve as the administrator, provided, however, he or she shall meet the qualifications for an administrator.

The provisions of this Section shall not apply to owner-administrators of personal care homes holding a valid license at the time this rule becomes effective.

6.2.2. An individual shall not act as or be the administrator of more than two personal care homes. A personal care home having an administrator performing on other than a full-time basis shall have a written contract, or, if the owner functions as the administrator, a written statement, specifying the extent of the administrator's responsibility to the personal care home and stating specifically how the personal care home will assure that the functions assigned to the administrator under this rule will be performed.

6.2.3. A personal care home shall notify the director in writing within ten days of any change in administrators. An emergency administrator who shall be capable of protecting the physical and mental well-being of residents may be employed only upon prior verbal approval from the director which the director shall confirm in writing. A personal care home shall not operate for more than sixty days without a qualified administrator or qualified individual acting in that capacity, unless the director grants an extension, based on a determination that a reasonable attempt has been made to find a suitable replacement.

6.2.4. The administrator shall have the authority for managing the daily operations of the personal care home and assuring compliance with this rule and other applicable state and federal laws and regulations; and may delegate authority as necessary for efficient and effective management.

6.2.5. The administrator shall inform the owner and each member of any governing body of all: (a) official inspection reports and complaint investigation reports issued by the director; (b) plans of correction submitted

by the personal care home to the director; (c) licensure classification; and (d) requests, orders, complaints or policy statements filed with the administrator by the director.

6.3. Admission, Discharge and Transfer Policies (Class II)

6.3.1. The personal care home shall develop and implement written policies regarding the admission, discharge and transfer of residents which shall include but are not limited to those in this Section.

6.3.2. Persons admitted to a personal care home may be in need of personal assistance in activities of daily living, or in need of supervision because of mental impairment, or both, but shall not be in need of nursing care as defined in State law and this rule, except for temporary intermittent care as specified in Section 11 of this rule.

6.3.3. Except in an emergency, a personal care home shall consult the resident or his or her legal representative, his or her physician and any sponsor agency at least seven days in advance of the resident's transfer or discharge.

6.3.4. No personal care home which offers services to members of the general public shall deny admission to a prospective resident on the grounds of race, color, religion or national origin.

6.4. Admission Contract (Class II)

6.4.1. The relationship of a resident to the personal care home shall be covered by a contract entered into at the time of or prior to the individual's admission, between the resident or his or her legal representative and the personal care home.

6.4.2. Each party to the contract shall have a copy of the contract.

6.4.3. The personal care home shall keep each contract on file for five

years after the date it is terminated.

6.4.4. A contract shall include at least the following provisions:

(a) the daily, weekly or monthly rate charged by the personal care home and refund provisions for unused portions;

(b) the services and accommodations to be provided by the personal care home in consideration for the daily, weekly or monthly rate;

(c) agreement that medical, dental and other health care services can be obtained promptly when needed;

(d) provisions for transfer of the resident to a hospital, nursing home or other appropriate care provider when the resident's physical or mental condition has changed so that the personal care home can no longer meet the resident's needs;

(e) any services for which the personal care home will make arrangement and the responsibility for payment for such services;

(f) procedures governing emergencies including immediate care of the resident, persons to be notified, and reports to be prepared;

(g) provision for review and renegotiation of the contract thirty days prior to any change in the terms of the contract; and

(h) specification of any rights, duties, and obligations of the parties in addition to those required by law.

6.4.5. Subsection 6.4.4 shall not apply to residents receiving care pursuant to a provider agreement between the personal care home and the West Virginia department of human service except that such residents shall receive a written contract delineating their responsibilities in accordance with Subsection 6.4.4.

6.4.6. A personal care home is prohibited from entering into a life care

contract as a provider of services without the director's prior written authorization. An application for authorization must be submitted to the director, on forms provided by the director, stating fully the terms and conditions of the contract, the financial conditions of the personal care home and other information as the director may require.

6.5. Administrative Recordkeeping Requirements (Class III)

6.5.1. Records and reports required shall be completed legibly in ink or typewritten.

6.5.2. Records shall be in accordance with generally accepted professional standards and practices.

6.5.3. Complete legible photocopies of records will be accepted in fulfillment of the requirements of this rule.

6.4. The following records and documents shall be available in the administrative office:

- (a) documentation of any formal staff meetings;
- (b) documentation of visits by any professional consultants employed by the home related to compliance with this rule;
- (c) a copy of this rule;
- (d) a copy of all current policies and procedures;
- (e) reports of all inspections by government agencies together with summaries of corrective action taken in response to each report during the previous five years;
- (f) reports of any other inspections required by this rule;
- (g) copies of contracts and agreements for the provision of services by outside agencies or contractors to which the personal care home is a party;
- (h) documentation of the control and ownership of the facility;

- (i) by-laws of the governing body, if applicable;
- (j) reports of accidents or incidents involving residents as required by this rule;
- (k) records of all transactions conducted by the facility involving personal funds of residents in the facility during the previous five years;
- (l) all menus prepared and served by the personal care home as required by this rule;
- (m) records of food purchases made by the home;
- (n) a copy of the emergency evacuation plan;
- (o) the chronological record of all residents admitted to the personal care home; and
- (p) all other records required by state or federal laws and regulations, except those for which maintenance elsewhere is permitted.

6.6. Fiduciary Responsibilities of the Personal Care Home (Class III)

6.6.1. A personal care home which elects to handle money for residents shall hold all resident monies in trust and separately from the funds of the personal care home.

6.6.2. The personal care home shall administer the funds on behalf of the resident in the manner directed by the depositor.

6.6.3. The personal care home shall maintain a true and complete account of all moneys received and all receipts for any disbursements for the personal account of each resident, including the purpose and payee of each disbursement. Receipts shall not be required for expenditures of less than five dollars, provided, when disbursements are made jointly for a number of residents, a copy of the receipt shall be placed in each resident's account file indicating the amount and purpose of the expenditure for each resident or,

alternatively, a master file of such joint receipts shall be kept with a notation in each resident's record indicating the date, purpose and payee for the expenditure and the location of the receipt.

6.6.4. The personal care home shall render a true account to the depositor or the resident upon written request, and upon termination of the individual's stay in the facility. The personal care home shall render by mail a true account to the director upon written request within one business day of the receipt of the request which shall be sent by registered mail or delivered in person.

6.6.5. A facility which, in any one month, handles at least \$25 of funds per resident or at least \$500 for all residents shall give evidence of furnishing bond in compliance with the following requirements:

(a) The amount of the bond shall be at least \$2,500, provided: the director shall have the discretion to require more than a \$2,500 bond based on the estimated amount of resident funds to be handled by the personal care home within the next twelve-month period. The director may require a facility to file an additional bond in the following circumstances: (i) when the director determines that the amount of the bond is insufficient to protect the patients' money; or (ii) when the amount of the bond or collateral is impaired by recovery against it pursuant to the provisions of Chapter 16, Article 5C, Section 7 of the West Virginia Code by a person injured as a result of improper or unlawful handling of a patient's funds.

(b) The facility shall execute the bond with a corporate surety licensed to do business in the State of West Virginia.

6.6.6. When a personal care home ceases to handle resident's funds in amounts which require a bond under this Section, the director shall allow the

release of the bond upon the facility's rendering a true and complete account to the depositors of residents' funds and to each resident for whom money is handled.

6.6.7. An employee of a personal care home or a person having a financial interest in the personal care home is prohibited from accepting appointment as guardian or committee for a resident or from accepting a power of attorney for a resident, except: such appointment shall be acceptable if the individual is related to the resident by blood or by marriage within the degree of consanguinity of second cousin. An individual serving in a prohibited capacity under this Section on the effective date of this rule shall initiate proceedings within thirty days following the effective date of this rule, to have him or herself removed from the prohibited capacity and to have another qualified person appointed.

6.7. Increase in Bed Capacity (Class I) - The personal care home shall not admit or have more residents than the number of beds for which it is licensed without review and approval of the director.

#### Section 7. Personnel Management and Staffing

##### 7.1. Employees (Class I)

7.1.1. The personal care home shall employ employees in accordance with this rule based on the following criteria to assure the safety and proper care of residents in the facility:

- (a) The physical and mental condition of the residents;
- (b) The size and layout of the building;
- (c) The capabilities and training of the employees; and
- (d) Compliance with this rule.

7.1.2. The personal care home shall assure that sufficient staff is on the

premises to implement emergency procedures, including evacuation of residents, in accordance with the facility's written disaster plan, in the event of fire, disaster, or other threats pertaining to the health, safety, and security of the residents.

7.1.3. The administrator shall assure that all staff are:

- (a) mentally and physically capable of performing their duties;
- (b) assigned duties in accordance with their level of education, preparation for their responsibilities and experience;
- (c) of good character;
- (d) clean and well-groomed;
- (e) at least eighteen years of age;
- (f) able and willing to accept supervision and training; and
- (g) are validly licensed in accordance with any applicable state law.

7.1.4. There shall be at least one staff member within the facility at all times who has a certification in an approved first aid course to include training in bleeding and seizure control, and the care for abrasions, scratches, cuts, and insect bites. A licensed registered nurse or licensed practical nurse is not required to be additionally certified in the approved first aid course.

7.1.5. All personal care homes shall:

- (a) Have at least one staff member within the facility at all times when residents are in the facility;
- (b) Provide for relief personnel to substitute for staff during vacation, illness, or other absences from the facility;
- (c) Assure that residents serving as volunteer staff shall not be left solely in charge of other residents while the facility owner or administrator and staff are absent from the facility.

