

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Division of Health

AGENCY: Department of Health and Human Resources TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code §§ 16-1-4- and 16-5C-5

AMENDMENT TO AN EXISTING RULE: YES  NO

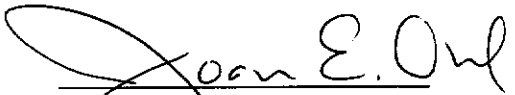
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 13

TITLE OF RULE BEING PROPOSED: Nursing Home Licensure

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Joan E. Ohl, Secretary

21.90

**Statement of Circumstances Which Require the Proposed  
Rule to be Filed on an Emergency Basis**

The proposed Nursing Home Licensure Rule is being revised to incorporate current acceptable practices and standards in health care which are consistent with the W. Va. Code of State Regulations. The current Nursing Home Licensure Rule is not consistent with the Code; Therefore, a request is being made to file this proposed Nursing Home Licensure Rule on an emergency basis.

## Brief Summary of the Rule

The proposed Nursing Home Licensure Rule establishes minimum standards for inspection and operation of these facilities in the areas of administration, policies, personnel, safety, sanitation, protective services, personal and health care services, quality of life, self-determination issues, dietary services, activity and social services, record keeping, physical environment, physician services, nursing care and enforcement criteria and other items or considerations deemed necessary to ensure the health, safety and welfare of the residents in accordance with West Virginia Code §16-5C-1 et seq. The rule is being revised to reflect current language and practice since the present rule's content is obsolete.

# FISCAL NOTE FOR PROPOSED RULES

**Rule Title:** Nursing Home Licensure Rule; 64CSR13  
**Type of Rule:**  Legislative  Interpretive  Procedural  
**Agency:** Division of Health  
 Department of Health and Human Resources  
**Address:** Building 3, Capitol Complex  
 Charleston, WV 25305

SHOW OVER-ALL EFFECT IN ITEMS 1 AND 2 AND IN ITEM 3 GIVE EXPLANATION OF BREAKDOWN BY FISCAL YEAR INCLUDING LONG-RANGE EFFECT.

EFFECT OF PROPOSAL	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
1. ESTIMATED TOTAL COST	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS AND ALTERATIONS					
EQUIPMENT					
OTHER					
2. ESTIMATED TOTAL REVENUES	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$

**3. EXPLANATION OF ABOVE ESTIMATES:**

These proposed Nursing Home Licensure Rules are a re-writing of the current regulations which contain references that are obsolete. Although the current rules underwent minor amendments in 1997 to gain consistency with Federal enforcement changes, the rules remained largely unchanged since the previous rules were written in 1983.

**4. Objectives of the rule:**

The proposed rule, Nursing Home Licensure Rule, is being revised to incorporate current acceptable practices and standards in the nursing home industry. Obsolete references carried forward from the 1983 regulations are corrected by this reorganization and revision.

5. Explanation of Overall Impact of Proposed Rule.

A. Economic Impact on State Government.

There is no economic impact on State Government directly as a result of this rule.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

There is no economic impact.

C. Economic Impact on Citizens/Public at Large.

There is no economic impact on citizens or the public at large as a result of this rule.

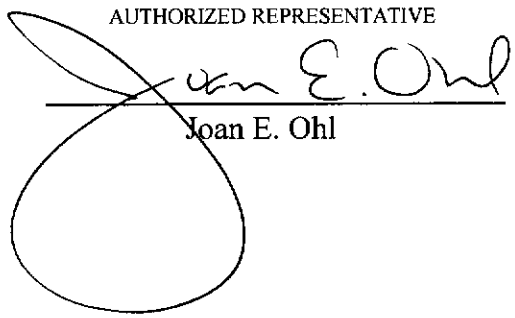
DATE

8/30/00

AGENCY

WV Dept. of Health & Human Resources

AUTHORIZED REPRESENTATIVE

  
Joan E. Ohl

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: August 30, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Office of Health

FROM: (Agency name, Address & Phone No.) Facility Licensure and Certification

350 Capitol Street, Room 206 ; Charleston, WV 25301

Telephone: (304) 558-0050

LEGISLATIVE RULE TITLE: Nursing Home Licensure

1. Authorizing statute(s) citation: WV Code Section 16-1-4 and 16-5C-5

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
July 17, 2000

b. What other notice, including advertising, did you give of the hearing?  
Notice of the proposed rule was sent to nursing home providers and  
Those associations who may have interest in distribution to their members,  
including the West Virginia Health Care Associaton, interested state agencies  
and advocacy groups.

c. Date of Public Hearing(s) or Public Comment Period ended:  
August 18, 2000

d. Attach list of persons who appeared at hearing, comments received,

amendments, reasons for amendments.

Attached   X  

No comments received           

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing (be exact):

  August 30, 2000  

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule (please type):

  Beth Marquart, Director  

  Regulatory Development/Department of Health and Human Resources  

  Room 265, Capitol Complex  

  Charleston, West Virginia 25305  

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

  Robert Brauner, Program Manager  

  Office of Health Facility Licensure and Certification  

  350 Capitol Street, Room 206  

  Charleston, West Virginia 25301  

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place a hearing for the taking of evidence and a general description of the issues to be decided.

  N/A

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b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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

**SERIES 13  
NURSING HOME LICENSURE**

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**2000**

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TITLE 64

WEST VIRGINIA DIVISION OF HEALTH LEGISLATIVE RULES

SERIES 13

NURSING HOME LICENSURE RULE

**§64-13-1. GENERAL PROVISIONS.**

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

1.2. Authority. W. Va. Code §§16-1-4 and 16-5C-5.

1.3. Filing Date.

1.4. Effective Date.

1.5. Repeal of Former Rule. This legislative rule repeals and replaces W. Va. 64CSR13 "Nursing Home Licensure Rule" effective August 1, 1997. A determination that any provision or application of any provision of these rules is invalid shall not affect the validity of any other provision of these rules or its applicability.

1.6. Application. This rule applies to nursing home residents and their legal representatives as well as every individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of the state that operates or applies to operate a nursing home as defined in this rule and W. Va. §16-5C-2(c).

1.7. Variances From This Rule.

1.7.a. The department may grant a variance from any provision of this rule if it determines that:

1.7.a.1. Strict compliance would impose a substantial hardship on the licensee;

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1.7.a.2. The licensee will otherwise meet the goal of the rule; and

1.7.a.3. A variance will not result in less protection of the health, safety and welfare of the residents.

1.7.b. A variance will not be granted from a provision pertaining to residents' rights.

1.7.b.1. Separate federal variance procedures may apply for provisions of these rules and are contained in the federal nursing home regulations.

1.7.b.2. Requests for variances from West Virginia fire safety and building construction requirements shall be addressed to the appropriate authorities.

1.8. Enforcement. This rule is enforced by the secretary of the Department of Health and Human Resources or his or her lawful designee.

### **§64-13-2. DEFINITIONS.**

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

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

2.3 Annual Inspection. - - For the purpose of this rule, annual inspection is defined as occurring during a time frame of nine (9) to fifteen (15) months.

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

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

2.6. Capacity to make decisions. - - An individual who is able to comprehend and retain information which is material to a decision, especially as to the likely consequences; the individual is able to use the information and weigh it in the balance as part of the process of arriving at a decision and is able to communicate the decision in an unambiguous manner.

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

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

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

2.10. Competent Individual. - - An individual who has not been adjudicated incompetent by a court of law.

2.11. Deemed Status. - - Special consideration granted to a nursing home that receives accreditation from an accrediting organization whereby an accreditation report may be used in place of an annual licensing inspection by the State if the standards of the accrediting organization recognized by HCFA are comparable to the Medicare standards.

2.12. Deficiency. - - An entry made on the OHFLAC 123 that includes: 1) the Code of State Regulations 64CSR13, 2) the regulation number or regulation number and alpha character, 3) the specific requirements of the regulation with which the nursing home failed to comply, 4) an explicit statement that the requirement was **“NOT MET”**, and 5) the evidence to support the decision of noncompliance.

2.13. Department. - - West Virginia Department of Health and Human Resources.

2.14. Director. - - The secretary of the Department of Health and Human Resources or his or her designee.

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

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

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

2.18. Family Council. - - A group of individuals, family members or responsible parties of the

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residents, meeting as a group, having the right to express grievances in relation to the residents' well-being in general and to make recommendations concerning nursing home policies and procedures.

2.19. Governing Body. - - The individual, or group of individuals with the ultimate responsibility and authority for the conduct of the nursing home.

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

2.21. Immediate Jeopardy. - - A situation in which the nursing home's noncompliance with one or more requirements of this rule has caused, or is likely to cause, serious injury, harm, impairment, or death of a resident.

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

2.23. Institutional Setting.- - Any health care facility.

2.24. Legal Representative.- - <sup>1</sup> A person appointed by an individual or by a duly authorized agency or court, or otherwise authorized by law to exercise some degree of control over a resident's affairs; namely one of the following most appropriate to the decision to be made.

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

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

2.24.c. An individual appointed as committee or guardian prior to June 9, 1994, within

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<sup>1</sup>Nursing home administrators should note that various types of legal representatives do not necessarily have the lawful authority to act on behalf of the resident in all matters that require action by the legal representative. For example, a conservator has responsibility for financial affairs, but not personal affairs such as medical care.

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limits set by the appointing order and W.Va. Code §44A-1-2-(d);

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

2.24.e. A representative payee under the U.S. Social Security Act, Title 42 US Code §301 et seq., within the limits of the payee's legal authority;

2.24.f. A surrogate decision-maker appointed pursuant to the West Virginia Health Care Decisions Act, W. Va. §16-30-1 et seq., within the limits set by the appointment;

2.24.g. An individual having a durable power of attorney pursuant to W. Va. Code §39-4-1, a power of attorney under common law, within the limits of the appointment; or

2.24.h. An individual identified pursuant to the W. Va. Code §16-3C-4, to grant consent for HIV related testing and for the authorization of the release of the results; or

2.24.i. A parent or guardian of a minor; or

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

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

2.26. Licensed or Registered.

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

2.26.b. Nursing home. - - One licensed by the Department.

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

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

2.29. Medicare. - - The medical insurance program established pursuant to Title XVIII of the

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Social Security Act.

2.30. Next of Kin. - - Descending order of priority;

2.30.a. The resident's spouse;

2.30.b. The resident's adult children

2.30.c. The resident's parents;

2.30.d. The resident's adult siblings;

2.30.e. The resident's adult grandchildren;

2.30.f. The resident's close friends; and

2.30.g. Any other person or entity, including guardians, public officials and private corporations and other persons or entities which the Department of Health and Human Resources may from time to time designate in rules promulgated pursuant to chapter twenty-nine of the West Virginia Code.

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

2.32. Nourishing Snack. - - Two (2) or more food items from the basic food groups plus a beverage of milk, juice or resident preference.

2.33. Nursing Home. - - Any institution, or any part or unit thereof, however named, in West Virginia, 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 care, for a period of more than twenty-four hours, for four or more persons who are ill or otherwise incapacitated and in need of nursing care due to physical or mental impairment, or which provides services for the rehabilitation of persons who are convalescing from an illness or incapacitation.

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

2.35. Ombudsman. - - Any person or organization designated by the State Long Term Care

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Ombudsman as part of the West Virginia Long-Term Care Ombudsman Program.

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

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

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

2.39. Premises. - - Tract of land, together with all buildings, equipment, fixtures and facilities erected, constructed or situated on the land, and all rights, powers, easements, and rights-of-way, and all interests in property, real, personal or mixed, now owned or hereafter acquired by a licensed person and appurtenant to or used in connection with the nursing home.

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

2.41. Qualified. - - An individual capable of performing a duty or a task based on training and experience and who is licensed, certified or registered in accordance with applicable State law or other accrediting bodies.

2.42. Regulatory Grouping. - - A set of directly-related regulatory requirements.

2.43. Repeat Deficiency. - - A deficiency that: 1) is cited on the current inspection and, 2) was cited on the previous inspection or any intervening inspection between the current inspection and the previous inspection and, 3) has had a plan of correction submitted for the previous inspection or any intervening inspection that was accepted by the director and, 4) is cited based on the same regulatory grouping.

2.44. Resident. - - An individual living in a nursing home.

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

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2.46. Restraint. - - Any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the individual cannot remove at will and which restricts freedom from movement or normal access to one's body, or any drug used to limit movement by a resident or to limit mental capacity of a resident beyond the requirements of therapeutic treatment.

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

2.48. Secretary. - - The Secretary of the Department of Health and Human Resources.

2.49. State Board of Review.- - A board designated by State law through which a resident may appeal a discharge from a nursing home.

2.50. Standard Quality of Care. - - Substantial compliance with this rule.

2.51. Substantial Compliance. - - A level of compliance with this rule such that any identified deficiencies pose no greater risk to the residents' health or safety than the potential for causing minimal harm.

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

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

### **§64-13-3. STATE ADMINISTRATIVE PROCEDURES.**

#### 3.1. General Licensure Provisions.

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

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

3.1.c. Separate buildings on the same premises, operated under the same ownership and management, are one (1) nursing home unless the director determines otherwise.

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

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

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

3.1.h. The application for a license by the new owner has the effect of a valid license for three (3) months from the date the application is received by the director.

3.1.i. The nursing home's name shall be changed only with the director's approval.

3.1.j. An approved name change is reflected in a newly issued license at a charge of fifty dollars (\$50.00).

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

3.1.l. A license shall state:

3.1.l.1. The name of the nursing home to which it applies;

3.1.l.2. The name of the applicant who is the licensee;

3.1.l.3. The maximum bed capacity for which it is granted;

3.1.l.4. The date of issuance; and

3.1.l.5. The expiration date.

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

3.2. Exceptions.

3.2.a. Nothing contained in this rule applies to:

3.2.a.1. A hospital as defined in W. Va. Code §16-5B-1;

3.2.a.2. Institutions as defined in W. Va. Code §§27-1-6 and 25-1-3;

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3.2.a.3. A federally operated institution;

3.2.a.4. Institutions operated for the care and treatment of alcoholic patients;

3.2.a.5. Offices of physicians;

3.2.a.6. Hotels;

3.2.a.7. Residential Board and Care Homes, as defined under W. Va. Code §16-5H-2, or similar places that furnish to their guests only room and board;

3.2.a.8. Extended care facilities operated in conjunction with a hospital;

3.2.a.9. Facilities, including intermediate care facilities for the mentally retarded required to be licensed under W. Va. Code §27-9-1;

3.2.a.10. Personal Care Homes as defined under W. Va. Code §16-5D-2;

3.2.a.11. Residential Care Communities as defined under W. Va. Code §16-5N-2; and

3.2.a.12. Homes or asylums operated by fraternal orders pursuant to W. Va. Code §35-3-1 et seq.

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

**3.3. Initial License.**

3.3.a. An applicant shall submit an application to the director, on a form prescribed by the director, containing information sufficient to demonstrate that the nursing home is in compliance with the standards for nursing homes established in W. Va. Code §16-5C-1 et seq., and this rule.

3.3.b. The application shall be filed not less than thirty (30) days and not more than ninety (90) days prior to the date proposed for commencement of operation.

**3.4. Renewal License.**

3.4.a. An applicant for a renewal license shall submit an application to the director on

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the form prescribed by the director.

3.4.b. A completed application for renewal of a license shall be submitted not less than thirty (30) days and not more than ninety (90) days prior to the expiration date of the current license.

3.4.c. The fee for renewal of a license, as determined by the director pursuant to W. Va. Code §16-5C-6(e), shall accompany the license renewal application.

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

3.4.d.1. The director finds the nursing home in substantial compliance with the provisions of W. Va. Code §16-5C-1 et seq., and with this rule;

3.4.d.2. The licensee applied for a renewal within the time period specified in this subsection; and

3.4.d.3. The licensee submitted the correct renewal fee with the application.

3.4.e. A renewal license is valid for one (1) year from the date of issuance.

3.5. Provisional License.

3.5.a. If the director finds that a nursing home applying for renewal of a license is not in substantial compliance with the requirements of this rule and the provisions of W. Va. Code §16-5C-1 et seq., the director may, at his or her discretion, issue a provisional license.

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

3.5.b.1. That the care given in the nursing home does not pose a substantial threat to the health and safety of residents; and

3.5.b.2. That the nursing home has demonstrated improvement and potential for substantial compliance within the term of the license for which renewal is requested.

3.5.c. A provisional license shall not be issued for a period greater than six (6) months.

3.5.d. No extensions or renewals will be granted on provisional licenses.

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### 3.6. Inspections of Licensed and Unlicensed Facilities.

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

3.6.b. The director shall conduct at least one (1) unannounced inspection annually, or in accordance with Section 17 of this rule on deemed status of a licensed nursing home, to determine compliance with the provisions of W. Va. Code §16-5C-1 et seq., and this rule.

3.6.c. In accordance with W.Va. Code §16-5C-9, the director or designee has the right to enter the premises of a nursing home that the director has reason to believe is being operated or maintained as a nursing home without a license.

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

3.6.e. If the director finds, on the basis of the inspection, that the nursing home is operating as a nursing home without a license, the nursing home shall apply for a license within ten (10) days in accordance with the provisions of this rule or shall reduce the number of residents to three (3) or fewer.

3.6.f. Failure to apply for a license shall be subject to the penalties established in Sections 15 and 16 of this rule.

3.6.g. A report of an inspection made pursuant to this rule shall be made in writing and shall be maintained on file by the director for five (5) years.

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

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

### 3.7. License; Posting; Licensed Capacity.

3.7.a. The license shall be posted in a conspicuous place on the licensed premises.

3.7.b. Each license certificate in the licensee's possession is the property of the State of West Virginia and shall be returned to the director immediately upon the suspension or revocation of the license, or if operation of the home is discontinued by voluntary action of the licensee.

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

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

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

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

3.8.b. For licensees planning a change in status as described in 3.8.a.:

3.8.b.1. This rule remains fully applicable until all residents have been discharged or transferred.

3.8.b.2. At least sixty (60) days prior to the date of the planned change in status, the administrator shall provide the director with a written transfer plan, subject to approval by the director. This plan shall include the following:

3.8.b.2.A. Documentation that adequate staff and resident care will be provided;

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

3.8.b.2.C. The placement action proposed to be taken for each individual resident.

3.8.b.3. The administrator, upon request, shall provide the licensing agency with any additional information related to the transfer plan as well as follow-up reports regarding specific placement action.

3.8.b.4. The licensee shall not admit new residents after the date of the written notice required in this Section.

### 3.9. Availability of Reports and Records.

3.9.a. The director shall make available for public inspection and, upon request,

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provide hard copies at a cost of twenty-five cents (\$0.25) per page or electronically at a nominal cost, of the following documents:

3.9.a.1. Applications and exhibits;

3.9.a.2. Inspection reports;

3.9.a.3. Reports of investigations conducted in response to complaints; and

3.9.a.4. Any other reports filed with or issued by the director pertaining to the compliance of a nursing home with applicable laws, rules and regulations.

3.9.b. If the director determines it is in the best interest of the public, the director may provide copies of records and reports free of charge to nonprofit community organizations upon written request.

3.9.c. The director shall treat a report of inspection of a nursing home as public information from the time an acceptable plan of correction is submitted.

3.9.d. If the nursing home does not submit a written plan of correction within the time specified by the director pursuant to Section 16 of this rule, reports pertaining to the nursing home shall be made public at the expiration of the specified time.

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

3.9.f. 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.

3.9.g. Before releasing a report or record considered to be public information, the director shall delete any confidential information regarding a resident that reasonably permits identification of the resident.

3.9.h. The director shall delete from complaints made available to the public under this Section any information required to be held confidential under subdivision 4.4.e. of this rule.

### 3.10. Nursing Home Licensing Advisory Council.

3.10.a. There shall be established a nursing home licensing advisory council composed of licensed nursing home administrators, representatives of appropriate government agencies and consumers.

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3.10.b. The composition of the council shall be determined by the director and be comprised of no less than ten (10) members and no more than fifteen (15) members.

3.10.c. The purpose of the council is to make recommendations to the director for regulatory issues and improvement.

3.10.d. The council shall meet at least semiannually and at least one (1) of these meetings shall be held in a public setting and receive input from the public.

**3.11. Transfer Agreements.**

3.11.a. The nursing home shall have in effect a transfer agreement with one (1) or more hospitals approved for participation under the Medicare and Medicaid programs that reasonably assures:

3.11.b. Timely admission to the hospital, when transfer is medically appropriate as determined by a physician; and

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

**3.12. Interpretive Guidelines.**

3.12.a. The agency shall issue an interpretive rule with respect to this rule. Prior to adoption and implementation of the interpretive rule, all affected parties will be given notice to comment.

**§64-13-4. RESIDENTS' RIGHTS.**

**4.1. Nursing Home Policies and Procedures.**

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

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

4.1.c. The nursing home's policies and procedures shall be made available upon request to:

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4.1.c.1. Residents or potential residents; and

4.1.c.2. Legal representatives.

### 4.2. Duties of Staff.

4.2.a. It is the duty of all members of the nursing home staff to ensure that every resident under their care is accorded all rights set forth in Sections 4 and 5 of this rule..

4.2.b. The staff of the nursing home shall be oriented to and trained at least annually in proper implementation of residents' rights policies as provided for in Paragraph 11.5.c.4 of this rule.

4.2.c. When the rights of a resident must be limited or restricted for medical reasons, the specific reasons for the limitation shall be documented in the resident's medical record; the restriction shall be only for a specific and limited period of time; and must be authorized in writing by the resident or the resident's legal representative.

### 4.3. Rights of Legal Representatives.

4.3.a. The rights and obligations established under this rule shall devolve to a resident's legal representative if, in accordance with applicable State law, the resident lacks capacity to exercise their rights and obligations.

4.3.a.1. If a legal representative has been appointed for, or designated by, any resident as having the authority to exercise on behalf of the resident one or more of the resident's rights under this rule, the home shall afford the legal representative the full opportunity to exercise that authority.

4.3.a.2. A legal representative shall exercise his or her authority in conformance with State and federal law.

4.3.a.3. Nothing in this rule shall in any way be construed to diminish or deprive any individual of any rights other than specifically provided in this rule.

4.3.b. If the resident is unable to make medical decisions, the nursing home shall:

4.3.b.1. In the case of a resident adjudged incompetent under the laws of a state by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf.

