WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #8

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

Dec. 19, 1996

NOTICE OF A EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Division of Health TITLE NUMBER: 64

DATE EMERGENCY RULE WAS ORIGINALLY FILED: August 16, 1996

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

YES ☒ NO ☐

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

YES ☐ NO ☐

DATE OF FIRST EMERGENCY AMENDMENT: _____

SERIES NUMBER OF RULE: 13 TITLE OF RULE: Nursing Home Licensure Rule

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

See attached

18.50

Gretchen O. Lewis, Secretary

Use additional sheets if necessary

Statement of Facts and Circumstances Relating to
Amending the Emergency Nursing Home Licensure Rule, 64 CSR 13
October 29, 1996

On August 16, the Department of Health and Human Resources requested authorization by the Secretary of State to implement a proposed amended Nursing Home Licensure Rule, 64CSR13, on an emergency basis. The Secretary of State approved the emergency filing on September 27, 1996, in Emergency Rule Decision, 19-96.

The Department has now completed its consideration of the public comments received regarding the proposed rule, and has made a few clarifications and corrections to the proposed rule in the Agency-Approved rule filed with the Legislative Rule-Making Review Committee. The Department believes that the nature of the clarifications and corrections are of sufficient significance to warrant amending the emergency rule by amending these same clarifications and corrections into the emergency rule. In particular, attempting to enforce the rule without the deletion of the proposed fee for a name change (§ 3.1.j), and the clarifications regarding notification requirements for a significant change in a resident's condition (§ 8.2.d.6), and the assessment of civil penalties (§§ 14.1.e, 14.3.b.2.B, 14.3.c.1 and 14.3.g) could cause considerable confusion and harm to the public in general and to the nursing home industry, specifically.

Accordingly the Department is hereby filing the Agency-Approved rule as filed with the Legislative Rule-Making Review Committee as an amended emergency rule, and requesting approval by the Secretary of State upon the basis described in the Department's August 16 filing.

Discussion of Public Comments Received
Concerning the Proposed Rule
Nursing Home Licensure Rule, 64CSR13

The main purpose of the proposed amendments to the Nursing Home Licensure Rule is to make the Nursing Home Licensure Rule consistent with mandated federal enforcement procedures. The new enforcement procedures involve: 1) Changing and adding definitions of terms; 2) Deleting the scoring system, all references thereto, and Class values for individual items; 3) Adding a section related to action on complaints of resident neglect and abuse, and misappropriation of resident property; and 4) Revising and combining the existing sections on penalties and due process. The present scoring system does not integrate with the federal evaluation process. The use of two different evaluation processes would require increased time in facilities, and in other activities such as report preparation, consultation, etc.

A public comment period was held from July 26 to August 26, 1996. Comments received are summarized and discussed below. The majority of comments received were from the West Virginia Health Care Association, which represents most nursing homes in the State. This discussion contains summaries of comments received and the Department's responses to the comments.

The Department filed the revised amended Nursing Home Licensure Rule, 64 CSR 13, as an emergency rule August 16, 1996. The rule was approved by the Secretary of State and became effective September 27, 1996. The Department intends to amend the emergency rule to correspond with the modifications proposed here.

BACKGROUND

New federal requirements for the enforcement of nursing home standards for participation in Medicare and Medicaid became effective July 1, 1995. W. Va. Code § 16-5C-19, passed by the 1996 Legislature (H. B. 2489, effective June 10, 1996) gives the Secretary of the Department of Health and Human Resources the authority to "promulgate emergency rules when the rules are required for compliance with federal law. The rules are subject to the provisions of § W. Va. Code 29A-3-1 et seq.

Additionally, the Department agreed in the West Virginia Comprehensive Long-Term Care Plan filed in response to a Memorandum Order filed under Wolford v. Lewis, 860 F. Supp. 1123 (S.D. W. Va. 1994), to draft and file amended nursing home licensure standards in accordance with new enforcement standards adopted by the federal Health Care Financing Administration. An order adopting the relevant part 2.08.01 of the Comprehensive Long-Term Care Plan was filed October 4, 1994. An additional Order requiring the enforcement of the proposed new sections 5 and 16 of the rule was filed March 29, 1996. Copies of the

Orders and the West Virginia Comprehensive Long-Term Care Plan are already on record with both the Secretary of State and the Legislative Rule-Making Review Committee as part of the emergency filing.

GENERAL COMMENTS

1. **Comment**: The agency has exceeded the scope of its statutory authority in the proposed legislative rule for reasons that: To the extent that the Federal Medicaid regulatory standards provide remedies for non-compliance, they are inconsistent with West Virginia Code, Chapter 16, Article 5C, Section 15. In enacting this statute, the Legislature elected to delineate those acts which were unlawful and to delineate the remedies which might be imposed by the Department of Health and Human Resources for their violation. The State statute did not, and lawfully could not, delegate any rule-making authority to the Department of Health and Human Resources to alter the remedies which are statutorily prescribed. For this reason, any attempt by the Department of Health and Human Resources to enact a legislative rule which is contrary to the State statute is constitutionally impermissible.

   Response: Although the commenter's point is well taken under normal circumstances, the Department believes that this rule is permissible because, during the 1996 legislative session, the following statement was enacted into law:

   > "§16-5C-19. Federal law; legislative rules.
   >
   > Not withstanding any provision in this code to the contrary, the department shall promulgate legislative rules, in compliance with the provisions of article three, chapter twenty-nine-a of this code, pertaining to nursing homes, when those rules are required for compliance with federal law or regulations. The rules may be filed as emergency rules."

   This was enacted to enable rules to be promulgated on an emergency basis. The federal court in Wolford v. Lewis ordered that new enforcement rules be put into effect on an emergency basis. The rule is not an exact replica of the federal enforcement regulation, but does reflect the same approach to establishing compliance. This was done primarily to enable surveyors who determine state and federal compliance to use the same approach to determine compliance. If this were not the case, surveys would have to be done using different procedures which would diminish efficiency and timeliness. The Department is currently drafting revisions to update the licensure law, which will among other things, address the apparent inconsistency.

2. **Comment**: The proposed legislative rule is not in conformity with the legislative intent of the statute. The rule is intended to implement, extend, apply, interpret or make specific, it is not to reflect a 'restatement' of provisions of Federal Medicaid regulations and State statutory provisions in the format of legislative rule which is a duplicate and unnecessary process. This practice of 'restating' results in conflicting standards when either the State statute is amended or changes are made to the Federal Medicaid regulations.

   Response: The response to No. 1 clarifies the Department's actions. The phrase in Code § 16-5C-19 that "Notwithstanding any provision in this Code to the contrary" makes other provisions in the law inapplicable if they are inconsistent with the rules adopted to conform to federal law or regulations. Again, the goal of the Department is to use a consistent approach to ensuring regulation compliance and thereby to reduce time and inefficiencies. In other regulatory areas where State rules reflect federal requirements and those requirements change, the State merely amends its rule to conform, either by an emergency rule or permanent rule, or both.

3. **Comment**: The proposed legislative rule is not necessary to fully accomplish the objectives of the statute under which the rule was proposed for promulgation.

   Response: The Department disagrees. The statute is designed to protect residents in long-term care facilities and to establish an enforcement system. This rule is designed to accomplish the same goal and, in addition, to increase efficiency by establishing a single survey process to measure and ensure compliance.

4. **Comment**: The proposed legislative rule is unreasonable, especially as it affects the convenience of persons particularly affected by it.

   Response: Since the commenter did not establish how persons were inconvenienced, the Department can respond only by stating that this new approach will integrate state and federal compliance tools into one (1) system which will actually eliminate confusion. The Department would like to clarify that the purpose of the rule is to ensure resident health and safety, and not to ensure provider convenience.

5. **Comment**: The proposed legislative rule could be made less complex or more readily understandable by the general public.

   Response: The Department has made every effort to make a complex subject as straightforward as possible while ensuring that the intent is clear.

6. **Comment**: The proposed legislative rule was not proposed for promulgation in compliance with the requirements of the Administrative Procedures Act and with requirements imposed by other provisions of the West Virginia Code.

Two examples of the problems are found in § 64-13-3.1.j and § 64-13-14.3.g. In § 64-13-3.1.j, the Agency created a new, fifty dollar ($50) fee for changing the name of a facility on its license. The statute on which the rule is based provides no such fee. The association is unaware of any state or federal law authorizing or requiring the establishment of this fee. The second example involves the interest rate on civil monetary penalties. The statute specifically provides for a two percent (2%) interest rate at W. Va. Code § 16-5C-11(f). The proposed rule increases the interest rate to five percent (5%). There is no statutory authority for this increase.

Response: The Department believes that the rule was promulgated in compliance with the provisions of the State Administrative Procedures Act regarding emergency and permanent rules and to comply with a federal court order.

The Department agrees that the examples cited by the commenter are in error. The proposed fifty dollar ($50) fee for a new license has been deleted and the interest rate has been corrected to two percent (2%). These topics will be considered in the Code revision noted above.

COMMENTS ON SPECIFIC ITEMS

§2.15. Comment: Placing both financial and health care legal representatives under the same, general definition of "legal representative" causes some potential problems. While it is apparent that the Agency attempted to limit conservators to financial decisions, the Agency did not fully address the situation in which a health care provider has to report to the legal representative. For example, if a bank was appointed a patient's conservator and a neighbor was appointed the health care surrogate, would a facility be required to notify only the bank after the patient had an accident or suffered a serious deterioration in condition? Based on § 8.2.d.6, this appears to be the case."

Response: The Department understands the concern. The definition of legal representative is based on current Code. To clarify the issue identified, the Department has reworded § 8.2.d.6 of the rule as follows to ensure that all involved parties are informed: "...all legal representatives with related responsibility for the resident..."

§4.3.a.3. Comment: This section of the rule fails to state with clarity which Fire Commission rules are applicable to nursing homes. The applicable rules should either be delineated here or a specific cite to the applicable rule should be contained in this section. The Agency has a statutory duty to draft the proposed legislative rule so that it is "less complex" and "more readily understandable by the general public."

Response: The Department of Health and Human Resources does not have the

statutory authority to determine which of the State Fire Commission rules are applicable to nursing homes. The purpose of this item is to require that a nursing home be in compliance with whatever is required by State Fire Commission law and rules as a necessary condition for the Department to issue a license to operate a nursing home.

§ 5.10. **Comment**: Information regarding clearance of personnel through the abuse registry should be added.

Response: The Department agrees that the proposed change is desirable, but believes that it is beyond the scope and intent of the present revision.

§ 10.2. **Comment**: An individual experienced in food service but lacking the necessary education should be afforded the opportunity to be supervised by a registered dietitian for a limited period of time, while taking an approved program of study.

Response: The Department agrees that the proposed change is desirable, but believes that it is beyond the scope and intent of the present revision.

§ 12. **Comment**: There are no qualifications for the Activity Professional. The federal regulations defer to the State on this.

Response: The Department agrees that the proposed change is desirable, but believes that it is beyond the scope and intent of the present revision.

§14.1.e. **Comment**: The word "shall" in the first sentence of this section should be changed to "may." The director should have the discretion to access civil penalties. Every violation does not warrant the imposition of a penalty. Moreover, the phrase "but not be limited to" in the second sentence should be deleted. If a nursing home is going to be subject to enforcement penalties, it is entitled to know, in advance, the grounds upon which the penalties will be based.

Response: The Department agrees, and has revised the item.

§14.1.e.6. **Comment**: The use of the word "rule" in this section is unclear. Is it used to describe the entire rule, §16 CSR 13, or individual sections of the rule? This is an important issue with respect to repeated non-compliance. The confusion is highlighted by §14.1.e.8 in which the word "rule" is used to describe all of §CSR13.

Response: The Department has changed the word "rule" "regulatory grouping," which is defined in §2.31 of the proposed rule.

§14.1.f. **Comment**: A provision needs to be included in this section which states that the

director will review admission bans and bed reductions within a specific time period such as the date set for compliance or upon notice by the facility that it is in compliance with this rule. Otherwise, a ban or reduction could remain in effect indefinitely.

Response: The Department agrees that the timely review of an admissions ban when a facility is again in substantial compliance is very important, and believes this has not been a problem. Sometimes a site visit is required to determine compliance, and sometimes the determination can be made by other means.

§14.3.b.2.B. Comment: The penalty reduction for waiving a hearing should be mandatory, not discretionary. A facility should be able to rely on the fact that if it does not request a hearing, the penalty "shall" be reduced by 35 percent.

Response: The Department agrees that the reduction in penalty should be guaranteed at the time a formal hearing could be requested and is not, and has revised the item.

§14.3.c. Comment: This section does not provide for the timing of the notice for a civil money penalty. The notice should be sent to the facility well in advance of the date upon which a facility must decide whether to request an informal or formal hearing based on the deficiencies it has received.

Response: The Department has clarified the item. Notices of penalties are sent at the time the decision is made to impose them. For example, a penalty is sent with the survey report which identifies the deficiencies to be penalized, or later if it is based on the facility not submitting a plan of correction. The Department believes a penalty should be challenged on the basis of its validity, not on the penalty amount.

§14.7.g.4. Comment: Restricting a facility's right to legal counsel raises serious constitutional issues. If this provision is to remain, a provision should be included which provides that any statements or evidence presented at the informal hearing cannot be used against the facility in the event that a formal hearing takes place.

Response: The Department believes that an informal hearing is an opportunity to discuss deficiencies and provide additional information. This can and has been done by telephone with the administrator. To include attorneys at this level is an unnecessary expense and can force the communication to become much more formal.

The Department is not represented by legal counsel in informal hearings. The Department agrees that the communication will be confidential and is not to be used in a formal hearing process. This has been clarified in the rule by stating "all such communications will be confidential and cannot be used by or against the facility in the event that a formal hearing takes place."

Commenters
Proposed Rule - Nursing Home Licensure, 64 CSR 13
Division of Health, Department of Health and Human Resources

Laurel Nursing & Rehabilitation Center - Lynda G. Kramer, RN, BSN, NHA, Administrator

WV Health Care Association - P. John Alfano

LAUREL NURSING & REHABILITATION CENTER

August 26, 1996

Kay Howard
Regulatory Services
West Virginia DHHR
Capital Complex Building 3, Room 265
Charleston, West Virginia 25305

Re: Nursing Home Licensure Rules

Dear Ms. Howard:

I attempted to contact you prior to 4:30 PM for a fax number and was able to obtain. The overall recommended changes are acceptable with three (3) recommendations:

1-	Add:	Section 5.10	Information regarding clearance of personnel through the abuse registry.
2.	Add:	Section 10.2	There need to be an addition of criteria by which an individual may serve as a food service supervisor while engaged in an approved program of study. The individual who is experienced in food service but lacks the necessary education could/should be afforded the opportunity to be mentored by a registered dietitian for a limited period of time, not to exceed the time for the course.
3.	Add:	Section 12	There is no provision for qualification for the Activity Professional. The federal regulations defer to the state for this.

I hope that these comments will be accepted. Thank you.

Sincerely,

Lynda G. Kramer, RN, BSN, NHA
Administrator

8 CAPITOL STREET, SUITE 700
CHARLESTON, WV 25301-2896
TELEPHONE (304) 346-4575
FACSIMILE (304) 342-0519

August 26, 1996

Kay Howard
Regulatory Development
Department of Health & Human Resources
State Capitol Complex
Building 3, Room 265
Charleston, WV 25305

Re: Nursing Home Licensure Rule

Dear Ms. Howard:

The purpose of this letter is to provide comment on the proposed legislative rule, 64 WVCSR 13, which was filed in the West Virginia Secretary of State's Office on July 26, 1996. Although the West Virginia Health Care Association supports the amendment of existing statutes and regulations governing nursing homes, it is concerned that this proposed rule is not being promulgated in compliance with State law. Specifically, the Association believes that sections of this rule are not in compliance with W. Va. Code § 29A-3-1 et seq. because:

1. The agency has exceeded the scope of its statutory authority in the proposed legislative rule for reasons that: To the extent that the Federal Medicaid regulatory standards provide remedies for non-compliance, they are inconsistent with West Virginia Code, Chapter 16, Article 5C, Section 15. In enacting this statute, the Legislature elected to delineate those acts which were unlawful and to delineate the remedies which might be imposed by the Department of Health and Human Resources for their violation. The State statute did not, and lawfully could not, delegate any rule-making authority to the Department of Health and Human Resources to alter the remedies which are statutorily prescribed. For this reason, any attempt by the Department of Health and Human Resources to enact a legislative rule which is contrary to the State statute is constitutionally impermissible.

2. The proposed legislative rule is not in conformity with the legislative intent of the statute. The rule is intended to implement, extend, apply, interpret or make specific, it is not to reflect a "restatement" of provisions of Federal Medicaid regulations and State statutory provisions in the format of legislative rule which is a duplicate and unnecessary process. This practice of "restating" results in conflicting standards when either the State statute is amended or changes are made to the Federal Medicaid regulations.

3. The proposed legislative rule is not necessary to fully accomplish the objectives of the statute under which the rule was proposed for promulgation.

4. The proposed legislative rule is unreasonable, especially as it affects the convenience of persons particularly affected by it;

5. The proposed legislative rule could be made less complex or more readily understandable by the general public; and

6. The proposed legislative rule was not proposed for promulgation in compliance with the requirements of the Administrative Procedures Act and with requirements imposed by other provisions of the West Virginia Code.

Several problems exist with this rule. Two examples of the problems are found in § 64-13-3.1.j and § 64-13-14.3.g. In § 64-13-3.1.j, the Agency created a new, fifty dollar fee for changing the name of a facility on its license. The statute upon which the rule is based provides for no such fee. The Association is unaware of any state or federal law authorizing or requiring the establishment of this fee.

The second example involves the interest rate on civil monetary penalties. The statute specifically provides for a two percent interest rate at W. Va. Code § 16-5C-11(f). The proposed rule increases the interest rate to five percent. There is no statutory authority for this increase.

While these examples and other changes in the rule may appear to be innocuous to the Agency, we are concerned that they call the legality of the rule into question and we request that the Agency only promulgate rules which are in compliance with the rule making provisions of state law.

At this time, the Association desires to make specific comments with respect to the following proposed rules.

§ 2.15

Placing both financial and health care legal representatives under the same, general definition of "legal representative" causes some potential problems. While it is apparent that the Agency attempted to limit conservators to financial decisions, the Agency did not fully address the situation in which a health care provider has to report to the legal representative. For example, if a bank was were appointed a patient's conservator and a neighbor was appointed the health care surrogate, would a facility be required to notify only the bank after the patient had an accident or suffered a serious deterioration in condition? Based on § 8.2.d.6, this appears to be the case.

§ 4.3.a.3

This section of the rule fails to state with clarity which fire commission rules are applicable to nursing homes. The applicable rules should either be delineated here or a specific cite to the applicable rule should be contained in this section. The Agency has a statutory duty to draft the proposed legislative rule so that it is "less complex" and "more readily understandable by the general public."

§ 14.1.e

The word "shall" in the first sentence of this section should be changed to "may." The director should have the discretion to assess civil penalties. Every violation does not warrant the imposition of a penalty. Moreover, the phrase "but not be limited to" in the second sentence should be deleted. If a nursing home is going to be subject to enforcement penalties, it is entitled to know, in advance, the grounds upon which the penalties will be based.

§ 14.1.e.6

The use of the word "rule" in this section is unclear. Is it used to describe the entire rule, § 16 CSR 13, or individual sections of the rule? This is an important issue with respect to repeated non-compliance. The confusion is highlighted by § 14.1.e.8 in which the word "rule" is used to describe all of § 64 CSR 13.

§ 14.1.f

A provision needs to be included in this section which states that the director will review admission bans and bed reductions within a specific time period such as the date set for compliance or upon notice by the facility that it is in compliance with this rule. Otherwise, a ban or reduction could remain in effect indefinitely.

§ 14.3.b.2.B

The penalty reduction for waiving a hearing should be mandatory, not discretionary. A facility should be able to rely on the fact that if it does not request a hearing, the penalty "shall" be reduced by 35 percent.

§ 14.3.c

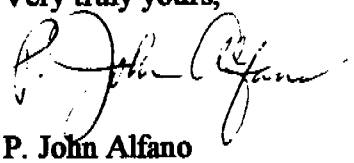
This section does not provide for the timing of the notice for a civil money penalty. The notice should be sent to the facility well in advance of the date upon which a facility must decide whether to request an informal or formal hearing based on the deficiencies it has received.

§ 14.7.g.4

Restricting a facility's right to legal counsel raises serious constitutional issues. If this provision is to remain, a provision should be included which provides that any statements or evidence presented at the informal hearing cannot be used against the facility in the event that a formal hearing takes place.

Thank you for your serious consideration of these issues.

Very truly yours,



P. John Alfano

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Nursing Home Licensure, 64 CSR 13

Type of Rule: _X_ **Legislative** ___ **Interpretive** ___ **Procedural**

Agency: Department of Health and Human Resources

Address: Building 3, Capitol Complex
Charleston, W. Va. 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	$	$	$	$	$
Personal Services					
Current Expense					
Repairs & Alterations					
Equipment					
Other					

2. Explanation of above estimates.

The Department has already budgeted for new enforcement procedures, which are supported in part by federal funds.