7.2. Minimum Staff (Class I)

7.2.1. The personal care home shall have a sufficient number of employees on duty to meet the following requirements:

(a) Homes having Type I residents only, shall have resident care employees sufficient to provide 0.8 hours of staff time per resident per day.

(b) Homes having any Type II residents, shall have resident care employees sufficient to provide 1.2 hours of staff time per resident per day.

(c) The minimum number of staff in a home is two, regardless of the number or type of residents.

(d) In addition to the requirements of 7.1.6.(a) through 7.1.6.(c), inclusive, there shall be at least one person awake and on duty in the home at night and there shall be at least one other person immediately available in the home to assist with emergencies. An owner-administrator's time as "available" need not be included for purposes of 4.33 time limits.

(e) There shall be sufficient staff over these minimum levels in accordance with the home's approved general plan for intermittent nursing and the specific requirements for each individual receiving intermittent nursing.

7.2.2. Staff shall be employed as necessary to meet other requirements of this rule.

7.2.3. (a) Any personal care home may be required to increase employees above the minimum ratios required herein when the director determines that an appropriate level of resident care cannot be provided to the residents in the facility as evidenced by any of the following alone or in combination lack of appropriate care provisions, failure to fulfill service agreements as agreed upon in the resident's contract, the facility's lack of compliance with this rule, and the health, safety and welfare of the residents.

(b) Increased staffing will only be required after the director consults with the facility administrator and residents, and a determination is made that additional staff is required to provide or arrange services for residents. When additional employees above the minimum ratios herein are required, the director shall require the submission of a corrective action plan by the administrator indicating how the increased staffing is to be achieved. The plan shall be approved by the director.

(c) When the home can demonstrate that the use of community services is sufficient to satisfy resident needs or the director determines increased staffing beyond that required herein is no longer required to maintain an appropriate level of resident care or supervision of residents, modifications may be made in staffing requirements with the approval of the director.

7.2.4. Each personal care home shall maintain and furnish to the director upon request information from payroll records setting forth the number (in full-time equivalents) and types of employees on duty in the home at any given time. An owner-administrator shall provide a record of time spent in the home and time spent in resident care.

7.2.5. Written work schedules shall be prepared, posted weekly and kept on file in the facility for at least a year.

### 7.3. Training and Orientation (Class II)

7.3.1. The personal care home shall implement a written plan for in-service training which begins with orientation and continues throughout the duration of employment for all staff members.

7.3.2. Orientation and training shall be designed to increase employee awareness and training in at least the following areas:

(a) general knowledge in the needs and care of elderly and disabled

persons;

- (b) the policies and services of the home;
- (c) their specific job responsibilities; and
- (d) the requirements of this rule pertinent to their responsibilities.

7.3.3. Training for employees with resident care responsibilities shall include the following in addition to the requirements of Subsection 7.2.2.

- (a) personal grooming care;
- (b) personal hygiene care;
- (c) feeding assistance;
- (d) providing assistance in other activities of daily living;
- (e) bowel and bladder training;
- (f) emergency care of residents;
- (g) use of first aid kit and cardio-pulmonary resuscitation (CPR) techniques;
- (h) resident rights;
- (i) complaint procedures of the home;
- (j) nutrition;
- (k) the activities program;
- (l) emergency plans for the facility, including fire safety and evacuation plans; and
- (m) protection of resident privacy and confidentiality.

7.3.4. The home shall provide training opportunities as needed but no less than once annually to total fifteen hours per year for employees with primary responsibility for resident care through in-service training programs, workshops, classes or conferences related to care of the aged.

7.4. Personnel Policies and Records (Class III)

7.4.1. Each home with more than five employees shall develop and discuss with each employee written personnel policies, procedures, organizational charts and job descriptions.

7.4.2. The home shall maintain confidential personnel records for each employee.

7.4.3. Each personnel record shall contain support for the employee's initial and current assignment as follows:

(a) a record of the employee's training, experience and previous employment with appropriate references obtained;

(b) a health record containing the results of pre-employment and annual physical examination including tuberculosis screening if indicated by exposure or prevalence;

(c) current license if applicable; and

(d) a summary record of each employee's orientation and in-service training, including topics and dates.

7.4.4. Employees shall have access to their own personnel records in accordance with facility policy concerning hours of availability and similar reasonable considerations.

7.4.5. A personal care home is prohibited from discharging or in any manner discriminating against an employee because the individual has filed a complaint under Section 5.7 of this rule or participated in a proceeding authoriz-

ed by Chapter 16, Article 5C of the West Virginia Code.

## Section 8. General Health and Safety

### 8.1. General Health and Safety Requirements (Class I)

8.1.1. A personal care home shall develop and implement written policies

and procedures to assure that a safe and sanitary environment exists for residents and employees.

8.1.2. Employees with symptoms or signs of respiratory infection or other communicable disease or condition or infected skin lesions shall not be permitted to work when there is a likelihood of disease or condition transmission.

8.1.3. There shall be a documented review of incidents and accidents to residents and employees to identify health and safety hazards.

8.1.4. The personal care home shall take reasonable actions to eliminate or minimize health and safety hazards identified through such reviews.

8.1.5. Residents who are nonambulatory or mobile-nonambulatory shall not be placed in a location without a ground-level exit unless there is an approved elevator.

8.2. Emergency Plan (Class II)

8.2.1. The personal care home shall have a written disaster plan which states procedures to be followed in the event of flood, fire, explosion or other emergency or occurrence which might severely affect the functioning of the facility.

8.2.2. In developing the emergency plan, the home shall consult with local services which may be involved in executing the plan.

8.2.3. Brief instructions and guidelines regarding procedures shall be readily available at strategic locations and evacuation routes shall be posted as appropriate.

8.2.4. There shall be policies and procedures for initiating and implementing the plan.

8.2.5. The emergency plan shall include at least the following:

(a) assignment and training of employees for specific tasks and responsibilities;

(b) procedures for identification and prompt transfer of casualties and records, when necessary, to the facility most appropriate for the administration of definitive care;

(c) policies and procedures with regard to transporting casualties and uninjured individuals;

(d) instructions regarding the location and use of alarm systems and signals, and of firefighting equipment;

(e) information regarding methods of fire containment;

(f) procedures for notification of appropriate personnel;

(g) specification of evacuation routes and procedures; and

(h) frequency of fire drills.

8.3. Fire Drills (Class I) - Fire drills shall be held at least quarterly for each scheduled shift of employees.

8.4. Emergency Training, Rehearsals and Reports (Class II)

8.4.1. The personal care home shall operate an internal emergency preparedness program which includes orientation and ongoing training and drills in procedures and specific assignments.

8.4.2. The emergency plan shall be rehearsed at least annually.

8.4. A dated written report and evaluation of each emergency rehearsal and fire drill shall be maintained on file for at least two years.

8.5. Provisions for Emergency Telephone Calls (Class I)

8.5.1. A personal care home shall have at least one noncoin-operated telephone or one extension on each resident occupied unit and additional telephones and extensions if needed to summon help in case of emergency.

8.5.2. A personal care home shall post at least the following emergency call information conspicuously near each telephone in the personal care home:  
(a) telephone number of fire, police and other appropriate emergency services;  
(b) names and telephone numbers of all personnel to be called in case of fire or emergency.

8.6. Infection and Communicable Disease Control (Class I) - The personal care home shall develop and implement policies and procedures for (a) identifying, preventing and controlling infections and communicable disease and conditions; (b) reviewing the health status of employees; and (c) ensuring employee compliance with policies and procedures.

8.7. Animals (Class II)

8.7.1. Animals present in the personal care home shall not be permitted in (a) food preparation areas (b) dining areas during meals, or (c) medication storage areas, except for fish in aquariums.

8.7.2. Wild, dangerous or obviously ill animals are prohibited.

8.7.3. Animals shall be housebroken, clean, friendly and well-mannered and their quarters shall be kept clean at all times.

8.7.4. Documentation that State and local laws regarding rabies prevention and animal licensure are observed shall be on file in the facility.

8.7.5. Residents shall not be physically endangered by animals present in the facility.

8.7.6. Residents shall not be required to associate with animals against their will.

Section 9. Residents' Rights

9.1. General (Class II)

9.1.1. A personal care home shall have written policies and procedures

regarding residents' rights which shall be consistent with the provisions of this rule.

9.1.2. A personal care home may have house rules pertaining to the conduct of residents in the home, which rules shall be in writing and consistent with the provisions of this rule. Any house rule which unreasonably restricts the rights of residents as provided in this rule or in any state or federal statute shall be rescinded.

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

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

9.1.5. Whenever this rule requires written consent, documentation of consent in the presence of a third party who is not an employee of the personal care home shall be acceptable for residents who are blind or who have a visual or other impairment which would prevent their reading or writing of the consent document.

9.1.6. Residents shall be encouraged and assisted to exercise their rights as residents and as citizens.

9.1.7. Residents shall be free from interference, coercion, discrimination or reprisal as a result of exercising any of their rights.

9.1.8. No resident shall be segregated, given separate treatment, restricted in the enjoyment of any advantage or privilege enjoyed by others in the home, or provided with any aid, care services, or other benefits which are different or are provided in a different manner from those provided to others in the home on the grounds of race, color, religion or national origin.

9.2. Rights to Communication and Personal Property (Class II)

9.2.1. A resident shall be permitted to express grievances to the home and to communicate to employees and outside representatives of the resident's choice the need for changes in the personal care home.