4.3.b.2. In the case of a resident who has not been adjudged incompetent by the

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State court, any legal surrogate designated in accordance with State law may exercise the resident's rights to the extent provided by State law.

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

4.3.d. If the rights of a resident have devolved to another individual, the nursing home shall maintain documentation of the determination of incapacity or incompetence, in the residents' medical record; and

4.3.e. Verification of the authority of the legal representative shall be maintained in the residents' medical record.

4.3.f. If the resident regains his or her capacity, the powers of the legal representative shall cease immediately.

### 4.4. Confidentiality and Access to Records.

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

4.4.b. Access to Records. Upon an oral or written request, each resident shall be given access to all of his or her records, including current clinical records, within twenty-four (24) hours.

4.4.b.1. Records may only be available during normal business operating hours, excluding weekends and holidays.

4.4.c. A resident may purchase, at a cost not to exceed twenty-five cents (\$0.25) per page, photocopies of the records or any portions of them, upon oral or written request and two (2) working days advance notice to the nursing home and returned to the individual making the request within two (2) working days.

4.4.d. Access to Survey and Inspection Reports. Any individual shall have the right to review the most recent and past state and federal inspection and complaint reports with the nursing home's plan of correction.

4.4.d.1. The nursing home shall make the results of surveys and inspections, as well as plans of correction, available for examination in a place readily accessible to residents and shall post a notice of their availability.

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4.4.d.2. The nursing home may charge an amount not to exceed twenty-five cents (\$0.25) per page for copies of reports requested by any individual.

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

### 4.5. Rights To Be Informed.

4.5.a. Each resident shall be fully informed, as evidenced by the resident's written acknowledgment, prior to or at the time of admission and within thirty (30) days of changes to these rights, of the resident rights set forth in this section and of all rules and regulations governing resident conduct and responsibility.

4.5.a.1. A copy of these rights, as well as the names, addresses, and telephone numbers of all pertinent State agencies, including but not limited to, licensing agencies and State and local ombudsmen programs shall be prominently posted within the nursing home.

4.5.b. The staff shall make reasonable accommodations to communicate the resident's rights to residents with communication impairments and residents who speak a language other than English.

4.5.c. Medical Condition. Each resident, and in the case of incapacity, the legal representative, shall be fully informed by a physician of his or her medical condition and significant changes therein.

4.5.d. Care and Treatment. Each resident, and in the case of incapacity, the legal representative, shall be informed in advance about care and treatment and of any change in that care or treatment that may affect the resident's well-being.

4.5.e. Grievances. A resident has the right to voice grievances without discrimination or reprisal. Such grievances include those with respect to treatment, furnished and unfurnished; and

4.5.e.1. The nursing home shall promptly resolve grievances the resident may have, including those with respect to the behavior of other residents.

### 4.5.f. Self Administration of Drugs.

4.5.f.1. An individual resident may self-administer drugs if the interdisciplinary team has determined that self administration is safe. This self administration must be reviewed by the interdisciplinary team at least quarterly.

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### 4.6. Refusal of Treatment and Experimental Research.

4.6.a. Refusal of Treatment. The resident has the right to refuse treatment and to refuse to participate in experimental research.

4.6.a.1. As provided under State law, a resident who has the capacity to make a health care decision and who either withholds consent to treatment or makes an explicit refusal of treatment, either directly or through an advance directive, shall not be treated against his or her wishes.

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

4.6.a.1.B. When a refusal of treatment occurs, the nursing home shall assess the reasons for the resident's refusal, clarify and educate the resident, and in the case of incapacity, the legal representative, as to the consequences of the refusal, and offer alternative treatments, and continue to provide all other services.

4.6.a.1.C. Documentation of the refusal and actions taken shall be maintained in the resident's medical record.

4.6.a.2. Refusal of Experimental Research. The resident shall have the opportunity to refuse to participate in experimental research prior to the start of the research.

4.6.a.2.A. A resident being considered for participation in experimental research shall be fully informed of the nature of the experiment and of the possible consequences of participation.

4.6.b. A nursing home shall not transfer or discharge a resident for refusing treatment unless criteria for transfer or discharge are met under Subsection 4.13 of this rule.

### 4.7. Written Information.

4.7.a. The nursing home shall furnish a written description of legal rights which includes:

4.7.a.1. A description of the manner of protecting personal funds, under Subdivision 4.10.g.;

4.7.a.2. Medicaid Eligibility. A description of the residents's financial

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obligation. The nursing home shall inform each resident, in writing, prior to or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges, including any charges for services not covered under the Medicaid Program, or not covered by the facility's basic per diem rate.

4.7.a.2.A. A description of the requirements and procedures for Medicaid eligibility. The nursing home shall also provide information to each resident, resident's family and/or resident's legal representative concerning the availability of asset assessments and advise them that these asset assessments are available upon request at the county DHHR office whether or not they are applying for Medicaid.

4.7.a.3. A list of names, addresses, and telephone numbers of the director, the Medicaid fraud control unit, and all pertinent state client advocacy groups such as the state ombudsmen program and the protection and advocacy network; and

4.7.a.4. A statement that the resident may file a complaint with the director concerning resident abuse, neglect, and misappropriation of resident property in the nursing home.

### 4.8. Advance Directives.

4.8.a. The resident has the right to execute an advance directive.

4.8.b. The nursing home shall maintain written policies and procedures regarding advance directives.

4.8.b.1. These policies and procedures shall include provisions to inform and provide written information to all adult residents concerning the right to accept or refuse medical or surgical treatment and, at the resident's option, execute an advance directive.

4.8.b.2. This includes a written description of the nursing home's policies implementing advance directives.

4.8.c. A nursing home shall only admit residents for which it has the capacity to administer care in accordance with the resident's advance directives, but can not require a resident to execute an advance directive as a condition of admission.

4.8.c.1. The nursing home shall notify the resident or legal representative of its inability to honor a resident's advance directive executed after admission to the nursing home and assist in finding appropriate alternative placement if he or she desires.



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### 4.9. Right to Choose a Personal Physician.

4.9.a. The resident shall have the right to choose a personal physician, and to request and receive a second opinion from a physician of the resident's choice where significant alternatives for care or treatment exist or when the resident requests information concerning care or treatment alternatives.

4.9.a.1. The resident shall receive such information from his or her doctor or the administrator or his or her designee, as appropriate.

4.9.b. Upon admission, the nursing home shall provide the resident with the names of physicians who have attending privileges at the nursing home.

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

### 4.10. Management of Residents' Personal Funds.

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

4.10.b. Upon written authorization of a resident, the nursing home shall hold, safeguard, manage, and account for the personal funds of the resident deposited with the nursing home as specified in Subdivisions 4.10.c. through 4.10.f. of this Section.

#### 4.10.c. Deposit of funds.

##### 4.10.c.1. Funds in excess of fifty dollars (\$50).

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

4.10.c.1.B. In pooled accounts, there shall be a separate accounting for each resident's share.

##### 4.10.c.2. Funds less than fifty dollars (\$50).

4.10.c.2.A. The nursing home shall maintain a resident's personal funds

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that do not exceed fifty dollars (\$50) in a non-interest bearing account, interest-bearing account, or petty cash fund.

### 4.10.d. Accounting and records:

4.10.d.1. The nursing home shall establish and maintain a system that assures a complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the nursing home.

4.10.d.2. The system shall preclude any co-mingling of a resident's funds with nursing home funds or with the funds of any person other than another resident.

4.10.d.3. The individual financial record shall be available through quarterly statements and on request to the resident or his or her legal representative.

4.10.d.3.A. For any transaction from a resident's account, the nursing home shall provide the resident with a receipt and retain a copy.

4.10.d.3.B. The nursing home shall administer the funds on behalf of the resident in the manner directed by the resident or in the case of incapacity, the legal representative.

### 4.10.e. Notice of certain balances.

4.10.e.1. The nursing home shall notify each resident who receives Medicaid benefits:

4.10.e.1.A. When the amount in the resident's account reaches two hundred dollars (\$200) less than the Supplemental Security Income (SSI) resource limit for one person; and

4.10.e.1.B. If the amount in the account, in addition to the value of the resident's other non-exempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

### 4.10.f. Conveyance upon death or discharge.

4.10.f.1. Upon the death or discharge of a resident with personal funds deposited with the nursing home, the nursing home shall convey, within thirty (30) days, the resident's funds, and a final accounting of those funds, to the discharged resident, or to the individual or probate jurisdiction administering the resident's estate.

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### 4.10.g. Assurance of financial security.

4.10.g.1. The nursing home shall purchase a bond or obtain and maintain commercial insurance with a company licensed in the State of West Virginia if the nursing home in any one month handles greater than thirty-five dollars (\$35) per resident per month in the aggregate.

4.10.g.1.A. The bond or insurance in a sum at least one and twenty-five one-hundredths (1.25) times the average amount of residents' funds deposited with the nursing home during the nursing home's previous fiscal year. Reference Table 64-13B of this rule.

4.10.g.1.B. The insurance policy shall specifically designate the resident as the primary beneficiary or payee for reimbursement of lost funds.

4.10.g.1.C. The nursing home shall reimburse, within thirty (30) days, the resident for any losses and seek its reimbursement through the bond or insurance.

4.10.g.1.D. The nursing home shall be responsible for any insurance deductible.

4.10.g.1.E. The director may require a nursing home to file an additional bond or purchase additional insurance in the following circumstances:

4.10.g.5.E.1. When the director determines that the amount of the bond or insurance is insufficient to protect the residents' money; or

4.10.g.5.E.2. When the amount of the bond or insurance is impaired by recovery against it.

4.10.g.1.F. When a nursing home ceases to handle residents' funds in amounts that require a bond or insurance, the director shall allow the release of the bond or insurance upon the nursing home providing an accounting to the residents.

4.10.g.1.G. When a nursing home determines, on the basis of medical judgement, that a resident is unable to manage his or her financial affairs and does not have a legal financial representative, the nursing home shall notify the resident's next of kin to initiate guardianship, conservatorship or incompetency proceedings.

4.10.g.1.H. A nursing home may initiate guardianship, conservatorship or incompetency proceedings on behalf of the resident if the resident has no next of kin or if the next of kin, once notified, fail to act.

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4.10.g.1.I. An employee of a nursing home, or a person or his or her spouse having a financial interest in the nursing home, shall not serve as a resident's legal representative unless the employee or person is related to the resident within the degree of consanguinity of second cousin or unless the nursing home has been named temporary legal representative payee.

### 4.11. Resident Work.

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

4.11.a.1. The nursing home has documented the need or desire for work in the plan of care;

4.11.a.2. The plan of care specifies the nature of the services to be performed and whether the services are voluntary or paid;

4.11.a.3. Compensation for paid services is at or above prevailing rates for such services; and

4.11.a.4. The resident agrees to the work arrangement described in the care plan.

### 4.12. Bed-Hold and Readmission Rights.

4.12.a. Upon payment of the nursing home's bed-hold rate or in the case of Medicaid residents, in accordance with the policy and procedure currently prescribed by the State plan, each resident has the right to retain the bed in which he or she is a resident.

4.12.a.1. Notice. At the time of admission and at the time of hospitalization or leave of absence, the resident shall be notified in writing of the nursing home's bed-hold policy.

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

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

4.12.c.1. If the nursing home is not certified under the Medicare program and the resident chooses placement in a nursing home providing Medicare coverage, the resident may be

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placed on a waiting list for readmission to the nursing home after Medicare coverage has ceased if the nursing home can provide the necessary services to the former resident.

### 4.13. Admission, Transfer and Discharge.

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

4.13.a.1. A resident of a Medicare certified skilled nursing home (SNF) from the distinct part of the institution that is a SNF to a part of the institution that is not a SNF; or

4.13.a.2. A resident of a non-Medicare certified nursing home (NF), from the distinct part of the institution that is a NF to a distinct part of the institution that is a SNF.

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

4.13.b.1. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing home;

4.13.b.2. The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the nursing home;

4.13.b.3. The health or safety of individuals in the nursing home is endangered;

4.13.b.4. The resident has failed, after reasonable and appropriate notice, to pay for a stay at the nursing home; or

4.13.b.5. The nursing home ceases to operate.

### 4.13.c. Documentation.

4.13.c.1. When the nursing home transfers or discharges a resident, the clinical record shall contain the reason for the transfer or discharge.

4.13.c.2. The documentation shall be made by the resident's physician when transfer or discharge is necessary under paragraphs 4.13.b.1 through 4.13.b.3 of this Subsection.

4.13.d. Notice before transfer or discharge. Before a nursing home transfers or discharges a resident, it shall:

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4.13.d.1. Provide written notice to the resident or his or her legal representative as appropriate, of the transfer or discharge. The notice shall be in a language the resident understands and shall include the following:

4.13.d.1.A. The reason for the proposed transfer or discharge;

4.13.d.1.B. The effective date of the proposed transfer or discharge;

4.13.d.1.C. The location or other nursing home to which the resident is being transferred or discharged;

4.13.d.1.D. A statement that the resident has the right to appeal the action to the State Board of Review, with the appropriate information regarding how to do so;

4.13.d.1.E. The name, address and telephone number of the State long term care ombudsman;

4.13.d.1.F. For nursing home residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals; and

4.13.d.1.G. For nursing home residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals.

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

4.13.e.1. The discharge is to a community setting in accordance with Subsection 4.13.g.;

4.13.e.2. The safety of individuals in the nursing home would be endangered;

4.13.e.3. The health of individuals in the nursing home would be endangered;

4.13.e.4. The resident's health improves sufficiently to allow a more immediate transfer or discharge;

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4.13.e.5. An immediate transfer or discharge is required by the resident's urgent medical needs; or

4.13.e.6. A resident has not resided in the nursing home for thirty (30) days.

### 4.13.f. Orientation for Transfer or Discharge.

4.13.f.1. A nursing home shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the nursing home.

4.13.f.2. Involuntary Transfer. In the event of an involuntary transfer, the nursing home shall assist the resident or legal representative or both in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge and by developing a plan designed to minimize any transfer trauma to the resident.

4.13.f.1.A. The plan may include counseling the resident, or legal representative or both regarding available community resources and taking steps under the nursing home's control to assure safe relocation.

### 4.13.g. Discharge to a Community Setting.

4.13.g.1. No resident, appropriate for nursing home care, may be discharged to a community setting against his or her will.

4.13.g.2. A nursing home shall document that a resident who was voluntarily discharged to a community setting understood fully all options for care will provide documentation in the record of plans the nursing home helped to develop in anticipation of the discharge.

4.13.g.3. Each resident shall understand fully the right to refuse such a discharge.

### 4.14. Equal Access to Quality Care.

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

4.14.a.1. Is the result of the nursing home not being able to provide adequate and appropriate care, and treatment and services to the resident or applicant due to the

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resident's or applicant's history of mental or physical disease or disability; and

4.14.a.2. Is not contrary to a federal or State law, regulation or rule:

4.14.a.2.A. That prohibits the discrimination; or

4.14.a.2.B. That requires the care to be provided if the nursing home participates in a financial program requiring the admittance or continued residence of the individual.

4.14.b. For all individuals, regardless of source of payment, a nursing home shall establish and maintain a set of policies and procedures regarding admission, transfer, discharge and the provision of services.

4.14.c. Civil Rights.

4.14.c.1. No resident shall be segregated, given separate treatment, restricted in the enjoyment of any advantage or privilege enjoyed by others in the nursing home, or provided with any aid, care services, or other benefits that are different or are provided in a different manner from those provided to others in the nursing home on the grounds of race, color, religion or national origin, age, disability, sex or other protected status.

4.14.c.2. No nursing home shall deny admission to a prospective resident on the grounds of race, religion or national origin, age, disability, sex or other protected status.

4.15. Admissions and Payment Policy.

4.15.a. A nursing home shall:

4.15.a.1. Not require residents or potential residents to waive their rights to Medicare or Medicaid; and

4.15.a.2. Not require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

4.15.b. Third Party Guarantee. A nursing home shall not require a third party guarantee of payment to the nursing home as a condition of admission or expedited admission, or continued stay in the nursing home.

4.15.b.1. The nursing home, however, may require for admission or for

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continued stay of the resident, that a person who has legal right and access to a resident's income or resources available to pay for care to sign a contract, without incurring personal financial liability, to provide payment from the resident's income or resources.

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

4.15.c.1. The nursing home may charge any amount for services furnished to non-Medicaid residents consistent with this paragraph.

4.15.c.2. Medical residents and their legal representatives shall be informed that if they desire a private room, they may privately supplement the Medicaid payment by directly paying the facility the difference between the semi-private room rate and the private room rate.

4.15.d. The nursing home shall inform residents in writing about Medicaid and Medicare eligibility and what is covered under those programs including information on resource limits and allowable uses of the resident's income for items and services not covered by Medicaid and Medicare.

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

4.15.e.1. The nursing home may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State Medicaid Plan as included in the term "nursing home services" if the nursing home gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for or receipt of such additional services; and

4.15.e.2. The nursing home may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the nursing home for a Medicaid eligible resident.

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4.15.f. The nursing home shall give the resident a thirty (30) day notice when changes are made to items and services specified in Subdivisions 4.16.c. and 4.16.d. of this Subsection.

### 4.16. Freedom from Restraints and Abuse.

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

4.16.a.1. The restraint is necessary to protect the resident from injury to himself or others; or

4.16.a.2. The restraint is used as a therapeutic intervention or enabler for specified periods of time to attain and maintain the resident's highest practicable physical, mental or psychosocial well-being.

### 4.16.b. Restraints.

#### 4.16.b.1. Assessments.

4.16.b.1.A. Before a resident is restrained, the nursing home shall conduct and document a comprehensive restraint assessment that includes:

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

4.16.b.1.A.2. Identifying the causal factors.

4.16.b.1.A.3. Identifying, assessing, and attempting restraint free interventions that are appropriate for the individual; and

4.16.b.1.A.4. The following, if alternatives to restraints are not found to be practicable:

4.16.b.1.A.4.(a). A full explanation to the resident, and in the case of incapacity, the resident's legal representative, of the reasons for using the restraint, the benefits and risks of the restraint, and the obtaining of written consent from the resident, and

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in the case of incapacity, the resident's legal representative.

4.16.b.1.A.4.(b). The nursing home must document that the use of the restraint will enhance the resident's quality of life and functional abilities and is clinically beneficial.

4.16.b.1.A.4.(c). An assessment of the resident to identify the least restrictive type of restraint that will provide for the resident's needs.

4.16.b.2. Physician's order.

4.16.b.2.A. After a comprehensive restraint assessment indicates the need for a restraint and the physician concurs, the resident's attending physician shall write an order specifying the type, precise application, circumstances and duration of the restraint.

4.16.b.3. The care plan shall include, at a minimum:

4.16.b.3.A. The type and size of restraint that is to be used;

4.16.b.3.B. When the restraint is to be used;

4.16.b.3.C. For physical restraints, a schedule of release times and what individualized activity is to be provided during that period of time; and

4.16.b.3.D. A systematic and gradual process to reduce the restraint or eliminate it, or both.

4.16.b.4. Application.

4.16.b.4.A. Physical restraints shall be applied in accordance with the manufacturer's instructions and in a manner to allow for quick release.

4.16.b.5. Monitoring and release.

4.16.b.5.A. A resident who is restrained shall receive direct monitoring at least every one-half ( $\frac{1}{2}$ ) hour and shall be released from the restraint at least every two (2) hours and provided exercise, toileting, and skin care.

4.16.b.6. Policies and procedures.

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4.16.b.6.A. The nursing home will establish and implement policies and procedures for restraint use.

4.16.b.7. Emergency.

4.16.b.7.A. In the case of an emergency, licensed nursing personnel authorized by the nursing home in writing may order the use of a physical restraint for a specified and limited period of time not to exceed twenty-four (24) hours until the physician can be notified of the resident's condition requiring the emergency application.

4.16.b.7.B. Continued use is subject to the same evaluation process described in this subdivision and shall be ordered by the attending physician.

4.16.c. Abuse.

4.16.c.1. A resident has the right to be free from verbal, sexual, physical, and mental abuse, financial exploitation, discrimination, denial of privileges, corporal punishment and involuntary seclusion.

4.16.c.2. Staff treatment of residents.

4.16.c.2.A. The nursing home shall develop and implement written policies and procedures that prohibit neglect, abuse of residents, and misappropriation of resident property.

4.16.c.3. A nursing home shall not employ individuals who:

4.16.c.3.A. Have been found guilty of abusing, neglecting, exploiting or mistreating residents, incapacitated adults or children by a court of law; or

4.16.c.3.B. Have had a finding entered into the Certified Nursing Assistant Registry or the West Virginia Adult Abuse Registry concerning abuse, neglect, exploitation or mistreatment of residents or misappropriation of their property.

4.16.c.4. A nursing home shall report any knowledge it has of actions by a court of law against an employee, that would indicate unfitness for service as a nurse aide or other nursing home staff to the West Virginia Certified Nursing Assistant Registry or the appropriate licensing authority and the director.

4.16.c.4.A. Actions by a court of law which indicate unfitness for

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service include a substantiated charge of abuse, neglect or exploitation against an employee, or conviction of an offense for actions related to bodily injury, theft or misuse of funds or property, or other crimes related to public welfare, in any jurisdiction within or outside of the State of West Virginia.

4.16.c.5. The nursing home shall ensure that all alleged violations involving mistreatment, neglect, exploitation or abuse, including injuries of unknown source, and misappropriation of resident property are reported in accordance with State law.

4.16.c.6. The nursing home shall document that all alleged violations are thoroughly investigated and shall take appropriate steps to prevent further potential abuse while the investigation is in progress.

4.16.c.7. The results of all investigations shall be reported to the administrator or his or her designated representative and to other officials in accordance with State law, including the director within five (5) working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

### 4.17. Complaint Procedures.

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

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

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

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

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

4.17.f. A nursing 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.

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

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

### **§64-13-5. QUALITY OF LIFE.**

A nursing home shall care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

#### 5.1. Dignity.

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

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

#### 5.2. Privacy.

5.2.a. Communication. The resident may associate and communicate privately with persons of his or her choice.

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

5.2.c. Married Couples. A married resident shall be assured privacy for visits by his or her spouse.

5.2.c.1. The resident has the right to share a room with his or her spouse when married residents live in the same nursing home and both spouses consent to the arrangement.