3. Objectives of this rule:

The purpose of the proposed revisions is to make the licensure rules consistent with mandated federal procedures and to comply with Orders issued October 4, 1994 and March 29, 1996 in Wolford v. Lewis, 860 F. Supp. 1123 (S.D. W. Va. 1994).

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None anticipated for fiscal year 1996-97. The Department is uncertain of the extent these new enforcement procedures will increase litigation. It is possible that additional legal activity will require more funds, but there is no way at the present to estimate to the response of the nursing home industry and the potential increase in costs. By January, 1997 the Department will be able to use the first six months activity to project future needs.

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

There is potential for impact on the nursing home industry and patients. However, it must be noted that this impact is under the control of federal mandate.

C. Economic Impact on Citizens/Public at Large.

There is some potential for impact on citizens in general to the extent that nursing home care is supported by taxes. However, it must be noted that this impact is under the control of federal mandate.

Date: July 18, 1996

Signature of Agency Head or Authorized Representative

Gretchen O. Lewis, Secretary
Department of Health and Human Resources

Rule Abstract
Division of Health
Department of Health and Human Resources
Proposed Amended 64 CSR 13, Nursing Home Licensure

The main purpose of the proposed amendments to the Nursing Home Licensure Rule is to make the licensure rules consistent with mandated federal enforcement procedures. The new enforcement procedures involve: 1) Changing and adding definitions of terms; 2) Deleting the scoring system, all references thereto, and Class values for all individual items; 3) Adding a section related to action on complaints of resident neglect and abuse, and misappropriation of resident property; and 4) Revising and combining the existing sections on penalties and due process. The present scoring system is not consistent with federal rules.

New and revised sections provide for: the director's powers, duties and rights with respect to enforcement, the inspection procedure and his/her obligations to residents; the procedure for civil penalties; action when there is immediate jeopardy to patients; program participation; change of ownership; temporary management; state monitoring; directed plan of correction; directed in-service training; revocation or suspension of license; and hearings and due process. W. Va. Code § 16-5C-19, passed by the 1996 Legislature (H. B. 2489, effective June 10, 1996) gave the Department the authority to revise the rule when required by federal law or regulations, and to file the revised rule as an emergency rule. The Department will file the revised rule as an emergency rule in addition to filing it for public comment, in order to come into compliance with Court Orders issued under Wolford v. Lewis, 860 F. Supp. 1123 (S.D. W. Va. 1994). In the event of approval by the Secretary of State, the emergency rule will be effective on the date the Secretary of State's Emergency Rule Decision is filed.

The Department has added to the rule a security bond schedule already in use. Other revisions make the rule consistent with current laws regarding patients' legal representatives and substituted consent, and update the rule for consistency with changes in the W. Va. Code, dates of referenced rules with which nursing homes are required to comply under various State and federal rules and regulations, and current style standards.

For further information contact: The Office of Health Facility Licensure and Certification, telephone (304) 558-0050, Bureau for Public Health, Department of Health and Human Resources, State Capitol Complex, Building 3, Room 518, Charleston, West Virginia, 25305; or the Office of Regulatory Development, telephone (304) 558-3223, Bureau for Operations, Department of Health and Human Resources, State Capitol Complex, Building 3, Room 265, Charleston, West Virginia, 25305.

10/30/96

PROPOSED RULE - TITLE 64
WEST VIRGINIA LEGISLATIVE RULE
DIVISION OF HEALTH

SERIES 13

NURSING HOME LICENSURE RULE

Agency-Approved Rule for
Filing with the Legislative Rule-Making Review Committee
and
Amended Emergency Rule

WEST VIRGINIA LEGISLATIVE RULE
DIVISION OF HEALTH
NURSING HOME LICENSURE

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STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton
Governor

Gretchen O. Lewis
Secretary

Date: November 8, 1996

To: Legislative Rule-Making Review Committee

From: Kay Howard, Director
Regulatory Development
Department of Health and Human Resources

Re: Nursing Home Licensure Rule, 64CSR13

FILED
Nov 8 3 20 PM '96
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

1. Authorizing statute(s) citation: § 16-5C-5

2. a. Date filed in State Register with Notice of Hearing: July 26, 1996

   b. Other notice, including advertising, given of the hearing: Nursing homes, interested associations and individuals were notified and sent copies.

   c. Date of hearing(s): Public comment period ended August 26, 1996.

   d. List of persons who appeared at hearing, comments received, amendments, reasons for amendments.
   Attached _X___ No comments received _____

   e. Date of filing in State Register the Agency-Approved proposed Legislative Rule following public hearing: November 8, 1996

   f. Name and phone number of agency contact person: Kay Howard, 558-3223

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: Not applicable.

   a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.
   b. Date of hearing:
   c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?
   d. Attach findings and determinations and reasons:

PROPOSED - TITLE 64
WEST VIRGINIA LEGIASLATIVE RULE
DIVISION OF HEALTH
SERIES 13
NURSING HOME LICENSURE RULE

Ed. Note: This rule has been renumbered and reformatted using the new numbering system and format rules of the Secretary of State which became effective June 7, 1996. Where a section has been entirely deleted, the number of the section is shown; otherwise, previous section numbers are not shown.

§ 64-13-1. General.

1.1. Scope. -- ~~These legislative rules establish~~ This legislative rule establishes general rules and procedures for the licensing of nursing homes.

1.2. Authority. -- § 16-5C-5. Related. § 16-5C-1 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Supersession of Former Rule. -- This rule amends and reenacts West Virginia Department of Health and Human Resources Administrative Rules, Title 64, Series 13, Nursing Home Licensure, effective April 6, 1990.

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

1.7. 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. Supersession and Repeal of Former Rule.** These legislative rules supercede and repeal Nursing Home Licensure, West Virginia Department of Health and Human Resources Administrative Rules, 64 CSR 13, 1983.~~

~~**§64-13-3. Application and Enforcement.**~~

~~3.1. Application. These legislative rules shall apply to every individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of the state which shall operate or apply to operate a nursing home as defined in W. Va. Code § 16-5C-2(c), as amended and these regulations.~~

~~3.2. Enforcement. The enforcement of these legislative rules is vested with the director of the West Virginia department of health or his lawful designee.~~

§ 64-13-2. Definitions.

2.1. Applicant. -- The person who submits an application for a license or renewal of a license to

operate a nursing home.

2.2. Bed Capacity. -- The maximum number of beds the facility is currently licensed to offer for patient occupancy.

~~4.3. Board. -- The West Virginia board of health.~~

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

2.4. Change of Ownership. -- Any transaction which results in a change of control over the capital assets of a facility including but not limited to a conditional sale, a sale, a lease or a transfer of title or controlling stock (See Section ~~5.1.8~~ 3.1.h of ~~these regulations~~ this rule).

2.5. Controlling Person. -- Any person who by reason of a direct or indirect ownership interest whether of record or beneficial has the ability, acting either alone or in concert with others with ownership interests, to direct or cause the direction of the management or policies of a facility. No employee of the department of health and human resources shall, by reason of his or her official position, be ~~deemed~~ considered to be a controlling person of any facility, nor shall any person who serves as an officer, administrator or other employee or as a member of a board of directors or trustees of any facility be ~~deemed~~ considered to be a controlling person solely as a result of ~~such~~ the position or his or her official actions in ~~such~~ the position.

2.6. Day Care Services. -- Services and supervision provided to nonresident individuals who are capable and desirous of semiindependent living. Services may include supervised nutrition, planned, organized activities and protective supportive environment not to exceed twelve hours per day per person.

2.7. Department. -- West Virginia department of health and human resources.

2.8. Deficiency. -- A statement of the rule and the fact that compliance has not been established and the reason therefor.

2.9. Director. -- ~~The director of the West Virginia department of health or other employee acting on behalf of the director with written designation and identification.~~ The secretary of the department of health and human resources or his or her designee.

2.10. Facility. -- Any nursing home as defined in Section ~~4.19~~ 2.23 of ~~these regulations~~ this rule.

~~4.11. Gender. -- The pronoun "he" shall denote both the masculine and feminine gender. The use of any word denoting the masculine gender shall be taken to apply to both females and males.~~

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

2.12. Health Care Financing Administration. -- The federal agency which implements standards for the process of surveying skilled nursing homes under Medicare and nursing homes under Medicaid and for the process of certifying that these homes meet the requirements for participation in the Medicare and

Medicaid programs.

2.13. Immediate Family. -- Each parent, child, spouse, brother, sister, first and second cousin, aunt and uncle of an individual, whether ~~such~~ the relationship arises by reasons of birth, marriage or adoption.

2.14. Immediate Jeopardy. -- A situation in which the nursing home's noncompliance with one (1) or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

2.15. Legal Representative. --

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

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

2.15.c. An individual appointed as committee or guardian prior to June 9, 1994, within the limits set by the appointing order and W. Va. Code 44A-1-2(d);

2.15.d. A person having a medical power of attorney pursuant to the West Virginia Medical Power of Attorney Act, W. Va. Code §§16-30A-1 et seq., within the limits set by the law and the appointment;

2.15.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;

2.15.f. A surrogate decision-maker appointed pursuant to the West Virginia Health Care Surrogate Act, W. Va. Code §§16-30B-1 et seq., or the West Virginia Do Not Resuscitate Act, §§16-30C-1 et seq., within the limits set by the appointment;

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

2.15.h. 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.

2.16. License. -- The document issued by the director which constitutes the authority to receive patients and perform services included within the scope of ~~these regulations~~ this rule.

2.17. Licensed or Registered. -- When applied to a person means that the person to whom the term is applied is ~~duly~~ licensed or registered to follow a profession by the proper authority within the State of West Virginia and when applied to a facility means that the facility is ~~duly~~ licensed by the department ~~of health~~.

2.18. Licensed Nursing Personnel. -- Licensed registered professional nurses and licensed practical nurses.

2.19. Licensee. -- The person or body to whom the license is issued, who shall be held responsible for compliance with all rules, regulations and minimum standards.

2.20. Noncompliance. -- Any deficiency that causes a nursing home to not be in substantial compliance.

2.21. Nurse Aide Registry. -- Registry of nurse aides who have:

2.21.a. Successfully completed a nurse aide training and competency evaluation program or nurse aide competency evaluation program;

2.21.b. Been deemed as meeting these requirements; or

2.21.c. Have had these requirements waived by the director.

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

2.23. Nursing Home. -- Any institution, residence or place, 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 (24) hours, for ~~three (3)~~ four (4) 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 illness or incapacitation.

2.24. 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 patient-oriented nursing functions, including registered professional and licensed practical nurses, nursing aides and orderlies, but excluding employees engaged in administration, dietetics, housekeeping, laundry and maintenance.

2.25. Patient. -- An individual under care in a nursing home.

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

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

2.28. Personal Care Home. -- Any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and

personal assistance and supervision, for a period of more than twenty-four (24) hours, to ~~six (6)~~ four (4) or more persons who are dependent upon the services of others by reason of physical or mental impairment ~~but who do not require nursing care~~ who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice: Provided, That services utilizing equipment which requires auxiliary power in the event of a power failure may not be used unless the personal care home has a backup generator.

2.29. Premises. -- A tract of land, together with all buildings, equipment, fixtures and facilities erected, constructed or situated thereon, 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 licensed facility.

2.30. Principal Stockholder. -- Any person who beneficially owns, holds or has the power to vote ten percent (10%) or more of any class of securities issued by a corporation.

2.31. Regulatory Grouping. -- The sets of requirements under the various subsections in a main section. For example, Section 6, General Health and Safety, has nine (9) regulatory groupings.

2.32. Repeat Deficiency. -- A deficiency found at the last survey for which a civil money penalty was imposed and sustained, the deficiencies are subsequently corrected, but deficiencies in the same regulatory grouping of requirements are found again at the next survey.

2.33. Restraint. -- Any device which limits movement by the patient and which cannot be removed easily by the patient, or any chemical or drug used to limit movement by a patient or to limit the mental capacity of a patient beyond the requirements of therapeutic treatment.

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

2.35. Secretary. -- The secretary of the department of health and human resources.

2.36. Serious Physical Harm. -- That type of bodily injury in which:

2.36.a. A part of the body would be permanently removed, rendered functionally useless, or substantially reduced in capacity, either temporarily or permanently; or

2.36.b. A part of an internal function of the body would be inhibited in its normal performance to such a degree as to shorten life or cause reduction in physical or mental capacity.

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

2.38. Standard Survey. -- A periodic, resident-centered inspection which gathers information about the quality of service and care furnished in a nursing home to determine compliance with the requirements for licensure under this rule.

2.39. Substandard Quality of Care. -- One (1) or more deficiencies which constitute either immediate jeopardy to resident health or safety, or actual harm.

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

2.41. Substantial Probability. -- The more likely consequences.

2.42. Stop Order. -- A written policy that definitely prescribes the number of doses or the period of time after which administration of a drug to a patient must be stopped automatically, unless the physician's order for the drug specified the number of doses or the period of time the order was to be in effect.

2.43. Transfer Agreement. -- An agreement with a hospital which provides the basis for arrangements under which inpatient hospital care or other services are available promptly to the facility's patients when needed.

2.44. Unit Dose. -- The ordered amount of a drug dispensed by a pharmacist in a dosage form ready for administration to a particular person by the prescribed route at the prescribed time.

§ 64-13-3. State Administrative Procedures.

3.1. General Licensure Provisions.

3.1.a. No person may establish, operate, maintain, offer or advertise within the State of West Virginia, a nursing home as defined in ~~W. Va. Code § 16-5C, as amended and herein~~ W. Va. Code § 16-5C-2(d) and this rule unless that person obtains a current valid license.

3.1.b. ~~Neither an~~ The original ~~nor a renewal~~ license shall be issued under ~~these regulations~~ this rule for a project reviewable under ~~W. Va. Code § 16-2D, as amended~~ W. Va. Code § 16-2D-1 et seq. ~~unless~~ only if the ~~West Virginia State health planning and development~~ health care cost review agency has issued a finding, after a final conformance review, that the completed project conforms to the terms of the certificate of need decision issued for the project.

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

3.1.d. Separate buildings on the same premises operated under the same ownership and management shall constitute one (1) licensed facility, unless the director determines otherwise.

3.1.e. A license shall be valid only for the premises and persons named in the application.

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

3.1.g. If the ownership of a facility with a valid unexpired license changes, the new owner shall apply for a new license.

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

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

3.1.j. An approved name change shall be shown in the next license issued.

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

3.1.l. A license shall state:

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

3.1.l.2. The maximum bed capacity for which it is granted;

~~5.1.2.c. The rating assigned to the facility pursuant to Section 5.11 of these regulations;~~

3.1.l.3. The date of issuance; and

3.1.l.4. The expiration date.

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

3.2. Exceptions.

3.2.a. Unless such facilities request licensure as a nursing home, nothing contained in ~~these regulations~~ this rule ~~shall apply~~ applies to:

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

3.2.a.2. A state or federally operated institution, as defined in W. Va. Code § 27-1-6 or W. Va. Code § 25-1-3~~, as amended~~;

3.2.a.3. Institutions operated for the care and treatment of alcoholic patients;

3.2.a.4. Offices of physicians;

3.2.a.5. Hotels;

3.2.a.6. Boarding homes, as defined in Section ~~4.4~~ 2.3 of ~~these regulations~~ this rule, or similar places that furnish to their guests only room and board;

3.2.a.7. Extended care facilities operated in conjunction with a hospital;

3.2.a.8. Facilities, including intermediate care facilities for the mentally retarded, required to be licensed under W. Va. Code § 27-9-1~~, as amended~~; ~~or~~

3.2.a.9. Personal care homes as defined in Section ~~4.23~~ 2.28 of ~~these regulations~~ this rule; or

3.2.a.10. 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, ~~may not be deemed to~~ does not constitute a nursing home within the meaning of ~~these regulations~~ 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 facility is in compliance with the standards for nursing homes established in ~~W. Va. Code § 16-5C, as amended and these regulations~~ 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 (See also Section ~~6~~ 4 of ~~these regulations~~ this rule).

3.3.c. The application shall contain at least the information required by ~~this~~ Section 3.3 of this rule.

3.3.d. Where the information required pertains to activities proposed to be undertaken by the applicant, the applicant shall provide information on ~~such~~ the proposed activities.

3.3.e. The following information pertaining to ownership shall be submitted:

3.3.e.1. The name and address of the individual submitting the application;

3.3.e.2. The name, address and principal occupation of the following:

3.3.e.2.A. Each person, who as a stockholder or otherwise, has a proprietary interest of ten (10) percent or more in the facility;

3.3.e.2.B. Each officer and director of an incorporated facility;

3.3.e.2.C. Each trustee and beneficiary of a facility which is a trust; and

3.3.e.2.D. Each officer and director of any corporation which has a proprietary interest of fifty (50) percent or more in the facility;

3.3.e.3. The name and address of the owner of the facility if the owner is not the applicant; and

3.3.e.4. The name and address of the owner of the facility premises if he or she is not the applicant or the owner under Section ~~5.3.5~~ 3.3.e of ~~these regulations~~ this rule.

3.3.f. Where the applicant is the lessee or the assignee of the facility or the premises of the proposed facility, a signed copy of the lease and any assignment thereof shall be submitted with the initial application.

3.3.g. If the owner of the facility premises is a corporation, the name and address of the following shall be submitted as part of the application:

3.3.g.1. Each person who, as a stockholder or otherwise has a proprietary interest of ten (10) percent or more in the corporation;

3.3.g.2. Each officer and director of the corporation;

3.3.g.3. Each trustee and beneficiary of the corporation if it is a trust; and

3.3.g.4. Each officer and director of any corporation which has a proprietary interest of fifty (50) percent or more in the owning corporation.

3.3.h. The following information pertaining to operation of the facility shall be submitted:

3.3.h.1. The specific name and address of the facility;

3.3.h.2. The level of participation, if any, in the Medicare and Medicaid programs (e.g., skilled nursing facility, intermediate care facility);

3.3.h.3. The proposed bed capacity of the facility, by unit where units will be specialized;

3.3.h.4. An organizational plan for the facility indicating the number of employees and their positions and duties;

3.3.h.5. The name and address of the administrator;

3.3.h.6. Evidence of compliance with applicable laws, rules, and regulations governing zoning, buildings, safety, fire prevention, sanitation, and any other laws, rules, and regulations as specified in ~~these regulations~~ this rule;

3.3.h.7. Evidence of approval by the state health planning and development agency, if necessary (See Section ~~5.1.2~~ 3.1.b of ~~these regulations~~ this rule);

3.3.h.8. The names and locations of any other facilities which are or have been operated by the owner or manager, or for which one (1) of the individuals identified in Section ~~5.3.5~~ 3.3.e of ~~these regulations~~ this rule is a controlling person as would be identified under Section ~~5.3.5~~ 3.3.e of ~~these regulations~~ this rule for ~~such~~ the facility; and

3.3.h.9. Any additional information which the director may require.

3.3.i. A nonrefundable application fee of one hundred dollars ($100) shall be submitted with the application for an initial license.

3.3.j. An initial license shall be issued only after the director inspects the facility (See Section ~~6.2~~ 4.2 of ~~these regulations~~ this rule).

3.3.k. A facility found on inspection to have deficiencies shall be subject to Section ~~5.7~~ 3.7 and Section ~~16~~ 14 of ~~these regulations~~ this rule relating to plans of correction and penalties relating thereto.

3.3.l. The director shall issue an initial license if he or she finds:

3.3.l.1. That the individual applicant, and every partner, trustee, officer, director and controlling person of an applicant which is not an individual is a person responsible and suitable to operate, direct or participate in the operation of a facility by virtue of the following:

3.3.l.1.A. Financial capacity;

3.3.l.1.B. Appropriate business or professional experience;

3.3.l.1.C. A record of compliance with any lawful orders of the department or other

licensing agency for any jurisdiction in which the applicant or any individual identified in Section ~~5.3.5~~ 3.3.e of ~~these regulations~~ this rule has operated, directed, or participated in the operation of a facility; and

3.3.l.1.D. Lack of revocation of a license to operate a nursing or personal care home in West Virginia or any other jurisdiction during the previous five (5) years; and

3.3.l.2. That the facility substantially complies with ~~these regulations~~ this rule.

3.3.m. A license ~~issued after the effective date of these regulations shall be~~ is valid for one (1) year from the date of issuance.

3.4. Renewal License.

3.4.a. An applicant for a renewal license shall submit an application to the director on a form prescribed by the director containing at least the following information:

3.4.a.1. A balance sheet of the facility prepared not more than one (1) fiscal quarter preceding the application date, setting forth assets and liabilities, including all capital, surplus, reserve, depreciation and similar accounts;

3.4.a.2. A statement of operations of the facility for the twelve (12) month period not more than one (1) fiscal quarter precedent to the application date, setting forth all revenues, expenses, taxes, extraordinary items and other credits or charges;

3.4.a.3. A statement showing any changes in the name, address, management or ownership information on file with the director; and

3.4.a.4. a report on the facility in the form prescribed by the director.