9.2.2. Residents shall be allowed to visit with and communicate privately with individuals of their choice.

9.2.3. A personal care home is prohibited from discharging or in any manner discriminating against a resident because the individual has filed a complaint under Section 5.7 of this rule or participated in a proceeding authorized by Chapter 16, Article 5C of the West Virginia Code. A rebuttable presumption of retaliatory action against a resident shall arise against any personal care home which in any way adversely discriminates against a resident by who or on whose behalf a complaint has been submitted to the director or who is involved in any proceeding instituted under Chapter 16, Article 5C of the West Virginia Code within one hundred and twenty days of the filing of the complaint or the institution of any such proceeding.

9.2.4. Residents shall be allowed unimpeded, private and uncensored communication with other by mail and by telephone. If the personal care home regularly or routinely opens mail for or reads mail to a resident or both, there shall be a written signed consent on file in the resident's record. Verbal consent for specific pieces of mail need not be documented, unless this is a

regular occurrence.

9.2.5. The personal care home shall make telephones reasonably accessible and shall ensure that correspondence can be conveniently received and mailed. Reasonable times and places for telephone use may be established and, if established, shall be in writing.

9.2.6. Residents shall be given the opportunity to meet with and participate in the activities of social, religious and community groups, at their discretion.

9.2.7. A married resident shall be assured privacy for visits by his or her spouse. The home may establish reasonable schedules, if necessary. If both spouses are residents, they may be permitted to share a room and a bed if they so choose.

9.2.8. Residents have the right to retain and use personal clothing and possessions subject to limitations of space, sanitation, safety and the potential for infringing upon the rights of other residents. The home may specify in the admission contract conditions limiting the liability accepted by the personal care home for such personal clothing and possessions.

9.2.9. The personal care home shall maintain on file a current inventory of all personal possessions of the resident in use in the facility which shall be signed by the resident and by a representative of the facility. The resident shall be given a copy of the inventory.

9.2.10. The personal care home shall institute reasonable procedures to safeguard resident's clothing. A clothing inventory is not required.

9.2.11. If the personal care home agrees to store or to arrange for storage of personal possessions of a resident, conditions of storage and any liability accepted by the personal care home shall be specified in the admission

contract. The home shall maintain on file an inventory of such personal possessions which shall be signed by the resident and a representative of the home. The resident shall be given a copy of the inventory.

9.3. Rights with Regard to Treatment (Class I)

9.3.1. No resident shall be verbally, physically or otherwise abused, or neglected or mistreated.

9.3.2. No resident shall be restrained by physical or chemical means except as follows:

(a) In an emergency situation where there is imminent danger that the resident will injure himself or herself or others, methods used to prevent harm shall be those which restrict or limit the resident's activity to the minimum level necessary for protection of the resident or others. Supervision and care shall be provided to meet the physical and emotional needs of said resident and of any other residents and employees in need during the emergency. The home shall seek assistance as needed and shall arrange for prompt transfer of the resident to a facility capable of meeting his or her needs, if needed.

(b) Half bedside rails may be used for the protection of a resident from harm only with the written order of the resident's physician. Full bedside rails are prohibited.

(c) The voluntary use of tranquilizers or other medication which is prescribed by a physician is not prohibited.

9.3.3. Alleged violations shall be reported immediately to appropriate individuals as designated by the personal care home and there shall be evidence that: (a) all such alleged violations are thoroughly investigated; (b) the results of such investigation are reported to the administrator or his or her designated representative within twenty-four hours of the report of the inci-

dent; and (c) sanctions are invoked when the allegation is substantiated.

9.3.4. Residents shall be given the opportunity to participate in the planning of their care and supervision.

9.3.5. Residents shall be permitted to select their own personal physician.

9.3.6. A resident has the right to refuse any medical treatment.

9.3.7. Residents shall not be required to perform services for the facility, nor be required to participate in any social, recreational or religious activity.

9.4. Confidentiality, Privacy and Record Access (Class II)

9.4.1. Residents shall be assured confidential treatment of their personal care records and condition, which shall not be discussed without the resident's consent with persons not treating or caring for the resident.

9.4.2. A resident has the right to refuse the release of his or her personal care records to any individual outside the facility, except as required by law or third-party payment contracts. A specific signed consent shall be obtained for all other releases. No prior executed general release shall be used. A prior consent for release to specific persons or facilities or release under emergency conditions which render the resident incapable of consent at the time of the emergency and where the record is relevant for the provision of emergency care is acceptable.

9.4.3. Residents shall be permitted to inspect their own records during ordinary business hours or at other reasonable times subject to any relevant state and federal laws.

9.4.4. A resident or his or her agent or representative of choice shall, upon request and in accordance with State and federal law, be given a copy of

the resident's own records subject to paying the home's reasonable fee to cover the expense of copying the records. The home may require that the request for a copy be in writing.

9.4.5. Residents shall be treated in a manner which assures privacy in their daily living.

9.5. Financial Rights (Class II)

9.5.1. Residents have the right to manage their personal financial affairs.

9.5.2. A personal care home may manage a resident's personal funds only on the written prior authorization of the resident.

9.5.3. A resident shall be liable only for charges which have been included in the admission contract between the resident and the personal care home including any written modification of the contract except for charges for emergency services which could not have been reasonably anticipated when the contract was signed or amended.

9.5.4. If emergency services provided are not included in the admission contract, the personal care home shall, when feasible, obtain the prior written consent of the resident or other financially responsible persons or agency stating the amount of the applicable charges.

9.5.5. No resident shall be transferred from or discharged by a personal care home without the resident's consent or request except for the resident's health, welfare or safety, the health, welfare or safety of other residents or employees, or for nonpayment.

9.5.6. A resident whose cost of care is reimbursed by the West Virginia department of human services shall be discharged only in accordance with any lawfully adopted procedures of the department of human services.

9.6. Internal Complaint Procedures (Class II)

9.6.1. A personal care home shall develop and implement written procedures for a complaint program to receive and respond to complaints by residents, their families, sponsors and the public. A home's compliance with this Section shall not obviate compliance with the provisions of Section 5.7 of this rule.

9.6.2. A personal care home shall designate an employee to be responsible for coordinating its complaint program.

9.6.3. The administrator shall be informed of all complaints.

9.6.4. The program shall include a process for investigation and assessment of the validity of all such complaints.

9.6.5. The program shall provide a mechanism to record and maintain on file all complaints received and action taken on them and to inform residents of the decision and action of the home regarding their complaints within thirty (30) days.

9.6.6. The home shall assure that careful consideration is given to each complaint even when it has been made by an individual who often makes complaints having no valid basis.

9.6.7. The complaint program shall include a program to educate residents, their families and sponsors about the facility's complaint policies and procedures.

9.7. Access (Class II)

9.7.1. A personal care home shall be open for general visitation for at least ten hours between 9:00 a.m. and 10:00 p.m., seven days per week.

9.7.2. A personal care home shall permit full and free access to representatives of recognized community organizations and groups approved by the

director in the registry described in this Section. Such access shall be limited to normal visiting hours unless by permission of the personal care home or as specified in this Section regarding complaint investigation by the State commission on aging and its agents or as permitted by other state and federal law or rules and regulations.

9.7.3. Such representatives shall be permitted to visit, talk with, and to make personal, social and legal services available to any resident and to inform residents of their rights, entitlements and corresponding obligations under federal and state laws and rules and regulations through distribution of educational materials and in discussion with individual residents or groups of residents.

9.7.4. Such representatives shall be permitted to assist residents in asserting their legal rights including claims for public assistance, medical assistance, social security benefits and in other legal matters. Assistance may be provided individually or on a group basis, and may include organizational activity, counseling and litigation.

9.7.5. Such representatives shall be permitted to view all areas of the personal care home with the following exceptions: (a) living areas of a resident who objects to such visit or inspection; (b) business records of the personal care home, unless the administrator consents; (c) resident records, unless the resident consents in writing; (d) food service or other areas requiring sanitary conditions; and (e) any other areas where inspection might endanger any individual or might invade the privacy of any resident or employee. No such representative shall enter a resident's room without identifying himself to the resident and a resident shall have the right to refuse a visit pursuant to this Section and the visit shall be terminated upon the re-

sident's request. Communication between a resident and such representatives are deemed confidential.

9.7.6. An individual entering a personal care home pursuant to this Section shall, upon entering the personal care home notify the administrator or other available agent of his or her presence. If requested, the individual shall provide identification as an authorized representative of an agency on the registry of such agencies maintained by the director. Such individuals shall coordinate their activities with the personal care home's administrator, social worker or activity director.

9.7.7. A personal care home may restrict a particular visitor, or individual obtaining access under this Section, if his or her behavior is, in the judgment of the administrator, unreasonably disruptive of the functioning of the home. The reasons for such judgment and restriction shall be documented in writing and kept on file as an administrative record.

9.7.8. No resident shall be punished or harassed by a personal care home, its agents, its employees or its contractors because of his or her efforts to avail himself of his right to communicate with others under this Section. Violation of this provision shall be subject to the provisions of Section 9.2.3. of this rule.

9.7.9. The board of health recognizes the lawful interests of and the responsibilities of the State commission on aging with respect to the senior citizens of the state. In accordance with those interests and responsibilities, the commission on aging and its recognized affiliates, including the nursing home ombudsman program shall be granted full and free access privileges for the necessary conduct of complaint investigations.