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

5.2.e. Residents have the right to personal privacy in accommodations, medical treatment, written communications, personal care, visits, and meetings of family and resident groups,

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but this does not require the nursing home to provide a private room for each resident.

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

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

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

5.3.c. Make choices about aspects of his or her life in the nursing home that are significant to the resident;

5.3.d. Personal Clothing and Possessions. Retain and use personal clothing and possessions and to have their room as homelike as possible, according to their individual tastes and desires taking into consideration, space limitations, the potential for infringing on the rights of other residents, as well as safety and sanitation issues.

5.3.d.1. A nursing home may specify in the admission contract the nursing home's liability for a residents personal clothing and possessions;

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

5.3.f. Participate in planning care and treatment.

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

5.4.a. Access.

5.4.a.1. A nursing home shall not deny a resident immediate access to, and shall provide immediate access to a resident by:

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

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5.4.a.1.B. The ombudsman; and

5.4.a.1.C. Any other person of the resident's choosing.

5.4.a.2. A person entering a nursing home, other than a representative of the director, who has not been invited by a resident or a resident's legal representative shall:

5.4.a.2.A Promptly advise the administrator or other available agent of the nursing home of his or her presence;

5.4.a.2.B. Not enter the living area of a resident without identifying him or herself to the resident and without receiving the resident's permission to enter;

5.4.a.2.C. Terminate a visit with a resident upon request of the resident;

5.4.a.2.D. Not disclose communications with a resident unless the resident authorizes disclosure;

5.4.a.2.E. Be permitted to visit all areas of the nursing home except:

5.4.a.2.E.1. Living areas of a resident who objects;

5.4.a.2.E.2. Business records of the nursing home unless the administrator consents;

5.4.a.2.E.3. Personal and medical records of the resident, unless the resident or in case of incapacity, the resident's legal representative, consents in writing;

5.4.a.2.E.4. Food service areas requiring sanitary conditions;  
or

5.4.a.2.E.5. Pharmaceutical or secure area; or

5.4.a.2.E.6. Any other areas where inspection might endanger any individual or might invade the privacy of any employee or resident.

5.4.a.3. A nursing home shall establish visiting hours consisting of at least eight (8) hours per day between 8:00 a.m. and 8:00 p.m., seven (7) days a week.

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5.4.a.3.A. Visiting hours shall be posted conspicuously in a public place in the nursing home.

5.4.a.4. Relatives and members of the clergy shall be permitted to visit a seriously ill resident without restriction to the extent possible.

### 5.4.b. Resident's Refusal.

5.4.b.1. The resident has the right to refuse a visit and the visit shall be terminated upon the resident's request.

5.4.b.2. In the case of an incapacitated individual, the legal representative may refuse visits on behalf of the resident if the legal representative demonstrates that such visits have a harmful effect on the resident. All relevant information shall be documented in the resident's medical record.

### 5.4.c. Administration's Exclusion.

5.4.c.1. The administrator or designee in charge of the nursing home may refuse a visitor access or require such a visitor to leave only if:

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

5.4.c.1.B. Access is sought for financial solicitation or commercial purposes, or;

5.4.c.1.C. A resident does not wish the visitor to stay.

5.4.c.2. The restriction and the reasons for it shall be documented and kept on file.

### 5.4.d. Resident and Family Groups and Councils.

5.4.d.1. Residents have the right to organize, maintain, and participate in resident groups in the nursing home.

5.4.d.2. A resident's family has the right to meet in the nursing home with the families of other residents.

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5.4.d.3. The nursing home shall provide a resident or family group with private space for meetings.

5.4.d.4. The nursing home shall provide assistance for resident or family group meetings, if requested.

5.4.d.5. Staff or visitors may attend resident or family group meetings only at the group's invitation.

5.4.d.6. The nursing home shall respond in writing to oral and written requests from resident and family council meetings. Resident councils and family councils shall be encouraged to make recommendations regarding nursing home policies.

5.4.d.7. The nursing home shall provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings.

5.4.d.8. When a resident or family group exists, the nursing home shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the nursing home.

### 5.5. Participation in Other Activities.

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

### 5.6. Accommodation of Residents' Needs.

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

5.6.b. A resident has the right to receive notice before the resident's room or roommate in the nursing home is changed and to be informed of the reason for the change. The nursing home shall make efforts to assure that the changes are effected with the least disruption to the resident's life.

### 5.7. Activities.

5.7.a. The nursing home shall provide for an ongoing program of activities designed

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to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident. This shall include provisions for evening and weekend activities.

5.7.b. The activities program shall be directed by an individual who:

5.7.b.1. Is a qualified therapeutic recreation specialist or activities professional; or

5.7.b.2. Has two (2) years of experience in a social or recreational program within the last five (5) years, one (1) of which was full-time in a resident activities program in a health care setting; or

5.7.b.3. Is a qualified occupational therapist or occupational therapy assistant; or

5.7.b.4. Has demonstrated the ability to provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident; and

5.7.b.4.A. Serves with regularly scheduled consultation by an individual who meets the qualifications described in 5.7.c. of this rule. The use of oversight by a qualified consultant may continue until the time a candidate can meet the required qualifications, but not for more than a period of twelve months from the date of hire.

5.7.b.5. Has completed a training course approved by the State.

5.7.c. A qualified activities consultant shall be a qualified professional who is a qualified therapeutic recreation specialist or activities professional who is licensed, registered or certified, if applicable, and has three years of experience in a social or recreational program. This person shall:

5.7.c.1. Visit the nursing home as indicated by the needs of the nursing home and its residents, but not less than eight (8) hours quarterly; and

5.7.c.2. Provide a written, dated report, containing the time and duration of the visit and a summary of the findings with recommendations for improvements in the program to the administrator and the activities director, within ten (10) working days of the completion of the onsite visit.

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5.7.d. The duties of the activities director shall include:

5.7.d.1. Developing the nursing home's recreational and activities plan; organizing and directing the program, developing and implementing a written monthly activities calendar at least one (1) month in advance; completing an accurate resident assessment and care plan; documenting participation or nonparticipation in activities and reasons for nonparticipation as it relates to the resident's care plan; and maintaining a current record of community services, resources, programs, and nursing home materials available to the residents, staff, and families; and

5.7.d.2. Designing an activities program to restore, maintain, and improve functioning and well-being in conjunction with the care plan for the individual resident.

5.8. Social Services.

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

5.8.b. A nursing home with sixty (60) or more beds shall employ a qualified social worker on a full-time basis.

5.8.c. A qualified social worker is an individual with:

5.8.c.1. A license to practice social work in the State of West Virginia;  
and

5.8.c.2. Has a demonstrated ability to provide medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

### **§64-13-6. RESIDENT ASSESSMENT.**

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

6.1. Admission Orders.

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

6.2. Comprehensive Assessments.

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

6.2.a.1. Is based on a uniform data set and instrument specified by the director; and

6.2.a.2. Describes the resident's capability to perform daily life functions and any significant impairments in functional capacity.

6.2.b. The comprehensive assessment shall include at least the following information:

6.2.b.1. Identification and demographic information.

6.2.b.2. Customary routine.

6.2.b.3. Cognitive patterns.

6.2.b.4. Communication.

6.2.b.5. Vision.

6.2.b.6. Mood and behavior patterns.

6.2.b.7. Psychosocial well-being.

6.2.b.8. Physical functioning and structural problems.

6.2.b.9. Continence.

6.2.b.10. Disease diagnosis and health conditions.

6.2.b.11. Dental and nutritional status.

6.2.b.12. Skin conditions.

6.2.b.13. Activity pursuit.

6.2.b.14. Medications.

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6.2.b.15. Special treatments and procedures.

6.2.b.16. Discharge potential.

6.2.b.17. Documentation and summary information regarding the additional assessment performed through the resident assessment protocols.

6.2.b.18. Documentation of participation in assessment.

6.2.c. Frequency. Comprehensive assessments shall be conducted:

6.2.c.1. No later than fourteen (14) days after the date of admission;

6.2.c.2. Within fourteen (14) days after the facility determines, or should have determined that there has been a significant change in the resident's physical or mental condition; and

6.2.c.3. In no case less often than every three hundred sixty-six (366) days.

6.2.d. Review of Assessments. The nursing home shall examine each resident no less than once every ninety-two (92) days, and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.

6.2.e. Use. The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care under Section 7 of this rule.

6.2.f. Coordination. The nursing home shall coordinate assessments with any State-required preadmission screening program to the maximum extent practicable to avoid duplicative testing and effort.

6.3. Accuracy of Assessments.

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

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

6.3.c. Each individual who completes a portion of the assessment shall sign and

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certify the accuracy of that portion of the assessment.

### 6.3.d. Civil money penalty for falsification.

6.3.d.1. An individual who willfully and knowingly certifies (or causes another individual to certify) a material and false statement in a resident assessment is subject to civil money penalties.

### 6.3.e. Use of independent assessors.

6.3.e.1. If the director determines, under an inspection or otherwise, that there has been a knowing and willful certification of false statements under subdivision 6.3.c. the director may require (for a period specified by the director) that resident assessments under this section be conducted and certified by individuals who are independent of the nursing home and who are approved by the director.

## **§64-13-7. COMPREHENSIVE CARE PLANS.**

### 7.1. Development of the Care Plan.

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

#### 7.1.a. The comprehensive care plan shall describe the following:

7.1.a.1. The services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under Section 8 of this rule; and

7.1.a.2. Any services that would otherwise be required under Sections 4 and 5 of this rule, but are not provided due to the resident's exercise of rights including the right to refuse treatment.

### 7.2. Timing of the Care Plan and Participation Requirements.

#### 7.2.a. A comprehensive care plan shall be:

7.2.a.1. Developed within seven (7) days after the completion of the comprehensive assessment;

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7.2.a.2. Prepared by an interdisciplinary team, which includes the attending physician, a registered nurse with responsibility for the resident, other appropriate staff in disciplines as determined by the resident's needs, and to the extent practicable, the participation of the resident, the resident's family or the resident's legal representative and the resident's family with the consent of the resident or the resident's legal representative.

7.2.a.3. Periodically reviewed and revised by a team of appropriate persons after each assessment.

### 7.3. Services Provided Under a Care Plan.

7.3.b. The services provided or arranged by the nursing home shall:

7.3.b.1. Meet professional standards of quality; and

7.3.b.2. Be provided by qualified persons in accordance with each resident's written plan of care.

### 7.4. Plans for Care and Medical Records.

7.4.a. Plans for care.

7.4.a.1. The resident's plan of care shall be developed for each resident upon admission and maintained by the nursing service in cooperation with all other services.

7.4.a.2. The plan of care shall provide a profile of the needs of the individual resident, identify the role of each service in meeting those needs, and the supportive measures each service will use to complement each other service in the accomplishment of the overall goal of care.

7.4.a.3. The plan of care plan shall be in writing and contain at least the following:

7.4.a.3.A. The goals to be accomplished;

7.4.a.3.B. Individually designed activities to meet the goals;

7.4.a.3.C. Therapies;

7.4.a.3.D. Treatments, including diet requirements; and

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7.4.a.3.E. A statement of which discipline, or professional service individual is responsible for each element prescribed in the plan.

7.4.a.4. A nursing home shall have written policies and procedures to ensure that through the resident care conferences or other means of coordination, the resident care plan shall be reviewed and revised as needed, but at least quarterly. The review shall be noted in the medical record.

7.4.a.5. Policies and procedures shall delineate the rules and responsibilities of each service in relation to the resident care plan.

7.4.a.6. The resident care plan shall be available for use by all personnel caring for the resident.

7.4.a.7. Relevant information from the resident care plan shall be made available with other information that is conveyed when the resident is transferred to another nursing home, an acute care facility or referred for continuing care by other agencies upon discharge to the community.

7.4.a.8. A discharge plan shall be maintained and shall include at least the following:

7.4.a.8.A. An initial assessment including discharge potential and goals, completed at admission or within no more than seven (7) days thereafter;

7.4.a.8.B. Relevant information concerning such areas as nursing assessment, social history, rehabilitation potential, resident needs at discharge and available community resources; and

7.4.a.8.C. Periodic review and re-evaluation on a monthly basis for the first three (3) months after admission and then at least quarterly.

### 7.4.b. Discharge.

7.4.b.1. General. When a resident is discharged to another nursing home or agency or to his or her home, a summary shall be prepared prior to the discharge. The complete summary shall be conveyed to the receiving nursing home or agency at the time of discharge. If the resident is discharged to his or her home, the resident shall be given appropriate information concerning his or her needs for care and medications. The summary shall include:

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- 7.4.b.1.A. The resident's name and identifying number;
- 7.4.b.1.B. The name of the attending physician;
- 7.4.b.1.C. The date of admission;
- 7.4.b.1.D. The date of discharge;
- 7.4.b.1.E. A provisional and final diagnosis;
- 7.4.b.1.F. The course of treatment and care in the nursing home;
- 7.4.b.1.G. Pertinent diagnostic findings;
- 7.4.b.1.H. Essential information regarding the resident's illness or

problems;

- 7.4.b.1.I. Restorative procedures;
- 7.4.b.1.J. Medication instructions; and

7.4.b.1.K. The nursing home, agency or location to which the resident was discharged:

7.4.b.2. Anticipated Discharge. When a discharge is anticipated, a nursing home shall prepare for the resident a discharge summary that includes:

7.4.b.2.A. A recapitulation of the resident's stay;

7.4.b.2.B. A final summary of the resident's status to include items in Subdivision 6.2.b. of this rule, prepared at the time of the discharge, that is available for release to authorized persons and agencies with the consent of the resident or legal representative;

7.4.b.2.C. Thirty (30) day notification of the discharge as appropriate and in compliance with other provisions of this rule;

7.4.b.2.D. A post-discharge plan of care that is developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

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7.4.b.3. The death of a resident shall be reported immediately to the attending physician and to the resident's legal representative and family as relevant.

7.4.b.3.A. The discharge summary shall include those requirements specified in 7.4.b.1.A - K.

7.4.b.4. Medical record requirements of discharged residents. Medical records shall be completed promptly within a time specified in the nursing homes policies and procedures, not to exceed thirty (30) days after the resident is discharged.

7.4.b.4.A. The discharge summary shall contain a dated physician's signature.

### **§64-13-8. QUALITY OF CARE.**

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

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

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

8.1.a.1. Bathe, dress, and groom;

8.1.a.2. Transfer and ambulate;

8.1.a.3. Toilet;

8.1.a.4. Eat; and

8.1.a.5. Use speech, language, or other functional communication systems.

8.1.b. A resident is given the appropriate treatment and services to maintain or improve his or her abilities specified in Subsection 8.1.a.; and

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8.1.b.1. Assistive devices. The nursing home shall provide special eating equipment and utensils for residents who need them.

8.1.b.2. Residents having potential to benefit from such devices shall be evaluated to assure that the devices meet the residents' needs.

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

### 8.2. Vision and Hearing.

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

8.2.a.1. In making appointments; and

8.2.a.2. By arranging for transportation to and from the office of a practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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### 8.8. Accidents.

8.8.a. The nursing home shall provide an environment that remains as free of accident hazards as possible; and

8.8.b. Where each resident receives adequate supervision and assistive devices to prevent accidents.

8.8.c. A written report shall be made of any incident or accident in which a resident is involved, either inside or outside of the nursing home.

8.8.d. The report shall include the following:

8.8.d.1. The date;

8.8.d.2. The time of the occurrence;

8.8.d.3. The place of the occurrence;

8.8.d.4. The details of the occurrence;

8.8.d.5. The date and signature of the reviewing physician.

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

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

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

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

8.9.c. Who has an unplanned weight loss of ten percent (10%) or more in six (6) months, or a gradual progressive unexplained weight loss of ten percent (10%) or more below the individual's admission body weight, shall have a thorough nutritional assessment, including appropriate laboratory studies.

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

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

- 8.11.a. Injections;
- 8.11.b. Parenteral and enteral fluids;
- 8.11.c. Colostomy, ureterostomy, or ileostomy care;
- 8.11.d. Tracheostomy care;
- 8.11.e. Tracheal suctioning;
- 8.11.f. Respiratory care;
- 8.11.g. Foot care;
- 8.11.h. Prostheses; and
- 8.11.i. Skin conditions.

### 8.12. Medications and Drugs.

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

- 8.12.a.1. In excessive doses (including duplicate therapy);
- 8.12.a.2. For excessive duration;
- 8.12.a.3. Without adequate monitoring;
- 8.12.a.4. Without adequate indications for its use;
- 8.12.a.5. In the presence of adverse consequences that indicate the dose should be reduced or discontinued.

8.12.b. Antipsychotic Drugs. Based on a comprehensive assessment of a

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resident, the nursing home shall ensure that:

8.12.b.1. Residents who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record; and

8.12.b.2. Residents who use antipsychotic drugs receive gradual dose reductions and behavioral interventions, unless clinically contraindicated, in an effort to discontinue these drugs.

8.12.c. Medication Errors. The nursing home shall ensure that:

8.12.c.1. It is free of medication error rates of five percent (5%) or greater;  
and

8.12.c.2. Residents are free of any significant medication errors.

8.12.d. Controlled Drugs Policy. Facilities shall have policies and procedures regarding controlled drugs as required in subsection 8.18 of this rule and State law.

8.13. Nursing Services Staffing.

8.13.a. The nursing home shall have sufficient nursing personnel to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care, or as specified by the resident assessments and individual plans of care, but shall not, other than during short unforeseeable emergencies, be less than an average of two and twenty five one hundredths (2.25) hours of nursing personnel time per resident per day.

8.13.a.1. Minimum hours of resident care personnel to residents is outlined on table 64-13.A.

8.13.a.2. Facilities with fewer than fifty-one (51) beds are staffed at higher hours as seen on table 64-13.A. of this rule.

8.13.b. The nursing home shall provide services by sufficient numbers of each of the following types of personnel on a twenty-four (24) hour basis to provide nursing care to all residents in accordance with resident care plans:

8.13.b.1. Licensed nurses; and

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8.13.b.2. Other nursing personnel. Based on the resident need and the nursing home services, the nursing home may determine the combination of licensed nurse time and nursing assistant time if the total meets the minimum 2.25 hours nursing personnel time requirement.

8.13.c. Charge Nurse. The nursing home shall designate a licensed nurse to serve as a charge nurse on each shift;

8.13.d. Registered Nurse. The nursing home shall have a registered nurse on duty in the facility for at least eight (8) consecutive hours, seven (7) days a week.

8.13.d.1. In facilities with fewer than sixty (60) beds, the director of nursing may serve to meet this requirement.

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

8.13.f. Director of Nursing. The nursing home shall designate in writing a registered nurse to serve as the director of nursing services on a full-time basis, on duty at least five (5) days a week, eight (8) hours a day during the day shift.

8.13.g. The director has the authority to require staffing ratios above the specified minimum ratios if necessary to meet residents' needs.

### 8.14. Dietary Services.

#### 8.14.a. Dietary Staffing.

8.14.a.1. Dietitian. The nursing home shall employ a qualified dietitian either full-time or part-time, or on a consultant basis.

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

8.14.a.1.B. Is qualified as defined by the West Virginia Board of Licensed Dietitians, and is licensed by that board to provide professional nutritional services in West Virginia.

8.14.a.1.C. Consultation shall be based upon residents needs and

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shall occur at intervals of no less than every thirty (30) days and for no less than eight (8) hours.

8.14.a.2. Dietary Manager. If a dietitian is not employed full-time, the nursing home shall employ a dietary manager. A dietary a manager is person who is one of the following:

8.14.a.2.A. A dietetic technician, registered by the American Dietetic Association; or

8.14.a.2.B. A certified dietary manager, as certified by the Dietary Manager's Association; or

8.14.a.2.C. A graduate of an associate or baccalaureate degree program in foods and nutrition or food service management.

8.14.b. The dietary manager, under the direction of the dietitian, shall be responsible for the daily operation of the dietetic service;

8.14.c. Sufficient staff. The nursing home shall employ sufficient support personnel competent to carry out the functions of the dietary service.

8.14.d. Menus and Nutritional Adequacy.

8.14.d.1. The nursing home shall meet the nutritional needs of residents in accordance with the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

8.14.e. Food. The nursing home shall provide each resident with:

8.14.e.1. Food prepared by methods that conserve nutritive value, flavor, and appearance.

8.14.e.1.A. Meals shall be prepared and served the same day;

8.14.e.2. Food that is palatable, attractive, and at the proper temperature;

8.14.e.2.A. At the time of receipt by the resident, foods shall be at a temperature of no less than 120°F for hot foods and at no more than 50°F for cold foods;

8.14.e.3. Food prepared in a form designed to meet individual needs.

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8.14.e.4. Food substitutes of similar nutritive value for food the resident refuses.

8.14.e.5. Food prepared with salt, unless contraindicated by a physician's order; and

8.14.e.6. Iodized salt, if used.

8.14.f. Diets including regular diets. All residents shall have a physician's order for the specific type of diet he or she is to receive. "As tolerated" orders are not acceptable.

8.14.f.1. Therapeutic and texture modified diets shall be served to residents in accordance with the physician's orders.

8.14.f.2. Nursing personnel shall advise food service in writing of each resident's diet order, and a copy of the order shall be kept on file for at least one (1) year.

8.14.f.3. Therapeutic Diets.

8.14.f.3.A. Therapeutic diets shall be prescribed by the attending physician. A current therapeutic diet manual that is not more than five (5) years old and is approved by the dietitian shall be available for nursing personnel and physicians.

8.14.f.4. Recognizing that the resident has the right to refuse medical treatment, all residents shall have the right to request substitute foods even when this violates the physician's orders.

8.14.f.4.1. The nursing home shall provide education to the resident regarding the benefits of the prescribed diet and consequences of the refusal.

8.14.f.4.2. Document the informed decision in the resident's medical record.

8.14.g. Frequency of meals.

8.14.g.1. The nursing home shall provide at least three (3) meals daily at regular times, or in accordance with residents' preferences and customary routines.

8.14.g.2. No more than fourteen (14) hours shall elapse between a substantial evening meal and breakfast the following day.

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8.14.g.2.A. Breakfast shall not be served before 7:00 A.M., unless by resident's request.

8.14.g.3. The nursing home shall offer a nourishing snack at bedtime daily, as determined by resident needs.

8.14.g.3.A. The amount of the snack(s) consumed by the resident shall be recorded in the resident's medical record.