3.4.b. If a facility is in compliance with the requirements of the Health Care Facility Financial Disclosure Law, ~~W. Va. Code § 16-5F, as amended~~ W. Va. Code § 16-5F-1 et seq., it ~~will~~ shall be considered to have met the requirements of ~~Section 5.4.1(a-e)~~ Sections 3.4.a.1, 3.4.a.2 and 3.4.a.3 of ~~these regulations~~ this rule.

~~5.4.3. For a facility having a valid license on the effective date of these regulations, the first application for renewal after the effective date of these regulations shall include the information required to be submitted by initial applicants pursuant to Section 5.3 of these regulations.~~

3.4.c. 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 scheduled expiration date of the current license.

3.4.d. The fee for renewal of a license ~~shall be four dollars ($4) per bed, determined according to the licensed bed capacity of the facility, and~~ as determined by the director pursuant to W. Va. Code § 16-5C-6(e) shall accompany the license renewal application.

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

3.4.e.1. The director finds the facility in compliance with the provisions of ~~W. Va. Code § 16-5C, as amended~~ W. Va. Code § 16-5C-1 et seq. and with ~~these regulations~~ this rule;

3.4.e.2. The licensee applied for a renewal within the time period specified in this Section;

and

3.4.e.3. The licensee submits the correct renewal fee with the application.

3.4.f. A renewal license ~~shall be~~ is valid for one (1) year from the date of issuance.

3.5. Provisional License.

3.5.a. If the director finds that a facility applying for renewal of a license is not in substantial compliance with the requirements of ~~these regulations~~ this rule and the provisions of ~~W. Va. Code § 16-5C, as amended~~ 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 facility is adequate to meet patient needs; and

3.5.b.2. That the facility 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 twelve (12) months.

3.5.d. A provisional license shall not be renewed.

~~3.5.e. A provisional license shall not be issued to a facility with uncorrected violations of a Class I standard as identified in Section 5.10 of these regulations.~~

3.6. Inspections of Licensed and Unlicensed Facilities.

3.6.a. The director shall conduct at least one (1) unannounced inspection annually of a facility holding a license to determine compliance with the provisions of ~~W. Va. Code § 16-5C, as amended~~ W. Va. Code § 16-5C-1 et seq. and ~~these regulations~~ this rule.

3.6.b. The director ~~shall have~~ has the right to enter the premises of a facility which the director has reason to believe is being operated or maintained as a nursing home without a license in accordance with W. Va. Code § 16-5C-9 ~~as amended~~.

3.6.c. If the owner or person in charge of an unlicensed facility refuses entry pursuant to this Section, the director shall apply to the circuit court of the county in which the facility is located for a warrant authorizing inspection.

3.6.d. If the director finds on the basis of the inspection that the facility is operating as a nursing home without a license, the facility shall apply within ten (10) days for a license in accordance with the provisions of ~~these regulations~~ this rule or shall reduce its patient census to less than ~~three (3)~~ four (4).

3.6.e. Failure to apply for a license shall be subject to the penalties established in Section ~~5.7.11~~ 3.7.k and Section ~~16~~ 14 of ~~these regulations~~ this rule.

3.6.f. A report of an inspection made pursuant to ~~these regulations~~ this rule shall be made in writing and shall be maintained on file by the director.

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

3.6.h. The director shall send a copy of a report of an inspection to the facility.

3.7. Plans of Correction.

3.7.a. A facility found on the basis of an inspection to have deficiencies shall develop a plan of correction and submit it to the director within ~~thirty (30)~~ twenty (20) days of receipt of a report of inspection.

3.7.b. A plan of correction shall specify a reasonable time within which the facility shall correct each violation cited in the report.

3.7.c. The time shall be the shortest possible time within which the facility reasonably can be expected to correct the violation.

3.7.d. The time stated shall be subject to approval or modification by the director.

3.7.e. In determining whether to approve the time submitted by the facility, the director shall consider the following factors:

3.7.e.1. The seriousness of the violation;

3.7.e.2. The number of patients affected;

3.7.e.3. The availability of required equipment or personnel;

3.7.e.4. The estimated time required for delivery and installation of required equipment; and

3.7.e.5. Any other relevant circumstances.

3.7.f. A plan of correction submitted by a facility shall be approved, modified or rejected by the director.

3.7.g. The director shall notify each facility within ten (10) days as to whether a plan of correction has been approved, modified or rejected.

3.7.h. If the director rejects or modifies the plan, the reasons for the action shall be stated.

3.7.i. When the director rejects a plan of correction, a reasonable time for submission of a revised plan may be allowed before civil penalties are assessed.

3.7.j. The director shall not allow time for submission of a revised plan where the deficiency to be corrected is ~~a Class I deficiency~~ is immediate jeopardy or causes a resident harm.

3.7.k. Upon the failure by a facility with deficiencies to submit a plan of correction which is approved by the ~~director~~ or to correct any deficiency within the time specified in an approved plan of correction, the director may assess civil penalties as ~~hereinafter~~ provided in this rule or may initiate any other legal or disciplinary action available to him in accordance with the ~~West Virginia Code of 1931, as~~

~~amended and these regulations~~ State law and this rule.

3.8. Interference with Official Duties.

No licensee or employee of any nursing home shall engage in the following activities:

3.8.a. Willfully prevent, interfere with or attempt to impede in any way the work of any ~~duly~~ authorized representative of the director or of the state fire marshal in the lawful enforcement of inspection duties;

3.8.b. Willfully prevent or attempt to prevent ~~any such~~ the representative from examining any relevant books or records in the conduct of inspection duties; or

3.8.c. Willfully prevent or interfere with ~~any such~~ the representative in the preserving of evidence of any violation of ~~these regulations~~ this rule.

~~5.9. Classification of Standards.~~

~~5.9.1. In accordance with the board has established a classification for each standard in these regulation.~~

~~5.9.2. Class I standards are those which when violated would present either an imminent danger to the health, safety or welfare of any patient or a substantial probability that death or serious physical harm would result.~~

~~5.9.3 . Class II standards are those which when violated would have a direct or immediate relationship to the health, safety or welfare of any patient but which would not create imminent danger if violated.~~

~~5.9.4. Class III standards are those which if violated would have an indirect or a potential impact on the health, safety or welfare of any patient.~~

~~5.10. Point System.~~

~~5.10.1. A Class I standard shall be assigned a value of ten (10) points if the facility fully complies with the standard. If the facility fails to comply fully with the standard but does demonstrate substantial compliance a score of nine (9) points may be assigned to the standard. If the facility fails to demonstrate full or substantial compliance with the standard but partial compliance is in evidence, a score of four (4) points may be assigned to the standard. If the facility fails to demonstrate partial compliance or if the violation is a repeat of a deficiency cited during the previous annual survey a partial score shall not be assigned and the standard shall be scored as a zero.~~

~~5.10.2. A Class II standard shall be assigned a value of nine (9) points if the facility fully complies with the standard. If the facility fails to comply fully with the standard but does demonstrate substantial compliance a score of eight (8) points may be assigned to the standard. If the facility fails to demonstrate full or substantial compliance with the standard but partial compliance is in evidence, a score of four (4) points may be assigned to the standard. If the facility fails to demonstrate partial compliance or if the violation is a repeat of a deficiency cited during the previous annual survey a partial score shall not be assigned and the standard shall be scored as a zero.~~

~~5.10.3. A Class III standard shall be assigned a value of eight (8) points if the facility fully~~

~~complies with the standard. If the facility fails to comply fully with the standard but does demonstrate substantial compliance a score of seven (7) points may be assigned to the standard. If the facility fails to demonstrate full or substantial compliance with the standard but partial compliance is in evidence, a score of four (4) points may be assigned to the standard. If the facility fails to demonstrate partial compliance or if the violation is a repeat of a deficiency cited during the previous annual survey a partial score shall not be assigned and the standard shall be scored as a zero.~~

~~5.10.4. Certain standards are available for extra credit, if, in the opinion of the director, the facility performs significantly in excess of the minimum standards set by these regulations. No more than one (1) extra credit point shall be assigned to any individual standard for which extra credit is available. Extra credit points are not permitted to offset zero scores. Items for which extra credit is available are identified in Sections 5.10.5, 5.10.6 and 5.10.7.~~

~~5.10.5. Class I standards are found in Table 64-13A at the end of this regulation; items for which extra credit is available are identified by an asterisk.~~

~~5.10.6. Class II standards are found in Table 64-13B at the end of this regulation; items for which extra credit is available are identified by an asterisk.~~

~~5.10.7. Class III standards are found in Table 64-13C at the end of this regulation; items for which extra credit is available are identified by an asterisk.~~

~~5.10.8. Certain material within the body of the regulations is explanatory or otherwise necessary linguistically but will not enter into the scoring system.~~

~~5.10.9. If a standard is not applicable for a particular facility, a full compliance value shall be assigned for that item for scoring and rating purposes.~~

~~5.11. Facility Rating.~~

~~5.11.1. The director shall assign a rating to each facility licensed under these regulations.~~

~~5.11.2. The rating shall be assigned and included on the license issued to the facility.~~

~~5.11.3. A rating shall be based on the results of the annual survey.~~

~~5.11.4. Scores and ratings for individual categories are shown in Table 64-13D found at the end of this regulation.~~

~~5.11.5. A facility must obtain the number of points indicated in the table Section 5.11.4 within each category to obtain a particular category rating. Points scored in any individual category shall not be permitted to offset deficiencies within another category. Therefore, no total of value points is to be computed. An overall rating for the facility cannot be determined solely on the basis of total points earned.~~

~~5.11.6. For purposes of assigning an overall rating, a category rating of "A" shall be assigned a score of four (4); a category rating of "B" shall be assigned a score of three (3); a category rating of "C" shall be assigned a score of two (2); and a category rating of "F" shall be assigned a score of zero (0). These category rating scores for the ten categories shall be totaled and an average category rating score shall be computed. An overall facility rating shall be assigned based on the average category rating score and the number of categories rated "F" as follows:~~

~~(a) If a facility is given a rating of "F" on as many as one (1) category or has an average category rating score of less than 2.0, an overall rating of "F" shall be assigned;~~

~~(b) For an average score of 2.0 through 2.59, an overall rating of "C" shall be assigned;~~

~~(c) For an average score of 2.6 through 3.59, an overall rating of "B" shall be assigned; and~~

~~(d) For an average score of 3.6 through 4.0, an overall rating of "A" shall be assigned.~~

~~5.11.7. A facility with an overall rating of "F" may be issued a provisional license as described in Section 5.5 of these regulations and in W. Va. Code 16-5C-6, as amended, or may be subject to other actions by the director as described in Section 16 of these regulations and in W. Va. Code § 16-5C, as amended.~~

3.9. Complaint Investigation.

3.9.a. Any person may register a complaint with the director alleging violation of applicable laws, rules or regulations by the facility. A complainant shall state the substance of the complaint and shall identify the facility involved.

3.9.b. Upon receipt of a complaint, the director shall attempt to determine whether the complaint is willfully intended to harass a licensee or is without reasonable basis.

3.9.c. 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.

~~5.12.4. A complaint which is viable after initial determination pursuant to Section 5.12.2 of these regulations shall be investigated.~~

3.9.d. The director shall conduct an unannounced inspection of the facility to determine the validity of the complaint.

3.9.e. The department shall provide the facility with notice of the substance of the complaint only at the time of the inspection.

3.9.f. The director shall conduct ~~such~~ other investigation ~~as is~~ necessary to determine the validity of the complaint.

3.9.g. No later than ~~five (5)~~ fifteen (15) working days after completing an investigation of a complaint the director shall notify the complainant and the facility in writing of the results of the investigation.

3.9.h. A description of the corrective action the facility will be required to take and of any disciplinary action to be taken by the director will be sent to the complainant upon receipt of written request.

3.9.i. If a complaint has been found to have merit, the director shall advise any injured party of the possibility of a civil remedy under ~~W. Va. Code § 16-5C, as amended~~ W. Va. Code § 16-5C-1 et seq.

3.9.j. The name of a complainant or of any person named in a complaint shall be safeguarded by the department and shall not be disclosed without the individual's written authorization.

3.9.k. Disclosure of the name of a patient identified in a complaint who is not the complainant shall be subject to the confidentiality provisions otherwise in effect in ~~these regulations~~ this rule and shall not be disclosed without the patient's prior written authorization.

3.9.l. If a complaint becomes the subject of a judicial proceeding, nothing in this Section shall be construed to restrict disclosure of information which would otherwise be disclosed in a judicial proceeding.

3.9.m. Before any complaint is disclosed to a facility, or to the public pursuant to Section ~~5.13~~ 3.11 of ~~these regulations~~ this rule, any information in the complaint which could reasonably identify the complainant or a patient shall be deleted.

3.9.n. A facility is prohibited from discharging or in any manner discriminating against a patient or employee because the individual has filed a complaint or participated in a proceeding authorized by ~~W. Va. Code § 16-5C,as amended~~ W. Va. Code § 16-5C-1 et seq.

3.9.o. Violation of the prohibition of Section ~~5.12.15~~ 3.9.n of ~~these regulations~~ this rule ~~shall be~~ is grounds for suspending or revoking the facility's license.

3.9.p. A rebuttable presumption of retaliatory action against a patient shall arise against any facility which in any way adversely discriminates against a patient by whom or on whose behalf a complaint has been submitted to the director or who is involved in any proceeding instituted under ~~W. Va. Code § 16-5C, as amended~~ W. Va. Code § 16-5C-1 et seq., within one hundred and twenty (120) days of the filing of the complaint or the institution of any such proceeding.

3.10. Action on Complaints of Resident Neglect and Abuse, and Misappropriation of Resident Property.

3.10.a. The director shall review all allegations of resident neglect and abuse, and misappropriation of resident property regardless of their source.

3.10.b. If there is reason to believe, either through oral or written evidence, that an individual used by a facility to provide services to residents could have abused or neglected a resident or misappropriated a resident's property, the director shall investigate the allegation.

3.10.c. If the director makes a preliminary determination that the abuse, neglect or misappropriation of property occurred, he or she must notify in writing:

3.10.c.1. The individuals implicated in the investigation; and

3.10.c.2. The current administrator of the facility in which the incident occurred.

3.10.d. The director shall notify the individuals specified in Section 3.13.c of this rule within ten (10) working days of the director's investigation. The notice must include the:

3.10.d.1. Nature of the allegation(s);

3.10.d.2. Date and time of the occurrence;

3.10.d.3. Right to a hearing;

3.10.d.4. Director's intent to report the substantiated findings in writing, once the individual has had the opportunity for a hearing, to the nurse aide registry or appropriate licensure authority;

3.10.d.5. Fact that the individual's failure to request a hearing in writing within thirty (30) days from the date of the notice will result in the director reporting the substantiated findings to the nurse aide registry or appropriate licensure authority;

3.10.d.6. Consequences of waiving the right to a hearing;

3.10.d.7. Consequences of a finding through the hearing process that the alleged resident abuse or neglect, or misappropriation of resident property did occur; and

3.10.d.8. Fact that the individual has the right to be represented by an attorney at the individual's own expense.

3.10.e. The director shall complete the hearing and the hearing record within one hundred twenty (120) days from the day he or she receives the request for a hearing.

3.10.f. The director shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

3.10.g. If the finding is that the individual has neglected or abused a resident or misappropriated resident property, or if the individual waives the right to a hearing, the director shall report the findings in writing within ten (10) working days to:

3.10.g.1. The individual;

3.10.g.2. The current administrator of the facility in which the incident occurred;

3.10.g.3. The administrator of the facility that currently employs the individual, if different than the facility in which the incident occurred;

3.10.g.4. The licensing authority for individuals used by the facility other than nurse aides, if applicable; and

3.10.g.5. The nurse aide registry for nurse aides.

3.11. Availability of Reports and Records.

3.11.a. The director shall make available for public inspection and, upon request, provide at a nominal cost copies of the following documents:

3.11.a.1. Applications and exhibits;

3.11.a.2. Inspection reports;

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

3.11.a.4. Any other reports filed with or issued by the director pertaining to the compliance

of a facility with applicable laws, rules and regulations.

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

3.11.c. The director shall treat a report of inspection of a facility as public information from the time a written plan of correction is submitted.

3.11.d. If the facility does not submit a written plan of correction within the time specified by the director pursuant to Section ~~5.7~~ 3.7 of ~~these regulations~~ this rule, reports pertaining to the facility shall be made public at the expiration of the specified time.

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

3.11.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 patient.

3.11.g. Before releasing a report or record ~~deemed~~ considered to be public information the director shall delete any confidential information regarding a patient which could reasonably permit identification of the patient.

3.11.h. The director shall delete from complaints made available to the public under this Section any information required to be held confidential under Section ~~5.12~~ 3.12 of ~~these regulations~~ this rule.

3.12. Registry of Organizations with Right of Access.

3.12.a. The director shall maintain a register of all organizations and groups approved for access to facilities under the provisions of Section ~~9.11~~ 7.11 of ~~these regulations~~ this rule and W. Va. Code § 16-5C-5(b)(1)(i), ~~as amended~~.

3.12.b. ~~Such~~ These groups shall render assistance to patients without charge. The primary function of ~~such~~ these groups shall be to improve or enhance the quality of life for patients in the facility. Eligible groups shall include, but not be limited to, such groups as ombudsman programs, long-term care advocates and legal service organizations.

3.12.c. Any organization or group desiring ~~such~~ approval under this rule shall apply in writing to the director, stating the name, address and general purpose of the organization or group and reasons why ~~such~~ the access privilege should be granted. The director may in his or her sole discretion require additional information.

3.12.d. The director shall review any ~~such~~ the application and shall notify the applicant in writing within ten (10) working days of the receipt of all information requested whether access rights have been approved or denied.

3.12.e. The director shall have the right to revoke ~~such~~ the approval of a group or organization or of a particular representative, upon presentation of evidence that any organization, group, or particular representative has failed to comply with the provisions of Section ~~9.11~~ 7.11 of ~~these regulations~~ this rule.

3.12.f. The director shall publish a list of approved groups and organizations annually. Copies

of the list shall be distributed to facilities annually. Copies may be obtained upon request.

3.13. Nursing Home Licensing Advisory Council.

3.13.a. There shall be established a nursing home licensing advisory council which shall:

3.13.a.1. Advise the director on the implementation of ~~these regulations~~ this rule;

3.13.a.2. Monitor and report to the director the impact of ~~these regulations~~ this rule on the cost and quality of nursing home care;

3.13.a.3. Assist the director in the development of orientation and training programs for facilities in nursing home management and regulatory compliance; and

3.13.a.4. Make recommendations to the director for regulatory improvement.

3.13.b. The nursing home licensing advisory council shall be composed of:

3.13.b.1. Three (3) members who are administrators of licensed nursing homes with sixty (60) or fewer beds;

3.13.b.2. Three (3) members who are administrators of licensed nursing homes with more than sixty (60) beds;

3.13.b.3. One (1) member who is an administrator of a state-operated long-term care facility;

3.13.b.4. One (1) member who represents the State commission on aging;

3.13.b.5. One (1) member who represents the ~~State department of welfare~~ division of human services;

3.13.b.6. One (1) member who represents the division of health ~~department~~;

3.13.b.7. Three (3) consumers who have or have had a close family member as a patient in a nursing home. Consumer members of the council shall not profit in any way, either directly or indirectly, from nursing or personal care homes or be employed by any of the state agencies listed in (d), (e) or (f); and

3.13.b.8. One (1) member who represents social work services.

3.13.c. The members of the nursing home licensing advisory council shall be appointed by the director for two-year terms. The director shall consult with and obtain recommendations from representative groups in making appointments.

3.13.d. The nursing home licensing advisory council shall be staffed by the department.

3.13.e. Meetings of the council shall be held no less than quarterly per year.

3.13.f. Non-government members of the council shall be reimbursed by the department for travel expenditures associated with meetings and actual expenditures otherwise incurred in the performance

of the duties of their office according to the state rules governing reimbursement for travel expenditures.

§ 64-13-4. Physical Facilities, Equipment, and Related.

4.1. Applicability.

4.1.a. The provisions of Section ~~6~~ 4 ~~shall~~ of this rule apply to the physical facilities and services of all nursing homes, except that the requirements may be modified for existing facilities if their application clearly would be impractical in the judgment of the director, and provided that ~~such~~ the alternate arrangements are not, in the opinion of the director, considered to be detrimental to the health or safety of the occupants and employees of ~~such~~ the facility. ~~Such~~ The modification shall conform as nearly as is practicable to the current ~~regulations~~ rule.

