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WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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January 07, 2001

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Beth Marquart  
Health, Division of  
Capitol Complex  
Building 3, Room 265

FROM: Legislative Rule-Making Review Committee

Proposed Rule: Nursing Home Licensure, 64CSR13

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
  - (a) as originally filed
  - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Health

Subject: Nursing Home Licensure, 64CSR13

OFFICE OF THE CLERK  
SECRETARY OF STATE

DEC 1 11 20 AM '00

FILED

PERTINENT DATES

Filed for public comment: July 19, 2000  
Public comment period ended: August 18, 2000  
Filed following public comment period: August 30, 2000  
Filed LRMRC: August 30, 2000  
Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule repeals and replaces a current legislative rule. The following is a section-by-section synopsis of the substantive amendments made by the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 relates to state administrative procedures. It prohibits any person from establishing or operating a nursing home in this state without a valid license. It sets forth the information which must be included on the license. It sets forth those institutions which are exempt from the proposed rule such as hospitals, physicians offices and personal residential care homes.

This section requires an application for an initial license to be filed not less than 30 or more than 90 days prior to the date proposed for commencement of operation. It also requires an application for a renewal of a license to be filed not less than 30 or more than 90 days prior to the expiration date of the current

license. It requires the Director to renew an original license when certain specified conditions are met.

This section authorizes the Director to issue a provisional license to a nursing home applying for a renewal license, if the nursing home is not in substantial compliance, with the requirements of the law and the rule. It allows the issuance of provisional licenses only after the Director makes specific findings, provides that the license may not be issued for more than six months and provides that a provisional license may not be extended or renewed.

Under this section the Director is also authorized to inspect licensed and unlicensed facilities. It requires the Director to inspect a nursing home before licensing it and to conduct at least one unannounced inspection annually.

This section also requires the administrator of a licensee who plans to discontinue all or part of its operation or change ownership or location to notify the Director at least 90 days prior to the change when the change and status would necessitate the discharge or transfer of residents.

Finally, this section provides for the establishment of a nursing home licensing advisory council composed of licensed nursing home administrators, representatives of appropriate government agencies and consumers. The Director is to appoint 10 to 15 members to the council who are to make recommendations to the Director for regulatory issues and improvement.

Section 4 relates to residents rights. It requires the governing body of the nursing home to establish written policies and procedures regarding the rights and responsibilities of residents. It states that the rights and obligations established under this rule devolve to a resident's legal representative, if the resident lacks the capacity to exercise his or her rights or obligations.

This section states that each resident is to be assured confidential treatment of his or her medical records and also be given access to his or her records as well as survey and inspection reports. This section also contains provisions allowing a resident to refuse treatment and experimental research; requiring nursing

homes to furnish a copy of a resident's legal rights; stating the rights of a resident to execute an advance directive and choose a personal physician; setting forth the right of a resident to manage his or her personal funds; setting forth procedures a nursing home must follow when managing a resident's personal funds; giving a resident the right to refuse to perform services for the nursing home; resident rights regarding bed-holds and readmission; setting forth resident rights regarding transfer and discharge; setting forth a resident's right to be free from restraints and abuse; establishing standards for the use of restraints; and requiring the nursing home to develop written procedures for responding to complaints by residents, their legal representatives and the public.

Section 5 relates to quality of life and requires a nursing home to care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life. It requires that a resident's dignity and privacy be respected; that residents have reasonable access to a telephone for private conversations; that residents have a right to personal privacy in accommodations, medical treatment and visits with family that residents have a right to choose their own activities schedules; that resident have the right to retain personal clothes and possessions; that residents have access to resident and family groups and councils; that residents have the right to refuse a visit; that the administrator has the right to refuse a visitor's access; and that the resident, the family groups and councils have the right to organize. This section also requires a nursing home to provide an on-going program of activities designed in accordance with a comprehensive assessment to meet the interests and the physical mental and psychosocial well-being of each resident. It sets forth requirements for individuals directing the activities program. It also requires a nursing home with 60 or more beds to employ a certified social worker on a full time basis.

Section 6 relates to resident assessment. It requires a nursing home to conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. It sets forth the information which must be contained in the comprehensive assessment. It requires comprehensive assessments to be conducted no later than 14 days after the date of admission; within 14 days of a significant change in the resident's mental or physical condition; and in no case; less often than every 366 days.

It requires a nursing home to examine each resident no less than once every 92 days to determine the accuracy of the assessment and revise it, if necessary.

Section 7 relates to comprehensive care plans. It requires a nursing home to develop a comprehensive care plan for each resident within seven days after the completion of the comprehensive assessment that includes measurable objectives and timetables to meet a resident's medical, nursing, and psychosocial needs that are identified in the comprehensive assessment. The plan is to be prepared by a interdisciplinary team and reviewed periodically.

This section also requires a plan of care to be developed for each resident which provides a profile of the needs of the resident and identifies the roll of each service in meeting those needs. It requires the plan to be in writing and to contain certain specified information.

In addition, this section requires a nursing home to prepare a discharge summary when a resident is discharged and sets forth the information which must be contain in the summary.

Section 8 relates to quality of care. It requires that a nursing home provide the necessary care and services for each resident to attain or maintain the highest practicable, physical, spiritual and psychosocial well-being of the resident, in accordance with the comprehensive assessment and plan of care. A nursing home is to ensure that a resident's abilities in activities of daily living, such as his or her ability to bathe dress and groom, do not diminish unless circumstances of the resident's clinical condition cause the diminution. A nursing home is to ensure residents receive proper treatments and assistive devices to maintain vision and hearing. A nursing home is to ensure residents do not develop pressure sores and that residents with pressure sores are properly treated. This section also contains provisions regarding urinary incontinence; range of motion; mental and psychosocial functioning; feeding tubes; accidents; nutrition; hydration; special needs such as injections, tracheal suctioning and prosthesis; and medications and drugs.