9.8. Residents to be Informed (Class II)

9.8.1. The personal care home shall prepare in written form one or more documents, which may include a copy of parts of this rule, setting forth the following:

- (a) resident rights specified in Section 9 of this rule;
- (b) the home's house rules of conduct;
- (c) a statement of the availability of the licensure law and this rule as required by Section 9.8.6;

- (d) at the discretion of the home, other rights of residents under facility policies and procedures; and

- (e) in a prominent position, the following statement:

"This Bill of Rights sets forth some fundamental human rights to which you, as a personal care home resident, are entitled under West Virginia law and regulations. If you see a violation of any of the rights listed here, you are encouraged to report the violation to the administrator or [insert the name of the individual identified under Section 9.6 here], who is responsible for handling complaints. If the facility does not respond to your complaint promptly, favorably or sufficiently, or if you are dissatisfied for another reason, you may contact the Health Facilities Evaluation Division of the West Virginia Department of Health at 1800 Washington Street, East, Charleston, West Virginia, 25305, telephone (304) 348-0050, to report the alleged violation and to request an inspection of the facility. Alternatively, you may contact the West Virginia Commission on Aging at the State Capitol, Charleston, West Virginia, 25305, telephone (304) 3498-2241 or their local representative, if any [insert the appropriate name, address and telephone number here]. The names of those filing complaints will be kept confidential."

9.8.2. Within sixty days of the effective date of this rule; residents

shall be given a copy of the document described in Section 9.8.1 prior to or at the time of admission. Residents already in the personal care home at the time this rule becomes effective shall receive the document of resident rights within sixty days of the effective date of the rule.

9.8.3. If a resident is unable to read the list of rights, the rights shall be read to the resident in a language the resident understands. The licensee or administrator or designated employees shall explain to the resident any portions of the rights which the resident does not understand and shall answer any questions the resident may have regarding the rights.

9.8.4. After a copy of the rights has been given to, and, if necessary, read to, the resident, the resident shall sign and date a written acknowledgment that the resident has read or has been read the rights, that the resident understands the rights, and that any questions which the resident has regarding the rights have been answered by the home. A copy of the written acknowledgment signed and dated by the resident shall be placed in the resident's record provided for in Section 14.

9.8.5. Copies of the document described in Section 9.8.1 shall be made available to resident's families, any legal representatives, any sponsoring agencies, and prospective residents and shall, upon request, be available to members of the public.

9.8.6. Copies of the West Virginia Nursing and Personal Care Home Licensure Law (Chapter 16, Article 5C of the West Virginia Code) and this rule shall be readily available in the home for inspection upon request by residents and the general public during regular business hours.

9.8.7. At least one copy of the document described in Section 9.8.1 shall be posted conspicuously and conveniently for resident access and ease of

reading in the dining or recreation area. Additionally, a notice stating the access provisions of Section 9.7 shall be conspicuously posted at or near the door.

Section 10. Personal Care, Assistance and Supervision (Class I)

10.1. The personal care home shall provide personal care and supervision services as determined by the needs and capabilities of the residents.

10.2. Residents shall be assessed at the time of admission and reassessed at intervals not to exceed seven months to determine their needs for personal assistance or supervision in each of the following areas:

(a) Ability to adjust socially and emotionally to the home, including such factors as their capability to communicate and relate with others, behave appropriately, be compatible with other residents and potential to adapt or control personal habits as needed;

(b) Need for assistance with legal or financial problems;

(c) Need for assistance with activities of daily living;

(d) Ability to manage their personal affairs, use the telephone, handle their finances, read and write correspondence, express their likes and dislikes;

(e) Need for social, recreational and leisure time activities, with specification of likes and dislikes; and

(f) Needs due to hearing, vision, speech, mobility and memory impairments.

10.3. Each resident shall have a written, signed and dated assessment by a licensed physician not more than forty-five days prior to the resident's admission, or no less than seventy-two hours following admission, if the assessment cannot reasonably be accomplished prior to admission. This assessment

shall include at least the following:

- (a) the general level of care and assistance needed by the resident;
- (b) mental status;
- (c) any mobility impairment or restrictions;
- (d) any dietary restrictions;
- (e) any medication orders;
- (f) any known allergies or allergic reactions to medications;
- (g) a statement that the individual is not a communicable disease carrier;

and

(h) a statement that the individual may be adequately cared for in the personal care home.

10.4. The personal care home shall make available the following personal services in accordance with this rule:

- (a) personal supervision;
- (b) individual assistance with ambulation;
- (c) individual assistance with bathing;
- (d) individual assistance with dressing;
- (e) individual assistance with eating;
- (f) individual assistance with grooming;
- (g) individual assistance with securing necessary health care; and
- (h) individual assistance with self-administered medications.

The personal care home shall also offer those residents in need assistance with such other activities of daily living as securing transportation, making and keeping appointments, care of personal possessions, use of the telephone and in making arrangements for shopping or for otherwise obtaining personal necessities.

10.5. Residents shall be encouraged to practice good personal hygiene and to dress in clothing which is clean, neat, appropriate to the season and in good repair. The appearance of residents shall be considered in evaluating compliance with this provision; however, reasonable allowances shall be made for the individual preference and taste of residents.

10.6. All residents shall receive the encouragement and assistance necessary to develop and maintain maximum independence and self determination.

10.7. Tub baths or showers shall be made available for each resident on a regular basis and residents shall be encouraged to bathe at least twice weekly. Shampoos, shaves, hair cuts and other hygiene measures shall be made available as needed to assure opportunity for cleanliness, neatness and sanitation.

10.8. The routine of the home shall be such that residents may spend the majority of their waking hours out of their bedrooms.

10.9. Residents shall be generally up and about during normal waking hours except for occasional rest and for periods of temporary illness or disability as described herein. Individual preference of residents for time of retiring and rising shall be permitted, except as specified in the resident care plan.

10.10. Each resident shall have a residential care plan which addresses those areas in which the resident needs supervision and assistance or both. The resident's personal physician shall review the care plan annually and shall sign and date it indicating the medical reason for any specific exceptions or limitations.

## Section 11. Health Care and Medications

### 11.1. General Health Care (Class I)

11.1.1. Resident shall be examined and evaluated by a physician as indicated by their age and general health; however, in no case shall the interval between physician assessments be less than annually.

11.1.2. When a resident is in need of specialized professional health or mental health care, he or she shall be assisted as needed by the personal care home in making appropriate arrangements for the needed care. Health care shall include but not be limited to dental care, medical care, and care of feet, fingers, eyes and ears.

11.1.3. When the resident is unable to participate in making appropriate arrangements, the resident's family or legal representative shall be notified of the need.

11.1.4. When a resident suffers a serious accident or illness, medical attention shall be secured immediately.

11.1.5. The resident's next of kin, and any legal representative shall be notified immediately of any serious accident or illness and within twenty-four hours of any non-routine health care needs.

11.1.6. The home shall ensure access to health care in accordance with the age and general health of the resident.

11.1.7. The home shall take all necessary precautions to ensure an accident-free environment for the residents.

11.1.8. A resident shall not associate with other residents while affected with any infection or communicable disease or condition when there is a likelihood of transmitting the infection, disease or condition to other residents. Precautions shall be taken to protect other residents and employees. While having a common cold or other disease such as flu or a viral infection or a lice infestation would not be grounds for discharging or transferring a resident,

when in doubt of the seriousness of the disease or condition, a physician should be consulted. The home shall consult with a physician immediately regarding any lengthy or severe infection, illness or condition or one which affects more than a small number of residents.

11.1.9. In the event of an outbreak of a highly infectious disease or condition, a residence shall, upon the orders of the director, be immediately closed to the public.

11.1.10. A standard American Red Cross first aid kit, or the equivalent shall be readily available at all times in the facility.

11.1.11. If a resident becomes disturbed and unmanageable, the attending physician, next of kin or lawfully responsible party shall be notified promptly. (See also §9.3 of this rule).

11.2. Intermittent Nursing (Class I)

11.2.1. A personal care home may with the prior approval of the director provide temporary intermittent nursing care to residents who, because of a temporary illness or disabling condition, are in need of such care. Such care shall be only occasional or incidental, such as might be given in the home of any individual.

11.2.2. In order for a resident to receive temporary intermittent care in the personal care home, a physician must state in writing:

(a) a prognosis that, except for the temporary illness or condition, the resident is expected to continue as an individual suitable for a personal care home setting;

(b) a statement that adequate care can be provided in the personal care home;

(c) a statement that the nature of the illness or disability does not

require the constant presence of a nurse or that the home has agreed to arrange for such care and that the facilities of a nursing home are not required; and

(d) orders for care and treatment needed.

11.2.3. A registered nurse shall:

(a) complete an initial assessment of the individual's need for temporary nursing care;

(b) develop a nursing care plan;

(c) estimate the prognosis for return of the resident to personal care status;

(d) instruct appropriate employees of the home in procedures required to be executed for and by the resident, including but not limited to any medication administration, treatments, restorative and recuperative care procedures; and

(e) record keeping required.

11.2.4. A registered nurse shall visit each resident as indicated by the physician and as reflected in the nursing care plan not to be less than one hour per week per resident receiving nursing care. The registered nurse shall review the resident's condition and record regarding care needed and received, each review to be documented by a dated signature.

11.2.5. Nursing care procedures may be executed by either a registered nurse or a licensed practical nurse who is under the direction and supervision of a registered nurse as described above or a physician.

11.2.6. The home may have nurses as employees or public health nurses or staff of a home health agency or other type of agency providing nursing services, provided, care shall conform to the nursing care plan.