4.1.b. For purposes of ~~these regulations~~ this rule, an existing facility ~~shall be~~ is defined as a facility having either a valid nursing home license or licensed as an extended care facility according to Hospital Licensure, ~~West Virginia Department of Health Legislative Rules, 64 CSR 12, 1987,~~ West Virginia Department of Health and Human Resources Administrative Rules, 64 CSR 12, as of or within a period of one (1) year prior to ~~the effective date of these regulations~~ April 6, 1990.

4.2. Applications Required.

4.2.a. Detailed plans for new construction, additions, renovations, and alterations, drawn to scale of not less than one-eighth inch equals one (1) foot, shall be submitted to and approved by the director before construction is started.

4.2.b. Two (2) copies of these plans and specifications signed by an architect registered in the State of West Virginia shall be submitted to the director, and shall show, properly identified, the general arrangement and construction of the building and location of all fixed equipment.

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

4.2.d. The requirement for a registered architect may be waived by the director.

4.2.e. A performance statement ~~must~~ shall be obtained by the owner from the builder of a proposed facility stating that in constructing the facility the builder has followed the architect's plans which are on file with and approved by the director.

4.2.f. All new facilities shall be inspected by the director and shall have the director's approval prior to admitting patients. A request for a pre-opening inspection shall be made in writing thirty (30) days prior to the proposed opening date.

4.2.g. Unless substantial construction is started within one (1) year of the date of approval of final drawings, ~~it will be necessary for~~ the owner or architect ~~to~~ shall secure written notification from the director that ~~such~~ the plan approval for construction is still valid and in compliance with this ~~Section~~ rule.

4.2.h. Plans for addition, removal or modification of equipment which is of the type which is permanently affixed to the building or which may otherwise involve or necessitate new construction, alteration of, or addition to the facility shall be submitted to and approved by the director, prior to beginning any construction, alterations, removal or modification.

4.2.i. Additionally, certain other changes involving equipment, which may or may not require physical changes in the facility, but which may relate to other standards and requirements of ~~these regulations~~ this rule may require the director's approval. Facilities may request judgment and approval in advance from the director regarding a particular change or rearrangement. Areas in which changes are likely to require approval include, but are not limited to: kitchen; laundry; and heating equipment.

4.3. Construction, Life Safety and Related. ~~(Class I)~~

4.3.a. Except as provided in Section ~~6.1.1~~ 4.1.a of ~~these regulations~~ this rule, the following documents are adopted as construction, equipment, physical facility and related procedural standards for all existing nursing homes, all new construction, and any additions, alterations, renovations, or conversions of existing buildings:

4.3.a.1. The relevant sections of Minimum Requirements of Construction and Equipment for Hospitals and Medical Facilities - U.S. Department of Health, Education, and Welfare (DHEW NO. (HRA) 81-14500);

4.3.a.2. Minimum Property Standards for Care-Type Housing (4920.1) and Minimum Property Standards (4930.1), U.S. Department of Housing and Urban Development; and

4.3.a.3. ~~The 1981 edition of the National Building Code~~ Applicable rules of the state fire commission.

~~(d) National Fire Protection Association - National Fire Codes; and Fire Prevention Code known as the Fire Safety Code, as adopted by the West Virginia State fire commission and the additional promulgated fire safety regulations as filed by the State fire commission with the secretary of state;~~

~~(e) W. Va. Code § 18-10F, and any rules and regulations promulgated hereunder regarding handicapped persons and public buildings and facilities.~~

4.3.b. When standards of ~~these regulations~~ this rule exceed requirements of the documents listed above ~~these regulations~~ this rule shall prevail.

4.4. Site Characteristics and Accessibility. ~~(Class I)~~

4.4.a. The facility shall be accessible to physicians, medical facilities and other necessary services.

4.4.b. There shall be good drainage, approved sewerage disposal, approved potable water supply, electricity, telephone, and other necessary facilities available on or near the site.

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

4.4.d. Accessibility shall be facilitated by hard surfaced, all-weather roads which are kept passable at all times. There shall be all-weather, hard surfaced walks and parking areas provided.

4.4.e. Local building codes and zoning restrictions shall be observed. Evidence of compliance signed by local fire, building and zoning officials shall be available.

4.4.f. Where local codes, rules or regulations permit standards lower than those required by ~~these regulations~~ this rule, the facility shall meet the standards set forth ~~herein~~ in this rule.

4.5. Increase in Bed Capacity ~~(Class I)~~ - Bed capacity may be increased only with the permission of the director.

4.6. Equipment and Furnishing of Patient Rooms ~~(Class II)~~

4.6.a. Equipment and furnishings in patient rooms shall include at least the items in this Section.

4.6.b. A bed shall be provided for each patient.

4.6.b.1. Each bed shall be substantially constructed, not less than thirty-six (36") wide and in good repair.

4.6.b.2. Each non-ambulant patient shall be provided with a hospital-type bed.

4.6.b.3. Rollaway beds, folding beds and cots shall not be used.

4.6.b.4. Bed springs and mattress shall be in good repair and fit the bed.

4.6.c. At least one (1) clean, comfortable pillow shall be provided for each bed; additional pillows shall be available to meet the needs of the patient.

4.6.d. Each patient shall be provided with a bedside stand with a drawer to accommodate toilet articles and utensils.

4.6.e. Each patient room shall have reasonable closet and drawer space for clothing and personal items currently being used by the patient.

4.6.f. Each room shall have individual towel and wash cloth racks or an equivalent substitute.

4.6.g. Window shades and curtains or draperies shall be provided and maintained in good condition.

4.6.h. One (1) comfortable chair suitable for the patient's use shall be provided for each patient in each room.

4.7. Nursing Equipment, Sterile Supplies, and Linens. ~~(Class I)~~

4.7.a. Nursing equipment shall be sufficient to meet patients' needs. If warranted by a patient's condition, each individual shall have the following:

4.7.a.1. Wash basin;

4.7.a.2. Bedpan;

4.7.a.3. Urinal;

4.7.a.4. Emesis basin; and

4.7.a.5. Water pitcher and cup or drinking glass.

4.7.b. Utensils shall be sterilized between use by different patients.

4.7.c. Styrofoam water pitchers and cups shall not be used.

4.7.d. Equipment constructed of enamelware or materials which cannot be sterilized shall not be used.

4.7.e. Damaged utensils shall not be used.

4.7.f. A facility shall have a sufficient number of thermometers to meet patient needs. These may be the standard mercury thermometers or electronic or thermo-chemical types of thermometers.

4.7.g. A facility shall disinfect each thermometer after each use.

4.7.h. A facility shall have sufficient hot water bottles with suitable covers to meet patient needs.

4.7.i. Nursing equipment and sterile supplies shall be stored in an area which is completely separate from contact with patients.

4.7.j. Sterile supplies shall not be stored beyond their dated shelf life.

4.7.k. Storage space shall be provided on each nursing unit for clean linen.

4.7.l. Sufficient quantities of linens shall be available to nursing personnel to assure the cleanliness and comfort of each patient.

4.7.m. Individual towels, wash cloths and blankets shall be provided for each patient.

4.7.n. Waterproof mattresses or mattress covers shall be provided for each patient.

4.7.o. When electric blankets are used they shall be UL approved and they shall be checked periodically by facility staff for safety.

4.8. General Maintenance. ~~(Class II)~~

4.8.a. The facility shall establish a program of preventive maintenance to ensure that equipment is operative and that the interior and exterior of the building are safe, clean and orderly. Maintenance and housekeeping services may be provided by another organization under written contract.

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

4.8.c. The grounds shall be kept in sanitary, safe, and presentable condition and shall be free from accumulated rubbish and other health hazards of a similar nature.

4.8.d. A facility shall be kept free from insects, rodents, and vermin through operation of a pest control program.

4.8.e. Pesticides shall be applied so as to prevent contamination to patients and food.

4.8.f. Insecticidal strips shall not be used.

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

4.9. Waste and Refuse Disposal. ~~(Class II)~~

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

4.9.b. A facility shall have procedures for disposing of soiled dressings and similar items in a safe and sanitary manner.

4.10. Cleaning Supplies. ~~(Class III)~~ - A facility shall have sufficient supplies and equipment, properly stored and conveniently located, to permit frequent cleaning of floors, walls, woodwork, windows, screens, and to facilitate all necessary building and grounds maintenance.

4.11. Laundry. ~~(Class I)~~ - The facility shall have written procedures for handling, storing, processing and transporting of linens and other laundered goods in ~~such~~ a manner to prevent the spread of infection.

§ 64-13-5. Facility Governance and Management.

5.1. Governing Body. ~~(Class II)~~

5.1.a. A facility shall have an effective governing body, or designated persons so functioning, which is legally responsible for the operation of the facility.

5.1.b. The governing body shall adopt and enforce rules and regulations governing the health care and safety of patients, the protection of their personal and property rights, and the operation of the facility.

5.1.c. The governing body shall develop a written facility plan (See also Section ~~5.3.8~~ 3.3.h of ~~these regulations~~ this rule) which shall be reviewed annually. In addition to the other requirements described in law and in ~~these regulations~~ this rule, the facility plan shall include:

5.1.c.1. An annual operating budget including all anticipated income and expenses; and

5.1.c.2. A capital expenditure plan for at least a three (3) year period.

5.1.d. The governing body shall assure the development and maintenance of written policies and procedures which govern the services the facility provides. ~~Such~~ The policies and procedures shall include as a minimum all policies and procedures required by ~~these regulations~~ this rule.

5.1.e. A copy of each written policy shall be available for inspection on request by staff, residents, patients and members of the public.

5.2. Administrator. ~~(Class II)~~

5.2.a. The owner or governing body of a facility shall appoint a qualified administrator who holds a currently valid license or ~~an~~ emergency permit issued by the West Virginia nursing home administrators licensing board~~, pursuant to W. Va. Code § 30-25, as amended~~.

5.2.b. A facility shall notify the director in writing within ten (10) days of any change in administrators.

5.2.c. An emergency administrator shall be employed only upon prior verbal approval from the director which the director shall confirm in writing.

5.2.d. The administrator shall be given the necessary authority and responsibility to manage the facility, to implement administrative policy, and to plan, organize and direct the responsibilities delegated to him by the owner or governing body or assigned to him under ~~these regulations~~ this rule.

5.2.e. A facility having an administrator performing in that capacity on other than a full-time basis shall have a written contract, or, if the owner functions as the administrator, a written statement, specifying the extent of the administrator's responsibility to the facility and stating specifically how the facility will assure that the functions assigned to the administrator under ~~these regulations~~ this rule will be performed.

5.2.f. An individual shall not act as or be the administrator of more than two (2) long-term care facilities, and shall otherwise conform to applicable rules ~~and regulations~~ promulgated by the West Virginia nursing home administrator's licensing board including limitations and documentation of service.

5.2.g. The governing body or owner shall designate in writing, by name or position, a qualified individual to act for the administrator in his or her absence.

5.3. Administrator Functions. ~~(Class II)~~

5.3.a. The administrator shall be responsible for managing the operations of the facility and delegating his or her authority as necessary.

5.3.b. The administrator shall have the authority to assure facility compliance with applicable provisions of laws, rules and regulations.

5.3.c. The administrator shall assure that public information describing the facility's services is accurate and fully descriptive.

5.3.d. The administrator shall serve as liaison to the governing body, medical staff and other professional and supervisory staff.

5.3.e. The administrator shall evaluate and implement recommendations from the facility's committees established pursuant to ~~these regulations~~ this rule.

5.3.f. The administrator shall participate regularly in continuing education programs and other professional activities in the field of long-term care and health services administration.

5.3.g. The administrator shall be responsible for the completion, maintenance and submission of reports and records required by the director.

5.3.h. Each member of the governing body and each owner shall be apprised by the administrator of all:

5.3.h.1. Official inspection reports and complaint investigation reports issued by the director;

5.3.h.2. Plans of correction submitted by the facility to the director;

5.3.h.3. Facility licensure classification; and

5.3.h.4. Requests, orders, complaints or policy statements filed with the administrator by the director.

5.3.i. Where ~~these regulations require~~ this rule requires either statements of policy or procedures, or documentation, the administrator shall be responsible for ensuring that all ~~such~~ the statements are in writing, and unless ~~these regulations state~~ this rule states otherwise, ~~such~~ the statements shall be reviewed annually, and signed and dated by the administrator at the most recent review.

5.3.j. The administrator shall be responsible for the reporting of deaths, reportable diseases, and any other reports required by state and federal law, rules and regulations.

5.4. Admission, Discharge and Transfer Policies . ~~(Class II)~~

5.4.a. A facility shall develop and implement written policies regarding the admission, discharge and transfer of patients. Policies shall include but are not limited to those in this Section.

5.4.b. A facility shall admit only those persons whose needs it can meet with its services alone or in cooperation with other providers with whom it has appropriate written agreements to ensure its responsibility for the care provided to its patients.

5.4.c. A facility shall maintain written agreements assuring that medical and remedial services required by the patient but not regularly provided within the facility can be obtained promptly when needed.

5.4.d. A facility shall have written transfer agreements with one (1) or more hospitals assuring prompt transfer of a patient to a hospital or other appropriate provider when that patient's physical or mental condition has changed so that the facility can no longer meet that patient's needs.

5.4.e. Except in an emergency, a facility shall consult the patient, his or her next of kin, his or her physician and the responsible agency, if any, at least seven (7) days in advance of ~~a~~ the patient's transfer or discharge.

5.5. Admission Contract. ~~(Class II)~~

5.5.a. The relationship of a patient to the facility shall be covered by a contract entered into at the time of or prior to the patient's admission, between the patient or his or her legal representative and the facility.

5.5.b. Each party to the contract shall have a copy of the contract.

5.5.c. The facility shall keep each contract on file for five (5) years after the date it is terminated.

5.5.d. A contract shall include at least the following provisions:

5.5.d.1. The daily, weekly or monthly rate charged by the facility, and refund provisions for unused portions;

5.5.d.2. The services and accommodations to be provided by the facility in consideration for the daily, weekly or monthly rate;

5.5.d.3. The services for which the facility will make arrangement;

5.5.d.4. Delineation of responsibilities for provision of payment for services not covered by the basic rate, including but not limited to medical treatment, medications, special equipment and appliances, dressings, clothing, personal supplies of the patient, services of related medical and paramedical personnel;

5.5.d.5. Facility procedures governing emergencies including immediate care of the patient, persons to be notified, and reports to be prepared;

5.5.d.6. Provision for review and renegotiation of the contract thirty (30) days prior to any change in the terms of the contract; and

5.5.d.7. The specification of any rights, duties, and obligations of the parties in addition to those required by law.

5.5.e. ~~Subsection~~ Section 5.5.d of this rule ~~7.5.4 shall~~ does not apply to patients receiving care and treatment ~~pursuant to a provider agreement between the nursing home and the department of Welfare under Title XIX and Chapter 9 of the Public Welfare Law of West Virginia~~ under the Medicare or Medicaid programs; except that ~~such~~ these patients shall receive a written contract delineating their responsibilities in accordance with ~~Subsection 7.5.4~~ Section 5.5.d of this rule.

5.6. Life Care Contract. ~~(Class III)~~

5.6.a. A facility or licensee is prohibited from entering into a life care contract as a provider of services without the director's prior written authorization.

5.6.b. An application for authorization ~~must~~ shall be submitted to the director, on forms provided by the director, stating fully the terms and conditions of the contract, the financial conditions of the applicant and other information as the director may require.

5.6.c. For the purposes of ~~this Subsection of~~ this rule, a life care contract is an agreement between a facility and an individual in which the facility agrees to provide to the individual for the duration of his or her life or for a term of more than one (1) year, nursing services, medical services or personal care services, in addition to board and lodging. The agreement is conditioned upon the individual's paying consideration to the facility in lieu of or in addition to the payment of the facility's customary charges for the care and services involved.

5.7. Prohibited Activities. ~~(Class III)~~

5.7.a. A facility is prohibited from advertising, asserting, representing or otherwise implying in any manner that it may render care or services other than those specifically within the scope of the license issued to it by the director.

5.7.b. A facility is prohibited from renting, leasing or using its premises for any purposes not related to that for which it is licensed, unless the use is specifically authorized in advance, in writing, by the director.

5.7.c. Residence in a facility is restricted to patients and staff, unless otherwise approved in writing by the director.

5.8. General Recordkeeping Requirements. ~~(Class III)~~

5.8.a. The facility shall maintain records in accordance with ~~these regulations~~ this rule and accepted professional standards and practices.

5.8.b. Compliance with this Section shall not preclude compliance with other specific provisions in ~~these regulations~~ this rule.

5.8.c. Records and reports required by the provisions of ~~these regulations~~ this rule shall be completed legibly in ink or typewritten.

5.8.d. Complete legible photocopies of records ~~will~~ shall be accepted in fulfillment of the requirements of ~~these regulations~~ this rule.

5.9. Administrative Records. ~~(Class III)~~ - The facility shall maintain on file in its administrative office the following records:

5.9.a. Documentation of the facility's professional and administrative staff meetings;

5.9.b. Documentation of visits by professional consultants employed by the facility in accordance with the requirements of ~~these regulations~~ this rule;

5.9.c. A current copy of ~~these regulations~~ this rule;

5.9.d. A copy of the facility's current policy and procedures manual containing copies of all policies and procedures required by the provisions of ~~these regulations~~ this rule;

5.9.e. 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;

5.9.f. Reports of any other inspections required by ~~these regulations~~ this rule;

5.9.g. Copies of contracts and agreements, including agreement for the provision of professional services by outside agencies or contractors, to which the facility is a party;

5.9.h. Documents demonstrating control and ownership of the facility;

5.9.i. Bylaws of the governing body, if applicable;

5.9.j. Reports of accidents or incidents involving patients as required by Section ~~9.6.1~~ 7.6.a and Section ~~11.8~~ 9.8 of ~~these regulations~~ this rule;

5.9.k. Records of all transactions conducted by the facility involving personal funds of patients in the facility during the previous five (5) years (See Section ~~9.9~~ 7.9 of ~~these regulations~~ this rule);

5.9.l. All menus prepared by the facility in accordance with the requirements of Section ~~12.3~~ 10.3 of ~~these regulations~~ this rule;

5.9.m. Records of food purchases made in compliance with Section ~~12.3~~ 10.3 of ~~these regulations~~ this rule;

5.9.n. A copy of the facility's emergency evacuation plan as required by Section ~~8.2~~ 6.2 of ~~these regulations~~ this rule;

5.9.o. A chronological record of all patients admitted to the facility with an identifying number, date of admission and where appropriate date of discharge; and

5.9.p. All other records required by state or federal laws, rules, and regulations, except those for which maintenance elsewhere is required.

5.10. Personnel Records. ~~(Class III)~~

5.10.a. The facility shall maintain a confidential personnel record for each employee containing sufficient information to support the employee's assignment. The record shall contain at least the following information:

5.10.a.1. A dated application for employment which includes a resume of the applicant's training and experience and verification by references;

5.10.a.2. An employee health record containing the results of pre-employment and annual physical examination, including tuberculosis screening if indicated by exposure or prevalence;

5.10.a.3. Evaluations of work performance signed by employee and supervisor;

5.10.a.4. Subsequent change of status forms including change of address, salary adjustments, merit increases, promotions;

5.10.a.5. Current licensure, registration or certification status demonstrating appropriate licensure, registration or certification and periodic verification; and

5.10.a.6. A summary record of each employee's in-service training.

5.10.b. The facility shall make available to employees and assure explanation of written personnel policies, procedures, organizational charts and job descriptions.

5.10.c. The facility shall maintain a job description for each job category, including the following:

5.10.c.1. Job title and qualifications, including educational and skill requirements;

5.10.c.2. General description of duties and responsibilities including limitations, if applicable; and

5.10.c.3. Supervision to be given and received.

5.11. Staff Development. ~~(Class II)~~

5.11.a. Reference should be made to the following sections of ~~these regulations~~ this rule to determine the minimum appropriate orientation and training requirements:

5.11.a.1. Section ~~7.10.1(f)~~ 5.10.a:6 (relating to in-service training records);

5.11.a.2. Sections ~~7.10.2~~ 5.10.b and ~~7.10.3~~ 5.10.c (relating to personnel policies, job descriptions, etc.);

5.11.a.3. Section ~~8.3.1~~ 6.3.a (relating to training for disasters);

5.11.a.4. Section ~~9.1.4~~ 7.1.d (relating to patients' rights training);

5.11.a.5. Section ~~9.10.7~~ 7.10.g (relating to training in complaint procedures);

5.11.a.6. Section ~~10.1.3(h)~~ 8.1.c.8 (relating to physician participation in training);

5.11.a.7. Section ~~11.2.4(e)~~ 9.2.d.5 (relating to director of nursing duty to orient and train nursing service personnel); and

5.11.a.8. Section ~~11.5.2~~ 9.5.b (relating to orientation and training in restorative nursing).

5.11.b. Personnel who provide direct patient care but are not required to be licensed, registered or certified shall receive special instruction under the direction of the director of nursing services.