This section requires that the nursing homes have sufficient nursing personnel and references a table in the rule concerning minimum hours of resident care personnel to residents. It sets

forth requirements regarding nurses and requires each nursing home to have a full time director of nursing. This section also requires a nursing home to employ a qualified dietitian either full time or part time or on a consultant basis. This section also contains provisions regarding menus, including food nutritive value, flavor, appearance and temperature. It requires a nursing home to provide three meals a day, as well as a bedtime snack. It also requires a nursing home to plan a three day disaster menu that coordinates with its emergency food supply.

This section also contains provisions regarding physicians and physician extender services. It requires a physician to personally approve, in writing, a recommendation that a person be admitted to a nursing home. It sets forth standards for continuing medical care by a physician and allows a physician to delegate certain tasks to physician assistants, nurse practitioners or clinical nurse specialists. It also requires a nursing home to obtain any necessary specialized rehabilitative services, dental services and pharmacy services.

Section 9 relates to physical facilities and equipment. It sets forth the standards for construction, renovation and alteration of a nursing home. It allows the Director to allow a nursing home to be governed by rules which were in effect prior to the effective date of this rule, if the Director determines that changes necessary for compliance with this section would create an undo hardship for nursing homes in existence when this rule becomes effective. This section contains provisions regarding site characteristics and accessibility; increase in bed capacity; equipment and furnishings in resident rooms; laundry and linens; nursing equipment and sterile supplies; general maintenance and housekeeping; solid waste and bio-waste disposal; water supply; sewage disposal; fire safety and disaster preparedness; disaster training; and animals.

Section 10 relates to administration. It requires a nursing home to 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 and requires a nursing home to have a governing body which is to 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. It also requires

the governing body to develop a written plan which must contain an annual operating budget and a three year capital expenditure plan.

Section 11 relates to human resources. It requires a nursing home to employ on a full time, part time or consultant basis those professionals necessary to carry out the provisions of the rule. It requires a criminal conviction investigation to be conducted on all applicants for employment. It requires a nursing home which does not employ a qualified professional person to furnish a specific service to have that service furnished by a person or agency outside the nursing home under an agreement.

This section requires that all personnel be required to attend and participate in regularly scheduled in-service training programs. It also requires a nursing home to complete an annual performance review of every employee and provide regular in-service education based on the review. It sets forth specific requirements for in-service instruction.

This section requires a nursing home to maintain a confidential personnel record for each employee containing certain specified information. It also requires a nursing home to designate a medical director and sets forth the responsibilities of the medical director.

Section 12 relates to laboratory, radiology and other diagnostic services. It requires a nursing home to provide or obtain these services to meet the needs of its residents.

Section 13 relates to clinical records. It requires a nursing home to maintain clinical records on each resident and to retain those records for five years from the date of discharge or death or, in the case of a minor, for three years after the resident reaches 18 years of age. The information in the clinical record is to be kept confidential. This section also specifies the required contents of the clinical record.

Section 14 relates to quality assessment and insurance. It requires a nursing home to maintain a Quality Improvement and Assessment Committee consisting of the director of nursing services, the medical director, and at least three other members of the nursing home's staff. The Committee is to meet at least quarterly to identify issues of quality assessment and improvement

activities and to develop and implement appropriate plans of action to correct identified quality deficiencies.

Section 15 relates to inspections and investigations. It states that all licensed nursing homes are to be inspected annually. It also authorizes the Director to investigate a complaint registered by any person. It sets forth the manner and time lines for investigating complaints. This section also provides for an informal dispute resolution. The Director is to write policies and procedures addressing the manner in which an informal dispute resolution is to be conducted.

Section 16 relates to enforcement and due process. It authorizes the Director to assess civil penalties or suspend, revoke or deny a renewal of the license of a nursing home for cause. Those actions or inactions which constitute cause are specified.

This section provides for formal hearings conducted according to the Department's rule, Rules of Procedure for Contested Cases and Declaratory Rulings, 64CSR1. It also sets forth the available remedies which include license termination, reduction of bed capacity, ban on new admissions, temporary management, civil money penalties or closure of the nursing home in emergency situations or transfer of residents or both.

This section requires the Director to send a nursing home a certified written notice of intent to impose a civil money penalty and sets forth the required contents of the notice. It provides that civil money penalties may not be less than \$50 nor more than \$8,000. It sets forth the hearing and due process procedures regarding civil money penalties.

This section also requires a nursing home, which has deficiencies based on an inspection, to develop a plan of correction and submit it to the Director within ten working days of receipt of a report of inspection. The plan is to specify the time to correct each violation and sets forth factors to be used by the Director in determining whether or not to approve the nursing home's time frames. It also sets forth the information the plan of correction must contain.

Section 17 relates to deemed status. This section allows the Director, upon approval of deemed status by the Health Care Financing Administration, to accept accreditation by the Joint Commission on the Accreditation of Health Care Organizations or any other Health Care Financing Administration approved accrediting organization. When the specified criteria are met, the Director may use a copy of the accreditation report in lieu of one regular nursing home licensure inspection.

Table 64-13A contains minimum ratios of resident care personnel to residents.

Table 64-13B contains a surety bond schedule.

#### AUTHORITY

Statutory authority: W.Va. Code, §16-5C-5, which provides, in part, as follows:

(a) All rules shall be proposed for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. The director shall recommend the adoption, amendment or repeal of such rules as may be necessary or proper to carry out the purposes and intent of this article...

#### ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.