11.2.7. A resident shall not remain bedfast for a period exceeding one week. In such instances prompt transfer to a nursing home shall be arranged.

11.2.8. The resident shall not require nursing care for a period longer than three months, except in the instance that a reevaluation by a physician indicates that continued care in the home is desirable and that there is still a prognosis for the resident to return to personal care status within no more than an additional three months. This evaluation shall include plans for transfer to a nursing home or hospital if indicated and preparation of the resident and family, if any, for the potential transfer. Physician reevaluations shall occur again at four months and five months. In no case may a resident receive nursing services in the home for a period longer than six months.

11.2.9. In no instance shall the number of residents receiving temporary nursing care exceed ten percent of the licensed bed capacity of the home. A fraction of five tenths or less shall be rounded down to the nearest whole number and a fraction of more than five tenths may be rounded up for purposes of this provision.

11.2.10. Such provision for temporary intermittent nursing care as provided herein shall not interfere with the care of other residents.

11.2.11. The director shall have the authority to develop a list of illnesses, conditions and nursing procedures which may not be cared for in a personal care home.

11.2.12. The personal care home shall have a detailed plan for obtaining and providing temporary intermittent nursing care as permitted herein, if provided.

### 11.3. Medications (Class I)

11.3.1. The personal care home shall make provision for accurate as-

sistance with self-administration and administration of medicine and drugs according to the physician orders as indicated on the individual container of drugs or medications or in the resident's record.

11.3.2. Residents shall be permitted to self-administer their medications. However, staff may remind, assist or supervise, as necessary, in the self-administration of medications. This may include the following and similar activities: opening a bottle cap for an individual, reading the medication label to the individual, observing individuals while they take medication, checking the self-administered dosage against the label of the container, reassuring individuals that they have obtained and are taking the correct dosage.

11.3.3. If the home provides regular assistance or supervision as described herein, daily records shall be kept showing the date, time and dosage. This record shall be signed by the person providing the assistance and shall be made a part of the resident's record. Initials may be used, provided that the full signature shall appear at least once on each page of the record and the initials are identifiable.

11.3.4. All residents shall be routinely observed for visible effects, side-effects and adverse reactions of medication. If the home is providing assistance and supervision, side effects shall be reported to the physician, unless otherwise instructed in writing by the physician. Adverse reactions shall be reported immediately. If the home is not providing assistance and supervision, side-effects and possible reactions shall be discussed with the resident. A written record of such discussion shall be kept in the resident's care record.

11.3.5. Medications requiring stop orders and injectables, except for insulin, shall be administered by a physician, a registered nurse, a licensed

practical nurse or other individual having such authority under state law. The resident's record shall show the date, time and dosage of each administration and shall be signed or initialed in the manner of §11.3.3.

11.3.6. No prescription drugs shall be kept in the home unless they have been legally dispensed and labeled by a licensed pharmacist.

11.3.7. A locked medicine cabinet, container or compartment shall be available for the storage of medications prescribed for residents. If refrigeration is needed, the home shall provide a locked refrigerator or a locked box within a refrigerator for storage. Refrigerators used for medication storage shall have temperatures required for safe storage of the medication and shall be equipped with a thermometer.

11.3.8. All medications and drugs must be kept in their original labeled containers.

11.3.9. A resident may be permitted to keep his or her own medication in his or her room if the physician's report has indicated that the resident is capable of self-administering the medication and storage is provided to meet the specifications of this Section. Danger of misuse may require that medication of individual residents be kept by the facility, in which case there shall be notation in the resident's record.

11.3.10. Medications kept by the home shall be stored under lock and key at all times, except when required to be kept by an individual due to need of frequent or emergency use. Proximate danger of misuse may require that medication stored in an individual's room also be stored under lock and key, in which instance the administrator shall have a duplicate key.

11.3.11. Medications stored in the personal care home which are discontinued by a physician's orders shall be destroyed no more than thirty (30)

days after the date of discontinuance, unless prepared in unit dose form, in which case, the medications may be returned to the resident, except that any drugs which are scheduled under Chapter 60(A) of the West Virginia Code shall be destroyed. Medications of deceased residents shall be destroyed immediately, unless prepared in unit dose form, in which case they may be returned to the resident'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 resident's name, and the name and a count of the drug. The date, name of drug, and amount of any drug returned to the resident or his or her estate must be documented in the resident's record and signed by the nurse.

11.3.12. If the home provides assistance with medication, a registered nurse shall:

(a) assist with developing and implementing of a training program regarding assistance and effects, side effects and interactions of drugs in use in the home and observation techniques;

(b) perform a quarterly review of medication records;

(c) assist with developing procedures and techniques for medication storage;

(d) serve as a liaison between the home, residents and physicians and pharmacies; and

(e) investigate medication errors and develop corrective measures.

## Section 12. Social Work and Recreation Services

### 12.1. Social Work Services (Class II)

12.1.1. Social work responsibilities of the personal care home shall include at least:

(a) identification of a resident's social, psychosocial and emotional needs related to their care and stay in the personal care home;

(b) assisting the resident and family to adjust to the need for being in the facility, or to the need for transfer to other arrangements when indicated;

(c) promoting involvement of the family in the resident's care while in the facility;

(d) liaison and referral between the resident and community resources;  
and

(e) coordination of services, where multiple-agency contacts are needed.

12.1.2. The home shall have written procedures for how it will meet its social work responsibilities.

12.1.3. The personal care home shall designate an individual to be responsible for social work services and for making social service entries in the resident's record.

12.1.4. The personal care home shall encourage residents to use community social services which may benefit them such as community mental health or mental retardation services, services of a senior citizens center or the area agency on aging.

12.2. Recreation and Activities Program (Class II)

12.2.1. A personal care home shall offer a planned and diversified program of social, recreational and leisure activities for residents.

12.2.2. The recreation and activities program, as indicated by individual needs, capabilities and interests of residents shall be designed to:

(a) maximize self care and independence;

- (b) facilitate social and general rehabilitation;
- (c) promote adjustment to the long-term care environment;
- (d) promote the dignity of residents; and
- (e) maximize the opportunity of residents for meaningful active lives within or without the confines of the personal care home setting.

12.2.3. A resident's participation in the recreation and activities program shall be restricted only upon a physician's order.

12.2.4. The personal care home shall make provisions to enable and shall encourage relatives and friends of residents to participate in activities with residents.

12.2.5. The recreation and activities program shall offer a variety of activities to occur during evenings and weekends as well as during the daytime hours of the usual business day. At a minimum, there shall be available at least eight evening activities per month other than watching television, and at least four weekend activities per month other than watching television and religious services.

12.2.6. The recreation and activities program shall offer activities designed for both individual and group participation.

12.2.7. Recreation and activity schedules shall be developed and posted a month in advance. A record of all recreation and activity shall be retained on file for at least one year.

12.2.8. Volunteers may be used to assist in the recreation and activity program.

12.2.9. The personal care home shall maintain a record of community services, resources and programs from which residents may benefit. This record shall be reasonably complete and current and shall be reviewed and

updated annually.

12.2.10. The recreation and activities program shall offer access to a variety of activities available within the community, such as religious services, activities and programs sponsored by religious organizations and other community groups, political activities, and the use of library services.

12.2.11. Residents shall be encouraged but not forced to participate in the program of activities.

12.2.12. Daily visits to residents in the home shall be permitted and residents shall not be prohibited from making reasonable visits away from the home.

12.2.13. The home shall assist in making arrangements for transportation for residents to and from activities included in the home's program which take place outside the home.

12.2.14. The recreation and activities program shall include the following types of activities as indicated by the needs, capabilities and interests of the residents:

(a) Activities which provide opportunity for fun, enjoyment and the development of friendships, such as: parties, dances, banquets, coffee hours and games.

(b) Activities designed to emphasize individual accomplishment and provide diversion, such as: sewing, painting, and other craft-type activities.

(c) Opportunities for participation in volunteer service activities, such as: assisting in community fund drives, making toys for underprivileged children, assisting other residents and preparing church literature.

(d) Activities designed to provide mental stimulation, such as: discussion groups, arrangements for the use of library services and materials,

book review groups, music appreciation groups, and lectures or classes.

(e) Spiritual or religious activities, such as: formal worship, scripture reading and study, mission work, and hymn singing. Care shall be taken to insure access to all faiths of individual residents, unless specified otherwise in the admission contract.

(f) Exercise and physical activities to assist residents to keep active and alert, such as: individual and group exercise sessions and programs, outdoor walks, and sports and games adapted to the capabilities and needs of the individual participants.

12.2.15. The personal care home shall designate an individual to be in charge of and responsible for the recreation and activity program.

### Section 13. Food Service

#### 13.1. Nutrition (Class I)

13.1.1. The personal care home shall ensure that each resident is offered at least three meals daily which shall be prepared and served fresh each day.

13.1.2. The personal care home shall offer at least one substitute food and beverage upon request with equivalent nutritional value to residents who refuse food served at mealtimes and shall generally offer a variety of foods adapted to the food habits, preferences and physical abilities of the residents.

13.1.3. Meals shall provide nutrients and calories for each resident based upon current recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council or as follows, except as ordered by a physician:

(a) Meat Group: Two or more servings of lean meat, fish, poultry, eggs or cheese with dried beans, other legumes or peanut butter as occasional

alternatives. At least four ounces of edible meat or its equivalent shall be served daily. Eggs shall be offered at least two times per week.