5.11.c. A facility shall provide for a written plan covering a period of twelve (12) months at a time for continuing education and training to develop the skills of all personnel. This program shall include at least:

5.11.c.1. Training related to problems and needs of the aged, ill and disabled;

5.11.c.2. In-service training concerning prevention and control of infections, fire and safety rules, accident prevention, confidentiality of patient information, protection of patient privacy and personal property rights, and all other topics required by ~~these regulations~~ this rule; and

5.11.c.3. Provisions for periodic in-service training for all employees of the facility.

5.11.d. A facility shall document the contents of and attendance at in-service training.

5.11.e. A facility shall designate an in-service training coordinator who shall be responsible for: (a) implementing the planned program of in-service training; and (b) ensuring the documentation of attendance at all in-service training programs.

5.11.f. No employee with more than one (1) year's tenure with the facility shall be counted in terms of meeting staffing requirements for licensure purposes unless that employee has completed appropriate in-service training requirements.

5.11.g. No employee shall be counted in terms of meeting staffing requirements for licensure purposes, unless that employee has completed appropriate orientation requirements.

§ 64-13-6. General Health and Safety.

6.1. General Health and Safety Requirements. ~~(Class I)~~

6.1.a. A facility shall develop and implement written policies and procedures to assure that a

safe and sanitary environment exists for patients and personnel.

6.1.b. Employees with symptoms or signs of communicable diseases or infected skin lesions shall not be permitted to work.

6.1.c. Incidents and accidents to patients and personnel shall be reviewed to identify health and safety hazards.

6.2. Disaster Plan. ~~(Class II)~~

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

6.2.b. The disaster plan shall be developed and maintained with the assistance of qualified fire, safety, and other appropriate experts.

6.2.c. Brief instructions and guidelines regarding procedure shall be available at the nurses station.

6.2.d. Evacuation routes shall be posted as appropriate.

6.2.e. There shall be policies and procedures for implementing the plan.

6.2.f. The disaster plan shall include at least the following:

6.2.f.1. Assignment and training of personnel for specific tasks and responsibilities;

6.2.f.2. Procedures for identification and prompt transfer of casualties and records, when necessary, to the facility most appropriate for the administration of definitive care;

6.2.f.3. Policies and procedures with regard to transporting casualties and uninjured individuals;

6.2.f.4. Instructions regarding the location and use of alarm systems and signals, and of firefighting equipment;

6.2.f.5. Information regarding methods of fire containment;

6.2.f.6. Procedures for notification of appropriate personnel;

6.2.f.7. Specification of evacuation routes and procedures; and

6.2.f.8. Frequency of fire drills.

6.3. Disaster Training. ~~(Class II)~~

6.3.a. The facility shall operate an internal disaster preparedness program which includes orientation and ongoing training and drills in procedures and specific assignments.

6.3.b. The disaster plan shall be rehearsed at least annually.

6.4. Fire Drills. ~~(Class I)~~ - Fire drills shall be held at least quarterly for each shift.

6.5. Disaster Rehearsal and Fire Drill Reports. ~~(Class II)~~ - A dated written report and evaluation of each disaster rehearsal and fire drill shall be maintained on file for at least two (2) years.

6.6. Provisions for Emergency Calls. ~~(Class I)~~

6.6.a. A facility shall have at least one (1) noncoinoperated telephone or one (1) extension on each patient occupied unit and additional telephones and extensions if needed to summon help in case of emergency.

6.6.b. A facility shall post emergency call information conspicuously near each telephone, exclusive of patient telephones, in the facility. ~~Such~~ The information shall include at least the following:

6.6.b.1. Telephone number of fire, police and other appropriate emergency services;

6.6.b.2. Names and telephone numbers of all personnel to be called in case of fire or emergency;

6.6.b.3. The name and telephone number of the physician on call; and

6.6.b.4. Where applicable, name and telephone number for the consulting nurse when on call.

6.7. Infection and Communicable Disease Control. ~~(Class I)~~

6.7.a. A nursing home shall establish an infection control committee which shall consist of at least the following persons:

6.7.a.1. The administrator;

6.7.a.2. The medical director or another physician;

6.7.a.3. The director of the nursing services;

6.7.a.4. The director of the dietetic services; and

6.7.a.5. The housekeeper.

6.7.b. The infection control committee shall develop for the facility written policies and procedures on at least the following:

6.7.b.1. Preventing and controlling infection in the facility;

6.7.b.2. Maintaining a sanitary environment;

6.7.b.3. Identifying infections within the facility;

6.7.b.4. Reviewing the health status of employees;

6.7.b.5. Ensuring staff compliance with infection control policies and procedures; and

6.7.b.6. Aseptic and isolation techniques.

6.7.c. The infection control committee shall meet no less than twice a year.

6.8. Isolation. ~~(Class I)~~

6.8.a. Any patient who contracts a communicable disease shall be segregated from other patients as described in the policies required by Section ~~8.7.2~~ 6.7.b of ~~these regulations~~ this rule.

6.8.b. Isolation techniques to prevent the transfer of the disease to other patients and staff of the facility shall be employed.

6.8.c. If ordered by a physician, the patient shall be removed from the facility as soon as suitable arrangements are made for continuing his or her care.

6.9. Animals. ~~(Class II)~~

6.9.a. No dogs, cats or other domestic animals shall be permitted within a nursing home or on its premises other than as specified ~~herein~~ in this rule.

6.9.b. If domestic animals other than strays are present on the nursing home grounds, there shall be provisions or areas set off and restricted so that patients may be free from risk of exposure to or physical harm from the animals, or the animals shall be leashed or otherwise limited in movement.

6.9.c. In the case of the presence of animals as part of a therapeutically designed and professionally supervised program which is of short duration, ~~Subsection~~ Section 6.9.b ~~8.9.2~~ need not apply.

6.9.d. If animals are present in the nursing home, they shall not be permitted in:

6.9.d.1. Food preparation areas;

6.9.d.2. The pharmacy;

6.9.d.3. Any storage areas; and

6.9.d.4. Patient areas except as specified in ~~Subsections~~ Sections ~~8.9.5, 8.9.6~~ 6.9.e, 6.9.f and ~~8.9.7 herein~~ 6.9.g of this rule.

6.9.e. Animals may be permitted in:

6.9.e.1. Non-patient areas not otherwise prohibited by ~~these regulations~~ this rule;

6.9.e.2. Recreation areas or rooms;

6.9.e.3. Areas especially set aside for such usage; and

6.9.e.4. Halls, if leashed or caged, in transit to and from permissible areas. Animals shall not be displayed or transported during meal times.

6.9.f. Patients shall not be permitted to have pets living in their rooms.

6.9.g. Animals may be allowed in patient rooms only under strictly supervised conditions; only if none of the occupants of the room object; and only if the patients' medical conditions are not prohibitive.

6.9.h. Wild, dangerous or obviously ill animals are prohibited, except that ~~such~~ wild animals as squirrels, birds, chipmunks and the like which are natural to the neighborhood of the facility shall not be prohibited from the facility grounds.

6.9.i. Animals and their quarters shall be kept clean at all times.

6.9.j. State and local laws regarding rabies prevention and animal licensure shall be observed.

6.9.k. Appropriate sanitation procedures shall be applied.

6.9.l. Residents shall not be physically endangered.

6.9.m. The provisions of Section ~~8.9.1~~ 6.9.a of this rule do not apply to fish in aquariums.

§ 64-13-7. General Patients' Rights Policies and Procedures.

7.1. Implementation of Patients' Rights. ~~(Class II)~~

7.1.a. The governing body of a facility shall develop written policies and procedures regarding the rights and responsibilities of patients.

7.1.b. Policies adopted shall be consistent with the provisions of ~~these regulations~~ this rule.

7.1.c. The governing body shall be responsible for the facility's adherence to procedures implementing patients' rights policies.

7.1.d. The staff of a facility shall be oriented to and trained at least annually in proper implementation of patients' rights policies.

7.1.e. A copy of patients' rights policies and procedures shall be made available to patients, ~~guardians, committee,~~ legal representative, next of kin, and sponsoring agencies, ~~and representative payees,~~ as applicable, and upon request shall be made available to members of the public.

7.2. Patients' Legal Representatives. ~~and Substituted Consent (Class II)~~

~~9.2.1. Definitions.~~

~~For purposes of Section 9.2 of these regulations the following definitions apply:~~

~~(a) Applicable Power of Attorney. A power of attorney which terminates upon incapacity of the person granting the power of attorney (the principal) or a durable power of attorney under W. Va. Code § 39-4-1 et seq. or similar enactments of other jurisdictions, which power of attorney or durable power of attorney:~~

~~(1) generally authorizes the holder or attorney in fact to act for the principal on all delegable matters upon which the principal has authority to act; or~~

~~(2) authorizes the holder or attorney-in-fact to make delegable health care decisions for the principal applicable to questions that arise at the time of admission to, or during, nursing home care.~~

~~(b) Any Interested Person. A person who requests a re-evaluation of a determination of incapacity or who requests an administrative review of such a determination.~~

~~(c) Section 5a Representative. The person who serves as a representative for a patient under the authority of West Virginia Code § 16-5C-5a.~~

~~(d) Physical or Mental Incapacity. (or like words) For purposes of these regulations, the inability, because of physical or mental impairment, of a nursing home patient or prospective patient to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented, and to communicate that choice in an unambiguous manner.~~

7.2.a. 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 (1) or more of the resident's rights under this rule, the home shall afford the legal representative full opportunity to exercise the authority. If a legal representative so appointed or designated exercises this authority, he or she shall exercise his or her authority in a manner consistent with all applicable state and federal laws, rules and regulations.

7.2.b. When the rights of an individual must be limited or restricted for medical reasons, those reasons shall be set forth in specificity in the individual's medical record and ~~such~~ the restriction shall be only for a specific and limited period of time authorized in writing by the patient or the patient's legal representative as defined in Section ~~9.2.3 of these regulations~~ 2.15 of this rule.

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

~~9.2.3. Patient's Representatives. The rights and responsibilities set forth in these regulations shall devolve to parties other than the patient only under the following circumstances:~~

~~(a) a committee or a guardian has been appointed for the patient; or~~

~~(b) a patient has executed, in writing, an applicable power of attorney; or~~

~~(c) a patient has a Section 5a representative. Such representative, in order of class priority, shall be one of the following:~~

~~(1) the patient's spouse;~~

~~(2) an adult child of the patient;~~

~~(3) a parent of the patient;~~

~~(4) an adult sibling of the patient;~~

~~(5) the nearest living relative of the patient;~~

~~(6) an authorized representative of a licensed guardianship service, or an authorized adult protective service worker of the department of human services, or an authorized employee of the commission on~~

~~aging and its recognized affiliates;~~

~~(7) any person selected by the patient:~~

~~Provided, That there is no reason to believe that health care services provided by a nursing home are contrary to the patient's religious or expressed beliefs or known wishes, there is no actual notice of opposition by a member of the same or prior class, and there is no expressed opposition by the patient to a person to serve as his or her Section 5a representative.~~

~~9.2.4. Documentation Concerning Patients' and Prospective Patients' Representatives.~~

~~(a) If a patient is incapacitated, as of the effective date of these regulations, then a committee, guardian or Section 5a representative, in accordance with State law and rules shall be obtained for the patient within sixty (60) days of the effective date of these regulations.~~

~~(b) If a patient has been adjudicated incompetent, or has been determined to be mentally retarded or otherwise mentally handicapped in accordance with law, then such fact shall be documented in the patient's medical record, and a clear and legible copy of the court's order appointing the patient's committee or guardian shall be kept in the record.~~

~~(c) If a patient is represented under an applicable power of attorney, then a clear and legible copy of that instrument shall likewise be maintained in the patient's medical record.~~

~~(d) If a patient does not have a committee or guardian and has not granted a durable power of attorney, the patient's medical record for any admission after the effective date of these regulations shall show that the nursing home made inquiries before admission to determine whether the patient was to be recommended by the nursing home for an evaluation of incapacity. Such inquiries may be made by the nursing home's social worker or nursing staff and shall include inquiries to persons knowledgeable of the prospective patient's condition. Such persons may include health care professionals, friends, family members, the prospective patient, if practical, and any other such knowledgeable persons. If the nursing home made a recommendation for evaluation of incapacity, the patient's medical record shall document:~~

~~(1) that the evaluation was performed within five (5) days prior to admission or two (2) days subsequent to admission. These days shall be defined as working days of available psychologists, psychiatrists and physicians through the service; and~~

~~(2) the outcome of the evaluation.~~

~~(e) If a patient is represented by a Section 5a representative, then the patient's medical record shall include the following:~~

~~(1) Evidence that before an evaluation for incapacity the patient was informed of the purpose of the evaluation verbally and in writing;~~

~~(2) The results of an evaluation for incapacity by two (2) physicians licensed to practice medicine in West Virginia, or one (1) such physician and one (1) psychologist licensed in West Virginia. At least one (1) of the said individuals shall have examined the patient within one (1) day preceding the determination of incapacity. Both individuals shall give a written opinion regarding the cause and nature of the incapacity as well as its extent and probable duration. Whenever possible, the patient's attending physician will be one (1) of the two (2) individuals making the determination of incapacity. At least one (1) of the physicians, or the psychologist, who certifies the incapacity shall not be associated in any way~~

~~with the nursing home. The two (2) individuals performing the certification shall not be associated in the same medical practice;~~

~~(3) Notation at the time of the determination of incapacity and three (3) months thereafter that notice of incapacity was provided verbally to the patient along with:~~

~~(A) Notice of the right to a reevaluation of a determination of incapacity;~~

~~(B) Notice of the right to appeal a determination of incapacity to the department of health; and~~

~~(C) A list of places known to the nursing home where legal representation or other advocacy services may be obtained;~~

~~(4) Notation of any evidence of objection by the patient to the determination of incapacity;~~

~~(5) Evidence that the results of the evaluation were delivered to the patient's Section 5a representative;~~

~~(6) The name of the person determined to be the patient's Section 5a representative along with the relationship, if any, of such person to the patient. Such person's willingness to serve shall be acknowledged in writing along with acknowledgment that the nursing home has provided information (after development by the department of health) on the role and responsibility of a patient's Section 5a representative;~~

~~(7) Evidence that good faith efforts have been made to contact permitted representatives in the order of class priority and to contact all members of a class before the next class is contacted;~~

~~(8) Any refusals of eligible persons to serve as the patient's Section 5a representative; and~~

~~(9) Evidence that notice of the acceptance of the person to be the patient's Section 5a representative was sent to the last known addresses of all persons of the same or higher class as the representative as well as to persons known to have lived with the patient.~~

~~9.2.5. Authority. A nursing home may rely on the apparent authority of a committee, guardian or attorney in fact as set forth in the order or instrument appointing such person. A patient's Section 5a representative may act on the patient's behalf regarding matters related to nursing home care and services including but not necessarily limited to the following, but limited by Section 9.2.6 of these regulations:~~

~~(a) giving or withholding consent for admission and treatment and the provision of services in a nursing home, including signing an admission agreement authorizing services;~~

~~(b) acknowledging in writing the receipt of notification of patient rights, responsibilities, and any applicable rules and regulations of the nursing home; and~~

~~(c) exercising all rights and responsibilities with regard to treatment and services provided in the nursing home, including consultation with the patient's physicians and other health care personnel, but excluding financial matters related to health care services.~~

~~9.2.6. Limitation in Certain Cases.~~

~~(a) The authority of a patient's Section 5a representative is limited to the making of nursing home~~

~~health care decisions and shall not be construed as a finding of incapacity or incompetency for any other purpose. Patients' Section 5a representatives do not have the authority to consent for a patient to have:~~

~~(1) behavior modification therapy involving aversive stimuli; or~~

~~(2) the patient's assets handled; however, a patient's Section 5a representative may make financial arrangements on behalf of the patient from sources other than the patient's assets. Subsection 9.3.6(a) does not limit the authority of a person who has been granted a durable power of attorney for financial affairs.~~

~~(b) A determination of incapacity expires after six (6) months or upon the patient's earlier discharge from the nursing home. Near the end of each six (6) month period, a nursing home may obtain a reevaluation, and if the patient remains incapacitated, shall provide new documentation in accordance with Section 9.2.4(e)(1) thru (5) above. If a patient's Section 5a representative is changed, new documentation is also required for Sections 9.2.4(e)(6) thru (9) of these regulations.~~

~~(c) In addition to the reevaluations required in paragraph (b) above, the nursing home shall, upon request of any interested person, or upon its own initiative if it has reason to believe that the patient has regained his or her capacity, obtain or permit a reevaluation at any time between the hours of 8:00 a.m. and 5:00 p.m. by one (1) or more physicians licensed in West Virginia, except that no patient shall be required to be reevaluated within three (3) months of a prior evaluation except for good cause determined by the nursing home staff responsible for the patient care plan. A physician's determination of capacity upon such reevaluation shall terminate the authority of a patient's Section 5a representative. Denial of any requested reevaluation shall be in writing, shall list the reasons for the denial, and shall be sent to the interested person. Such person shall also be informed that he or she has the right to appeal such denial to the department of health. The nursing home shall document each request for reevaluation in the patient's medical record.~~

~~(d) When the authority of a patient's Section 5a representative expires or is terminated, the nursing home shall inform the patient that he or she has regained the right to act for himself or herself regarding all matters related to nursing home care and services, including but not necessarily limited to the matters set forth in Section 9.2.5.(a) to (c) above. The patient shall acknowledge notification of the termination of the authority of his or her Section 5a representative in writing. The nursing home shall keep such acknowledgment in the patient's medical record and notify the patient's Section 5a representative that the authority of the patient's Section 5a representative has expired or terminated.~~

~~(e) The appointment of a guardian or committee after an adjudication shall immediately terminate the authority of a patient's Section 5a representative.~~

~~9.2.7. Patient's Alternate Section 5a Representative. A patient's alternate Section 5a representative may be identified for a patient under the same requirements as for the identification of a patient's Section 5a representative. A patient's alternate Section 5a representative may serve with full authority of the patient's Section 5a representative when a nursing home has used its best efforts to locate the patient's Section 5a representative, but such representative cannot be found in a timely manner. A patient's alternate Section 5a representative may serve with the authority of the patient's Section 5a representative only until the patient's Section 5a representative can be located.~~

~~9.2.8. Administrative Review. Any interested person may obtain an administrative review of any determination of good cause as found in Section 9.2.6(e) of these regulations or of capacity or incapacity made pursuant to these regulations by requesting a hearing under the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1, of the Department of Health. Any hearing~~

~~shall be held in the county of the patient's nursing home.~~

~~9.2.9. Statistical Records. Nursing homes shall maintain records concerning the number of their patients with Section 5a representatives and related aggregate data.~~

~~9.2.10 Other Rights and Laws.~~

~~(a) Nothing in these regulations shall in any way be construed to diminish or deprive any individual of rights beyond the scope of these regulations or recognized and established under laws of the State of West Virginia other than W. Va. Code § 16-5C-5a or of the United States.~~

~~(b) Nothing in these regulations shall in any way preclude any interested person from seeking a determination of competency or incompetency under the laws of the State of West Virginia or of the state of the patient's domicile or from seeking any form of judicial review.~~

~~9.2.11. Relief From Liability or Deficiency. A nursing home is not liable and shall not be cited for a licensure deficiency for any failure to apprise the proper persons of the requirements of Section 9.2 of these regulations and W. Va. Code § 16-5C-5a, so long as it has acted reasonably and in good faith.~~

7.3. Civil Rights. ~~(Class II)~~

7.3.a. No facility which offers services to members of the general public shall deny admission to a prospective patient on the grounds of race, color, religion or national origin.

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

7.4. Rights to be Informed. ~~(Class II)~~

7.4.a. A patient shall be fully informed of these rights and of all rules and regulations governing patient conduct and responsibilities during the duration of the patient's stay.

7.4.b. A patient shall be notified and informed of his or her rights, responsibilities and any applicable rules and regulations prior to or at the time of admission, and at least annually thereafter.

7.4.c. A patient shall acknowledge in writing that he or she has received notification of rights, responsibilities, rules, and regulations.

~~9.4.4. An individual already in a facility at the time these regulations become effective shall be given notification of these patient rights within thirty (30) days of the effective date of these regulations.~~

7.4.d. When a mentally retarded person is notified, notification shall be witnessed by a third person.

7.5. Rights to Communication and Personal Property. ~~(Class II)~~

7.5.a. A patient shall be encouraged and assisted throughout the duration of his or her stay to exercise his or her rights as a patient and as a citizen.

7.5.b. A patient shall be permitted to express grievances and to communicate to facility staff and outside representatives of the patient's choice the need for changes in facility policies.

7.5.c. A patient shall be free from restraint, interference, coercion, discrimination or reprisal as a result of exercising any of his or her rights.

7.5.d. A patient has the right to associate and communicate privately with persons of his or her choice.

7.5.e. A patient has the right to send and receive personal mail unopened.

7.5.f. A patient shall have access to telephones to make and receive calls in privacy.

7.5.g. A patient has the right to meet with and participate in the activities of social, religious and community groups, at his or her discretion.