8.14.h. Sanitary conditions. The nursing home shall:

8.14.h.1. Procure food from sources approved or considered satisfactory by Federal, State or local authorities;

8.14.h.2. Store, prepare, distribute, and serve food under sanitary conditions;

8.14.h.2.A. Hold hot foods for service above 140°F and cold foods at or below 40°F; and

8.14.h.3. Dispose of garbage and refuse properly.

8.14.i. Emergency supplies.

8.14.i.1. The nursing home shall have a planned three (3) day disaster menu that correlates with the emergency food supply.

8.14.i.2. The emergency food supply shall be maintained on the premises with non-perishable foods and disposable supplies to meet all resident needs for three (3) days.

8.14.i.3. The emergency food supply may be incorporated with the regular stock of food supplies.

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

8.14.k. The dietetic service shall be in substantial compliance with the department's current "Food Establishments" rule, 64CSR17.

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**8.15. Physician and Physician Extender Services.**

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

**8.15.a. Physician supervision. The nursing home shall ensure that:**

**8.15.a.1. The medical care of each resident is supervised by a physician;**  
and

**8.15.a.2. Another physician supervises the medical care of residents when their attending physician is unavailable.**

**8.15.b. Physician visits. The physician shall:**

**8.15.b.1. Review the resident's total program of care, including medications and treatments, and examine the resident personally at each visit required by Subdivision 8.15.c. of this subsection;**

**8.15.b.2. Write, sign, and date progress notes at each visit; and**

**8.15.b.3. Sign and date all orders.**

**8.15.c. Frequency of physician visits. The resident shall be seen by a physician:**

**8.15.c.1. Within five (5) days prior to admission or within seventy-two (72) hours following admission; and**

**8.15.c.2. At least every thirty (30) days for the first ninety (90) days after admission, and as the resident's condition warrants. The nursing home shall assure that physician visits occur as clinically indicated for the resident.**

**8.15.c.3. After the ninety (90) day requirement has expired, the physician shall visit every sixty (60) days and as the resident's condition warrants.**

**8.15.d. Except as provided in Subdivision 8.15.e. of this Subsection, all required physician visits shall be made by the physician personally.**

**8.15.e. After the initial visit, at the option of the physician, the required visit every sixty (60) days may alternate between personal visits by the physician and visits by a**

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physician's assistant, nurse practitioner or clinical nurse specialist in accordance with subdivision 8.15.g. of this subsection below.

8.15.f. Availability of physicians for emergency care. The nursing home shall provide or arrange for the provision of physician services twenty-four (24) hours a day, in case of an emergency.

8.15.g. Physician delegation of tasks. Except as specified in subdivision 8.15.c.2., a physician may delegate tasks to a physician assistant, nurse practitioner, or clinical nurse specialist who:

8.15.g.1. Is licensed as such by the State; and

8.15.g.2. Is acting within the scope of practice as defined by State law; W. Va. Code §§30-3 and 38-42-1, et seq.; and

8.15.g.3. Is under the supervision of the physician.

8.16. Specialized Rehabilitative Services.

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

8.16.a.1. Provide the required services; or

8.16.a.2. Obtain the required services from an outside resource (in accordance with Subdivision 11.4 of this rule) from a provider of specialized rehabilitative services.

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

8.17. Dental Services.

8.17.a. The nursing home shall assist residents in obtaining routine and twenty-four (24) hour emergency dental care.

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8.17.b. The nursing home shall provide, or obtain from an outside resource in accordance with Subdivision 11.4 of this rule, the following dental services to meet the needs of each resident:

8.17.b.1. Routine dental services (to the extent the resident is covered under the State Medicaid Plan); and

8.17.b.2. Emergency dental services.

8.17.c. The nursing home shall assist a resident in need of dental services by:

8.17.c.1. Making dental appointments;

8.17.c.2 Arranging for transportation to and from the dentist's office; and

8.17.c.3. Referring residents with lost or damaged dentures to a dentist.

### 8.18. Pharmacy Services.

8.18.a. The nursing home shall provide routine and emergency drugs and biologicals to its residents, or obtain them under an agreement described in Subsection 11.4 of this rule.

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

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

8.18.d. Service consultation. The nursing home shall employ or obtain the services of a licensed pharmacist who:

8.18.d.1. Provides consultation on all aspects of the provision of pharmacy services in the nursing home;

8.18.d.2. Establishes a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation; and

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8.18.d.3. Determines that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled.

8.18.e. Drug regimen review.

8.18.e.1. The drug regimen of each resident shall be reviewed, by a licensed pharmacist, at least every thirty-seven (37) days.

8.18.e.2. The drug regimen review shall include substances that are regarded as herbal products or dietary supplements.

8.18.f. The drug regimen review shall be conducted on the nursing home premises.

8.18.g. The pharmacist shall report any irregularities in the drug regimen review to the attending physician and the director of nursing, and these reports shall be acted upon.

8.18.h. Labeling of drugs and biologicals.

8.18.h.1. Drugs and biologicals used in the nursing home shall be labeled in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, with the expiration date when applicable.

8.18.i. Storage of drugs and biologicals.

8.18.i.1. In accordance with state and federal laws the nursing home, shall store all drugs and biologicals in locked compartments under proper temperature controls and permit only authorized personnel to have access to the keys.

8.18.i.2. The nursing home shall provide separately locked, permanently affixed compartments for the storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 42 U.S.C. § 812, and other drugs subject to abuse, except when the nursing home uses single unit package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.

8.18.j. The nursing home shall establish policy to assure that residents' requests for prescription medications from sources other than the contracted pharmacy be honored.

8.19. Infection Control.

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

8.19.b. Infection control program. The nursing home shall establish and implement an infection control program under which it:

8.19.b.1. Investigates, controls, and prevents infections in the nursing home;

8.19.b.2. Determines what procedures, such as isolation, should be applied to a resident and isolates only to the extent that is required to protect the resident and others; and

8.19.b.3. Maintains a record of incidents, investigations, and corrective actions related to infections.

8.19.b.3.A. The records shall provide for analysis of causal factors and identification of preventative actions to be implemented.

8.19.c. Preventing spread of infection.

8.19.c.1. Policies and Procedures. The nursing home shall establish and implement policies and procedures consistent with current accepted standards of practice regarding the administration of pneumococcal vaccine, influenza vaccine, and screening for tuberculosis.

8.19.c.2. Isolation. When the infection control program determines that a resident needs isolation to prevent the spread of infection, the nursing home shall isolate the resident or make arrangements to have the resident transferred to a nursing home which can better meet the needs of the resident if the nursing home is unable to provide the required degree of isolation.

8.19.c.3. The nursing home shall prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease.

8.19.c.4. Hand-washing. The nursing home shall require staff to wash their hands after each direct resident contact and after engaging in any activity for which hand washing is indicated by accepted standards of professional practice.

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8.19.d. Linens. Personnel shall handle, store, process, and transport linens so as to prevent the spread of infection.

### §64-13-9. PHYSICAL FACILITIES, EQUIPMENT AND RELATED.

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

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

9.1.b. The standard for construction, renovations, and alterations shall be relevant sections of the 1996-1997 edition of "The Guidelines for Design and Construction of Hospitals and Health Care Facilities", as recognized by the American Institute of Architects, Academy of Architecture for Health with assistance from the U. S. Department of Health and Human Services.

9.1.c. The nursing home shall comply with the 1996 Edition of National Fire Protection Association (NFPA) of "NFPA 99 Standards for Health Care Facilities."

9.1.d. The nursing home shall comply with the state building code Building Officials and Code Administrators, 13<sup>th</sup> Ed. 1996 (BOCA).

9.1.e. The nursing home shall comply with all applicable provisions of the Americans with Disabilities Act (ADA).

9.1.f. A complete set of architectural, structural, and mechanical drawings, drawn to scale not less than one-eighth (1/8) inch equals one (1) foot, shall be submitted to and approved by the director before construction begins.

9.1.f.1. This requirement applies to new construction, additions, renovations, or alterations to existing nursing homes.

9.1.g. The submitted drawings and specifications shall be prepared, signed and sealed by an individual registered to practice architecture in the State of West Virginia.

9.1.g.1. The project shall be inspected during the construction phase by a registered professional architect or his representative.

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

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

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

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

9.1.l. All new facilities, additions, and alterations shall be inspected by the director and shall have the director's approval in writing prior to admitting residents.

9.1.l.1. A request for a pre-opening inspection shall be made in writing a minimum of thirty (30) days prior to the proposed opening date.

9.1.m. All fees specified in the Division of Health rule 64CSR51 "Fees for Services" for site inspections of new construction or major renovations, architectural review of drawings and specifications, and inspections of new projects prior to opening are the responsibility of the nursing home or design professional.

9.1.n. Unless substantial construction is started within one (1) year of the date of approval of final drawings, the owner or architect shall secure written notification from the director that the plan approval for construction is still valid and in compliance with this rule.

### 9.2. Site Characteristics and Accessibility.

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

9.2.b. The site shall be located in an environment that is free from flooding and excessive noise sources such as railroads, freight yards, traffic arteries and airports.

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9.2.b.1. The site shall not be exposed to excessive smoke, foul odors or dust.

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

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

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

9.2.e.1. The road shall connect directly to a paved hard surface highway.

9.2.e.2. Grades to all sites shall permit access for emergency vehicles and fire fighting equipment in all weather conditions.

9.2.f. Parking areas shall be sufficient according to the guidelines set by the American Institute of Architects.

9.2.g. Hard surface walks, a minimum of forty-eight (48) inches wide with a slip resistant surface, shall be provided at all entries and exits and connect into the main walk or parking area.

9.2.h. Soil conditions shall be reviewed as necessary by a qualified soils engineer and if conditions require, earth core boring shall be conducted.

9.2.h.1. The design professional shall supply the director with copies of soil test reports if engineered fill is installed or if other soil tests are conducted.

9.2.i. Local building codes and zoning restrictions shall be followed.

9.2.i.1. Evidence of compliance signed by local fire, building and zoning officials shall be maintained by the owner or designee and available for review.

9.2.i.2. Where local codes or regulations permit lower standards than required by this rule, the standards contained in this rule shall have precedence.

9.3. Increase in Bed Capacity.

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

### 9.4. Equipment and Furnishings in Resident Rooms.

9.4.a. Each resident shall be provided with a bed that accommodates his or her individual needs.

9.4.b. Each resident shall be provided with a night stand that has a drawer for toilet articles and utensils.

9.4.c. A chair shall be provided for each resident that accommodates the resident's individual needs.

9.4.d. Each resident shall have reasonable closet and drawer space for clothing and personal items.

9.4.d.1. Shelves and drawers shall be positioned at a height that accommodates the needs of the individual resident.

9.4.e. Each resident shall have individual towel bars or an equivalent. In semi-private rooms towel bars shall be located to encourage individual use.

9.4.f. Cubicle curtains shall be provided that assure visual privacy for each resident.

9.4.g. Window dressings and curtains or draperies shall be provided and maintained in good condition.

### 9.5. Laundry and Linens.

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

9.5.b. At least one clean, comfortable pillow shall be provided for each bed; additional pillows shall be available to meet the needs of the resident.

9.5.c. The nursing home shall provide clean waterproof mattresses or mattress

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covers that are non-absorbent.

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

9.5.e. Individual towels, wash cloths, and blankets shall be provided and made available for each resident.

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

### 9.6. Nursing Equipment and Sterile Supplies.

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

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

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

9.6.d. If the nursing home provides electrical life support services, all electrical equipment used to sustain life shall be connected to an emergency generator, through a critical branch electrical system.

9.6.d.1. The generator and all critical branch electrical circuits shall comply with the standards as identified in the "National Fire Protection Association NFPA 99 Standard for Health Care Facilities".

9.6.e. All equipment shall be maintained in accordance with section 8.19 of this rule.

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

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

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

9.6.i. Damaged supplies and utensils shall not be used.

9.7. General Maintenance and Housekeeping.

9.7.a. The nursing home shall be constructed, maintained and equipped to protect the health and safety of residents, personnel, and the public.

9.7.b. All new nursing homes shall establish and maintain the nursing home and equipment in accordance with the guidelines in the 1996-1997 Edition of the Guidelines for Design and Construction of Hospitals and Health Care Facilities as recognized by The American Institute of Architects for Health.

9.7.c. All existing nursing homes shall establish and maintain the nursing home and equipment in accordance with the guidelines referenced in the Minimum Requirements of Construction and Equipment for Hospitals and Medical Facilities - U.S. Department of Health Education and Welfare (DHEW NO. (HRA) 81-14500).

9.7.d. The nursing home shall establish and implement a maintenance program that assures that:

9.7.d.1. All equipment is operable.

9.7.d.2. The interior and exterior of the building is safe; and

9.7.d.3. The grounds are maintained in a presentable condition free from rubbish and other health hazards of a similar nature.

9.7.e. The nursing home shall establish and implement a housekeeping program and services that assures a clean, sanitary environment.

9.7.f. The nursing home shall provide a comfortable, home-like environment for residents.

9.7.g. The nursing home shall be kept free of insects, rodents and vermin by an effective pest control program. Insecticidal strips are prohibited.

9.7.h. Pesticides shall be applied only by an applicator certified by the

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United States Department of Agriculture.

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

### 9.8. Solid Waste and Bio-Hazard Waste Disposal.

9.8.a. The nursing home shall have procedures and contracts for disposing of bio-hazardous waste.

9.8.a.1. Chain of custody receipts and forms shall be maintained by the nursing home for one (1) year.

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

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

9.8.d. All garbage and refuse shall be stored in durable, covered, leak-proof and vermin-proof containers or dumpsters.

9.8.d.1 The containers and dumpsters shall be kept clean of all residue accumulation.

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

### 9.9. Water Supply.

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

9.9.b. The nursing home shall have as its source of water a public water system that complies with West Virginia Division of Health Rules, Public Water Systems, 64CSR3, or a water well that complies with West Virginia Division of Health Rules, Water Well Regulations, 64CSR19 and Water Well Design Standards, 64CSR46.

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9.9.c. The nursing home shall have hot and cold running water in sufficient supply to meet the needs of the residents.

9.9.d. Hot water distribution systems serving resident care areas shall be recirculating to provide continuous hot water at each hot water outlet.

9.9.d.1. The temperatures shall be appropriate for comfortable use but shall not exceed 110° degrees.

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

### 9.10. Sewage Disposal.

9.10.a. Sewage disposal shall be in accordance with West Virginia Division of Health Rules, Sewage System Rules, and West Virginia Division of Health Rules, Sewage Treatment and Collection System Design Standards, 64CSR47.

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

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

### 9.11. Fire Safety, Disaster and Emergency Preparedness.

9.11.a. The nursing home shall provide evidence of compliance with applicable rules of the State Fire Commission.

9.11.a.1. Any variation to compliance with the fire code shall be coordinated with the department and approved in writing by the state fire marshal.

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

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

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

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

9.11.f. There shall be copies of the disaster and emergency preparedness plan at all staff stations or emergency control stations.

9.11.f.1. The disaster and emergency preparedness plan shall be located in an area that allows visual contact at all times. Staff shall know the location at all times.

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

9.11.h. The nursing home shall have a plan and procedures written for transferring casualties and uninjured residents.

9.11.h.1. These procedures shall include the transfer of pertinent resident records including identification informational diagnoses, allergies, advance directives, medications and treatments, and other records needed to ensure continuity of care.

9.11.i. The nursing home shall have written instructions regarding the location and use of alarm systems, signals and fire fighting equipment.

9.11.j. The nursing home shall have information regarding methods of fire containment.

9.11.k. The nursing home shall have written instructions regarding accessibility for evacuation routes.

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

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

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9.11.m.1. Telephone number of the fire department, the police, and ambulance service and other appropriate emergency services;

9.11.m.2. Key personnel telephone numbers, including at least the following:

9.11.m.2.A. The administrator;

9.11.m.2.B. The director of nursing or nurse on call;

9.11.m.2.C. The maintenance director or safety director;

9.11.m.2.D. The physician on call; and

9.11.m.2.E. Other appropriate personnel.

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

9.11.o. The nursing home shall provide an area of sufficient space to hold the congregate population of the nursing home with a heat source that is supplied with emergency electrical power from the emergency power source.

### 9.12. Disaster Training.

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

9.12.b. The internal disaster plan shall be rehearsed at least annually.

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

9.12.d. Disaster Rehearsal and Fire Drill Reports. A dated written report and evaluation of each disaster rehearsal and fire drill shall be maintained on file for at least two (2) years.

### 9.13. Animals.

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

**§64-13-10. ADMINISTRATION.**

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

10.1. Licensure.

10.1.a. A nursing home shall be licensed pursuant to section 3 of this rule.

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

10.2. Governing Body.

10.2.a. A nursing home shall have a governing body.

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

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

10.2.c.1. An annual operating budget, including all anticipated income and expenses; and

10.2.c.2. A capital expenditure plan for at least a three (3) year period.

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

10.2.d.1. The policies and procedures shall include as a minimum all policies and procedures required by this rule.

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10.2.d.2. A copy of each written policy and procedure shall be available for inspection on request by the nursing home's staff and residents and by members of the public.

### §64-13-11. HUMAN RESOURCES.

#### 11.1. Professional Staff.

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

#### 11.2. Professional Qualifications.

11.2.a. Professional staff shall be licensed, certified, or registered in accordance with applicable laws.

#### 11.3. Criminal Background Checks.

11.3.a. A criminal conviction investigation shall be conducted on all applicants for employment.

11.3.b. If an applicant has been convicted of a misdemeanor or a felony offense constituting child abuse or neglect or abuse or neglect of an incapacitated adult, he or she may not be employed by a nursing home.

11.3.c. The applicant may also not be employed by the nursing home if he or she is under indictment for, or convicted of, in any court of a crime punishable by imprisonment for more than one year or be a fugitive from justice.

#### 11.4. Use of Outside Resources.

11.4.a. If the nursing home does not employ a qualified professional person to furnish a specific service to be provided by the nursing home, the nursing home shall have that service furnished to residents by a person or agency outside the nursing home under an arrangement or an agreement as described in 42 U.S.C. §1395x(w) or an agreement as described in Subsection 11.2, and services shall meet the ongoing identified needs of residents to ensure implementation of the plan of care and to avoid unnecessary duplication of services.

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

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11.4.b.1. Obtaining services that meet professional standards and principles that apply to professionals providing services in such a nursing home; and  
11.4.b.2. The timeliness of the services.

### 11.5. Staff Development.

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

11.5.a.1. Plan and organize a system of training that begins with an orientation program and continues throughout employment with scheduled in-service training programs;

11.5.a.2. Develop in each employee an awareness of his or her abilities and limitations in providing care for residents; and

11.5.a.3. Develop the abilities of each employee with an in-depth review of operational policies and procedures, their positions, methods and procedures to follow in implementing assigned duties, and to provide up-to-date information that will assist in providing quality care.

11.5.b. Records shall be maintained of attendance, and if absences occur a make-up class shall be scheduled and completed.

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

11.5.c.1. Be sufficient to ensure the continuing competence of certified nursing assistants, but shall be no less than twelve (12) hours per year;

11.5.c.2. Address areas of weakness as determined in the employee's evaluation and may address the special needs of residents as determined by the nursing home staff;

11.5.c.3. For nursing staff providing services to residents with cognitive impairments, also address the care of the cognitively impaired; and

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11.5.c.4. Include in-service instruction to all personnel on the following:

11.5.c.4.A. Problems and needs of the aged, ill and disabled,

11.5.c.4.B. The prevention and control of infections,

11.5.c.4.C. Disaster preparedness and fire and safety rules,

11.5.c.4.D. Accident prevention,

11.5.c.4.E. Confidentiality of resident information,

11.5.c.4.F. Protection of resident's privacy and personal property rights, dignity and protection of residents rights,

11.5.c.4.G. Complaint procedure, abuse, neglect, and misappropriation of personal property.

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

11.6.a. A dated application;

11.6.b. Reference verification;

11.6.c. Results indicating a satisfactory health status for the employees current job assignment. (See Subsection 8.19 of this rule.)

11.6.d. Results of annual physical;

11.6.e. Evaluations of work performance;

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

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

11.6.h. Any nursing home specific required forms; and

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11.6.i. A job description signed by the employee,

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

11.7.a. The medical director is responsible for:

11.7.a.1. Reviewing policies, procedures, and guidelines to ensure adequate, comprehensive services;

11.7.a.2. Coordinating medical care provided, including attending physicians, in the nursing home so it is adequate and appropriate;

11.7.a.3. Assisting in the evaluation of credentialing and recredentialing of licensed independent practitioners, physicians' assistants and nurse practitioners to determine whether they will be authorized to practice within the organization by recommendation;

11.7.a.4. Approving in-service training programs; and

11.7.a.5. Reviewing and evaluating incident reports or summaries of incident reports, identifying hazards to health and safety, and making recommendations as needed.

**§64-13-12. LABORATORY, RADIOLOGY, AND OTHER DIAGNOSTIC SERVICES.**

12.1. Laboratory Services.

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

12.1.b. If the nursing home provides its own laboratory services, the services shall meet the applicable requirements.

12.1.c. If the nursing home arranges for outside laboratory services, that laboratory shall meet the applicable requirements for laboratories.

12.1.d. If the nursing home provides blood bank and transfusion services, it shall meet the applicable requirements.

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12.1.e. If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory shall be certified in the appropriate specialties and sub-specialties of services in accordance with the requirements to which it is subject.

12.1.f. The nursing home shall:

12.1.f.1. Provide or obtain laboratory services only when ordered by a physician;

12.1.f.2. Promptly notify the physician of the findings;

12.1.f.3. Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

12.1.f.4. File in the resident's clinical record laboratory reports that are dated and contain the name and address of the testing laboratory.

### 12.2. Radiology and Other Diagnostic Services.

12.2.a. The nursing home shall provide or obtain radiology and other diagnostic services to meet the needs of its residents. The nursing home is responsible for the timeliness of the services.

12.2.b. If the nursing home provides its own diagnostic services, the services shall meet the applicable licensing and certification requirements established for those services.

12.2.c. If the nursing home does not provide its own diagnostic services, it shall have an agreement to obtain these services from a provider or supplier that meets all applicable licensing and certification requirements established for those services.