(b) Milk: Two or more cups of milk or its equivalent. Cheese, cottage cheese, yogurt or ice cream may be used to meet part of the milk requirement.

(c) Vegetables: Two or more one-half cup servings each day including yellow, orange or dark green leafy vegetables or other good source of Vitamin A at least four times per week.

(d) Fruit: Two or more one-half cup servings each day, at least one of which shall be a citrus fruit or other good source of Vitamin C.

(e) Whole Grain or Enriched Bread and Cereal Products: One or more servings each meal with at least four servings each day;

(f) Other foods to round out meals and snacks to provide additional calories as needed.

13.1.4. When therapeutic diet service is provided, a physician's order for each diet and the meal pattern including types and amounts of food to be served shall be on file in the food preparation area. Therapeutic diets shall be prepared and served as ordered by the physician.

13.1.5. Foods shall be prepared and seasoned by methods that conserve nutritional value, flavor and appearance and shall be attractively served at safe and palatable temperatures in a form to meet the needs of individual residents.

13.1.6. Salt shall not be omitted from resident's diets except by physician's orders.

13.1.7. All salt used shall be iodized.

13.1.8. Bedtime snacks of nourishing quality shall be routinely available to all residents except on physician order.

13.1.9. Not more than fourteen hours shall elapse between the evening meal and breakfast the next morning, which shall not be served before 7:00 a.m.

13.1.10. Condiments shall be available for use by residents in the dining area.

13.2. Meal Assistance (Class III)

13.2.1. Every resident shall be encouraged to eat in designated dining areas, unless medically temporarily contraindicated.

13.2.2. Trays served to temporarily ill or incapacitated residents in their rooms shall be provided with firm supports.

13.2.3. A supply of appropriate tableware in good condition shall be available for each resident. This shall include at least knives, forks, tea-spoons, and also soup spoons.

13.2.4. The use of self-help feeding devices and techniques as needed shall be encouraged.

13.3. Food Service Management (Class II)

13.3.1. The personal care home shall have written policies and procedures for providing the proper nutritional care of residents.

13.3.2. The food service shall be in full compliance with current food service sanitation regulations duly promulgated by the State board of health.

13.3.3. Current reports of food service sanitation inspection shall be on file in the personal care home. Corrections of any deficiencies shall be documented.

13.3.4. The administrator or a person designated by the administrator shall be responsible for the total food service and the supervision of food service employees, including at a minimum coordinating food services with

other services, developing work assignments, planning food purchases, and orienting and supervising food service employees, determining whether a resident has a special physician-ordered diet and assuring that food service employees are informed in writing of special diets.

13.3.5. The personal care home shall prepare written dated menus which state portion size, as applicable, planned at least seven days in advance.

13.3.6. Menus shall be posted in the food preparation area and posted in the dining room or otherwise made available to residents in advance.

13.3.7. The same menu for an individual meal shall not be used more than once in a week.

13.3.8. If cycle menus are used, the cycle must cover a minimum of three weeks.

13.3.9. All menus and menu changes shall be kept on file for at least thirty days which shall be supported by records of food purchased and grocery store or other supplier receipts.

13.3.10. A copy of a current diet manual, approved by the director, shall be available for planning therapeutic diets.

13.3.11. A supply of non-perishable foods sufficient to meet all resident needs for at least three days shall be kept on the premises for emergency use. This supply may be incorporated with regular stock of food supplies.

13.3.12. A physician shall review therapeutic diet orders at intervals specified by the physician, but no less frequently than annually.

#### Section 14. Resident Care Records (Class I)

14.1. The personal care home shall maintain a resident care record for each resident of the facility.

14.2. The resident care record shall be in ink and legible.

14.3. The record shall contain the following basic information:

- (a) name;
- (b) social security number;
- (c) birthdate;
- (d) sex;
- (e) marital status;
- (f) religious preference and affiliation, if any; and
- (g) a snap shot of the resident suitable for identification purposes.

Residents may refuse to have a snapshot taken.

14.4. The resident's record shall contain names, addresses and telephone numbers for the following relevant persons:

- (a) physician;
- (b) dentist;
- (c) legal representative, if any;
- (d) person, organization or agency responsible for payments for and support of the resident, if applicable;
- (e) next of kin and other interested relatives;
- (f) persons to be notified in case of an emergency, accident, serious illness or death;
- (g) any case management agency or organization; and
- (h) any day care or other programs in which the resident participates.

14.5. The record shall contain the following information relevant for the personal supervision and assistance to be provided to the resident by the home:

- (a) initial physician assessment;
- (b) the needs assessment of §10.2;

- (c) physician orders, including special diets;
- (d) annual physicians report or signed care plan;
- (e) a general resident care plan which identifies services to be provided to the resident;
- (f) medication assistance information as required by Section 11; and
- (g) the dates of physician, dentist and other health and behavioral health care taker appointments and visits.

14.6. Whenever a resident refuses care or treatment, a record of such refusal shall be made. The home shall make reasonable efforts to secure professional consultation, or assistance from the family, a physician, a registered nurse, caseworker, or other appropriate individual in order to ensure that residents receive necessary services.

14.7. When a resident moves away from the home or is transferred to another care setting, the following shall be noted in the record:

- (a) the date of the last day of residence;
- (b) the circumstances of the relocation, including the type of care needed, if any;
- (c) the type of living situation to which the resident is moving; and
- (d) the address of the new location if the resident is moving to a non-independent living situation.

14.8. If an individual dies in the home or while maintaining a residence in the home, the record shall indicate the date and location of death, the attending physician, and persons notified. If the home makes burial arrangements, the record shall show relevant details.

14.9. Other information shall be recorded in the resident's record if applicable including: specific illnesses, incidents or accidents, any significant

observations concerning the resident, denture identification number and social services received.

14.10. A report of the incident shall be completed for any resident who has sustained a fall, injury, or accident in the facility indicating the date and time, the extent of the injury and treatment. The resident shall be examined and treated by a physician, if necessary. If, in the opinion of the administrator or person in charge, the incident is not serious enough to call an examining physician, a report should still be recorded in the resident's record and the administrator shall initial the report within twenty-four hours. This report may be kept separate from the resident care record, provided, however, the record shall contain a notation of the accident or incident and treatment or care actions.

14.11. If examination and treatment by a physician is necessary as a result of an incident the home shall notify the nearest relative, caseworker or legal representative within seventy-two hours.

14.12. Each personal care home shall maintain a permanent resident register in chronological order according to date of admission. Such register shall include date of admission, name of resident, and date of last day in the residence.

14.13. If nursing services are provided as described in Section 11.2, the resident's record shall include dates and specifics of nursing care administered, including therapies, treatments, medications and all other relevant details.

## Section 15. Construction and Site

### 15.1. Life Safety (Class I)

15.1.1. The personal care home shall comply with the 1981 edition of the

National Building Code.

15.1.2. The personal care home shall comply with the rules and regulations of the State fire commission.

15.1.3. The personal care home shall comply with Chapter 18, Article 10F of the West Virginia Code and any other rules and regulations promulgated thereunder regarding handicapped persons and public buildings and facilities.

15.1.4. Where the above permits standards lower than those required by this rule, the facility shall meet the standards set forth in this section.

15.2. Accessibility (Class II)

15.2.1. The personal care home shall be easily accessible by automobile by a hard-surface road which is maintained and passable at all times of the year.

15.2.2. There shall be at least one hard-surfaced walk area leading into the home with an adjacent hard-surfaced area large enough to discharge passengers from an automobile and to permit access for wheelchairs and ambulances. Gravel is not a hard surface.

15.2.3. All-weather parking areas shall be provided.

15.3. General Environmental Requirements (Class I)

15.3.1. The personal care home shall have a water supply which: (a) is from a public water supply which complies with rules and design standards of the State board of health; or (b) meets board of health standards regarding contamination of water as contained in the aforementioned rules. If the water supply is from a well which is not in compliance with State board of health design standards for water wells, the director shall have the authority to require modification of the well to the degree necessary to meet minimum safety standard portions of the aforementioned water well design standards.

15.3.2. Sewage disposal shall be in accordance with rules duly promulgated by the State board of health.

15.3.3. The personal care home shall have electric power.

15.3.4. The personal care home shall have telephone service.

15.3.5. Local building codes and zoning restrictions shall be observed. Evidence of compliance signed by building and zoning officials shall be available. Where local codes or regulations permit standards lower than those required by these regulations, the facility shall meet the standards set forth herein.

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

15.4. General Interior Comfort and Safety (Class I)

15.4.1. The home shall have hot and cold running water adequate to meet the needs of the residents and employees.

15.4.2. Hot water temperature shall not be lower than 100 degrees Fahrenheit or higher than one hundred and twenty degrees Fahrenheit at outlets used by residents.

15.4.3. The home shall have a central heating system or incremental units which are U.L. Inc. approved for individual room systems.

15.4.4. The heating system shall be capable of maintaining a temperature in rooms used by residents of at least seventy-two degrees Fahrenheit during cold weather.

15.4.5. Heat shall be supplied to all rooms used by residents.

15.4.6. Cooling systems shall be provided for the use of residents when

inside temperatures exceed eighty-five degrees Fahrenheit. Acceptable cooling devices are air conditioners, heat pumps, or approved incremental units.

15.4.7. Electrical energy systems shall assure a safe and adequate source of energy for satisfactory illumination and for residents and for safe, efficient and convenient operation of appliances and electrical and mechanical equipment.

15.4.8. Handrails shall be installed on each side of corridors. Rails must be mounted thirty-three inches above the floor, with one and one-half inches clearance from wall; ends of rails shall be constructed to avoid snagging resident's clothing.