7.5.h. A married patient shall be assured privacy for visits by his or her spouse. If both spouses are inpatients in a facility, they shall be permitted to share a room.

7.5.i. A patient has the right to retain and use personal clothing and possessions subject to space limitations and the potential for infringing upon the rights of other patients.

7.5.j. A facility may specify in the admission contract conditions of facility liability for a patient's personal clothing and possessions.

7.6. Rights with Regard to Treatment. ~~(Class I)~~

7.6.a. No patient shall be verbally, mentally or physically abused, or neglected or mistreated, or restrained by physical or chemical means except in accordance with Section ~~11.6~~ 9.6 of ~~these regulations~~ this rule (relating to use of restraints). Alleged violations shall be reported immediately to appropriate individuals as designated by the facility and there shall be evidence that:

7.6.a.1. All ~~such~~ alleged violations are thoroughly investigated;

7.6.a.2. The results of ~~such~~ the investigation are reported to the administrator or his or her designated representative within twenty-four (24) hours of the report of the incident; and

7.6.a.3. Appropriate sanctions are invoked when the allegation is substantiated.

7.6.b. A mentally retarded individual who is a minor shall participate in a behavior modification program involving the use of restraints or aversive stimuli only upon the prior written informed consent of his or her parent or ~~guardian~~ legal representative.

7.6.c. A patient shall participate in experimental research only on the basis of prior written informed consent. Any ~~such~~ informed consent procedures shall be in conformance with applicable state and federal laws, rules, and regulations.

7.6.d. A patient shall be given the opportunity to participate in the planning of his or her total health and medical treatment.

7.6.e. A patient shall have the right to be fully informed of his or her medical condition.

7.6.f. A patient has the right to refuse any medical treatment.

7.6.g. A patient shall not be required to perform services for the facility, nor be required to participate in any social, recreational or religious activity.

7.7. Rights to Confidentiality. ~~(Class II)~~

7.7.a. A patient shall be assured confidential treatment of his or her personal and health care records and condition, which shall not be discussed without the patient's consent with persons not treating or caring for the patient.

7.7.b. A patient has the right to refuse the release of his or her personal or health care records to any individual outside the facility, except as required by law or third-party payment contracts applicable to that patient. A specific signed release shall be obtained for all other releases and no prior executed blanket release shall be used.

7.7.c. A patient shall have access to his or her records.

7.7.d. A patient who is being discharged shall have the right to obtain a copy of his or her records subject to paying the facility's reasonable fee to cover the expense of copying the records.

7.7.e. A patient shall be treated in a manner which assures privacy in treatment and in care for his or her personal needs.

7.8. Financial Rights. ~~(Class II)~~

7.8.a. A patient has the right to manage his or her personal financial affairs.

7.8.b. A facility shall manage a patient's personal funds only on the written prior authorization of the patient.

7.8.c. A patient shall be liable only for charges which have been included in the admission contract between the patient and the facility pursuant to Section ~~7.5~~ 5.5 or Section ~~7.6~~ 5.6 of ~~these regulations~~ this rule or included in any written modification of the contract as provided in Section ~~7.5~~ 5.5 or Section ~~7.6~~ 5.6 of ~~these regulations~~ this rule, except in the case of charges for emergency services which could not have been reasonably anticipated when the contract was signed or amended.

7.8.d. If emergency services provided are not included in the admission contract, the facility shall, when feasible, obtain the prior written consent of the patient or other financially responsible persons or agency stating the amount of the applicable charges.

7.8.e. No patient shall be transferred from or discharged by a facility except for medical reasons, for the patient's welfare or safety or the welfare or safety of other patients, for nonpayment for his or her stay or upon the patient's consent or request.

7.8.f. A patient whose cost of care is reimbursed under ~~Titles XVIII or XIX of the Social Security Act~~ Medicare or Medicaid shall be discharged for nonpayment only in accordance with the provisions of ~~the Social Security Act and regulations~~ any applicable federal regulations.

7.9. Fiduciary Responsibilities of the Facility. (Class III)

7.9.a. A facility which handles money for patients within the facility shall hold separately and in trust all patients' funds.

7.9.b. The facility shall administer the funds on behalf of the patient in the manner directed by the depositor.

7.9.c. The facility shall render a true and complete account upon request to the depositor and to the director and at least quarterly to the patient on forms provided by the director.

7.9.d. Upon termination of the deposit the facility shall account to the depositor for all funds received, expended and held on hand on forms specified by the director.

7.9.e. A facility which, in any one (1) month, handles at least $25 of patients' funds per patient, or at least $500 for all patients shall give evidence of furnishing bond as assurance that the facility will comply with the requirements of this ~~Subsection~~ rule.

7.9.f. The amount of the bond shall be ~~at least $2,500~~ as shown in Table 64-13A found at the end of this rule.

~~9.9.9. The director shall have the discretion to require more than a $2,500 bond based on the amount of patients' funds handled by the facility.~~

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

7.9.h. The director may require a facility to file an additional bond in the following circumstances:

7.9.h.1. When the director determines that the amount of the bond or collateral on deposit is insufficient to protect the patients' money; or

7.9.h.2. When the amount of the bond or collateral is impaired by recovery against it pursuant to the provisions of W. Va. Code § 16-5C-7~~, as amended~~ by a person injured as a result of improper or unlawful handling of a patient's funds.

7.9.i. When a facility ceases to handle patients' funds in amounts which require a bond under this ~~Section~~ rule, the director shall allow the release of the bond upon the facility's rendering a true and complete account to the depositors of patients' funds.

7.9.j. When a facility determines on the basis of medical judgment that a patient appears unable to manage his or her affairs, the administrator of the facility shall notify the patient's next of kin to initiate guardianship or incompetency proceedings.

7.9.k. A facility may initiate guardianship or incompetency proceedings on behalf of the patient if the patient has no family or if the family, once notified, fails to act.

7.9.l. An employee of a facility, or a person having a financial interest in the facility, ~~with the exception of anyone related to such a person by consanguinity as defined in Section 5.2.2 of these regulations is prohibited from accepting appointment as guardian, committee or conservator of the estate of a patient, or from accepting a power of attorney for a patient~~ is prohibited from serving as a patient's legal representative, unless the employee or person is related to the patient by consanguinity as defined in

Section 3.2.b of this rule.

~~9.9.16. An individual serving in a prohibited capacity under Subsection 9.9.15 of these regulations on the effective date of these regulations this rule shall initiate proceedings within thirty (30) days following the effective date of these regulations, to have himself removed from the prohibited capacity and to have another qualified person appointed.~~

7.10. Complaint Procedures. ~~(Class II)~~

7.10.a. A facility shall develop and implement written procedures for registering and responding to complaints by patients, their legal representative, any sponsors and the public.

7.10.b. A facility shall designate an employee to be responsible for receiving complaints.

7.10.c. A facility shall establish a method to inform the administrator of all complaints.

7.10.d. A facility shall establish a process for investigation and assessment of the validity of all complaints.

7.10.e. A facility shall provide a mechanism to record all complaints received and action taken on them.

7.10.f. A facility 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.

7.10.g. A facility shall establish a program to assure that its personnel are familiar with complaint policies and procedures.

7.10.h. A facility shall establish a program to educate patients, their next of kin, legal representatives, and any sponsors about the facility's complaint policies and procedures.

7.10.i. A facility's compliance with ~~this~~ Section 7.10 of this rule ~~shall~~ does not obviate compliance with the provisions of Section ~~5.12~~ 3.12 of ~~these regulations~~ this rule.

7.11. Access. ~~(Class II)~~

7.11.a. A facility 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 per week. Visiting hours shall be posted conspicuously in a public place in the facility.

7.11.b. Relatives and members of the clergy shall be permitted to visit a critically ill patient at any time.

7.11.c. A facility shall permit full and free access to the facility to representatives of recognized community organizations and ~~(Class II)~~ groups approved for such access by the director in the registry described in Section ~~5.14~~ 5.15 3.12 of ~~these regulations~~ this rule. ~~Such~~ The access shall be limited to normal visiting hours unless by permission of the facility or as specified in Section ~~9.11.12~~ 7.11.1 of ~~these regulations~~ this rule regarding complaint investigation by the State commission on aging and its agents or as permitted by other state and federal law or rules and regulations.

7.11.d. ~~Such~~ The representatives shall be permitted to visit, talk with, and to make personal,

social and legal services available to any patient and to inform patients of their rights, entitlements and corresponding obligations under federal and state laws and rules and regulations through distribution of educational materials and in discussion with individual patients or groups of patients.

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

7.11.f. ~~Such~~ The representatives shall be permitted to view all areas of the facility with the following exceptions: (a) living areas of a patient who objects to ~~such~~ the inspection; (b) business records of the facility, unless the administrator consents; (c) personal and medical records of a patient, unless the patient consents in writing; (d) drug storage areas which are not secure from access by unauthorized persons; (e) food service areas requiring sanitary conditions; and (f) any other areas where inspection might endanger any individual or might invade the privacy of any employee or patient.

7.11.g. An individual entering a facility pursuant to Section ~~9.11.3~~ 7.11.c of ~~these regulations~~ this rule shall, upon entering the facility, notify the administrator or other available agent of the facility of said individual's presence. If requested by the facility, the individual shall provide identification as an authorized representative of an agency on the registry of ~~such~~ the agencies maintained by the director.

7.11.g.1. No ~~such~~ person shall enter a patient's room pursuant to Section 7.11.c of this rule without identifying himself or herself to the patient and receiving the patient's permission to enter.

7.11.g.2. A patient ~~shall have~~ has the right to refuse a visit pursuant to Section ~~9.11.3~~ 7.11.c of ~~these regulations~~ this rule and ~~such~~ the visit shall be terminated upon the patient's request.

7.11.g.3. ~~Such~~ These individuals shall coordinate their activities with the facility's social worker or activity director.

7.11.h. A facility may restrict a particular visitor, or individual obtaining access under Section ~~9.11.3~~ 7.11.c of ~~these regulations~~ this rule from the facility if his or her behavior is, in the judgment of the administrator, unreasonably disruptive of the functioning of the facility. The reasons for ~~such~~ the judgment and restriction ~~must~~ shall be documented in writing and kept on file.

7.11.i. Communications between a patient and a person visiting pursuant to Section ~~9.11.3~~ 7.11.c of ~~these regulations~~ this rule are ~~deemed~~ confidential.

7.11.j. No patient shall be punished or harassed by a facility, its agents, its employees or its contractors because of his or her efforts to avail himself of his or her rights to communicate with others under this Section. Violation of this provision shall be subject to the provisions of Section ~~5.12.17~~ 3.9.p of ~~these regulations~~ this rule.

7.11.k. Nothing in this Section shall be construed to restrict the rights of a patient to receive or refuse visitors other than those obtaining access under the provisions of Section ~~9.11.3~~ 7.11.c of ~~these regulations~~ this rule.

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

complaint investigations.

7.12. Notice and Posting Requirements. ~~(Class III)~~

7.12.a. A facility shall post its license in a conspicuous and public place in plain view of all patients and visitors to the facility.

7.12.b. A facility shall post in a conspicuous place on each floor a legible notice stating the civil rights requirements of Section ~~9.3~~ 7.3 of ~~these regulations~~ this rule, the patients' rights requirements of Sections ~~9.4~~ 7.4 through ~~9.8~~ 7.8 of ~~these regulations~~ this rule, the complaint procedures of Section ~~9.10~~ 7.10 of ~~these regulations~~ this rule, and the access requirements required in Section ~~9.11~~ 7.11 of ~~these regulations~~ this rule. In addition, a notice stating the visiting hours and access requirements of Section ~~9.12~~ 7.12 shall be posted conspicuously at or near the entrance to the facility.

7.12.c. A facility shall provide each patient with a personal copy of a statement setting forth the requirements of Section ~~9~~ 7 of ~~these regulations~~ this rule.

7.12.d. The document shall include in a prominent position the following statement:

"This Bill of Rights sets forth some fundamental human rights to which you, as a facility resident or patient, are entitled under West Virginia law and ~~regulations~~ rules. If you see a violation of any of the rights listed here, you are encouraged to report the violation to the administrator or [insert the name of the individual identified under Section 7.10.b here], who is responsible for handling complaints. If the facility does not respond to your complaint promptly, favorably or sufficiently, or if you are dissatisfied for another reason, you may contact the ~~Health Facilities Evaluation Division of the West Virginia Department of Health, at 1800 Washington Street, East~~ Office of Health Facility Licensure and Certification, Capitol Complex, Charleston, West Virginia, 25305, telephone (304) 558-0050, to report the violation and to request an inspection of the facility. Alternatively, you may contact the West Virginia Commission on Aging at the State Capitol, Charleston, West Virginia, 25305, telephone (304) 558-2241 or their local representative, if any [insert the appropriate name, address and telephone number here]. The names of those filing complaints will be kept confidential."

7.12.e. A copy of the above statement shall be given to each patient upon admission.

~~9.12.6. A copy of the above statement shall be given to each person already a patient or resident in a facility within fourteen (14) days of the effective date of these regulations.~~

7.12.f. A facility staff member shall read the statement to any patient who for any reason cannot read the notice and shall also give the patient a written copy.

7.12.g. A facility shall include in the patient's record a certification that the patient has received the required document, and where necessary that it has been read to him. The certification shall be signed both by the patient and the administrator of the facility and shall be dated to show when actual notice was received by the patient.

7.12.h. The facility shall inform each patient of the availability within the facility of a complete copy of ~~these regulations~~ and of W. Va. Code § ~~16-5C, as amended~~ §16-5C-1 et seq.

7.12.i. Upon request by a patient, the facility shall provide the patient the opportunity to inspect the law and ~~these regulations~~ this rule.

§ 64-13-8. Medical and Dental Services.

8.1. Medical Director. ~~(Class II)~~

8.1.a. Pursuant to a written agreement, a nursing home shall retain a physician licensed in West Virginia to serve as a medical director.

8.1.b. The medical director shall be responsible to the administrator as to medico-administrative matters.

8.1.c. The medical director's responsibilities shall include, but not be limited to the following:

8.1.c.1. Delineating the responsibilities of attending physicians;

8.1.c.2. Communicating with attending physicians to ensure that medical care plans are written as required by Section ~~10.3~~ 8.3 of ~~these regulations~~ this rule;

8.1.c.3. Establishing written policies for the utilization of medical consultants and specialist services;

8.1.c.4. Monitoring the health status of the facility's personnel, as required by Section ~~7.10.1~~ 5.10.a and Section ~~8.1~~ 6.1 of ~~these regulations~~ this rule;

8.1.c.5. Documenting investigation of incidents and accidents that occur on the premises;

8.1.c.6. Providing documented information to the administrator, in order to ensure a safe and sanitary environment for patients and personnel;

8.1.c.7. Assuming with the administrator responsibility for the execution of patient care policies;

8.1.c.8. Participating in the development of ongoing staff educational programs;

8.1.c.9. Participating or ensuring physician participation in facility committees such as: pharmaceutical and infection control; and

8.1.c.10. Reviewing and approving the credentials of any physician's assistant who will be working in the facility. A physician assistant shall be ~~duly~~ certified by the West Virginia board of medicine or the West Virginia board of osteopathy.

8.1.d. A facility of sixty (60) beds or less may be granted a waiver of the requirement for medical director upon documentation of alternative means for effectuating the duties of the medical director as specified in Section ~~10.1.3~~ 8.1.c.

8.2. Availability of Medical Services. ~~(Class I)~~

8.2.a. A nursing home shall require upon admission the patient or the patient's ~~sponsor~~ legal representative to designate in writing a physician to attend the patient.

8.2.b. A facility shall confirm with the designated physician as soon as possible after the admission of the patient that the physician will provide at least those services required in Section 8.3 ~~10.3~~

~~herein~~ of this rule.

8.2.c. A facility shall require the attending physician or the patient to designate or authorize the administrator to designate an alternate physician to attend the patient in an emergency or whenever the attending physician is unavailable.

8.2.d. The administrator or his or her designee shall assure availability of physician services in at least the following ways:

8.2.d.1. Verify that the patient's medical record contains documentation of the name, address and telephone number of the attending physician and the alternate physician;

8.2.d.2. Notify the attending physician whenever a physician is required or in an emergency;

8.2.d.3. Ensure that the patient is visited by a physician for required visits and in response to an emergency;

8.2.d.4. Assist in the development of, and implement, written procedures to provide emergency medical care;

8.2.d.5. Provide at each nurses' station a list of physicians available to provide emergency care; and

8.2.d.6. Ensure that efforts are made to notify the patient's next of kin or ~~sponsor~~ legal representatives with related responsibility for the resident and any sponsor promptly after the patient has had an accident or suffers a serious deterioration in condition, in accordance with Section ~~11.8~~ 9.8 of ~~these regulations~~ this rule regarding accident and illness and Section ~~11.9~~ 9.9 regarding death.

8.3. Services of Attending Physician. ~~(Class I)~~

8.3.a. An attending physician shall provide at least the following services:

8.3.a.1. Not more than five (5) days before nor more than forty-eight (48) hours after a patient's admission to a nursing home, a signed, dated admission and medical history including: a current physical examination; a current assessment of mental status; an admission diagnosis; and an estimate of rehabilitation potential;

8.3.a.2. A medical visit to the patient as is medically necessary but at least every thirty (30) days unless longer intervals are documented as sufficient by the physician in the patient's record. In no case shall the interval between visits be longer than sixty (60) days;

8.3.a.3. A written, signed and dated progress note in the patient's record at the time of each visit;

8.3.a.4. Orders for medical care;

8.3.a.5. A documented review and ~~such~~ any revision as is necessary in the medical care plan at each visit;

8.3.a.6. Emergency medical service when available; and

8.3.a.7. A signed review of any report made under Section ~~11.8~~ 9.8 of ~~these regulations~~ this rule (relating to incidents or accidents).

8.3.b. If the interval between physician visits to a patient is more than thirty (30) days, that patient's medical plan of care shall be reviewed by the designated physician with a licensed nurse of the facility by telephone and rewritten at least every thirty (30) days.

8.3.c. Whenever a physician fails to comply with the requirements of Section ~~10.3.1(b)~~ 8.3.a.2 or Section ~~10.3.2~~ 8.3.b of ~~these regulations~~ this rule regarding visits to patients, the nursing home shall notify the physician of record of the requirements by registered mail and request the physician's compliance. If the physician then fails either to comply with the requirements or to make other arrangements for his or her patients within ten (10) days, the nursing home administrator shall declare the patient to be abandoned and notify the director in writing. The director shall notify the West Virginia board of medicine. The nursing home administrator shall then be allowed to seek other medical care for the patient.

8.3.d. If a physician uses a physician's assistant in a nursing home, the physician first shall write to the facility identifying the physician assistant, delineating the physician assistant's functions and limitations, and documenting that the physician assistant is ~~duly~~ certified by the West Virginia board of medicine or the West Virginia board of osteopathy.

8.4. Availability of Dental Services. ~~(Class II)~~

8.4.a. A facility shall have a written plan to assist patients in obtaining routine and emergency dental care.

8.4.b. A facility shall help a patient to arrange transportation to and from a dentist, as appropriate.

8.5. In-service Training in Dental Care. ~~(Class II)~~ - A facility shall ensure that a dentist participates at least annually in its staff development program on dental and oral hygienic practices. If approved in writing by a dentist, this requirement may be satisfied by a licensed dental hygienist.

§64-13.9. Nursing Services.

9.1. Nursing and Patient Care Staffing. ~~(Class I)~~

9.1.a. A nursing home shall provide licensed nursing services twenty-four (24) hours a day, seven (7) days a week.

9.1.b. The number of nursing personnel on duty shall be determined by the number of patients, their medical needs and the physical arrangement of the facility, but ~~will~~ shall at no time other than during short unforeseeable emergencies be less than sufficient to make available an average of two (2) hours of nursing personnel time per patient per day. This two (2) hours shall include four tenths of an hour (0.4 hours) of licensed nurse time and one and six tenths of an hour (1.6 hours) of aide time as shown in ~~the table in Section 11.1.3 of these regulations~~ Table 64-13B found at the end of this rule.

In facilities with less than sixty (60) beds, the director of nursing may be included in these staff to patient ratio calculations; in facilities with sixty (60) or more beds, the director of nurses shall not be included for purposes of evaluating compliance with this standard. In facilities with forty (40) or fewer beds, some exceptions to the general average ~~have been~~ are made to provide for minimum coverage on

all shifts. These exceptions are detailed in ~~Section 11.1.3~~ Table 64-13B found at the end of this rule.

For purposes of evaluating compliance with these ratios, licensed nurses are included as nursing personnel. Adequate personnel to meet patient needs ~~must~~ shall be employed on each nursing shift. "Available" or "on call" does not meet the requirements for minimum staffing. For purposes of determining compliance with the minimum staffing allowable, no individual shall be counted as meeting these numerical requirements on any two (2) consecutive shifts, unless the facility can demonstrate extenuating circumstances and only then as a non-routine occurrence. The director ~~shall have~~ has the authority to require staff above the specified minimum ratios if required to meet patient needs.