12.2.d. The nursing home shall:

12.2.d.1. Provide or obtain radiology and other diagnostic services only when ordered by the attending physician;

12.2.d.2. Promptly notify the physician of the findings,

12.2.d.3. Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

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12.2.d.4. File in the resident's clinical record signed and dated reports of x-ray and other diagnostic services, with the name and address of the provider of the service.

**§64-13-13. CLINICAL RECORDS.**

13.1. Records Maintenance and Retention.

13.1.a. The nursing home shall maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

- 13.1.a.1. Complete;
- 13.1.a.2. Accurately documented;
- 13.1.a.3. Readily accessible; and
- 13.1.a.4. Systematically organized.

13.1.b. All of an individual's clinical records shall be retained for the longer of the following time periods:

- 13.1.b.1. Five (5) years from the date of discharge or death; or
- 13.1.b.2. For a minor, three (3) years after a resident reaches eighteen (18) years of age.

13.1.c. The nursing home shall safeguard clinical record information against loss, destruction, or unauthorized use.

13.1.d. The nursing home shall ensure that each clinical record contains a photograph of the resident, unless the resident objects.

13.2. Confidentiality. The nursing home shall keep all information contained in the resident's medical record confidential, except when release is required by:

- 13.2.a. Transfer to another health care institution;
- 13.2.b. Law;

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13.2.c. Third party payment contract; or

13.2.d. The resident.

13.3. Contents. The clinical record shall contain:

13.3.a. Sufficient information to identify the resident;

13.3.b. All the resident's assessments;

13.3.c. The plan of care and services provided;

13.3.d. The results of any pre-admission screening conducted by the State;

13.3.e. Progress notes; and

13.3.f. Physician orders.

### **§64-13-14. QUALITY ASSESSMENT AND ASSURANCE.**

14.1. Quality Improvement Committee.

14.1.a. A nursing home shall maintain a quality improvement and assessment committee consisting of:

14.1.a.1. The director of nursing services;

14.1.a.2. The medical director; and

14.1.a.3. At least three (3) other members of the nursing home's staff.

14.1.b. The quality improvement and assessment committee shall:

14.1.b.1. Meet at least quarterly to identify issues of quality assessment and improvement activities;

14.1.b.2. Develop and implement appropriate plans of action to correct identified quality deficiencies;

14.1.b.3. Continuously measure, assess, and improve all important resident

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care and nursing home functions;

14.1.b.4. Collect and review outcome data and use it to systematically benchmark the level of quality with that of other extended care providers; and

14.1.b.5. Collect and review resident satisfaction.

14.2. Disclosure of Records. The State may not require disclosure of the quality improvement committee records insofar as such disclosure is related to the compliance with the requirements of this section.

14.3. Sanctions.

14.3.a. Good faith attempts as documented by the committee to identify and correct quality areas of concern or deficiencies can not be used as a basis for citing a new deficiency or as a basis for sanctions.

### **§64-13-15. INSPECTIONS AND INVESTIGATIONS.**

15.1. Regular Inspections.

15.1.a. The director shall make or cause to be made inspections by his or her authorized representatives as necessary to carry out the intent of W. Va. § 16-5C-1 and this rule.

15.1.b. All licensed nursing homes shall be inspected annually, or in accordance with Section 17 of this rule to determine the nursing homes' compliance with applicable statutes and rules.

15.1.b.1. Nursing homes with the greatest number of deficiencies shall be investigated with greater frequency as determined by the director.

15.1.c. The director shall provide a nursing home with a written description of its deficiencies within ten (10) working days of the last day of the inspection.

15.2. Complaint Investigation.

15.2.a. Any individual may register a complaint with the director alleging violation of applicable statutes and rules by the nursing home.

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15.2.a.1. The director shall document all complaints and shall identify the nursing home involved.

15.2.b. A complaint that the director determines is willfully intended to harass a licensee or is without any reasonable basis shall not be investigated.

15.2.b.1. 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.

15.2.c. The director shall conduct an unannounced inspection of the nursing home to determine the validity of the complaint.

15.2.c.1. The director shall provide the nursing home with general notice of the substance of the complaint only at the time of the inspection.

15.2.d. The director shall conduct other investigations necessary to determine the validity of the complaint.

15.2.e. No later than twenty (20) working days after investigating and completing a complaint, the director shall notify the complainant and the nursing home in writing of the results of the investigation.

15.2.e.1. A description of the corrective action the nursing home will be required to take and of any disciplinary action to be taken by the director shall be sent to the complainant.

15.2.e.2. If a complaint has been found to be substantiated, the director shall advise any injured party of the possibility of a civil remedy under W. Va. Code §16-5C-1 et seq.

15.2.f. The names of a complainant or of any person named in a complaint shall not be disclosed by the department without the individual's written authorization.

15.2.f.1. If a complaint becomes the subject of a judicial proceeding, nothing in this section shall be construed to restrict disclosure of information that would otherwise be disclosed in a judicial proceeding.

15.2.g. Before any complaint is disclosed to a nursing home or the public pursuant to subsection 16.2.v. of this rule, any information in the complaint that could reasonably

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identify the complainant or a resident shall be redacted.

15.2.h. A nursing home is prohibited from discharging or in any manner discriminating against a resident or employee because the individual, legal representative, next of kin or concerned party has filed a complaint or participated in a proceeding authorized by W. Va. Code §16-5C-1 et seq.

15.2.h.1. A rebuttable presumption of retaliatory action against a resident shall arise against any nursing home that adversely discriminates against a resident who submitted, or on whose behalf a complaint was submitted, to the director or who is involved in any proceeding instituted under W. Va. Code §16-5C-1 et seq., within one hundred and twenty (120) days of the filing of the complaint.

15.2.i. Investigations of complaints involving immediate jeopardy to resident health or safety shall be made within twenty four (24) hours of the date of receipt of the complaint.

15.2.i.1. Investigations of complaints involving harm, that is not immediate jeopardy, shall be made within ten (10) days of the date of the complaint.

15.2.i.2. Investigations of complaints involving no harm, but with potential for greater than minimal harm, that are not immediate jeopardy shall be made within forty-five (45) days of the date of the complaint.

15.2.i.3. Investigations of complaints involving no harm with potential for minimal harm and all other complaints shall be made at the time of the next inspection.

15.2.j. If within one hundred twenty (120) days of an inspection or a complaint investigation, a nursing home fails to comply with the requirements of this rule, the director shall inform all residents of the nursing home's non-compliance.

15.2.j.1. If the non-compliance results in an action against the license of the nursing home, the director shall notify residents of the time period during which residents may relocate if they wish prior to the deficient nursing home being reported to the Social Security Administration if certified under the Medicare or Medicaid programs.

15.2.j.2. The director shall provide all residents with a list of nursing homes and agencies to assist them in moving if they wish.

15.2.k. The director shall make copies and information concerning applications,

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inspections, investigations and other reports available for public inspection from the time of receipt of the plan of correction.

15.2.k.1. Copies of all inspection reports shall be made available to the state long-term ombudsman, the local office of adult protective services, and the Social Security regional offices.

15.2.l. Within two hundred ten (210) days of an inspection or complaint investigation after which deficiencies are not timely corrected, the director shall cause the name and address of the deficient nursing home to be transmitted to the appropriate regional office of the Social Security Administration as a deficient nursing home.

15.2.m. The director shall provide the State long-term care ombudsman with the following within ninety (90) days:

15.2.m.1. A statement of deficiencies reflecting nursing home noncompliance;

15.2.m.2. Reports of adverse actions imposed on a nursing home; and

15.2.m.3. The date and time of any inspection.

15.3. Informal Dispute Resolution. (Informal Hearing).

15.3.a. The director shall offer a nursing home an opportunity for an informal dispute resolution.

15.3.a.1. Documentation for an informal dispute resolution shall be submitted with, but separate from, the plan of correction for existing deficiencies.

15.3.a.2. The request for an informal dispute resolution shall be submitted at that time the plan of correction is submitted for existing deficiencies.

15.3.a.3. The director shall write policy and procedures addressing how an informal dispute resolution shall be conducted.

15.3.a.4. The policy and procedures for an informal dispute shall be available to the public upon written request.

15.3.b. Failure of the director to complete an informal dispute resolution in a

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timely manner cannot delay the effective date of any enforcement action against the nursing home.

15.3.c. If during the informal dispute resolution process a nursing home is successful in demonstrating that deficiencies should not have been cited, the deficiencies shall be removed from the statement of deficiencies and any enforcement action imposed solely as a result of those cited deficiencies shall be rescinded.

15.3.d. All communications during an informal dispute resolution are confidential and cannot be used by or against the licensee or the director in the event a formal hearing takes place.

### **§64-13-16. ENFORCEMENT AND DUE PROCESS.**

#### 16.1. Enforcement: Director's Powers, Duties and Rights.

16.1.a. The director has the authority to invoke penalties against a nursing home violating the provisions of this rule in accordance with the provisions of this rule.

#### 16.2. Enforcement Generally.

16.2.a. The director may assess civil penalties, and may suspend, revoke, or deny renewal of the license of a nursing home for cause after notice as required by this rule and the provisions of W. Va. Code §16-5C-1, et seq., or take any other action contemplated by this rule. Cause may include one (1) or more of the following:

16.2.a.A. Failure to provide standard quality of care for residents;

16.2.a.B. Willfully and knowingly falsifying the material content of resident assessment(s);

16.2.a.C. Failure to submit a plan of correction required by W. Va. Code §16-5C-1 et seq.;

16.2.a.D. Failure to submit a plan of correction that is approved by the director;

16.2.a.E. Failure to correct deficiencies within the time frame specified in an approved plan of correction;

16.2.a.F. Repeat noncompliance within the same regulatory grouping as defined in this rule;

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16.2.a.G. Failure to cooperate with or interference with the director or an authorized representative of the director in the inspection of the nursing home;

16.2.a.H. Failure to comply with this rule;

16.2.a.I. Violation of any provision of this rule that produces immediate jeopardy to the health or safety of residents;

16.2.a.J. Violation of the provisions of this rule relative to the discharge of residents or employees because of complaints against the nursing home;

16.2.a.K. Use of subterfuge or other dishonest action in applying for an original or renewal license;

16.2.a.L. Use of subterfuge or other dishonest action in obtaining the time, date and location of any inspection;

16.2.a.M. Abuse of residents;

16.2.a.N. Neglect of residents;

16.2.a.O. Misappropriation of residents' property; or

16.2.a.P. Attempted bribery of any employee or contracted person of the department.

**16.3. Formal Hearings and Due Process for Actions of Enforcement.**

16.3.a. All formal hearings shall be conducted pursuant to "West Virginia Department of Health and Human Resources Legislative Rules, Rules of Procedure for Contested Cases", 64CSR1.

16.3.b. An applicant for a license or a licensee or any other person aggrieved by an order or other action by the director pursuant to this rule or to W. Va. Code §16-5C-1 et seq., shall have the opportunity for a formal hearing by the director, upon written request to the director in a manner prescribed in "West Virginia Department of Health and Human Resources Administrative Rules, Rules of Procedure for Contested Case Hearings and Declaratory Ruling", 64CSR1.

16.3.c. A formal hearing pursuant to this rule shall be conducted in accordance with

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the pertinent provisions of W. Va. Code §29A-4-1 et seq., and §29A-5-1 et seq., and “West Virginia Department of Health and Human Resources Administrative Rules, Rules of Procedure for Contested Case Hearings and Declaratory Rulings”, 64CSR1.

16.3.d. The nursing home shall have the right to request a formal hearing and seek judicial review pursuant to W. Va. Code §§16-5C-12 and 13 to contest the deficiencies issued by the director, irrespective of whether the deficiency results in the imposition of civil money penalty.

16.3.d.1. The director shall begin an enforcement action to ensure compliance with W. Va. Code §16-5C-1 et seq., or any rule, regulation or order issued thereunder, whenever the director determines that any person has engaged in, or is engaging in, an act or practice in violation of W. Va. Code §16-5C-1 et seq., or any rule, regulation or order, or whenever it appears to the director that any person has aided, abetted, or caused, or is aiding, abetting or causing such an act or practice or that no action is being taken under federal rule or that said action does not adequately protect residents' health or safety.

16.3.d.2. Available Remedies. One or more of the following remedies shall be used:

16.3.d.2.A. License termination;

16.3.d.2.B. Reduction of bed capacity;

16.3.d.2.C. Ban on new admissions;

16.3.d.2.D. Temporary management;

16.3.d.2.E. Civil money penalties; or

16.3.d.2.F. Closure of the nursing home in emergency situations or transfer of residents, or both.

16.3.e. A nursing home may not avoid cited deficiencies or enforcement actions because it has undergone a change of ownership.

16.4. Ban on New Admissions and Reduction in Licensed Bed Capacity.

16.4.a. The director shall by order place a ban on new admissions, reduce the licensed bed capacity of a nursing home, or both, when on the basis of inspection he or she makes the following findings:

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16.4.a.1. The licensee is not providing adequate care under the nursing home's existing bed capacity; and

16.4.a.2. A reduction in licensed bed capacity or a ban on new admissions, or both, would place the nursing home in a position to render adequate care.

16.4.b. A reduction in licensed bed capacity or a ban on new admissions, or both, shall remain in effect until the nursing home is determined by the director to be in substantial compliance with this rule.

16.4.c. If the residents of the nursing home are in immediate jeopardy regarding their health, safety, welfare or rights, the director may seek an order to transfer residents out of the nursing home as provided for in subsection 4.13 of this rule.

16.4.d. Any notice to a licensee of reduction in licensed bed capacity or a ban on new admissions shall include the terms of the order, the reasons for the order and a date set for compliance.

### 16.5. Revocation or Suspension of License.

16.5.a. If the director suspends a nursing home's license, he or she shall also specify the conditions giving rise to the suspension that are to be corrected by the licensee during the period of suspension to entitle the licensee to apply for reinstatement of his or her license.

16.5.a.1. If the director revokes a license, he or she may stay the effective date of the revocation by not more than ninety (90) days upon a showing that the stay is necessary to assure appropriate placement of residents.

16.5.b. The director's order is final unless vacated or modified by court order.

### 16.6. Immediate Jeopardy or Repeat Deficiency.

16.6.a. The director has the right to enforce this rule, administratively or in court, without first affording an opportunity to correct a deficiency when the director finds either of the following:

16.6.a.1. Violation of this rule jeopardizes the health or safety of a patient; or

16.6.a.2. The violation is a repeat deficiency which has caused harm or greater than harm.

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16.6.b. 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:

16.6.b.1. Institute or continue a disciplinary proceeding;

16.6.b.2. Institute or continue a proceeding for the denial of license application;

16.6.b.3. Enter an order denying a license application; or

16.6.b.4. Take any other disciplinary action as provided by state law or rules.

16.6.c. 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.

### 16.7. Procedure for Civil Penalties.

#### 16.7.a. Assessment and application of civil penalties.

16.7.a.1. Penalties for violations of this rule shall be assessed and applied in accordance with the provisions W. Va. Code §16-5C-1 et seq., and this rule.

16.7.a.2. Upon completion of a report of inspection, the director shall determine what civil money penalties he or she shall assess.

### 16.8. Notice of Civil Money Penalty.

16.8.a. The director shall send to the nursing home a certified written notice of intent to impose a civil money penalty including the basis for imposing such civil money penalty.

#### 16.8.a.1. The notice shall include:

16.8.a.1.A. The nature of the noncompliance;

16.8.a.1.B. The statutory basis for the civil money penalty;

16.8.a.1.C. The amount of civil money penalty;

16.8.a.1.D. Any factors that were considered when determining the

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amount of the civil money penalty;

16.8.a.1.E. When the civil money penalty is due; and

16.8.a.1.F. Instructions for responding to the notice, including a statement of the nursing home's right to a hearing, and the implications of waiving a hearing.

### 16.9. Amount of Civil Money Penalty.

16.9.a. Civil money penalties assessed against licensed nursing facilities may not be less than fifty dollars (\$50) nor more than eight thousand dollars (\$8,000):

16.9.a.1. The director may not assess a civil money penalty against a nursing home that corrects the violation of the rule within twenty (20) days of receipt of written notice of the violation, unless it is a repeat deficiency or the nursing home is a poor performer when a civil money penalty can be assessed immediately.

### 16.9.b. Hearing and Due Process for a Civil Money Penalty.

16.9.b.1. A nursing home shall, within sixty (60) days from receipt of the notice of an initial, reconsidered, or revised determination of the director, submit any request for a hearing on the determination of the noncompliance that is the basis for imposition of the civil money penalty. For good cause shown, a hearing examiner may extend the time for filing the request for hearing.

16.9.b.2. If a nursing home requests a hearing within the time specified in this rule, the director shall collect the civil money penalty within fifteen (15) days of a final adjudication that upholds the director's determination of non-compliance.

16.9.b.3. If a nursing home waives its right to a hearing in accordance with this rule, the director shall collect the civil money penalty within seventy-five (75) days of the notice of determination of the director.

16.9.b.4. If the nursing home waives its right to a hearing, the civil money penalty shall be reduced by thirty-five percent (35%) by the director.

16.9.c. If a civil money penalty is assessed by the Health Care Financing Administration or the State Medicaid Agency for the same deficiency, the director shall reduce any State civil money penalty by the amount of the federal civil money penalty in calculating the amount owed.

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### 16.9.d. Cumulative Remedies.

16.9.d.1. The civil money penalties and remedies provided by W. Va. Code §16-5C-15 are cumulative and shall be in addition to all other penalties and remedies provided by law.

16.9.d.1.A. For a violation that presents immediate jeopardy to the health, safety or welfare of one (1) or more residents, the director may impose a civil money penalty of not less than three thousand (\$3,000) dollars nor more than eight thousand dollars (\$8,000).

16.9.d.2. For a violation that actually harms one (1) or more residents, the director may impose a civil money penalty of not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000).

16.9.d.3. For a violation that has the potential to harm one (1) or more residents, the director may impose a civil money penalty of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000).

16.9.d.4. For a repeat deficiency, the director may impose a civil money penalty of up to one hundred fifty percent (150%) of the penalties provided in subdivisions (1.A.), (2.A.) and (d.3.) of this subsection.

16.9.d.5. If no plan of correction is submitted as established in this section, the director may assess a civil money penalty in the amount of one hundred dollars (\$100) a day unless the nursing home has provided a reasonable explanation that has been accepted by the director.

16.9.d.6. If a deficiency for which an acceptable plan of correction has been provided to the director is not corrected upon revisit to the nursing home, the deficiency shall be regarded as a repeat deficiency.

16.9.d.7. Residents, residents' families or legal representatives, and ombudsmen may also independently pursue violations of this rule in court. Any waiver by a resident or his or her legal representative of the right to commence an action under W. Va. Code §16-5C-15, whether oral or in writing, is void as contrary to public policy.

### 16.10. Civil Money Penalty Procedures After Termination of a License.

16.10.a. In the case of termination of a nursing home license, the director shall send the civil money penalty information after the:

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16.10.a.1. Final administrative decision is made;

16.10.a.2. Nursing home has waived its right to a hearing; or

16.10.a.3. Time for requesting a hearing has expired and the director has not received a hearing request from the nursing home.

16.10.b. Civil money penalty payment is due fifteen (15) days after:

16.10.b.1. A final administrative decision;

16.10.b.2. The time period for requesting a hearing has expired;

16.10.b.3. Receipt of the written request to waive a hearing; or

16.10.b.4. The effective date of termination of a license.

16.11. Civil Money Penalty for Notification of Inspection.

16.11.1. The director shall assess a civil money penalty not to exceed two thousand dollars (\$2,000) against any individual who notifies, or causes to be notified, a nursing home of the time or date on which an inspection is scheduled to be conducted.

16.12. Interest on Civil Penalties.

16.12.a. The assessments for penalties and for costs of actions taken under W. Va. Code §16-5C-1 et seq., shall accrue interest at the rate of five percent (5%) per annum beginning thirty (30) days after receipt of notice of the assessment or after receipt of the director's final order following a hearing, which ever is later.

16.12.b. All assessments against a nursing home that are unpaid shall be added to the nursing home's licensure fee and may be filed as a lien against the property of the licensees or operators of the nursing home.

16.13. Action for Recovery of Civil Penalties.

16.13.a. The director shall, in a civil judicial proceeding, recover any unpaid civil money penalty that has not been contested under W. Va. Code § 16-5C-12 within thirty (30) days of receipt of the director's final order, or that has been affirmed on judicial review, as provided in W. Va. Code §16-5C-13.

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16.13.a.1. All money collected by assessments of civil penalties or interest shall be paid into a special resident benefit account and shall be applied by the director for:

16.13.a.1.A. The protection of the health or property of the nursing home's residents;

16.13.a.1.B. Long-term care educational activities;

16.13.a.1.C. The costs arising from the relocation of residents to other facilities when no other funds are available;

16.13.a.1.D. In an emergency situation when no other funds available, the operation of the nursing home pending correction of deficiencies or closure; and

16.13.a.1.E. The reimbursement of residents for personal funds lost.

16.14. Immediate Jeopardy. If there is immediate jeopardy to resident health, safety, welfare or rights the director shall petition the circuit court.

16.14.a. The circuit court may issue an Order to:

16.14.a.1. Close the nursing home;

16.14.a.2. Transfer the residents in the nursing home to other nursing homes;

or

16.14.a.3. Appoint temporary management to oversee the operation of the nursing home and to assure the health, safety, welfare and rights of the nursing home residents.

16.15. Temporary Management.

16.15.a. Upon petition of the director, a circuit court may divest the licensee or operator of a nursing home of possession and control of a nursing home and appoint temporary management.

16.15.a.1. The temporary management shall be responsible to the court and shall have any powers and duties as the court may grant to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare and rights of the residents of the nursing home.

16.15.a.2. These powers include, but are not limited to, the replacement of

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management and staff, the hiring of consultants, the making of any necessary expenditures to close the nursing home or to repair or improve the nursing home to return it to compliance with applicable requirements and the power to receive, conserve, and expend funds, including payments on behalf of the licensee or operator of the nursing home.

16.15.a.3. Priority shall be given to expenditures for current direct resident care or the transfer of residents.

16.15.b. The person charged with temporary management shall be an officer of the court, is not liable for conditions at the nursing home that existed or originated prior to his or her appointment and is not personally liable, except for his or her own gross negligence and intentional acts for situations that result in injuries to persons or damage to property at the nursing home during the temporary management.