15.4.9. Kitchen facilities shall be designed and located to permit efficient food preparation, serving, utensil cleaning and refuse disposal.

15.4.10. The facility shall be easily cleanable and free of inaccessible spaces providing harborage for rodents and vermin.

15.4.11. Hand washing facilities shall be provided in the food preparation area for employees.

15.4.12. Space adequate for storage of linens, maintenance and house-keeping supplies, equipment and food supplies shall be provided.

15.4.13. At least one janitor's closet containing a service sink shall be provided for each story that houses residents.

15.4.14. Minimum door widths shall be thirty-six inches for exterior exit and resident room doors and thirty-four inches for bathroom doors.

15.4.15. Walls, ceilings and floors shall be smooth-surfaced in order to permit easy cleaning.

15.4.16. An area of at least thirty square feet per resident shall be provided for recreational and dining purposes. The dining area shall contain

at least fifteen square feet per resident, and may also serve as part of the activity area.

15.4.17. Corridors shall have a minimum width of six feet and shall lead directly to an exit.

15.5. Bedrooms (Class I)

15.5.1. Bedrooms shall provide no less than one hundred square feet of space for single occupancy rooms and no less than eighty square feet for each resident of a multiple occupancy room. This shall not include closet space.

15.5.2. No bedroom may be occupied by more than four persons.

15.5.3. Bedroom ceilings shall be at least eight feet in height.

15.5.4. Each resident's bedroom shall have direct access to a corridor without passing through a bathroom or another resident's bedroom.

15.5.5. There shall be at least eight square feet of window area in a room housing one person and at least six square feet of window area per person in rooms occupied by two or more persons.

15.5.6. Each bedroom shall have at least one light controlled by a switch at the door to the room.

15.5.7. Resident's rooms shall have outside exposure through a vertical transparent window; windows shall be operable from the interior without the use of special tools. Rooms extending below ground level shall not be used as bedrooms for residents.

15.5.8. The home shall have a call system which shall provide call capability for every bed and other areas as may be suitable or necessary for the safety of residents.

15.6. Toilets, Handwashing and Bathing Facilities (Class I)

15.6.1. Each resident room shall have access to a bathroom directly from

their bedroom. No more than two bedrooms shall share a bathroom and no more than six persons shall share a single bathroom.

15.6.2. Each bathroom shall have:

- (a) at least one handwashing sink;
- (b) at least one shower or bathtub with non-slip surfaces or mats and grab bars for each shower or tub provided;
- (c) at least one toilet;
- (d) grab-bars for each toilet;

15.5.3. There shall be at least one bathtub available for the use of residents on each story housing residents.

15.6.4. Bath and toilet facility doors shall swing outward. Any locks on such facility doors and the doors to rooms housing such facilities shall be easily openable or removable from the outside in the event of an emergency.

15.6.5. At least two separate indoor flush toilet and handwashing facilities shall be provided for the use of visitors and employees.

#### 15.7. Laundry (Class II)

15.7.1. Personal care homes which do their own laundry shall have a separate area or room designed for use as a laundry, including space for sorting soiled and clean linen and clothing. No laundry shall be done in any food preparation or dishwashing area.

15.7.2. Washing machines shall be installed so that no back-siphonage possibility exists.

15.7.3. Electric or gas clothes dryers shall be provided and used.

15.7.4. The laundry area and the clothes dryers shall be vented to the outside.

### Section 16. Furnishings, Equipment and Maintenance

16.1. Interior Comfort and Safety (Class I)

16.1.1. Any electric fans shall be screened and shall be placed to maximize resident safety and to minimize drafts.

16.1.2. Doors and windows which are used for ventilation shall be screened, and protected from rain and snow. Screen doors and windows shall swing outward and be self-closing.

16.1.3. Windows used for ventilation shall open and close readily and effectively and shall not require the use of special tools. Windows shall be constructed and maintained to fit snugly.

16.1.4. Floor coverings shall be maintained in a clean, odor free, sanitary and safe condition and free from protrusions.

16.2. Resident Living and Activity Areas (Class II)

16.2.1. The recreational area shall be furnished with comfortable sturdy furniture in good repair, a working color television set with at least a twenty one inch diagonal screen and other equipment for recreational activities such as playing cards or other games.

16.2.2. Supplemental electric lighting such as lamps suitable for reading and for other activities shall be provided as needed.

16.2.3. Minimal reading material shall be a newspaper and a variety of current magazines.

16.3. Bedrooms (Class I)

16.3.1. Each resident shall be provided with a bed which has a headboard; is at least the width of a standard adult single bed (thirty-six inches); and is substantially constructed and in good repair. Folding beds or cots, bunk beds, rollaway beds and youth beds are prohibited. Double beds are permitted for married couples, provided that: (a) the square footage per

occupant requirements are met and such occupancy is private.

16.3.2. Beds shall be placed only in bedrooms and shall not be placed in corridors, living rooms, kitchens, dining rooms, basements, attics, or any area not commonly used as a bedroom.

16.3.3. Each resident shall be provided with closet or wardrobe space for hanging clothing and a dresser for the storage of clothing and personal items which shall be located in the bedroom. Built-in units are acceptable.

16.3.4. Each bed shall be provided with substantial springs and a clean, comfortable mattress, which fit the bed. Each bed shall have a clean, comfortable pillow of at least average size, with a protective cover and pillow case. There shall be a protective cover on the mattress and two sheets.

16.3.5. Bed coverings shall be available to keep residents comfortable. This shall include at a minimum the following: (a) one or two (2) quilts; or (b) a comforter; or (c) one or two blankets, depending on the material, weight and construction of the blankets. Electric blankets may be permitted provided that: (a) they meet U.L. Inc., AGA, American National Standards Institute or other nationally accepted standards; (b) they are in good repair; (c) are not used for residents who might be easily susceptible to injury by their misuse. The director shall have the authority to require physician approval. Bed covering shall be available to meet minimum standards even when electric blankets are used.

16.3.6. Bedroom furnishings shall be of sturdy construction and maintained in good repair. Furnishings shall be reasonably attractive and comfortable; however, individual tastes of the residents shall be taken into consideration.

16.3.7. Clean and freshly laundered bed linens shall be provided for

each resident at least once a week and more often, if needed.

16.3.8. Windows shall have curtains, shades or blinds which may be opened and closed and are clean and in good repair.

16.3.9. Beds shall be placed so that no resident will experience discomfort because of proximity to heat sources or exposure to drafts.

16.3.10. Each resident of each bedroom shall be provided with:

(a) a bedside table, chest or its equivalent accessible to the bed;

(b) a bed lamp or bedside light suitable for reading accessible to the bed;

(c) a chair of sturdy construction suitable for resident use; and

(d) the bedside table shall have drawers for the storage of personal items and utensils.

16.3.11. A mirror suitable for full-length viewing shall be provided in bedrooms, or other area suitable for semi-private viewing.

16.3.12. If towel bars are not provided in bathrooms, they shall be provided in the bedroom according to the specifications of Section 16.4.

16.3.13. Styrofoam cups and pitchers and enamelware may not be used in bedrooms.

16.3.14. Curtains or privacy screens shall be provided in multiple occupancy bedrooms.

#### 16.4. Toilets, Handwashing and Bathing Equipment (Class I)

16.4.1. Bath towel bars shall be provided, with no more than two bath towels per bar. Space shall permit the ready drying of towels and washcloths.

16.4.2. Clean towels and wash cloths shall be provided to each resident at least twice weekly, and more often if needed.

16.4.3. Bathtubs, shower stalls and handwashing facilities shall not be

used for storage or for laundering soiled linens.

16.4.4. Bathrooms shall be supplied with soap, toilet tissue and disposable towels or a blow dryer for hands. The shared use of towels is prohibited.

16.4.5. There shall be a mirror over each sink.

16.5. Linens and Laundry (Class II)

16.5.1. There shall be a supply of sheets, pillow cases, bed coverings, towels, wash cloths and other linens to provided the minimum requirements of this rule and additional supplies to meet emergency needs.

16.5.2. Clean, dry storage space shall be provided for clean linens.

16.5.3. The personal care home shall provide laundry facilities or services for residents personal laundry. Laundry services may be provided by an outside laundry service.

16.6. General Maintenance and Housekeeping (Class I)

16.6.1. The interior of the personal care home, including its furnishings and equipment, shall be maintained in good repair and in a clean and sanitary condition.

16.6.2. The personal care home shall be kept free of insects, rodents and vermin.

16.6.3. Pesticides shall be applied in a manner to prevent contamination of food and hazards to residents. Insecticidal strips are prohibited.

16.6.4. The exterior of the personal care home, the yard or grounds, and any structures, buildings and equipment shall be maintained in good repair and in a clean and reasonably sanitary condition.

16.6.5. All garbage and refuse shall be stored in durable, leak-proof, non-absorbent, easily cleanable, insect and rodent-proof containers, and such

containers shall be kept clean and free of accumulations of residue. Dumpsters in good repair are acceptable.

16.6.6. Solid waste containers shall be provided in sufficient number and capacity to properly store all solid waste.

16.6.7. Solid waste, including garbage and refuse, shall be removed from the building daily and the premises weekly, or more often, if necessary.

16.6.8. A concrete platform or a metal rack shall be required for outside storage of solid waste containers.

16.6.9. When approved municipal or private solid waste disposal service is not available, the home shall dispose of the solid waste in accordance with the applicable provision of the state law and regulations governing the management of solid waste.