~~11.1.3. (See Table 64-13E found at the end of this regulation.~~

9.1.c. In addition to the requirements of ~~Section 11.1.1, Section 11.1.2 and Section 11.1.3 of these regulations~~ Sections 9.1.a and 9.1.b of this rule, if there is not a registered professional nurse on duty, there shall be a registered professional nurse on call.

9.1.d. There shall be a written agreement identifying the responsibilities of the individual on call.

9.2. Management of Nursing Services. ~~(Class I)~~

9.2.a. A nursing home shall organize, manage and operate its nursing services in accordance with a written organizational plan which describes the responsibility, authority and accountability relationships for the functions, activities and training of the nursing staff.

9.2.b. The facility shall have on duty at least five (5) days a week, eight (8) hours a day during the day shift a registered professional nurse designated in writing as the director of nursing services.

9.2.c. The director of nurses shall be a graduate of a school accredited by the West Virginia board of examiners for registered professional nurses. In addition, this individual shall meet, as a minimum, the following requirements for experience:

9.2.c.1. For a graduate of a two (2) year program, three (3) years of nursing experience, at least one (1) of which shall have been in a supervisory capacity; or

9.2.c.2. For a graduate of a three (3) year program, two (2) years of nursing experience, at least one (1) of which shall have been in a supervisory capacity; or

9.2.c.3. For a graduate of a four (4) year program, at least one (1) year of nursing experience; or

9.2.c.4. For an individual with education beyond a four (4) year program (post-graduate), at least one (1) year of nursing experience.

9.2.d. The director of nursing services shall be responsible for the direction, provision and quality of nursing care including, but not limited to, the following:

9.2.d.1. Assuring that a nursing care plan is established for each patient and the plan is reviewed and modified as necessary, but not less often than quarterly;

9.2.d.2. Establishing written nursing procedures which are: essential to ensure safe

practices; up to date and consistent with the type of service provided by the nursing home;

9.2.d.3. Evaluating nursing care practice;

9.2.d.4. Coordinating nursing services with other patient care services such as medical, physical therapy, occupational therapy, recreational activities, social services and dietary services;

9.2.d.5. Planning and conducting orientation and training programs for new nursing service personnel and a continuing in-service education program for all nursing service personnel;

9.2.d.6. Participating in the selection of prospective patients in terms of nursing services they need and nursing competencies available; and

9.2.d.7. Designating in writing a charge nurse on each nursing unit for each shift, seven (7) days a week.

9.2.e. The director of nursing services shall establish procedures to assure that the patient's medical record is completed in a timely manner in accordance with the requirements of Section ~~15~~ 13 of ~~these regulations~~ this rule and includes at least the following:

9.2.e.1. Patient care plan, in accordance with the orders of the attending physician establishing and maintaining the plan;

9.2.e.2. Treatment notes;

9.2.e.3. Nursing notes in accordance with Section ~~15.4.1(f) 15.4.1.f~~ 13.4.a.6 of ~~these regulations~~ this rule;

9.2.e.4. Nursing summaries;

9.2.e.5. Summaries of conferences with the designated physician or other personnel involved in patient care;

9.2.e.6. A record of medications administered; and

9.2.e.7. The signed nursing discharge note.

9.3. Charge Nurse. ~~(Class II)~~ - The charge nurse designated according to the provisions of ~~Subsection~~ Section ~~11.2.4.(g)~~ 9.2.d.7 of ~~these regulations~~ this rule shall be responsible for at least the following:

9.3.a. Supervising all nursing and ancillary personnel and activities related to nursing care in the nursing unit; and

9.3.b. Assessing the needs of each patient, initiating the nursing care plan for meeting those needs, and coordinating the patient care plan.

9.4. Nursing Staff Responsibilities. ~~(Class I)~~

9.4.a. Each patient shall receive care in accordance with the physician's written orders and the nursing care plan.

9.4.b. Patients shall be kept clean, dry and comfortable.

9.4.c. Each patient shall receive care toward prevention of decubitus ulcers, infection, accidents and injury.

9.4.d. If necessary, a patient shall receive assistance in feeding.

9.4.e. All patients shall be treated in accordance with the provisions of Section ~~9~~ 7 of ~~these regulations~~ this rule specifying patient rights, policies and procedures.

9.4.f. Each patient shall have an individual medication record.

9.4.g. After each administration of medication, the following information shall be recorded on the medication record by the person who administers the medications:

9.4.g.1. Name and strength of the drug administered;

9.4.g.2. Date and time of administration;

9.4.g.3. Dosage administered;

9.4.g.4. Route of administration; and

9.4.g.5. Signature of the individual administering the drug.

9.4.h. Drugs and biologicals shall be administered to the patient as soon as possible after the doses have been prepared.

9.4.i. The medication shall be administered by the same person who prepared the doses for administration, except under single unit dose package distribution systems.

9.4.j. Self-administration of medications by patients is not permitted except on written order of a physician and only permitted in special circumstances, which shall be set forth specifically in the individual's medical record.

9.5. Restorative Nursing Care. ~~(Class I)~~

9.5.a. An active restorative nursing care program shall be an integral part of the nursing service. The purpose of the program is to assist the patient to achieve and maintain an optimum level of functioning and self-care through education and retraining in the activities of daily living. Restorative nursing care services shall be performed daily for those patients who need ~~such~~ the services. The program shall include, but not be limited to, such techniques as:

9.5.a.1. Maintaining proper body alignment and positioning of bedfast patients and those confined to chairs;

9.5.a.2. Encouraging the activity of patients by getting them out of bed for reasonable periods of time, except when this is contraindicated by physician's orders;

9.5.a.3. Maintaining a program of skin care to prevent pressure sores;

9.5.a.4. Maintaining a bowel and bladder training program;

9.5.a.5. Assisting patients to ambulate and to carry out prescribed exercises between visits of the physical therapist;

9.5.a.6. Assisting patients to adjust to any disabilities and to direct their interest into useful activities; and

9.5.a.7. Assisting and teaching patients the activities of daily living such as: eating, dressing, grooming, and toilet activities.

9.5.b. Restorative nursing shall be a distinct part of the in-service education program. There shall be orientation and training of new employees and continuing education of all the nursing service employees in restorative nursing.

9.5.c. Observation of patients documented in the nursing notes shall give evidence that care is adequate and that the restorative nursing care program is followed. Observations which assist in determining if care is adequate may include such items as personal appearance and grooming, freedom from offensive odors, absence of pressure sores, and clean mouth and dentures. There shall be evidence that the staff encourage the patient to be out of bed, maintain good body positioning, eat in the dining room if able and to take part in diversional or recreational activities.

9.6. Use of Restraints. ~~(Class I)~~

9.6.a. Restraints shall be used only when necessary to protect the patient from self-injury or from injuring others. No patient shall be restrained for the convenience of the staff.

9.6.b. The use of physical or chemical restraints shall be authorized in writing by a physician for a specified and limited period of time.

9.6.c. The use of restraints on a mentally retarded individual shall be permitted when authorized by a physician or qualified mental retardation professional for use during behavior modification sessions.

9.6.d. For purposes of evaluating compliance with Section ~~11.6.3~~ 9.6.c of ~~these regulations~~ this rule, a qualified mental retardation professional shall be:

9.6.d.1. A currently licensed physician, psychologist or registered nurse who has had at least one (1) year of specialized training or experience in working with the mentally retarded; or

9.6.d.2. An M.S.W. with at least one (1) year of specialized training or experience in working with the mentally retarded.

9.6.e. In case of emergency, licensed nursing personnel authorized by the facility in writing may order the use of restraints. Non-physician personnel shall notify the attending physician promptly.

9.6.f. Patients shall not be subjected to the following types of restraints under any conditions: canvas jackets, canvas sheets, or canvas cuffs; leather belts, leather cuffs or leather hand mitts. Locked restraints are prohibited. A patient shall not be confined to any room by locking or fastening a door from the outside.

9.6.g. A patient who is restrained shall have his or her position changed and the restraints

removed long enough to give skin care every two (2) hours.

9.6.h. Methods of restraint shall permit quick removal in case of fire or other emergency.

9.6.i. Side rails on beds are not subject to the provisions of Section ~~11.6.7~~ 9.6.g of ~~these regulations~~ this rule.

9.7. Notice to Physician of Accident or Illness. ~~(Class I)~~

9.7.a. Any accident or change in a patient's condition shall be reported immediately to a registered professional nurse who shall notify the attending physician and the patient's family, ~~guardian, committee or sponsor~~ legal representative and any sponsor, as relevant.

9.7.b. The physician shall be notified within a reasonable period of time, depending upon the seriousness of the patient's condition.

9.8. Accident and Incident Reports. ~~(Class II)~~

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

9.8.b. The report shall include the following:

9.8.b.1. Date;

9.8.b.2. Time of occurrence;

9.8.b.3. Place of occurrence;

9.8.b.4. Details of the occurrence;

9.8.b.5. Date and time physician was notified; and

9.8.b.6. Date and signature of reviewing physician (as required in Section ~~10.3.1(g)~~ 8.3.a.7 of ~~these regulations~~ this rule).

9.8.c. The report shall be written and signed by the person who is responsible for the patient at the time that the accident or change in condition occurred.

9.9. Report of Death. ~~(Class III)~~ - The death of a patient shall be reported immediately to the attending physician and to the patient's family, ~~guardian, committee or sponsor~~ legal representative and any sponsor, as relevant.

§ 64-13-10. Dietetic Service.

10.1. Dietetic Service to be Maintained. ~~(Class I)~~

10.1.a. A nursing home shall maintain a dietetic service which shall be organized either directly by the nursing home or through written agreement with a contractor who complies with the standards of ~~these regulations~~ this rule concerning the dietetic service.

10.1.b. The dietetic service shall be in full compliance with current ~~Food Service Sanitation Regulations, West Virginia Department of Health Legislative Rules, 64 CSR 17, 1983~~ West Virginia Department of Health and Human Resources Administrative Rules, Food Service Sanitation Regulations, 64 CSR 17.

10.2. Director and Staffing of Dietetic Service. ~~(Class II)~~

10.2.a. The dietetic service shall be under the direction of a qualified dietitian employed by the nursing home on a full or part-time basis.

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

10.2.c. If a part-time consultant dietitian is employed, the consultant visits ~~must~~ shall be at appropriate times and of sufficient duration to allow the carrying out of the duties set forth in Section ~~12.2.4~~ 10.2.d of ~~these regulations~~ this rule.

10.2.d. The duties of a dietitian director or consultant dietitian shall include at least the following:

10.2.d.1. Advice to the administrator;

10.2.d.2. Liaison with the medical and nursing staff;

10.2.d.3. Patient counseling;

10.2.d.4. Planning or approval of all menus;

10.2.d.5. Guidance to the food service supervisor and staff; and

10.2.d.6. All duties of the food service supervisor as set forth in Section ~~12.2.7~~ 10.2.g of ~~these regulations~~ this rule if a food service supervisor is not employed on a full-time basis.

10.2.e. A dietetic service shall employ a full-time qualified food service supervisor as defined in Section ~~12.2.6~~ 10.2.f of ~~these regulations~~ this rule whenever a full-time dietitian director is not employed.

10.2.f. A qualified food service supervisor ~~must~~ shall be:

10.2.f.1. A qualified dietitian; or

10.2.f.2. A graduate of a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American Dietetic Association; or

10.2.f.3. Qualified for membership in the Hospital, Institution, and Educational Food Service Society or its equivalent; or

10.2.f.4. Trained and experienced in food service supervision and management in a military service equivalent in content to the requirements specified in ~~paragraphs (b) or (c) of this Section~~ Sections 10.2.f.2 and 10.2.f.3 of this rule.

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

10.2.g.1. Daily operation of the dietetic service;

10.2.g.2. Ensuring that therapeutic diets are served as ordered by a physician, and that no patient receives a therapeutic diet except as ordered by a physician;

10.2.g.3. Recommending the quantity, kinds and variety of food and supplies to be purchased; and

10.2.g.4. Maintaining a file of standardized recipes for menu items which shall be used in preparing foods listed on the posted menus.

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

10.3. Menus and Supplies. ~~(Class II)~~

10.3.a. A facility shall have written dated menus which state portion sizes, as applicable, planned at least fourteen (14) days in advance for all diets. Menus shall be posted in the food preparation area.

10.3.b. A menu shall not be used more than once in a week.

10.3.c. If cycle menus are used, the cycle ~~must~~ shall cover a minimum of three (3) weeks.

10.3.d. A current therapeutic diet manual approved by the dietitian ~~must~~ shall be readily available to dietetic service personnel, nursing staff and attending physicians.

10.3.e. All menu changes shall be recorded.

10.3.f. The dietetic service shall keep on file all menus and menu changes for at least ninety (90) days.

10.3.g. The dietetic service staff shall identify patients' likes and dislikes and substitute foods and drinks with equivalent nutritional values.

10.3.h. A supply of non-perishable foods sufficient to meet all patient needs for three (3) days or such period as the department ~~shall designate~~ designates shall be kept on the premises for use in the event of an unforeseen interruption in normal food service. This supply may be incorporated with the regular stock of food supplies.

10.4. Meals. ~~(Class I)~~

10.4.a. The dietetic service shall ensure that each patient receives at least three (3) meals daily or their equivalent which are prepared and served that day.

10.4.b. Dietetic service staff shall offer substitute foods and drinks with equivalent nutritional value to all patients who refuse the food served at meal times.

10.4.c. Meals served to a patient shall provide nutrients and calories for each patient, as ordered by a physician, based upon current recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council as adjusted for age, sex, weight, physical activity and therapeutic needs; or as follows:

10.4.c.1. Meat Group: Two (2) or more servings of lean meat, fish, poultry, eggs or cheese with dried beans, other legumes or peanut butter as occasional alternatives. At least four (4) ounces of edible meat or its equivalent shall be served daily. Eggs shall be served at least four (4) times per week;

10.4.c.2. Milk: Two (2) or more cups of milk or its equivalent. Cheese, cottage cheese, yogurt or ice cream may be used to meet part of the milk requirement;

10.4.c.3. Vegetables: Two (2) or more 1/2 cup servings each day including yellow, orange of leafy green vegetables or other good source of Vitamin A at least four (4) times per week;

10.4.c.4. Fruit: Two (2) or more 1/2 cup servings each day, at least one (1) of which shall be a citrus fruit or other good source of Vitamin C;

10.4.c.5. Whole Grain or Enriched Bread and Cereal Products: One (1) or more servings each meal with at least four (4) servings each day;

10.4.c.6. Other foods to round out meals and snacks to provide additional calories.

10.4.d. Therapeutic and regular diets shall be served to patients in accordance with a physician's written orders retained in the patient's record of care.

10.4.e. Food service personnel shall be advised in writing of ~~such~~ diet orders.

10.4.f. Physician orders for regular and therapeutic diets shall be reviewed at the same time all other orders are reviewed and at least every three (3) months.

10.4.g. Not more than fourteen (14) hours shall elapse between an evening meal and breakfast the next morning, which shall not be served before 7:00 a.m.

10.4.h. Every patient shall be encouraged to eat in designated dining areas, unless medically contraindicated.

10.4.i. Bedtime snacks of nourishing quality shall be offered routinely to all patients, unless medically contraindicated.

10.4.j. Trays served to patients in their rooms shall be provided with firm supports.

10.4.k. Self-help feeding devices shall be provided as appropriate and their use shall be encouraged.

10.4.l. Foods shall be prepared by methods that conserve nutritional value, flavor and appearance and shall be attractively served at optimum temperatures in a form to meet the needs of individual patients.

10.4.m. All salt used shall be iodized.

10.4.n. Salt shall not be omitted in food preparation unless by physician's orders.

§64-13.11. Pharmaceutical Services.

11.1. Provision of Pharmaceutical Services. ~~(Class I)~~

11.1.a. A facility shall ensure the provision of pharmaceutical services. All pharmaceutical services shall be provided in accordance with ~~these regulations~~ this rule and all other applicable federal, state and local laws and rules, and ~~regulations~~ the rules of the West Virginia board of pharmacy.

11.1.b. The nursing home shall have a written agreement with any consultant pharmacist in accordance with ~~these regulations and rules and regulations~~ this rule and the rules of the West Virginia board of pharmacy.

11.2. Supervision of Pharmaceutical Services. ~~(Class II)~~

11.2.a. The pharmaceutical services shall be under the supervision of a pharmacist currently registered with the West Virginia board of pharmacy.

11.2.b. The consultant pharmacist shall be responsible for:

11.2.b.1. The receipt, control and distribution of drugs and for maintaining at least those records required by applicable federal, state and local laws, rules, and regulations;

11.2.b.2. Developing in consultation with the pharmaceutical services committee a manual of policies and procedures in accordance with ~~these regulations~~ this rule and including at least those matters required by the rules ~~and regulations~~ of the West Virginia board of pharmacy;

11.2.b.3. Providing at least one (1) educational program each year and additional in-service training as necessary for all nursing personnel on any subject pertaining to the pharmaceutical service of the facility or drug therapy in geriatric patients;

11.2.b.4. Participating in the activities of the pharmaceutical services committee;

11.2.b.5. Providing the pharmaceutical services committee with a written report at least quarterly concerning the status of the facility's pharmaceutical services and an analysis of any incidents relating to drug therapy;

11.2.b.6. Providing a documented drug regimen review in the medical record of each patient at least monthly and reporting any irregularities in writing to the attending physician, the director of nursing services and to the facility administrator; and

11.2.b.7. Inspecting each nursing station and all other areas of the nursing home where drugs are stored at least once each month. The inspection shall be documented in writing with a signed and dated report by the pharmacist; the reports shall be submitted to the pharmaceutical services committee at its next scheduled quarterly meeting.

11.3. Pharmaceutical Services Committee. ~~(Class III)~~

11.3.a. A nursing home shall have a pharmaceutical services committee which develops written policies and procedures for safe and effective drug therapy, administration, distribution, control and use.

11.3.b. The committee shall be composed of at least the pharmacist, the director of nursing services, the nursing home administrator and one (1) physician.

11.3.c. The committee shall oversee pharmaceutical services in the nursing home, make recommendations for improvement and monitor the pharmaceutical service to ensure its accuracy and adequacy.

11.3.d. The committee shall meet at least quarterly and document its activities, findings and recommendations in writing.

11.3.e. The pharmaceutical services committee shall review incidents relating to drug therapy and the monthly inspection reports of the pharmacist.

11.4. Pharmaceutical Policies and Procedures. ~~(Class I)~~

11.4.a. All orders for medications and treatments for patients shall be in writing and signed by the attending physician.

11.4.b. A physician's verbal or telephone order for medications or treatments may be received only by a licensed nurse, a pharmacist or a certified physician assistant, if identified as a responsibility in the physician assistant's job description.

11.4.c. A physician's verbal or telephone orders shall be written immediately on the patient's order sheet, noted in the permanent medical record and signed by the accepting licensed nurse, pharmacist or certified physician's assistant and shall be countersigned by the physician on his or her next visit or by mail if returned within ten (10) days.

11.4.d. Drugs shall be administered only by physicians, licensed nurses or certified physician assistants as detailed in their job descriptions.

11.4.e. Written policies and procedures shall be established by the pharmaceutical services committee to ensure that drugs are checked against physicians' orders before the drugs are administered to the patient.

11.4.f. Medication errors and adverse drug reactions shall be reported immediately to the patient's physician verbally, and entered in the ~~Board of~~ patient's medical record. A written incident report shall be submitted to the pharmaceutical services committee.

11.4.g. An adverse drug reaction or allergy shall also be documented on the outside cover of the medical record.

11.4.h. An up-to-date medication information reference book, determined by the pharmaceutical service committee, concerning prescription and nonprescription drugs, their indications, actions, adverse reactions, interactions, contraindications, administration, precautions and dosages shall be kept at each nursing station.

11.4.i. Medications not specifically limited as to time or number of doses when ordered by the physician shall be controlled by automatic stop orders in accordance with written policies and procedures established by the pharmaceutical services committee.

11.5. Patient Medications. ~~(Class I)~~

11.5.a. A patient's medications shall be labeled in accordance with ~~these regulations~~ this rule and the rules ~~and regulations~~ of the West Virginia board of pharmacy.

11.5.b. Except for single unit dose package drug distribution systems, the label of each patient's individual prescription medication container shall clearly state the following information:

11.5.b.1. The patient's name;

11.5.b.2. The name and strength of the drug;

11.5.b.3. Drug's date of issue from the pharmacy;

11.5.b.4. Name of prescribing physician;

11.5.b.5. The pharmacy name, address and telephone number;

11.5.b.6. The prescription number; and

11.5.b.7. The directions on how and when to administer the medication.

11.5.c. All drugs shall be stored in a locked cabinet or medicine cart near the nurses station, and only personnel authorized in writing shall have access to the keys.

11.5.d. A patient's prescription medication shall be stored in the container in which it is received from the pharmacy and all nonprescription drugs shall be stored in their original container as labeled and distributed by the manufacturer. Nursing personnel shall not package, repackage, bottle or label in whole or in part any medication or alter in any way by tampering or defacing any labeled medication.