16.15.c. No person shall impede the operation of the temporary management.

16.15.c.1. There shall be an automatic stay for a ninety (90) day period subsequent to the establishment of a temporary management of any action that would interfere with the functioning of the nursing home, including, but not limited to, cancellation of insurance policies, termination of utility services, attachments to working capital costs, foreclosures, evictions and repossessions of equipment used in the nursing home.

16.15.d. The temporary management established for the purpose of making improvements to bring a nursing home into compliance with applicable requirements shall not be terminated until the court has determined that the nursing home has the management capability to ensure continued compliance with all applicable requirements.

16.15.d.1. If the court has not made the determination within six (6) months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the nursing home shall be closed.

16.15.d.2. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court, and after deducting from receipts the cost of the temporary management, expenditures and civil penalties and interest no longer subject to appeal, in that order, any excess shall be paid to the licensee or operator of the nursing home.

16.15.e. The temporary manager shall bill the nursing home on a bi-weekly basis and the nursing home shall pay within fifteen (15) days.

16.15.e.1. The amount paid to the temporary manager for a thirty day period may not exceed the seventy-fifth percentile of the allowable administrators' salary reported on the

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most recent cost report for the nursing home's peer group as determined by the director.

### 16.16. Corrective Action.

16.16.a. The director shall enforce these provisions to protect residents of nursing homes.

16.16.b. A nursing home, found on the basis of an inspection to have deficiencies, shall develop a plan of correction and submit it to the director within ten (10) working days of receipt of a report of inspections. There will be an allowance of three (3) additional days in the event of a documented extenuating circumstance.

16.16.c. A plan of correction shall specify the time when the nursing home shall correct each violation cited in the report.

16.16.d. The time specified shall be the shortest possible time within which the nursing home can reasonably be expected to correct the violation.

16.16.e. The time stated is subject to approval or modification by the director.

16.16.f. In determining whether to approve the time submitted by the nursing home, the director shall consider the following factors:

16.16.f.1. The seriousness of the violation;

16.16.f.2. The number of residents affected;

16.16.f.3. The availability of required equipment or personnel;

16.16.f.4. The estimated time required for delivery and installation of required equipment; and

16.16.f.5. Any other relevant circumstance.

16.16.g. A plan of correction shall contain:

16.16.g.1. The corrective action(s) that the nursing home will accomplish for those residents found to have been affected by the deficiency;

16.16.g.2. How the nursing home will identify other residents having the potential to be affected by the same deficiency and what corrective action will be taken;

16.16.g.3. What measures the nursing home will put into place or what systemic changes will be made to ensure that the deficiency does not recur; and

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16.16.g.4. How the nursing home will monitor the corrective actions put in place to ensure the deficiency will not recur, i.e., what quality assurance program will be put into place.

16.16.h. A plan of correction submitted by a nursing home shall be approved, modified or rejected by the director.

16.16.i. The director shall notify each nursing home within ten (10) working days as to whether a plan of correction has been approved, modified or rejected.

16.16.j. If the director rejects or modifies the plan, the reasons for the action shall be stated in the notice.

16.16.k. When the director rejects a plan of correction, a revised plan shall be submitted by the nursing home to the director within seven (7) working days of receipt.

16.16.l. A nursing home with a repeat deficiency or with deficiencies resulting in immediate jeopardy or causing harm to a resident shall not be allowed to submit a revised plan of correction.

16.16.m. If the nursing home fails to submit a plan of correction that is accepted by the director or to correct any deficiency within the time specified in an accepted plan of correction, the director may assess civil money penalties as provided in this rule or may initiate any other legal or disciplinary action available to him or her in accordance with State law and this rule.

### **§64-13-17. DEEMED STATUS.**

#### 17.1. Approval Process.

17.1.a. Upon approval of deemed status by the Health Care Financing Administration, the director shall accept accreditation by the Joint Commission on the Accreditation of Healthcare Organizations or other Health Care Financing Administration approved accrediting organization with standards and inspection process comparable to W. Va. Code §16-5C-1, et seq., and the regulations duly promulgated thereunder as evidence that the nursing home demonstrates compliance with or meets all licensing requirements. The director shall not perform a licensing inspection if the following criteria are met:

17.1.a.1. The nursing home sends the director a copy of the organization's official accreditation report within thirty (30) days of the nursing home's notification of accreditation; and

17.1.a.2. Quality of care measures are identified and assured as required by W. Va. Code §16-5C-9a(c).

#### 17.2. Responsibilities of the Director.

17.2.a. The director may use this report in lieu of one (1) regular nursing home

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licensure inspection.

17.2.b. The director shall make such inspections and investigations as he or she deems necessary, investigate complaints, perform follow up activities on adverse accreditation findings, conduct periodic validation inspections, and perform any Health Care Financing Administration mandated tasks.

17.2.c. Pursuant of W. Va. Code §16-5C-9a(d), the director may revoke the exemption from State licensing inspections upon substantiation of a complaint.

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**TABLE 64-13A**  
Minimum Ratios of Resident Care Personnel to Residents

Total Resident Care Personnel			Total Resident Care Personnel			Total Resident Care Personnel			Total Resident Care Personnel		
No of Residents	Hours per day	# Pers per day	No of Residents	Hours per day	# Pers per day	No of Residents	Hours per day	# Pers per day	No of Residents	Hours per day	# Pers per day
3 to 10	48	6	91	205	26	136	306	38	181	408	51
11 to 20	56	7	92	207	26	137	309	39	182	410	51
21 to 30	72	9	93	210	26	138	311	39	183	412	52
31 to 40	90	11	94	212	26	139	313	39	184	414	52
41 to 50	113	14	95	214	27	140	315	39	185	417	52
51	115	14	96	216	27	141	318	40	186	419	52
52	117	15	97	219	27	142	320	40	187	421	53
53	120	15	98	221	28	143	322	40	188	423	53
54	122	15	99	223	28	144	324	40	189	426	53
55	124	16	100	225	28	145	327	41	190	428	54
56	126	16	101	228	28	146	329	41	191	430	54
57	129	16	102	230	29	147	331	41	192	432	54
58	131	16	103	232	29	148	333	42	193	435	54
59	133	17	104	234	29	149	336	42	194	437	55
*60	135	17	105	237	30	150	338	42	195	439	55
61	138	17	106	239	30	151	340	42	196	441	55
62	140	18	107	241	30	152	342	43	197	444	56
63	142	18	108	243	30	153	345	43	198	446	56
64	144	18	109	246	31	154	347	43	199	448	56
65	147	18	110	248	31	155	349	44	200	450	56
66	149	19	111	250	31	156	351	44	201	453	57
67	151	19	112	252	32	157	354	44	202	455	57
68	153	19	113	255	32	158	356	44	203	457	57
69	156	20	114	257	32	159	358	45	204	459	57
70	158	20	115	259	32	160	360	45	205	462	58
71	160	20	116	261	33	161	363	45	206	464	58
72	162	20	117	264	33	162	365	46	207	466	58
73	165	21	118	266	33	163	367	46	208	468	58
74	167	21	119	268	34	164	369	46	209	471	59
75	169	21	120	270	34	165	372	46	210	473	59
76	171	21	121	273	34	166	374	47	211	475	59
77	174	22	122	275	34	167	376	47	212	477	60
78	176	22	123	277	35	168	378	47	213	480	60
79	178	22	124	279	35	169	281	35	214	482	60
80	178	22	125	282	35	170	383	48	215	484	60
81	180	22	126	284	36	171	385	48	216	486	61
82	183	23	127	286	36	172	387	48	217	489	61
83	185	23	128	288	36	173	390	49	218	491	61
84	187	23	129	291	36	174	392	49	219	493	62
85	189	24	130	293	37	175	394	49	220	495	62
86	194	24	131	295	37	176	396	50	221	498	62
87	196	24	132	297	37	177	399	50	222	500	62
88	198	25	133	300	38	178	401	50	223	502	63
89	201	25	134	302	38	179	403	50	224	504	63
90	203	25	135	301	38	180	405	51	225	507	63

\*60 and less may include director of nurse  
Number of personnel per day are full-time personnel equivalents based on forty (40) hours per week

**TABLE 64-13B**

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Surety Bond Schedule

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$ 1 to \$2,000	\$2,500
\$2,001 to \$2,100	\$2,625
\$2,101 to \$2,200	\$2,750
\$2,201 to \$2,300	\$2,875
\$2,301 to \$2,400	\$3,000
\$2,401 to \$2,500	\$3,125
\$2,501 to \$2,600	\$3,250
\$2,601 to \$2,700	\$3,375
\$2,701 to \$2,800	\$3,500
\$2,801 to \$2,900	\$3,625
\$2,901 to \$3,000	\$3,750
\$3,001 to \$3,100	\$3,875
\$3,101 to \$3,200	\$4,000
\$3,201 to \$3,300	\$4,125
\$3,301 to \$3,400	\$4,250
\$3,401 to \$3,500	\$4,375
\$3,501 to \$3,600	\$4,500
\$3,601 to \$3,700	\$4,625
\$3,701 to \$3,800	\$4,750
\$3,801 to \$3,900	\$4,875
\$3,901 to \$4,000	\$5,000
\$4,001 to \$4,100	\$5,125
\$4,101 to \$4,200	\$5,250
\$4,201 to \$4,300	\$5,375
\$4,301 to \$4,400	\$5,500
\$4,401 to \$4,500	\$5,625
\$4,501 to \$4,600	\$5,750
\$4,601 to \$4,700	\$5,875
\$4,701 to \$4,800	\$6,000
\$4,801 to \$4,900	\$6,125

## 64CSR13

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$4,901 to \$5,000	\$6,250
\$5,001 to \$5,100	\$6,375
\$5,101 to \$5,200	\$6,500
\$5,201 to \$5,300	\$6,625
\$5,301 to \$5,400	\$6,750
\$5,401 to \$5,500	\$6,875
\$5,501 to \$5,600	\$7,000
\$5,601 to \$5,700	\$7,125
\$5,701 to \$5,800	\$7,250
\$5,801 to \$5,900	\$7,375
\$5,901 to \$6,000	\$7,500
\$6,001 to \$6,100	\$7,625
\$6,101 to \$6,200	\$7,750
\$6,201 to \$6,300	\$7,875
\$6,301 to \$6,400	\$8,000
\$6,401 to \$6,500	\$8,125
\$6,501 to \$6,600	\$8,250
\$6,601 to \$6,700	\$8,375
\$6,701 to \$6,800	\$8,500
\$6,801 to \$6,900	\$8,625
\$6,901 to \$7,000	\$8,750
\$7,001 to \$7,100	\$8,875
\$7,101 to \$7,200	\$9,000
\$7,201 to \$7,300	\$9,125
\$7,301 to \$7,400	\$9,250
\$7,401 to \$7,500	\$9,375
\$7,501 to \$7,600	\$9,500
\$7,601 to \$7,700	\$9,625
\$7,701 to \$7,800	\$9,750
\$7,801 to \$7,900	\$9,875

64CSR13

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$7,901 to \$8,000	\$10,000
\$8,001 to \$8,100	\$10,125
\$8,101 to \$8,200	\$10,250
\$8,201 to \$8,300	\$10,375
\$8,301 to \$8,400	\$10,500
\$8,401 to \$8,500	\$10,625
\$8,501 to \$8,600	\$10,750
\$8,601 to \$8,700	\$10,875
\$8,701 to \$8,800	\$11,000
\$8,801 to \$8,900	\$11,125
\$8,901 to \$9,000	\$11,250
\$9,001 to \$9,100	\$11,375
\$9,101 to \$9,200	\$11,500
\$9,201 to \$9,300	\$11,625
\$9,301 to \$9,400	\$11,750
\$9,401 to \$9,500	\$11,875
\$9,501 to \$9,600	\$12,000
\$9,601 to \$9,700	\$12,125
\$9,701 to \$9,800	\$12,250
\$9,801 to \$9,900	\$12,375
\$9,901 to \$10,000	\$12,500
\$10,001 or more	Calculate <sup>2</sup>

Revised 8/28/00  
RKJ

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<sup>2</sup> 1.25 times the prior year's average monthly balance of client's funds

## **PUBLIC COMMENTS AND DEPARTMENT RESPONSES**

### **Nursing Home Licensure Rule 64 CSR 13**

A public comment period on the Proposed Rule was held beginning July 19, 2000 and ending August 18, 2000. Comments were received by the WWHCA, Long Term Care Ombudsmen Program, provider representatives and a dietician.

Comments are summarized below and the Department's responses and changes to the Rule are detailed.

## Public Comments and Department Responses (Cont'd)

**General Comment:** The page numbers in the table of contents do not match those in the body of the document.

**Response:** This agency was aware of the table of contents being incorrectly done. The intent was to wait until the final revisions were made before completing the table of contents. The table of contents now should correspond to the sections in the body of the Rule.

**General Comment:** There is a recommendation to eliminate the word "sponsor" throughout the document since legal representative is sufficient.

**Response:** The term "sponsor" appears in the definition section, 4.17.a. and 4.17.h. of the rule. Since this term was originally used to describe what is now defined as the legal representative, sponsor will be deleted from these areas.

**General Comment:** On page 87, Civil Money Penalties are addressed. It would be helpful if monies collected could be used to either help providers or consumers. Ohio has passed H.B. 403 which uses the Civil Money Penalty monies to produce a consumer guide. Quality improvement education may also be an option.

**Response:** The use of the monies is described in W.Va. Code § 16-5C-10 and requires that monies collected due to enforcement actions will be maintained in a special resident benefit account.

**General Comment:** Licensure rules are now more in line with the Federal Regs., but would like to see the W.Va. Regulations the HCFA document for guidance information and more detail as to how to comply with the regulations.

**Response:** OHFLAC at a later date may issue interpretive guidelines to this Rule. Guidelines will be written based on the experience gained by Department and nursing home providers in implementing the Rule and the providers' ability to comply with the Rule.

**General Comment:** The proposed rule does not contain a definition of "competency" or "capacity".

**Response:** These terms will be defined in § 64-13-2 Definitions. The statement "competent individual" is defined as an individual who has not been adjudicated incompetent by a court of law. The statement "capacity to

## Public Comments and Department Responses (Cont'd)

**make decisions” is defined as an individual who is able to comprehend information which is material to a decision, especially as to the likely consequences; the individual is able to use the information and weigh it in the balance as part of the process of arriving at a decision and is able to communicate the decision in an unambiguous manner.**

**General Comment:** Include a definition of “annual” as occurring once every fifteen months.

**Response:** “Annual inspection” will be defined under § 64-13-2 Definitions. It will state “occurring during a time frame of nine (9) to fifteen (15) months.

**General Comment:** “There are sections that have been deleted that contained information that is now not found in the federal or state component, especially in the area of pharmacy regarding storage of meds, destruction of meds and the like”

**Response:** The comment is not specific as to which “sections” have been deleted. The pharmacy concerns with regard to storage and destruction of meds are the responsibilities of the consultant pharmacist. The consultant pharmacist’s practice is regulated by the West Virginia Board of Pharmacy. The requirements for a consultant pharmacist which include but are not limited to the monitoring storage of medications and destruction of medications are found in Title 15, Legislative Rules, Series 1, Rules and Regulations of the Board of Pharmacy, Section 23.

**2.12. Comment:** The term “discharge” overlaps with the definition of “transfer” and a suggestion is made to change the definition of “discharge” to that of the federal language.

**Response:** The definition of discharge will be revised.

**2.26. Comment:** The comment suggests that the definition for the term “next of kin” is too broad.

**Response:** The definition for next of kin was taken from the Health Care Decisions Act. No revision will be made.

**2.27. Comment:** Comments A - E were received indicating that the definition of harm be clearer and more detailed. It was suggested that

## **Public Comments and Department Responses (Cont'd)**

situations are identified that would constitute minimal harm, actual harm, potential harm and immediate harm.

**Response:** No further clarification of the term "harm" or "immediate jeopardy", as addressed in the definition section of this rule is necessary. The terms for harm and immediate jeopardy mimic HCFA's definition and have been use for approximately five (5) years by OHFLAC in determining either circumstances. The suggestions made are, however, excellent and will be included in the interpretive guidelines for both surveyor and nursing home use.

**2.29. Comment:** One comment addresses the issue of making the contents of the nourishing snack less restrictive, but still meeting the dietary requirements of the resident.

**Response:** The definitions for nourishing snack will be amended to require a less restrictive choice of beverage and states "two (2) or more food items from the basic food groups plus a beverage of milk, juice or the resident's preference.

**2.38. Comment:** One comment received requested that the term "subsection" be defined.

**Response:** A definition for "subsection" will not be added under § 64-13-2 Definitions. The language "subsection" will be deleted from the definition regulatory grouping. This will be redefined. Regulatory grouping as identified in a repeat deficiency is a set of directly related requirements.

**2.41. Comment:** Comments were received to utilize the previous definition of resident and to avoid including the use of legal representative under the definition of "resident".

**Response:** The term "resident" will be re-defined under § 64-13-2 Definitions and the new definition will exclude legal representative and states, "an individual living in a nursing home.

**2.47. Comment:** One comment indicates a need to clarify "institutional setting".

**Response:** A definition will be added for the term "institutional setting" under § 64-13-2 Definitions and is defined as any health care facility.

**3.5.d. Comment:** The Concern is with no extensions or renewals. If a facility was

## **Public Comments and Department Responses (Cont'd)**

doing everything it possibly could to correct problems and have made significant changes and were almost there... should they not have at least another month for completion?

**Response:** No changes were made to 3.5.d. It is felt that the nursing home has been granted a reasonable time period and no additional extension will be granted.

**3.6.b. Comment:** This rule requires annual inspections while under 15.1.b. It states on the average of every twelve (12) months. This should be consistent.

**Response:** A definition for the term annual will be added to § 64-13-2 Definitions.

**15.1.b. will be changed to state annually, or in accordance with Section 17 of this Rule.**

**3.9.6. Comment:** Add the ombudsman program to the list of those eligible for records and reports free of charge.

**Response:** No revision was found to be necessary. It is the practice of the agency to provide copies of records and reports at no charge to non-profit organizations. It is felt if one non-profit organization is listed then all that fit the category would need to be included in the rule as well.

**3.10.d. Comment:** Add "at least one of these meetings shall be held in a public setting and receive input from the public".

**Response:** The revision will be made to the proposed rule.

**3.12.a. Comment:** One comment made addressed a recommendation that any interpretive guideline or document used for interpreting the rule should be given to affected parties for comment prior to the agency implementation.

**Response:** We disagree with allowing a comment period for affected parties when this agency implements any document utilized to interpret a part of the rule. The word "shall" is changed to "may" but otherwise 3.12.a. is satisfactory for its purposes.

**4.1.c. Comment:** Change to "The nursing home's policies and procedures shall be provided upon admission to...."

## **Public Comments and Department Responses (Cont'd)**

**Response:** After consideration of the comment, it was felt that providing these policies would be too cumbersome for the facility and more overwhelming than helpful to the resident or legal representative. Having the policies and procedures available upon request is satisfactory.

**4.2.c. Comment:** Replace with the existing language of 7.2.b. "When the rights of a resident must be limited or restricted for medical reasons, the specific reasons for the limitation shall be documented in the resident's medical record; the restriction shall be only for a specific and limited period of time; and must be authorized in writing by the resident or the resident's legal representative".

**Response:** Agree - the above language will be included under 4.2.c. of this rule.

**4.3.a. Comment:** Replace "be incapacitated" with "lack capacity to exercise their rights and obligations" and insert the language contained in footnote 1, propose rule 2.20 which states that legal representatives are only to be accorded authority consistent with their appointment.....  
This message should be afforded the full authority of the rule.

**Response:** Will change the requirement to include the additional "lack capacity to exercise their rights and obligations". The footnote will not be included under 4.3.a. because it is felt that it is best suited where it is currently placed defining legal representative under 2.20.

**4.4.b.1 Comment:** For the request of medical records, add during normal during normal business operating hours, excluding weekends and holidays.

**Response:** The additional language will be added to 4.4.b.1.

**4.4.c. Comment:** Add specifics about turn around time such as two working days notice to the nursing home and returned to requestor within two working days.

**Response:** A revision will be made to provide clarification of the time frame.

**4.4.c. and 4.4.d.2 Comment:** Replace the fifty (50) cent cap with "a cost consistent with the prevailing standard, not to exceed twenty-five (25) cents per page".

**Response:** Agree. This revision will be made.

## **Public Comments and Department Responses (Cont'd)**

**4.5.b. Comment:** This rule is inconsistent with the federal requirement. Change proposed rule to "The staff must inform the resident of his or her rights in a language that he or she understands. If the resident has a communication impairment, the facility must provide reasonable accommodations, including providing an interpreter, to assure that the resident receives and understands his or her rights".

**Response:** 4.5.b. will remain as written. The agency will consider this suggestion at a later date to be incorporated in a guideline in order to provide guidance to meet the intent of the regulation.

**4.5.c. Comment:** "Medical Citation" should be "Medical Condition".

**Response:** "Medical condition" will be used to replace "Medical citation" in the rule under 4.5.c.

**4.7.a.2. Comment:** This section is an incomplete cite to a federal statute and is poorly worded. Change to "A description of the resident's financial obligation. The nursing home shall inform each resident, in writing, prior to or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges, including any charges for services not covered under the Medicaid Program, or not covered by the facility's basic per diem rate.

A description of the requirements and procedures for Medicaid eligibility. The nursing home shall also provide information to each resident, resident's family and/or resident's legal representative concerning the availability of asset assessments and advise them that these asset assessments are available upon request at the county DHHR office whether or not they are applying for Medicaid.

**Response:** This section will be revised to include this information.

**4.8.c. Comment:** Add "but cannot require a resident to execute an advance directive as a condition of admission".

**Response:** This will be added to the rule under 4.8.c.

**4.8.c.1 Comment:** Add "and assist the resident in finding appropriate alternative placement if he or she desires".

**Response:** This will be added to the rule under 4.8.c.1.

## **Public Comments and Department Responses (Cont'd)**

**4.9.b. Comment:** The long term care facility is a hospital based facility with more than 300 physicians who have privileges at both the hospital and the long term care facility.

**Response:** This requirement assures the resident the right to choose a personal physician. The resident needs to be informed of the physicians that have privileges so that the resident can decide who he or she would like as their personal physician while residing at the nursing home.