16.6.10. The personal care home shall have sufficient supplies and equipment to permit frequent cleaning of floors, walls, woodwork, windows, screens and to facilitate all necessary building and ground maintenance.

16.6.11. Locked storage facilities separate from any food and drug storage shall be provided for cleaning supplies, work materials, laundry supplies, insecticides and any other toxic materials.

16.6.12. The facility shall establish a program of preventive maintenance ensure that equipment is operative and that the interior and exterior of the building are safe, clean, and orderly.

16.6.13. Walls, ceilings and floors shall be in good repair.

16.7. Laundry (Class II)

16.7.1. Table and kitchen linens shall be laundered separately from other washable goods.

16.7.2. Soiled laundry shall be stored in non-absorbent easily cleanable

covered containers or disposable plastic bags. Covered non-absorbent canvas carts are acceptable.

16.7.3. Soiled and clean laundry shall not be stored or placed in the same container or on a common table or shelf.

16.7.4. Common laundry (such as towels and washcloths, bed clothes, and mattress pads and covers) shall be mechanically dried in an electric or gas clothes dryer, vented to the outside.

16.7.5. If a resident has a communicable infection, disease or condition other than the common cold, precautions shall be taken to protect other residents from infection by keeping the resident's laundry separate.

## Section 17. Penalties

### 17.1. Director's Authority

17.1.1. The director shall have the authority to invoke penalties against a facility violating the provisions of this rule in accordance with the provisions of this rule and of Chapter 16, Article 5C of the West Virginia Code.

17.1.2. The director shall by order reclassify a licensed personal care home or reduce the bed capacity of the personal care home or both, when on the basis of inspection he or she makes the following findings: (a) that the licensee has not provided adequate care as indicated by a "C" rating on Section 8, 9, 10, 11, 12 and 13 under the facility's existing classification or bed capacity; and (b) that reclassification, reduction in bed capacity or both would place the facility in a position to render adequate care. The director shall notify a licensee of reclassification, reduction in bed capacity or both, stating the terms of the order, the reasons therefore and the date set for compliance.

17.1.3. The director may suspend, revoke, or deny renewal of the

license of a personal care home for good cause after notice and hearing as required by this rule and the provisions of Chapter 16, Article 5C of the West Virginia Code. Good cause shall include the following:

- (a) failure to provide adequate care for residents;
- (b) failure to submit a plan of correction;
- (c) failure to correct deficiencies within the time frame stated;
- (d) failure to cooperate with or interference with the director or a duly authorized representative in the inspection of the home;
- (e) substantial failure to comply with this rule;
- (f) a violation of any provision of this rule which produces imminent danger to residents;
- (g) violation of the prohibitions of this rule against discharge of residents or employees for reason of complaints regarding the home;
- (h) the use of subterfuge or other dishonest action in applying for an original or renewal licence; and
- (i) physical or other abuse or mistreatment of residents.

17.1.4. The director may at his or her discretion bring legal action to enforce compliance with the licensing law for personal care homes or any rule, regulation or order as provided by Chapter 16, Article 5C of the West Virginia Code.

17.1.5. The suspension, expiration, forfeiture or cancellation by operation of law or order of the director of a license issued by the director shall not deprive the director of the authority as provided by law and this rule to take any of the following actions: (a) institute or continue a disciplinary proceeding; (b) institute or continue a proceeding for the denial of a license application; (c) enter an order denying a license application; and (d) take any

other disciplinary action as provided by state law or rules and regulations.

17.1.6. Withdrawal of a license application shall not deprive the director of the right to penalize the applicant on any other ground using any authority otherwise provided by law or this rule.

17.2. Procedure for Director's Action

17.2.1. When the director takes action pursuant to Section 18.1 of this rule, the director shall file a complaint stating the facts constituting a ground or grounds for the action.

17.2.2. When the director files a complaint, the director shall notify the licensee, in writing, of the filing of the complaint.

17.2.3. Notice shall include the following terms: (a) a copy of the complaint; (b) notification of the availability of a hearing pursuant to Section 19 of this rule.

17.2.4. Notice shall be served by certified mail, return receipt requested.

17.2.5. The director has the right to enforce a provision of this rule, administratively or in court, without first affording an opportunity to correct a deficiency pursuant to Section 5.7 of this rule, when the director finds either of the following: (a) that violation of the regulation jeopardizes the health or safety of a resident; or (b) the violation is the second or subsequent violation of the same provision within twelve months.

17.3. Procedure for Civil Penalties

17.3.1. Upon a determination that civil penalties are to be imposed pursuant to the West Virginia Code as amended and this rule, the director shall issue a citation to the licensee or non-licensed operator. Provided that in the case of a penalty for a facility's failure to correct a deficiency of a

non-life-threatening nature, the director shall, prior to issuing the citation, notify the licensee or non-licensed operator by registered or certified mail that civil penalties will be imposed on a date to be specified by the director unless the corrective actions specified by the director are implemented in an acceptable manner.

17.3.2. The citation shall be served personally upon the licensee or non-licensed operator by a duly authorized representative of the director. If a citation is not served personally, it shall be sent by registered or certified mail, return receipt requested.

17.3.3. Each citation shall be in writing and shall include at least the following: (a) an assessment of civil penalties according to the nature of the violation or violations; and (b) a description of the nature of the violation fully stating the manner in which the licensee or non-licensed operator violated a specific statutory provision or provision of this rule and the particular place or area of the facility in which it occurred.

17.3.4. The name of any resident jeopardized by the violation shall not be specified in the citation in order to protect the privacy of the resident. However, at the time the licensee or non-licensed operator shall also be served with a written list of each of the names of the residents alleged to have been jeopardized by the violation. If the violation jeopardized all of the residents of the entire facility, such fact shall be specified in the citation and a written list of the names of the residents involved is not required to be furnished to the licensee or non-licensed operator.

17.3.5. For each violation of a Class I standard, the civil penalty shall amount to not less than one hundred or more than one thousand dollars. For each violation of a Class II standard, the civil penalty shall amount to not less

than fifty dollars and not more than one hundred dollars. For each violation of a Class III standard, the civil penalty shall amount to not less than twenty-five dollars and not more than fifty dollars.

17.3.6. Each day a violation continues after the date by which correction was required by an approved plan of correction, or if an approved plan of correction was not submitted, the date on which such plan was due, shall constitute a separate violation.

17.3.7. In both determining to assess a civil penalty and in fixing the amount of the civil penalty to be imposed for violations, the director shall consider: (a) the gravity of the violation, which shall include: (1) the degree of substantial probability that death or serious physical harm will result and, if applicable, did result from the violation; (2) the severity of serious physical harm most likely to result, and if applicable, that did result, from the violation; and (3) the extent to which the provisions of the applicable statutes or regulations were violated; and (b) any previous violations committed by the licensee.

17.3.8. If a licensee or non-licensed operator does not wish to contest a citation, he shall submit to the director, within four (4) business days after the issuance of the citation, the total sum of the penalty assessed.

17.3.9. If a licensee or a non-licensed operator desires to contest a citation, or the date specified for correction of a violation, he or she shall, within four (4) business days after service of the citation or specification of time in which a violation is to be corrected, serve upon the director, either personally or by registered or certified mail, the licensee's or non-licensed operator's written notice pursuant to Rules of Procedures for Contested Case Hearings and Declaratory Rulings, West Virginia Board of Health Pro-

cedural Rules, Chapter 16-1, Series 1, (1983).

Section 18. Administrative Due Process

18.1. An applicant for a license or a licensee or any other person aggrieved by an order or other action by the director pursuant to this rule or to Chapter 16, Article 5C of the West Virginia Code shall have the opportunity for a hearing by the director, upon written request to the director in a manner prescribed in and by the aforementioned Rules of Procedure for Contested Case Hearings and Declaratory Rulings.

18.2. A hearing pursuant to this Section shall be conducted in accordance with the pertinent provisions of Chapter 29A, Article 5 of the West Virginia Code and the aforementioned Rules of Procedure for Contested Case Hearings and Declaratory Rulings.

18.3. Notice of an order suspending a facility's license shall specify the conditions giving rise to the suspension which the licensee must correct during the period of suspension in order to have the license reinstated.

18.4. If the director revokes a license, the director may stay the effective date of revocation by no more than ninety days upon a showing that the stay is necessary to assure appropriate placement of residents.

18.5. The director's order shall be final unless vacated or modified either personally or by registered or certified mail or the licensee's or non-licensed operator's written notice pursuant to the aforementioned Rules of Procedures for Contested Case Hearings and Declaratory Rulings.

18.6. In addition to all other powers granted to the director under Chapter 16, Article 5C of the West Virginia Code and this rule, the director may hold a case under advisement and make a recommendation as to requirements to be met by the licensee in order to avoid suspension or revoca-

tion of a license, in accordance with Chapter 16, Article 5, Section 11 of the West Virginia Code.

18.7. When the director takes a case under advisement, the director shall: (a) enter an order stating the decision to hold the case under advisement; (b) notify the licensee and his attorney of record, if any, of the action, by certified mail, return receipt requested; (c) enter an order showing satisfactory compliance dismissing the complaint, if the licensee meets the requirements of the order; and (d) upon entering the second order, under this Section, the director shall notify the licensee and his attorney of record, if any, by certified mail, return receipt requested.

Section 19. Severability - The provisions of this rule are declared to be severable. If any provision of this rule shall be held invalid, the remaining provisions shall remain in effect.