**4.10.g.1.G and 4.10.g.1.H. Comment:** Change "guardianship or incompetency proceedings...." to "conservatorship proceedings on behalf.....".

**Response:** After further review, it was decided that guardianship would remain in the requirement, but conservatorship will also be added.

**4.10.g.1.I. Comment:** Change "temporary legal representative" to "representative payee".

**Response:** The revision will be made.

**4.11.a. Comment:** Change "A resident may perform services...." to "A resident has the right to perform services...."

**Response:** Revision will be made to utilize the suggested language.

**4.12.b. Comment:** One comment is to change the term "room" to "bed" in a semi-private room or "first available bed".

**Response:** The change will be made.

**4.12.c. Comment:** A comment was received requesting "room" be changed to bed under 4.12.c.

**Response:** The change will be made.

**4.12.c.1. Comment:** The wording "placed on the waiting list" is unclear and should state "placed on a readmission list" while another comment requests the wording be changed to state "readmission to the original, non-Medicare certified nursing home".

## **Public Comments and Department Responses (Cont'd)**

**Response:** If it is a case of readmission, the readmission would be to the nursing home of origin. The wording will be changed to state placed on a list for readmission. Federal guidelines state "is eligible for Medicaid nursing facility services" and would apply to a dually certified facility.

**4.13.a.2. Comment:** The comment suggests changing the language that states "a resident of a non-Medicare certified nursing home to "a resident of a nursing home".

**Response:** No change will be made in the language of this requirement. The purpose of this requirement is to protect residents from being moved involuntarily to another part of the nursing home solely for the purpose of assuring Medicare eligibility for payment.

**4.13.d.1.D. Comment:** The comment requests that "State Board of Review" be defined.

**Response:** State Board of Review will be added to § 64-13-2. Definitions section and will state "a board designated by State law through which a resident may appeal a discharge from a nursing home".

**4.13.e. Comment:** Change "except the notice shall be made as soon as practicable" to "except the notice shall be made at least seven (7) days, or soon as practicable in the event of an emergency, before a transfer or discharge when...".

**Response:** The existing language will remain as written. The use of the wording "as soon as practicable" has not been found to be a problem as it relates to an "emergency" transfer or discharge.

**4.13.f.2. Comment:** Change "reasonably appropriate" to "appropriate placement".

**Response:** The word "reasonably" will be deleted.

**4.14.a.1. Comment:** The suggestion is made to use the existing language.

**Response:** In review of 4.14.a.1. it was noted that the sentence structure was incomplete. The area will be changed to include the word "of" instead of "or" and the word "mental" will be added.

**4.14.a.2. Comment:** The ombudsman supports this change.

**Response:** No response required - no changes made.

## **Public Comments and Department Responses (Cont'd)**

**4.14.c.1. Comment:** There is a concern raised regarding the fine dining programs. The request is that the existing regulatory language be used.

**Response:** This language is required by Federal law therefore; no revisions will be made. To clarify the issue with fine dining as it relates to this issue; the intent of this agency is to assure that residents receive nourishing attractive meals, determine if services are provided to maintain or improve eating skills and determine if the dining experience enhances the residents quality of life and supports the residents' needs.

**4.15.c. Comment:** Add "Medicaid residents and their legal representatives shall be informed that if they desire a private room, they may privately supplement the Medicaid payment by directly paying the facility the difference between the semi-private room rate and the private room rate."

**Response:** This will be added to the rule as 4.15.c.2.

**4.16.a. Comment:** This currently conflicts with the federal restraint requirements. Change 4.16.a.1 - 3 to state "Each resident shall be free from mental and physical abuse, and free from chemical and physical restraints except when the restraint is authorized in writing by a physician for a specified and limited period of time, except under emergency circumstances and

- (1) The restraint is necessary to protect the resident from injury to himself or others; or
- (2) The restraint is used as therapeutic intervention.....".

**Response:** Revisions will be made to 4.16.

**4.16.a.4. Comment:** The comment is to delete this area because the issue is addressed in the restraints and abuse sections b and c.

**Response:** 4.16.a.4. will be deleted due to the fact that emergency use is covered elsewhere.

**4.16.b.1.A.4.(a.) Comment:** It is often unrealistic for the resident's legal representative to have an opportunity to see the restraining device on the resident because of not being in the local area or have the opportunity to see the restraining device on the resident because of not being in the local area or have the opportunity to see the restraint at the time the restraint is initiated.

## **Public Comments and Department Responses (Cont'd)**

**Response:** A revision will be made to delete the requirement of the restraint being seen prior to the restraint being applied. It is suggested that staff allow the resident an opportunity to see the restraint before it is applied and allow the legal representative to see the restraint prior to, but at least at their earliest convenience.

**4.16.b.2.A. Comment:** Insert "precise application" after "physician shall write an order specifying the type.....".

**Response:** This wording will be added to the requirement.

**4.16.b.5. Comment:** Toileting should be added as a requirement.

**Response:** The requirement of toileting will be added to the scheduled activities required when a restraint is removed in order to provide care.

**4.16.b.7.A. Comment:** Would "licensed nursing personnel" include all nursing supervisors if so indicated in the facility's policy?

**Response:** The requirement includes licensed nursing personnel authorized in writing by the nursing home as being permitted to order the physical restraint for a limited period of time. The intent of one being authorized by the facility is that the licensed nursing personnel permitted to perform this would have knowledge of restraint use, less restrictive measures to employ to better meet the needs of the resident, thus providing the least restrictive measure needed to treat the resident's condition.

**4.16.b.7.A Comment:** Insert "not to exceed a period of twenty-four (24) hours" after "may order the use of the physical restraint....".

**Response:** A revision will be made to this requirement to include the use of emergency restraints for no longer than twenty-four (24) hours.

**4.16.c.4. Comment:** Add "State ombudsman" to the list of agencies to be contacted.

**Response:** This requirement will be revised to include all reporting requirements are in accordance with State law.

**4.17.e. Comment:** Add "and to communicate the findings or outcomes to the resident, or resident's legal representative, making the complaint."

## **Public Comments and Department Responses (Cont'd)**

**Response:** This revision will be made.

**5.4.a.2.E. Comment:** The suggestion is made to change "view" to "visit".

**Response:** This area will be revised under 5.4.a.2.E.

**5.4.a.2.E.1. Comment:** The suggestion is made to delete "to such viewings".

**Response:** This area will be revised.

**5.4.a.2.E.2. Comment:** The suggestion is made to include "pharmaceutical area" or "secure area".

**Response:** A section will be added to include this additional requirement.

**5.4.a.2.E.3. Comment:** Insert "or resident's legal representative" after "unless the resident...".

**Response:** The revision will be made.

**5.4.b.2. Comment:** Insert "if the legal representative demonstrates that such visits have a harmful effect on the resident." after "the legal representative may refuse visits on behalf of the resident..."

**Response:** The revision will be made.

**5.4.c.1.A. Comment:** Delete "or the functioning of the nursing home." The inclusion of this clause vests too much unguided discretion in the administrator and presents the opportunity for misuse.

**Response:** A visitor may cause disruption to the extent that the disruption would affect the functioning of the nursing home in general. This would include a disruption that may cause a delay in services or staff normally caring for a resident who might be needed to intervene because of the disruption is occurring in a central area. In essence, if the disruption was interfering with the function of the nursing home, it would or could be detrimental to the health, safety or welfare of the residents. No revision will be made.

**6.2.d. Comment:** Change the requirement from 92 days to 90 days, in order to keep times consistent with the areas of review/compliance.

## Public Comments and Department Responses (Cont'd)

**Response:** No revision will be made. This allows the nursing home a ninety-two (92) day interval, but does not prohibit the review and revision to occur every ninety (90) days.

**7.1. Comment:** The term "spiritual" should be deleted.

**Response:** The term "spiritual" will be deleted; however, this should not hinder the nursing home from assisting the resident in meeting his or her "spiritual" needs.

**7.2.a.2. Comment:** Change the last clause to "the participation of the resident or the resident's legal representative and the resident's family with the consent of the resident or the resident's legal representative.

**Response:** The revision will be made.

**7.4.b.2.B. Comment:** The suggestion is that "within 30 days of the discharge" be stated instead of "at the time of discharge".

**Response:** The thirty (30) day requirement pertains to the completion of the medical record when the resident is discharged and will be addressed in a medical record requirement under this section of the rule.

**8.8. Comments:** Add:

8.8.c. A written report shall be made of any incident or accident in which a resident is involved, either inside or outside the nursing home.

8.8.d. The report shall include the following:

8.8.d.1. The date;

8.8.d.2. The time of the occurrence;

8.8.d.3. The place of the occurrence;

8.8.d.4. The details of the occurrence;

8.8.d.5. The date and signature of the reviewing physician.

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

8.8.f. The death of a resident shall be reported immediately to the attending physician and to the resident's legal representative and family as relevant.

**Response:** These suggestions will be added to the rule under section 8.8.

**8.13.b.2 Comment:** Add "and the ratio of other nursing personnel to licensed nurses does not fall below 4:1" and add a 8.13.b.3 stating "The nursing home shall

## **Public Comments and Department Responses (Cont'd)**

conspicuously post the numbers of licensed nurses and other nursing personnel actually working on each shift for each unit, wing, and/or floor of the facility.

**Response:** Some leeway was granted to encourage facilities to assess the care required by each resident based on individual needs. For some residents more time may be needed by other nursing personnel as opposed to a resident with special needs requiring more licensed nursing hours.

Presently Protocol mandated by HCFA requires agency staff to observe the name of the staff actually working in the resident care area and compare those individual names to the working schedule. A schedule is readily accessible upon request. At this time, the nursing home rule will not require nursing homes to post the number of direct care personnel per unit per shift.

**8.14.a.1.A. Comment:** The concern is that due to the "grandfathering" that was mandated the first year of the bill, there are dozens of Licensed Dietitians that are NOT Registered Dietitians. I do believe that the licensed dietitian should be a requirement in addition to the person being a Registered Dietitian as determined by the Commission on Dietetic Registration of the American Dietetic Association.

**Response:** The West Virginia Board of Dietitians was contacted regarding the education and qualifications of the Licensed Dietitians who were "grandfathered" into licensing upon its inception. It was the feeling of the Board that those persons who did not possess the education and skills to provide nutritional consultation have "weeded themselves out", and are no longer licensed as a dietitian in West Virginia.

To assure that facilities are aware of the distinction of the educational background of the dietitian whom they are employing, the definition of a qualified dietitian will be modified to include a reference to a registered dietitian. Revisions will be made to 8.14.a.1.A.

**8.14.f. Comment:** Add to this a "8.14.f.4." which states: Recognizing that the resident has the right to refuse medical treatment, all residents shall have the right to request substitute foods even when this violates the physician's orders.

**Response:** The revision will be made with additional clarification provided to include education regarding the outcome of the refusal and the documentation required.

## Public Comments and Department Responses (Cont'd)

**8.14.g.1. Comment:** The ombudsman program supports change.

**Response:** No response required.

**8.14.h.2. Comment:** RD's and Dietary Managers are not formally trained in evaluating the type of special adaptive equipment a person may need. This is not part of the RD scope of practice and may be better placed under the OT services.

**Response:** A revision will be made to place assistive devices under the facility's responsibility of providing treatment and services to maintain or improve a resident's ability to eat.

**8.17.b.1. Comment:** Define "routine dental services".

**Response:** This will be added to § 64-13-2 Definitions and will state, "an annual inspection of the oral cavity for signs of disease, diagnosis of dental disease, dental radiographs as needed, dental cleaning, fillings, minor dental plate adjustment, smoothing of broken teeth, and limited prosthodontic procedures such as impressions for dentures and fitting dentures.

**8.15.c.1. Comment:** The suggestion is made to replace the "48 hours" with a "72 hour" requirement.

**Response:** The rule will be changed to reflect this.

**8.18.e.1. Comment:** The comment is to change the "at least 30 days" requirement to "not to exceed 37 days".

**8.18.j. Comment** One comment received indicated that the change "could lead to problems" and policy requirements should be included. One comment was received in favor of the change. An additional comment was received questioning receiving medications from grocery stores and other pharmacies provided all requirements for labeling, storing and packaging were met.

**Response:** Proposed rule 8.18.j. is a new rule and not a change in an existing rule. The proposed new rule came about because of complaints received by the Office of Health Facility Licensure and Certification from private pay residents about the exorbitant prices paid for medications provided by the nursing home's contracted pharmacy supplier. The private paying

## Public Comments and Department Responses (Cont'd)

residents' contention is that medications can be purchased at more affordable prices from retail pharmacies other than the nursing home's contracted pharmacy provider. OHFLAC does understand the nursing home's concern regarding packaging, labeling, medication administration and safety when several different retail pharmacies are used by residents. However, the number of residents who may request other retail pharmacy services is assumed to be small (probably no more than 10%) and it is felt that the homes can accommodate this group of residents. But, since medication administration errors and resident safety are of great concern to OHFLAC, the regulation will be rewritten so that the nursing home will be able to exercise some control of the medications purchased from other retail pharmacies.

**Response:** The rule will be change to reflect this.

**9.1.e. Comment:** The ombudsman program supports this change.

**Response:** No response required.

**9.6.h. Comment:** Change "sterile supplies shall not be stored nor used beyond their dated shelf life".

**Response:** A revision to the rule will be made.

**9.13. Comment:** Make sure that this will impede or exclude alternative approaches to long term care, such as the Eden Alternative.

**Response:** This requirement was written to ensure that the Eden Alternative may be implemented in nursing homes.

**10.2.d. Comments:** Add the following requirements:

- 10.2.d.2 A current copy of this rule;
- 10.2.d.3. Documentation of the facility's professional and administrative staff meetings;
- 10.2.d.4. Documentation of visits by professional consultants employed by the facility in accordance with the requirements of this rule;
- 10.2.d.5. Reports of all inspections by government agencies together with summaries of corrective action taken in response to each report during the previous five (5) years;

## Public Comments and Department Responses (Cont'd)

- 10.2.d.6. Reports of any other inspections required by this rule;
- 10.2.d.7. Copies of contracts and agreements, including agreements for the provision of professional services by outside agencies or contractors, to which the facility is a party;
- 10.2.d.8. Documents demonstrating control and ownership of the facility;
- 10.2.d.9. Bylaws of governing body, if applicable;
- 10.2.d.10. Reports of accidents or incidents involving residents;
- 10.2.d.11. Records of all transactions conducted by the facility involving personal funds of residents in the facility during the previous five (5) years;
- 10.2.d.12. All menus prepared by the facility;
- 10.2.d.13. Records of food purchases;
- 10.2.d.14. A copy of the facility's emergency evacuation plan;
- 10.2.d.15. A chronological record of all residents admitted to the facility with an identifying number, date of admission and where appropriate, date of discharge;
- 10.2.d.16. All other records required by state or federal laws, rules, and regulations, except those for which maintenance elsewhere is required.

**Response:** The requirement of 10.2.d. is to ensure that the facility develops and maintains written policies and procedures that govern the services which includes all policies and procedures required by this rule. As stated, the intent is specified, therefore no changes will be made. The suggestions made would not necessarily be a policy or procedure, but may be required by the policy or procedure itself.

**10.2.d.2 Comment:** The text of this rule becomes 10.2.d.3.

**Response:** See response to 10.2.d.

**13.2. Comment:** Add "the State ombudsman".

**Response:** It is stated in W.Va. Code § 16-5L-12 that access may be only available by the resident or in case of incapacity, the legal representative through written consent. The right to access records is sufficient according to the Code and Federal Standards.

**15.1.b. Comment:** Annual is stated to occur on the average of every 12 months.

## Public Comments and Department Responses (Cont'd)

**Response:** A definition will be added for the term "annual inspection". 15.1.b. will be consistent with 3.6.b.

**15.2.e. Comment:** The suggestion is made to change 10 working days to "no later than twenty (20) working days."

**Response:** The rule will be revised to reflect this change.

**15.2.e.2. Comment:** A request is made to revise this to read "If a complaint has been found to be substantiated and a related actual harm deficiency is cited, the director shall advise any injured party of the possibility of a civil remedy under W.Va. Code § 16-5C-1 et seq."

**Response:** On the advice of counsel, there will be no revision made with the exception of replacing merit with substantial. It is felt that it is the agency's obligation to provide notification when a complaint is substantiated and not solely when related harm is found.

**15.2.i.1, 2, 3. Comments:** The comment is to change "actual" to "harm" and provide a definition for "minimal harm".

**Response:** The word "actual" will be removed from these areas. Harm is defined in the definition section of this rule.

**15.2.k. Comment:** The suggestion is made to add "after plan of correction from facility" because the plan of correction and statement of deficiencies go out together to the public.

**Response:** "after plan of correction from facility" will be added to 15.2.k.

**15.2.m. Comment:** Insert "state" before "long term care ombudsman." Also, include a time frame for when statement will be provided.

**Response:** The revision will be made to the rule.

**16.2.a.A. Comment:** Define "standard quality of care" for residents. Would this mean per care plan?

**Response:** Standard quality of care would include all aspects of the residents' plan of care and all services received by the resident rendered by the

## Public Comments and Department Responses (Cont'd)

nursing home or from an outside source arranged by the nursing home. **Standard quality of care is measured by the nursing home being in substantial compliance with this Rule. A definition was added to § 64-13-2 Definitions to address "standard quality of care" and will state, "substantial compliance with this rule".**

**16.2.a.O. Comment:** As written, this area is subject to interpretation. A suggestion is made to add the term "willful".

**Response:** No change will be made under 16.2.a.O. regarding the misappropriation of residents' property. This is being interpreted as the nursing home failing to protect the residents' property based on established policies and procedures.

**16.4. and 16.6 Comments:** A request is made to make "immediate jeopardy" and "immediate jeopardy action" consistent.

**Response:** The word "action" will be deleted.

**16.6.a. Comment:** 16.6.a. needs clarified. The question was asked "What are the triggers for immediate jeopardy action?" See definitions.

**Response:** Refer to definition section for a definition of immediate jeopardy. At a later date, guidelines may be issued which could include triggers for the determination of immediate jeopardy.

**16.16.b. Comment:** The comment is that there needs to be some flexibility in the "ten working days". The example is provided "ten working days or within a mutually agreed upon number of days because of extraordinary circumstances."

**Response:** The statement will be changed to include ten (10) working days with an exception made when there is documentation of an extraordinary circumstance with an additional three (3) day allowance granted.

**16.16.k. Comment:** Change the language to read "within seven (7) working days."

**Response:** Within seven (7) working days will be added.

**17. Comment:** The ombudsman program opposes the substitutions if inspections by the Joint Commission on the Accreditation of Healthcare Organizations, or other Health Care Financing Administration approved accrediting organizations,

## **Public Comments and Department Responses (Cont'd)**

for an inspection by the Office of Health Facility Licensure and Certification. Inspections by the other organizations do not correlate with actual conditions in the facility.

**Response: § 64-13-17 Deemed Status was written in accordance with the W.Va. Code. No changes will be made based on this comment.**

**Table 64-13A. Comment:** Change "Minimum Rations" to "Minimum Ratios".

**Response:** This was a typographical error and Table 64-13A will be changed to state "Minimum Ratios". Also, the word Resident will be spelled out.

## PROGRAM CHANGES TO PROPOSED RULE

**16.14. Because of inaccuracy, the program made a technical change to the requirement. The change is as follows:**

16.14. Immediate Jeopardy. If there is immediate jeopardy to resident's health, safety, welfare or rights, the director shall petition the Circuit Court.

16.14.a. The Circuit Court may issue an order to:

16.14.a.1. Close the nursing home;

16.14.a.2. Transfer the residents in the nursing home to other nursing homes; or

16.14.a.3. Appoint temporary management to oversee the operation of the nursing home and assume the health, safety, welfare and rights of the nursing home residents.

3 CAPITOL STREET, SUITE 700  
CHARLESTON, WV 25301-2896  
TELEPHONE (304) 346-4575  
FACSIMILE (304) 342-0519

August 16, 2000

RECEIVED  
11:24  
OHFLAC  
Robert Brauner  
Program Manager  
Office of Health Facility Lic. & Cert.  
350 Capitol Street, Rm. 206  
Charleston, WV 25301-3718  
Dear Bob:

On behalf of the WVHCA, I would like to offer the following revisions to the Nursing Home Licensure (64CRS13) regulations being proposed for passage during the 2001 legislature:

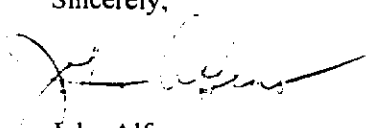
- 16-13- 2.27 ✓ Can we define "harm?" Determinations of whether a situation constitutes "potential" or "actual" harm and whether that harm is "minimal" or "more than minimal" or "immediate jeopardy" should address the following questions:
- A. Harm, potential - is a possible negative outcome likely if the deficiency is not corrected? Yes, would be a mandatory response for determination of "potential" harm.
  - B. Harm, actual - has a negative outcome occurred which has compromised the resident's ability to reach and/or maintain his/her highest achievable practicable level of well-being as that level is identified in the assessment? Yes, is a mandatory response for a determination of "actual" harm.
  - C. Harm, minimal - is the resident's ability to reach care plan goals compromised? No, is the mandatory response for a determination of "minimal" harm.
  - D. Harm, more than minimal - is the resident's ability to reach care plan goals compromised? Yes, is the mandatory response for a determination of "more than minimal" harm.
  - E. Immediate jeopardy - is there a high potential for a negative outcome to occur which would involve serious injury, serious harm, impairment, or death, and is the likelihood of such negative outcome imminent? Or, did the negative outcome involve serious injury, serious harm, impairment, or death? A "yes" to at least one of these two (2) questions is a mandatory response for a determination of "immediate jeopardy."
- ✓ 2.29 Nourishing snack - why does it have to be milk or juice? What if the resident would rather have something else? Our recommendation is that it not be this restrictive, but meet the dietary requirements for each resident.
- ✓ 2.38 "Subsection" needs to be defined. (i.e.: does it mean all of section 5 or just 5.1?)
- ✓ 2.41 Resident - use old definition from the existing regulations.
- ✓ 2.47 Transfer - OHFLAC needs to clarify "institutional setting."
- ✓ 3.12.a. I would recommend the following: "Any interpretive guidelines, memorandum of understanding, or document used for interpreting these rules shall be given to affected parties for comment prior to agency implementation."
- ✓ 4.12.b Change "room" to "bed" in a semi private room.

- ✓4.12.c. Change "room" to "bed."
- ✓4.12.c.1 Should state "placed on readmission list" instead of "waiting list."
- ✓4.13.d.1.D Define "State Board of Review."
- ✓4.14.a.1. Use old (existing) regulations language.
- ✓4.14.c.1. Questions were raised as to fine dining programs. OHFLAC's intent was to insure separation for treatment versus separation for convenience. Substitute existing regulation language.
- ✓4.16.a.4. Delete. Issue is addressed in restraints and abuse sections b & c.
- ✓8.4.a.2.e Change "view" to "visit."
- ✓8.4.a.2.E.1 Drop language "to such viewings."
- ✓5.4.a.2.e.2 Add "pharmaceutical area" or "secure areas."
- ✓7.1 "Spiritual" should be left out per national regulations.
- ✓7.4.b.2.B Revise to read, "A final summary of the resident's status to include items in Subdivision 6.2.b. of this rule, prepared within 30 days of the discharge, that is available for release to authorized persons and agencies with the consent of the resident or legal representative;"
- ✓8.15.c.1 Substitute "72" hours following admission instead of 48 hours.
- ✓8.18.e.1. Change "at least every thirty (30) days to "not to exceed 37 days."
- ✓8.18.j. Could lead to problems. Please state specify policy requirements for facility from state and federal agencies?
- ✓5.2.e. Change to "no later than twenty (20) working days."
- ✓5.2.e.2 Revise to read, "If a complaint has been found to be substantiated and a related actual harm deficiency is cited, the director shall advise any injured party of the possibility of a civil remedy under WV code §16-5C-1 et. seq.
- ✓15.2.i.1,2,3 change from "actual" to "harm" and define "minimal harm." (See definitions above)
- ✓15.2.k. Add "after plan of correction from facility." Plan of correction and statement of deficiencies go out together to public.
- ✓16.2.a.A Define "standard quality of care" for residents. (Does it mean as per care plan?)
- ✓16.2.a.o Subject to interpretation. Might want to add the term "wilful."
- ✓16.6.a. Please clarify. Also, What are the triggers for immediate jeopardy action? Again, see above definitions.
- ✓Pg. 87 Civil Money Penalties - It would be helpful if the monies collected could be used to either help providers or consumers. Ohio has passed H.B. 403 which uses the civil money penalty monies to produce a Consumer guide. Quality improvement education could also be option for the use of CMP funds.
- ✓16.6 and 16.4 Make "immediate jeopardy" and "immediate jeopardy action" consistent.
- 16.16.b. Needs flexibility in "ten working days." For example, "ten working days or within a mutually agreed upon number of days because of extraordinary circumstances."
- ✓16.16.k Change to "within seven (7) working days."

✓ We would also like to recommend the elimination of the use of the word "sponsor" throughout the document since legal representative is sufficient.

Thank you for this opportunity to comment. Please call if you have any questions.

Sincerely,

  
John Alfano  
CEO

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STATE OF WEST VIRGINIA  
BUREAU OF SENIOR SERVICES

RECEIVED  
00 AUG 17 AM 10:23  
WV SENIOR SERVICES

Cecil H. Underwood  
Governor

1900 Kanawha Boulevard, East  
Holly Grove -- Building 10  
Charleston, West Virginia 25305-0160  
Telephone (304) 558-3317  
FAX (304) 558-0004

Gaylene A. Miller  
Commissioner

August 17, 2000

Mr. Robert P. Brauner, R.Ph., Program Manager  
Office of Health Facility Licensure and Certification  
Department of Health and Human Resources  
350 Capitol Street, Room 206  
Charleston, WV 25301-3718

Dear Bob:

Roy Herzbach, Suzanne Messenger and I have gone over the Proposed Nursing Home Licensure Regulations. We would like to offer the attached comments/suggestions. Certainly we welcome this chance to comment and in the future we stand ready to provide input on this important subject.

Sincerely,

Larry Medley  
State Long Term Care Ombudsman

LM/db

Attachment

cc: Bill Lytton  
Roy Herzbach  
Suzanne Messenger

1. The page numbers in the table of contents do not match those in the body of the document. For example, "State Administrative Procedures" is listed on page six in the table of contents, however this section actually starts on page eight. *Reunita*
2. **Proposed rule 2.12.** The definition of "discharge," overlaps with the definition of "transfer." Proposed rule 2.47. Change the definition of "discharge" to the federal language. "Discharge is moving the resident to a noninstitutional setting when the releasing facility ceases to be responsible for the resident's care." *Bob*
3. **Proposed rule 2.17.** The definition of "harm" is not clear. *Bob*
4. **Proposed rule 2.26.** The definition of "next of kin" is too broad. The common use of this phrase precludes the inclusion of 2.26.g. *Alice*
5. **Proposed rule 2.41.** The definition of "resident" should not include the individual's legal representative. Including the legal representative in the umbrella of the resident distorts the later protections of this rule. For example, under proposed rule 4.15.b.1, the legal representative would be liable for debts under the proposed definition of "resident." To avoid this problem insert "and the resident's legal representative, where appropriate" following each occurrence of "resident" in the proposed rule. *Alice*
6. The proposed rule does not contain a definition of "competency" or "capacity." *Alice/Alice*
7. **Proposed rule 3.6.b.** This rule requires annual inspection. Proposed rule 15.1.b. requires inspection on the average of every twelve months. The two rules should be consistent. Include a definition of "annual" as "occurring once every nine to fifteen months." *Bob*
8. **Proposed rule 3.9.b.** Add "the ombudsman program" to the list of those eligible for records and reports free of charge. *John W.*
9. **Proposed rule 3.10.d.** Add "at least one of these meetings shall be held in a public setting and receive input from the public."
10. **Proposed rule 4.1.c.** Change to "The nursing home's policies and procedures shall be provided upon admission to . . . ."
11. **Proposed rule 4.2.c.** Replace with the language from existing rule 7.2.b. "When the rights of a resident must be limited or restricted for medical reasons, the specific reasons for the limitation shall be documented in the resident's medical record; the restriction shall be only for a specific and limited period of time; and must be authorized in writing by the resident or the resident's legal representative."
12. **Proposed rule 4.3.a.** Replace "be incapacitated" with "lack capacity to exercise their rights and obligations."

*is this necessary*

13. **Proposed rule 4.3.a.** Insert the language presently contained in footnote 1, proposed rule 2.20. The footnote states that legal representatives are only to be accorded authority consistent with their appointment, e.g., power of attorney, surrogate, guardian, conservator or representative payee. This message is too important to be relegated to a footnote and should be afforded the full authority of a rule. OK
14. **Proposed rules 4.4.c. and 4.4.d.2.** Capping copy fees at fifty cents per page opens the door for facilities to routinely charge fifty cents per page. This is too expensive. For a Medicaid resident, a hundred page clinical record would exhaust his or her entire personal needs allowance for that month. Replace the fifty cent cap with "a cost consistent with the prevailing community standard, not to exceed twenty-five cents per page." No  
to  
be  
included
15. **Proposed rule 4.5.b.** This rule is inconsistent with the federal requirements. 42 C.F.R. § 483.10(b)(1) states that "the facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights . . ." The guidance to surveyors states that for hearing impaired residents who communicate by signing, the facility is expected to provide an interpreter." This is a higher standard than the "reasonable accommodations" required by proposed rule 4.5.b. Change proposed rule to "The staff must inform the resident of his or her rights in a language that he or she understands. If the resident has a communications impairment, the facility must provide reasonable accommodations, including providing an interpreter, to assure that the resident receives and understand his or her rights." P
16. **Proposed rule 4.5.c.** "Medical Citation" should be "Medical Condition" OK
17. **Proposed rule 4.7.a.2.** This section makes an incomplete cite to a federal statute. It is also poorly worded, even though this is verbatim language out of the federal rule. Change to

A description of the resident's financial obligation. The nursing home shall inform each resident, in writing, prior to or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges, including any charges for services not covered under the Medicaid Program, or not covered by the facility's basic per diem rate.

A description of the requirements and procedures for Medicaid eligibility. The nursing shall also provide information to each resident, resident's family and/or resident's legal representative concerning the availability of asset assessments and advise them that these asset assessments are available upon request at the county DHHR office whether or not they are applying for Medicaid.

18. **Proposed rule 4.8.c.** Add "but cannot require a resident to execute an advance directive as a condition of admission."

19. **Proposed rule 4.8.c.1.** Add "and assist the resident in finding appropriate alternative placement if he or she desires."
20. **Proposed rules 4.10.g.1.G and 4.10.g.1.H.** Change "guardianship or incompetency proceedings . . . ." to "conservatorship proceedings on behalf. . . ." *1/11/14*
21. **Proposed rule 4.10.g.1.H.** Change "A nursing home may initiate guardianship or incompetency proceedings . . . ." to "a nursing home must initiate conservatorship proceedings on behalf. . . ." *1/11/14*
22. **Proposed rule 4.10.g.1.I.** Change "temporary legal representative" to "representative payee." *1/11/14*
23. **Proposed rule 4.11.a.** Change "A resident may perform services . . . ." to "A resident has the right to perform services . . . ."
24. **Proposed rule 4.12.b.** Change "first available room" to "first available bed."
25. **Proposed rule 4.12.c.1.** Language is not clear. Change "the resident may be placed on the waiting list for readmission to the nursing home . . . ." to "the resident may be placed on the waiting list for readmission to the original, non-Medicare certified, nursing home. . . ."
26. **Proposed rule 4.13.a.2.** Change "a resident of a non-Medicare certified nursing home (NF) . . . ." to "a resident of a nursing home (NF), . . . ."
27. **Proposed rule 4.13.e.** Change "except the notice shall be made as soon as practicable" to "except the notice shall be made at least seven (7) days, or soon as practicable in the event of an emergency, before a transfer or discharge when . . . ."
28. **Proposed rule 4.13.f.2.** Change "reasonably appropriate placement" to "appropriate placement."
29. **Proposed rule 4.14.a.2.A.** The ombudsman program supports this change. The inclusion of this rule will further this rule's purpose of helping each resident attain or maintain the highest practicable physical, mental and psychosocial well-being.
30. **Proposed rule 4.15.c.** Add "Medicaid residents and their legal representatives shall be informed that if they desire a private room, they may privately supplement the Medicaid payment by directly paying the facility the difference between the semi-private room rate and the private room rate."

31. **Proposed rule 4.16.a.** Currently conflicts with the federal restraint requirements. Change 4.16.a.1-3 to "Each resident shall be free from mental and physical abuse, and free from chemical and physical restraints except when the restraint is authorized in writing by a physician for a specified and limited period of time, except under emergency circumstances and  
  - (1) the restraint is necessary to protect the resident from injury to himself or others or
  - (2) the restraint is used as therapeutic intervention . . . ."
32. **Proposed rule 4.16.b.2.A.** Insert "precise application" after "physician shall write an order specifying the type, . . . ."
33. **Proposed rule 4.16.b.5.** Insert "toileting" after "released from the restraint at least every two hours and provided exercise and skin care."
34. **Proposed rule 4.16.b.5.A.** The ombudsman program supports this change. The inclusion of this rule will further this rule's purpose of helping each resident attain or maintain the highest practicable physical, mental and psychosocial well-being.
35. **Proposed rule 4.16.b.7.A.** Insert "not to exceed a period of twenty-four hours" after "may order the use of a physical restraint for a specified and limited period of time . . . ."
36. **Proposed rule 4.16.c.4.** Add "state ombudsman" to the list of agencies to be contacted.
37. **Proposed rule 4.17.e.** Add "and to communicate the findings or outcomes to the resident, or resident's legal representative, making the complaint."
38. **Proposed rule 5.4.a.2.E.3.** Insert "or resident's legal representative" after "unless the resident. . . ."
39. **Proposed rule 5.4.b.2.** Insert "if the legal representative demonstrates that such visits have a harmful effect on the resident." after "the legal representative may refuse visits on behalf of the resident. . . ."
40. **Proposed rule 5.4.c.1.A.** Delete "or the functioning of the nursing home." The inclusion of this clause vests too much unguided discretion in the administrator and presents the opportunity for misuse.
41. **Proposed rule 7.2.a.2.** Change the last clause to "the participation of the resident or the resident's legal representative and the resident's family with the consent of the resident or resident's legal representative."
42. **Proposed rule 8.8.** Add  
  - 8.8.c. A written report shall be made of any incident or accident in which a

resident is involved, either inside or outside the nursing home.

8.8.d. The report shall include the following:

8.8.d.1. The date;

8.8.d.2. The time of the occurrence;

8.8.d.3. The place of the occurrence;

8.8.d.4. The details of the occurrence;

8.8.d.5. The date and signature of the reviewing physician.

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

8.8.f. The death of a resident shall be reported immediately to the attending physician and to the resident's legal representative and family as relevant.

43. **Proposed rule 8.13.b.2.** Add "and the ratio of other nursing personnel to licensed nurses does not fall below 4:1." Add the following;

8.13.b.3. The nursing home shall conspicuously post the numbers of licensed nurses and other nursing personnel actually working on each shift for each unit, wing, and/or floor of the facility.

44. **Proposed rule 8.14.f.** Add "8.14.f.4. Recognizing that the resident has the right to refuse medical treatment, all residents shall have the right to request substitute foods even when this violates the physician's orders."

45. **Proposed rule 8.14.g.1.** The ombudsman program supports this change. The inclusion of this rule will further this rule's purpose of helping each resident attain or maintain the highest practicable physical, mental and psychosocial well-being.

46. **Proposed rule 8.17.b.1.** Define "routine dental services."

47. **Proposed rule 8.18.j.** The ombudsman program supports this change. The inclusion of this rule will further this rule's purpose of helping each resident attain or maintain the highest practicable physical, mental and psychosocial well-being.

48. **Proposed rule 9.1.e.** The ombudsman program supports this change. The inclusion of this rule will further this rule's purpose of helping each resident attain or maintain the highest practicable physical, mental and psychosocial well-being.

49. **Proposed rule 9.13.** Make sure that this will not impede or exclude alternative approaches to long-term care, such as the Eden Alternative.

50. **Proposed rule 9.6.h.** Change to "sterile supplies shall not be stored nor used beyond their dated shelf life."

51. **Proposed rule 10.2.d.** Add the following requirements:
- 10.2.d.2. A current copy of this rule;
  - 10.2.d.3. Documentation of the facility's professional and administrative staff meetings;
  - 10.2.d.4. Documentation of visits by professional consultants employed by the facility in accordance with the requirements of this rule;
  - 10.2.d.5. Reports of all inspections by government agencies together with summaries of corrective action taken in response to each report during the previous five (5) years;
  - 10.2.d.6. Reports of any other inspections required by this rule;
  - 10.2.d.7. Copies of contracts and agreements, including agreements for the provision of professional services by outside agencies or contractors, to which the facility is a party;
  - 10.2.d.8. Documents demonstrating control and ownership of the facility;
  - 10.2.d.9. Bylaws of the governing body, if applicable;
  - 10.2.d.10. Reports of accidents or incidents involving residents;
  - 10.2.d.11. Records of all transactions conducted by the facility involving personal funds of residents in the facility during the previous five years;
  - 10.2.d.12. All menus prepared by the facility;
  - 10.2.d.13. Records of food purchases;
  - 10.2.d.14. A copy of the facility's emergency evacuation plan;
  - 10.2.d.15. A chronological record of all residents admitted to the facility with an identifying number, date of admission and where appropriate, date of discharge;
  - 10.2.d.16. All other records required by state or federal laws, rules, and regulations, except those for which maintenance elsewhere is required.

52. **Proposed rule 10.2.d.2.** Text of this rule becomes proposed rule 10.2.d.3.

53. **Proposed rule 13.2.** Add "the state ombudsman."

54. **Proposed rule 15.2.m.** Insert "state" before "long-term care ombudsman." Also, include a time frame for when statement will be provided.

55. **Proposed rule 17.** The ombudsman program opposes the substitution of inspections by the Joint Commission on the Accreditation of Healthcare Organizations, or other Health Care Financing Administration approved accrediting organizations, for an inspection by the Office of Health Facility Licensure and Certification. Inspections by the other organizations do not correlate with actual conditions in the facility. For example, shortly before Care Haven was cited by OHFLAC for major deficiencies JCAHO renewed the facility's accreditation without problems. The inclusion of "deemed status" in the

proposed rule will not further the rule's purpose of helping each resident attain or maintain the highest practicable physical, mental and psychosocial well-being. *See attached materials from the National Citizen's Coalition on Nursing Home Reform.*

56. **Table 64-13A.** Change "Minimum Rations" to "Minimum Ratios."



**Bishop Joseph H. Hodges  
Continuous Care Center**

---

August 8, 2000

FILED  
00 AUG 14 PM 3:28  
WV L. HEALTH LAC

Robert Brauner, Program Manager  
Office of Health Facility Licensure and Certification  
350 Capitol Street, Room 206  
Charleston, WV 25301

RE: Proposed Rule Comments

Dear Dr. Brauner,

Enclosed are my comments and questions regarding the proposed rules for long term care facilities in West Virginia.

I hope that you will find this information helpful.

Sincerely,

Jane Powell, RN, BSN, CNA  
Assistant Administrator/DON

Enclosure

**BISHOP JOSEPH H. HODGES CONTINUOUS CARE CENTER  
COMMENTS REGARDING PROPOSED RULES**

**Proposed Rule**

- 4.9.b. Upon admission, the nursing home shall provide the resident with the names of physicians who have attending privileges at the nursing home.

**Comment Concerning Proposed Rule**

This long term care facility is a hospital based facility with more than 300 physicians who have privileges at both the hospital and the long term care facility.

**Proposed Rule**

- 4.16.b.1.A.4.(a). A full explanation to the resident, and in the case of incapacity, the resident's legal representative, of the reasons for using the restraint, the benefits and risks of the restraint, and the obtaining of written consent after the resident, and in the case of incapacity the resident's legal representative, have had the opportunity to see the restraint device on the resident.

**Comment Concerning Proposed Rule**

It is often unrealistic for the resident's legal representative to have an opportunity to see the restraint device on the resident, due to the fact that many of these representatives do not live in the local area or are not available at the time the restraint might need to be initiated.

**Proposed Rule**

- 4.16.b.7.A In the case of an emergency, licensed nursing personnel authorized by the nursing home in writing may order the use of a physical restraint for a specified and limited period of time until the physician can be notified of the resident's condition requiring the emergency application.

**Comment Concerning Proposed Rule**

Would "licensed nursing personnel" include all nursing supervisors if so indicated in the facility's policy?

**Proposed Rule**

- 8.18.j. The nursing home shall not prohibit residents from purchasing drugs or biologicals from sources outside the nursing home provided all other requirements for labeling, storage, etc. are met.

**Question Concerning Proposed Rule**

Does this mean that residents are permitted to purchase these items at outside sources such as grocery stores or pharmacies (i.e., Krogers, CVS, Rite Aid), as long as the labeling and storage regulations are met once the items are brought into the facility?

August 8, 2000

RECEIVED  
00 AUG 14 PM 3:29  
WV DEPT OF HEALTH

Dr. Bob Brauner  
Program Manager  
Office of Health Facility Licensure and Certification  
350 Capital Street  
Room 301  
Charleston, WV 25301

This note is in reference to the proposed regulations regarding the qualifications for the dietitian.

Section 8.14.a.1.A defines a qualified dietitian as one licensed by the WV Board of Licensed Dietitians. My concern is that due to the "grandfathering" that was mandated the first year of the bill there are dozens of Licensed Dietitians that are NOT Registered Dietitians. I do believe that the licensed dietitian should be a requirement in ADDITION to the person being a Registered Dietitian as determined by the Commission on Dietetic Registration of the American Dietetic Association. This is the current qualification.

When the licensure bill was passed, the first year allowed many people that do not have the same education and/or clinical training required to be a RD to be a LD. It is difficult for those not familiar with the bill to know that if they hire a LD they may not be getting a RD.

I feel very strongly that the training required to be a RD is necessary to appropriately take care of the residents' medical nutritional therapy needs. Keeping the RD requirement also gives each facility the assurance that the law has standardized the basic education and clinical training required of the person they hire.

Another issue is section 8.14.h.2. This is in regards to the resident being evaluated for the need for adaptive equipment devices. The question I raise is that RD's and Dietary Manager's are not formally trained in evaluating the type of special adaptive equipment a person may need. This type of evaluation is not part of the RD scope of practice. Occupational Therapists are the ones qualified to make this type of decision and therefore this regulation may be better placed under the OT services.

If you would need more information on this or for me to explain in more detail please call me at 292-1002.

Sincerely,



Diane Keegan, MPA, RD, LD

c: Mike Anderson  
John Alfano  
Betty Farley

**CAMERON**  
Continuous Care Center  
amfm of Marshall County, Inc.

RD #4 Box 20  
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(304) 686-3318

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August 16, 2000

Dr. Robert Brauner, Program Manager  
Office of Health Facility Licensure and Certification  
350 Capitol Street, Room 206  
Charleston, WV 25301

Dear Dr. Brauner,

I am writing this letter to comment on the proposed series number of rule 13, Nursing Home Licensure.

My comments are as follows:

- Licensure rules are now more in line with the Federal Regs, but would like to see the WV regulations reference the HCFA document for guidance information and more detail as to how to comply with the regulations.
- There are sections that have been deleted that contained info that is now not found in the federal or state component, especially in the area of Pharmacy regarding storage of meds, destruction of meds and the like.
- 3.5.d No extensions or renewals will be granted on provisional licenses. As noted in 3.5.c, the change in provisional license from 12 months to six months is good. The concern is with no extensions/renewal. If a facility was doing everything it possibly could to correct problems and have made significant changes and were almost there..should they not have at least another month for completion?
- 4.4.b.1 -Request for medical records: add during normal business operating hours, excluding weekends and holidays.
- 4.4.c - Add specifics about turnaround time, such as: two working days notice to the nursing home and returned to requestor within two working days.
- 6.2.d Review of Assessment: Change from 92 days to 90 days, keeping times consistent with other areas of review/compliance.

Thanking you in advance for consideration of the comments.

If you have any questions, please feel free to contact me at (304) 686-3318.

Sincerely,

*Diane W. McCauley, N.H.A.*

Diane W. McCauley, N.H.A.  
Executive Director