11.5.e. A medication container with an incomplete or illegible label shall be returned to the pharmacy for relabeling.

11.5.f. Medication shall be released to a patient upon discharge only on the written authorization of a physician.

11.5.g. Medication released to a patient shall be properly labeled and packaged by the pharmacist with directions for use in accordance with the rules ~~and regulations~~ of the West Virginia board of pharmacy.

11.5.h. Documentation of medication released to a patient shall be entered in the patient's medical record.

11.5.i. All discontinued, outdated, adulterated, deteriorated and deceased patients' medications shall be disposed of or destroyed in the nursing home by the consulting pharmacist and a licensed nurse employed by the nursing home once each month or more often if needed. This procedure shall be documented in writing in accordance with guidelines established by the director. All medication destruction records shall be signed and dated by the consultant pharmacist and by the licensed nurse. All medication destruction records shall be kept on file at the nursing home for a period of two (2) years. The medication destruction record shall clearly state the following information:

11.5.i.1. The name of the patient for whom the drug was prescribed;

11.5.i.2. The prescription number;

11.5.i.3. The name of the pharmacy;

11.5.i.4. The name and strength of the drug; and

11.5.i.5. The amount of drug that was destroyed.

11.6. Medication Storage. ~~(Class II)~~

11.6.a. Schedule II controlled drugs shall be stored in ~~such~~ a manner so that they are securely protected by two (2) locks.

11.6.b. Medications which require refrigeration shall be kept in a locked medication refrigerator, in a refrigerator located in a locked area, or in a locked box in a refrigerator separate from food. The refrigerator shall have a thermometer to indicate temperature.

11.6.c. Medication for external use only shall be kept separate from medications which are taken internally.

11.6.d. The control of drugs subject to the Uniform Controlled Substances Act (~~Chapter 60A of the West Virginia Code of 1931, as amended~~ W. Va. Code § 60A-1-1 et seq.) shall comply with federal and state laws and rules, ~~and regulations~~ the rules of the West Virginia board of pharmacy concerning procurement, storage, dispensing, administration and disposition of controlled substances.

11.6.e. The pharmaceutical services committee shall establish and approve in writing each year the list of contents of the emergency medication kits. In accordance with guidelines established by the director and the rules ~~and regulations~~ of the West Virginia board of pharmacy, an emergency medication kit shall be stored in a locked room or locked compartment near each nursing station.

11.6.f. There shall be a typewritten list of contents of the emergency medication kit, stating the name, strength and quantity of the drugs present in the emergency medication kit and posted near the telephone at each nursing station.

11.6.g. Each time the emergency medication kit is used the following information shall be written on an Emergency Medication Kit Inventory Record as described below:

11.6.g.1. The patient's name;

11.6.g.2. The name and strength of the drug administered;

11.6.g.3. The route of administration;

11.6.g.4. The date and time the drug is administered;

11.6.g.5. The amount of drug administered;

11.6.g.6. The amount of drug remaining in the kit;

11.6.g.7. The type of emergency;

11.6.g.8. The name of the physician who ordered the drug; and

11.6.g.9. The signature of the licensed nurse administering the drug.

11.6.h. Emergency oxygen and tracheal suction devices shall be readily available in the facility.

§64-13.12. Social Work Services and Recreation and Activity Services.

12.1. Social Work Services to be Provided. ~~(Class II)~~

12.1.a. A facility shall maintain the capacity directly or through contracted services to identify and meet social, psychosocial, emotional and cultural needs which are related to illness, stress, family and community relationships, death, treatment and stay in the facility.

12.1.b. If social services are provided by contract, a nursing home shall keep a current list of available social service agencies and resources including but not limited to those agencies affiliated with the West Virginia commission on aging.

12.1.c. The social work service shall serve as a liaison between patient needs and community resources and where multiple-agency contacts are necessary the social work service shall serve as the coordinating agent for the patient.

12.2. Plan for Social Work Services. ~~(Class II)~~

12.2.a. There shall be written policies and procedures regarding the scope and conduct of the social work service.

12.2.b. In addition to general social work activities, the social work service responsibilities shall include at least:

12.2.b.1. Preadmission contact and assessment, including the exploration of alternative types of placement or services with both the patient and the family;

12.2.b.2. Orientation at admission;

12.2.b.3. Integration of social services with other services and care provided for the patient;

12.2.b.4. Communication to other services of psychosocial factors which could affect services rendered or care delivered to the patient;

12.2.b.5. Provision of counseling to patient's families;

12.2.b.6. Participation in the development of patient care plans as described in Section ~~15.1~~ 13.1 of ~~these regulations~~ this rule;

12.2.b.7. Special attention to needs related to death and dying; and

12.2.b.8. Coordination of discharge planning as described in Section ~~15.1.7~~ 13.1.g and Section ~~15.1.8~~ 13.1.h of ~~these regulations~~ this rule.

12.3. Social Work Services Staffing. ~~(Class II)~~

12.3.a. A designated staff member shall be responsible for directing social work services.

12.3.b. An individual may serve as the director of social services provided one (1) of the following requirements regarding education, experience and post-degree training is met:

12.3.b.1. A B.S.W. graduate of a school of social work accredited by the Council of Social Work Education or a masters level graduate in social work or gerontology;

12.3.b.2. A B.S., B.A. or masters level graduate in a related field or a B.S.W. graduate of a nonaccredited school of social work with two (2) years of experience in a health care facility, medical social work, or gerontology;

12.3.b.3. An individual meeting the educational requirements of (b) above but not the experience requirements, provided supervision be provided by a qualified social work consultant with consultation no less than quarterly for a period of two (2) years; or

12.3.b.4. A non-degreed individual or an individual with a degree in a non-related field with three (3) year's experience in a health care facility, medical social work or gerontology, provided that supervision by a qualified social worker be provided no less than quarterly. If a facility complies with the requirements of (a) or (b) above but does not comply with the requirements of Section ~~14.1~~ 12.1 or Section ~~14.2~~ 12.2 or both, the director may require that the facility obtain consultation until such time as the facility ~~shall~~ is be judged in compliance with Sections ~~14.1~~ 12.1 and ~~14.2~~ 12.2.

If a facility director of social work services meets only the requirements of (c) or (d) above and the facility is in compliance with the requirements of both Sections ~~14.1~~ 12.1 and ~~14.2~~ 12.2, the director may modify or waive the requirement of (c) or (d) for consultation or supervision by a qualified social worker.

12.3.c. An individual who meets the requirements of Section ~~14.3.2(a)~~ 12.3.b.1 of this rule shall qualify as a social work consultant for the purposes of ~~these regulations~~ this rule.

12.3.d. For purposes of evaluating compliance with the requirements of Section ~~14.3.2~~ 12.3.b of ~~these regulations~~ this rule, a degree related to social work shall include: gerontology, clinical psychology, sociology, vocational rehabilitation, community mental health, counseling and guidance or any other degree for which prior written approval is obtained from the director.

12.3.e. There shall be sufficient social work staff to provide the equivalent of one (1) staff person per one hundred and twenty (120) patients. This requirement may be satisfied by part time staff or staff with assignments and responsibilities in both social services and recreation and activities, provided the overall requirements of Section ~~14~~ 12 of ~~these regulations~~ this rule are met.

12.3.f. The director of social services may also serve as the director of recreation and activities, provided the overall requirements of Section ~~14~~ 12 of ~~these regulations~~ this rule are met.

12.4. Social Work Services Facilities. ~~(Class II)~~ - Facilities shall be adequate for social services personnel and easily accessible to patients, families and staff and shall provide privacy for interviews and space for confidential storage of records.

12.5. Recreation and Activities Program. ~~(Class II)~~

12.5.a. A nursing home shall provide a planned and diversified program of therapeutic recreation and activity.

12.5.b. The recreation and activities program, as indicated by individual needs and capabilities, shall be designed to:

12.5.b.1. Maximize self care and independence;

12.5.b.2. Facilitate social and general rehabilitation;

12.5.b.3. Promote adjustment to the long-term care environment;

12.5.b.4. Promote the dignity of patients; and

12.5.b.5. Maximize the opportunity to patients to return to meaningful active lives within or without the confines of the nursing home setting.

12.5.c. Only upon a physician's order shall a patient's participation in an activities program be restricted and ~~such~~ the order shall be given in accordance with ~~Section 9.5.7, Section 9.6.7, and Section 9.2 of these regulations~~ Sections 7.5.g, 7.6.g, and 7.2 of this rule.

12.5.d. There shall be a written plan for the facility's recreation and activities program which shall address the following types of activities as appropriate to the needs of the facility's patients:

12.5.d.1. Social and interpersonal activities which provide opportunity for fun, enjoyment and the development of friendships, such as: parties, dances, banquets, coffee hours and games;

12.5.d.2. Diversional and recreational activities designed to emphasize individual accomplishment, provided diversion and aid in adjustment to long-term rehabilitation, such as: sewing, painting, and other craft-type activities;

12.5.d.3. Opportunities for participation in volunteer service activities, such as: assisting in community fund drives, making toys for underprivileged children, assisting other residents, and preparing church literature;

12.5.d.4. Intellectual activities designed to provide mental stimulation, such as: discussion groups, library services and materials, book review groups, music appreciation, and lectures or classes;

12.5.d.5. Spiritual or religious activities, such as: formal worship, scripture reading and study, mission work, and hymn singing. Care shall be taken to insure the representation of all faiths of individual residents in the nursing home;

12.5.d.6. Exercise and physical activities to assist residents to keep active and alert, such as: individual and group exercise sessions and programs, outdoor walks, and sports and games adapted to the capabilities and needs of the individual participants; and

12.5.d.7. A resident council which meets monthly and shall consider and have the right to express patient's grievances, to represent patients in the facility generally and to make recom-

mendations concerning facility policies and procedures.

The activities specified in Section ~~14.5.4~~ 12.5.d are included only as examples and ~~as such shall~~ need not be taken as exhaustive lists nor shall the lists be interpreted as a minimum or maximum set.

12.5.e. A facility shall make provisions to enable and shall encourage relatives and friends of patients to participate in activities with patients.

12.5.f. The recreation and activities program shall provide for a variety of activities to occur during evenings and weekends as well as during the daytime hours of the usual business day.

12.5.g. The recreation and activities program shall provide individual activities for those who are unable or unwilling to participate in group activities. Both small and large group activities shall be provided.

12.5.h. Recreation and activity staff shall participate in the development of patient care plans.

12.6. Recreation and Activities Staffing. ~~(Class II)~~

12.6.a. A nursing home shall appoint a patient activities director and ~~such~~ additional staff as needed to carry out the patient activities program, but not ~~to be~~ less than the equivalent of one (1) staff member per one hundred and twenty (120) patients in the nursing home.

12.6.b. The patient activities director's duties shall include at least the following:

12.6.b.1. Development of the recreation and activities plan;

12.6.b.2. Organizing and directing the recreation and activity program;

12.6.b.3. Organizing and directing a program of volunteer services for patients;

12.6.b.4. Maintenance of a current record of community services, resources, programs and facility materials accessible to the staff, patients, and patients' relatives and friends;

12.6.b.5. Development of a written monthly activities schedule at least one (1) month in advance;

12.6.b.6. Ascertaining from each patient's care plan any physician's orders limiting any patient's participation in the activities program; and

12.6.b.7. Documenting patients' participating in activities and reasons for nonparticipation in otherwise appropriate activities;

12.6.b.8. Working in collaboration with the director of social work services with the resident council; and

12.6.b.9. Providing in-service training to other staff members and volunteers in recreation and activities.

12.7. Recreation and Activities Facilities. ~~(Class II)~~

12.7.a. A patient activities area shall be provided with comfortable furniture in good repair.

12.7.b. A facility shall provide transportation for patients to and from patient activities.

12.7.c. Appropriate activities shall be provided to patients unable to leave their rooms.

§ 64-13-13. Plans for Care and Medical Records.

13.1. Plans for Care and Discharge. ~~(Class I)~~

13.1.a. A patient care plan shall be developed for each patient upon admission and maintained by the nursing service in cooperation with all other services. The plan of care shall provide a profile of the needs of the individual patient, 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. The patient care plan shall be in writing and contain at least the following:

13.1.a.1. Goals to be accomplished;

13.1.a.2. Individually designed activities to meet goals;

13.1.a.3. Therapies;

13.1.a.4. Treatments, including diet requirements; and

13.1.a.5. A statement of which professional service or individual is responsible for each element prescribed in the plan.

13.1.b. A nursing home shall have written policies and procedures to ensure that through patient care conferences or other methods of coordination, the patient care plan shall be reviewed and revised as needed but at least quarterly. ~~Such~~ The review shall be noted in the medical record.

13.1.c. Policies and procedures shall delineate the rules and responsibilities of each service in relation to the patient care plan.

13.1.d. The patient care plan shall be available for use by all personnel caring for the patient.

13.1.e. Relevant information from the patient care plan shall be made available with other information that is transmitted when the patient is transferred to another facility or referred for continuing care by other agencies upon discharge to the community.

13.1.f. A nursing care plan shall be maintained in accordance with the orders of the designated physician establishing and maintaining the plan. It shall include directions for the following:

13.1.f.1. How the nursing staff will provide care needed to achieve the goals in the patient care plan;

13.1.f.2. Medications and treatments;

13.1.f.3. Diets and special dietary needs;

13.1.f.4. Activity limitations, if any;

13.1.f.5. A bathing and grooming schedule; and

13.1.f.6. Recreational activities and limitations for the patient.

13.1.g. A discharge plan shall be maintained and shall include at least the following:

13.1.g.1. An initial assessment at admission or within no less than seven (7) days after the date of admission, including discharge potential and goals;

13.1.g.2. Relevant information concerning such areas as nursing assessment, social history, rehabilitation potential, patient needs at discharge and community resources available;

13.1.g.3. Periodic review and reevaluation at regular intervals, preferably on a monthly basis for the first three (3) months after admission and in no instance less than quarterly. Detail and content of the discharge plan after the initial assessment will vary with the condition of the patient.

13.1.h. When a patient is discharged to another facility or agency or to his or her home, a discharge summary shall be prepared prior to the discharge. The complete discharge summary shall be transmitted to the receiving facility or agency at the time of discharge. If the patient is discharged to his or her home, the patient shall be given appropriate information concerning his or her needs for care and medication. The discharge summary shall include:

13.1.h.1. Patient name and identifying number;

13.1.h.2. Name of attending physician;

13.1.h.3. Date of admission;

13.1.h.4. Date of discharge;

13.1.h.5. Provisional and final diagnosis;

13.1.h.6. Course of treatment and care in the facility;

13.1.h.7. Pertinent diagnostic findings;

13.1.h.8. Essential information regarding the patients' illness or problems;

13.1.h.9. Restorative procedures;

13.1.h.10. Medication instructions;

13.1.h.11. Facility, agency or location to which discharged; and

13.1.h.12. Dated physician signature.

13.2. Medical Record Required. ~~(Class II)~~

13.2.a. A facility shall maintain a medical record for each patient, which complies with the standards set forth in this Section.

13.2.b. Medical records shall be completed promptly within a time specified in the facility's policies and procedures, not to exceed thirty (30) days past discharge.

13.2.c. All clinical information pertaining to a patient's stay and medical care shall be centralized in a single medical record following discharge.

13.2.d. Medical records of discharged patients shall be maintained for at least three (3) years from date of discharge, or in the case of a minor, three (3) years after the patient becomes of age under state law.

13.2.e. Overall supervisory responsibility for the maintenance of medical records services shall be assigned to a full-time employee of facility.

13.2.f. The facility shall employ sufficient personnel competent to perform the functions required of a medical record service.

13.2.g. Records shall be maintained at a location that is accessible to appropriate staff.

13.2.h. Medical records shall be kept in a manner which is orderly and which maintains ready accessibility and retrieval of information.

13.3. Confidentiality of Medical Records. ~~(Class II)~~

13.3.a. The facility shall safeguard medical record information against loss, destruction or unauthorized use.

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

13.3.c. Access to medical records shall be limited to designated staff members, physicians, ~~representatives of the West Virginia board of health,~~ authorized representatives of federal or state departments of health, agencies designated by a third party payment contract, the patient or a person or agency given written permission by the patient or by the patient's ~~guardian or committee~~ legal representative.

13.4. Contents of Medical Records. ~~(Class II)~~

13.4.a. A patient's medical record shall contain at least:

13.4.a.1. Basic identifying information as listed in Section ~~15.4.4~~ 13.4.d;

13.4.a.2. Date and time of admission;

13.4.a.3. A signed, dated admission and medical history, completed in accordance with Section ~~10.3.1(a)~~ 8.3.a.1;

13.4.a.4. Signed physician's orders, including those pertaining to medication, special

procedures, treatments, diet and medical procedures;

13.4.a.5. Progress notes signed and dated at the time of each entry by appropriate staff authorized to write notes according to the written policies of the facility;

13.4.a.6. Nursing notes as kept current and signed by nursing personnel;

13.4.a.7. Signed and dated laboratory and x-ray reports, when ~~such~~ these procedures have been ordered;

13.4.a.8. A patient care plan as required in Section ~~15.1.1~~ 13.1.a;

13.4.a.9. A nursing care plan as required in Section ~~15.1.6~~ 13.1.f;

13.4.a.10. A discharge plan as required in Section ~~15.1.7~~; 13.1.g and

13.4.a.11. A discharge summary as required in Section ~~15.1.8~~ 13.1.h of this rule.

13.4.b. A physician shall countersign all verbal orders at the time of his or her next visit or by mail if returned within ten (10) days.

13.4.c. Policies shall specify the authority of at least the following types of practitioners in addition to physicians to write progress notes in medical records: nurses; social workers; therapists; psychologists; dentists; and podiatrists.

13.4.d. Basic identifying information shall include:

13.4.d.1. Patient's name and any identification number;

13.4.d.2. Room number;

13.4.d.3. Social security number;

13.4.d.4. Marital status;

13.4.d.5. Date of birth;

13.4.d.6. Sex;

13.4.d.7. Home address;

13.4.d.8. Telephone number of referral agency including hospital from which admitted;

13.4.d.9. Name, address, telephone number of attending physician;

13.4.d.10. Name, address and telephone number of next of kin or other responsible person;

13.4.d.11. Religious preference; and

13.4.d.12. Any pre-burial arrangements.

13.4.e. Nursing notes shall include at least:

13.4.e.1. Description of the care provided;

13.4.e.2. Nursing history;

13.4.e.3. Assessment of observed signs and symptoms;

13.4.e.4. Reactions to treatments and medications;

13.4.e.5. Changes in patient's physical or emotional condition;

13.4.e.6. Documentation of any unusual incident involving a patient; and

13.4.e.7. Nursing summary as indicated by patient needs.

~~**§64-13.16. Penalties.**~~

~~16.1. Director's Authority.~~

~~16.1.1. The director shall have the authority to invoke penalties against a facility violating the provisions of these regulations in accordance with the provisions of these regulations and pursuant to Chapter 16, Article 5C of the West Virginia Code of 1931, as amended.~~

~~16.1.2. The director shall by order reclassify a facility or reduce the bed capacity of a facility or both, when on the basis of inspection he makes the following findings: (a) that the licensee is not providing adequate care under the facility's existing classification or bed capacity; and (b) that reclassification, reduction in bed capacity or both would place the facility in a position to render adequate care.~~

~~16.1.3. The director shall notify a licensee of reclassification, reduction in bed capacity or both, stating the terms of the order, the reasons therefor and the date set for compliance.~~

~~16.1.4. The director may suspend or revoke a license if he finds upon inspection that there has been a substantial failure to comply with the provisions of these regulations or Chapter 16, Article 5C of the West Virginia Code of 1931, as amended.~~

~~16.1.5. The director may refuse to grant a license and may revoke a license if he determines there has been subterfuge or other dishonest action in applying for an original or renewal license.~~

~~16.1.6. 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 these regulations to take any of following actions: (a) institute or continue a disciplinary proceeding; (b) institute or continue a proceeding for the denial of a license application; (c) enter an order denying a license application; and (d) take any other disciplinary action as provided by state law or rules and regulations.~~

~~16.1.7. 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 these regulations.~~

~~16.2. Procedure for Director's Action.~~

~~16.2.1. When the director takes action pursuant to Section 16.1 of these regulations, the director shall file a complaint stating the facts constituting a ground or grounds for the action.~~

~~16.2.2. When the director files a complaint, the director shall notify the licensee, in writing, of the filing of the complaint.~~

~~16.2.3. Notice shall include the following items: (a) a copy of the complaint; and (b) notification of the availability of a hearing pursuant to Section 17 of these regulations.~~

~~16.2.4. Notice shall be served by certified mail, return receipt requested.~~

~~16.2.5. The director has the right to enforce a regulation, administratively or in court, without first affording an opportunity to correct a deficiency pursuant to Section 5.7 of these regulations when the director finds either of the following: (a) that violation of the regulation jeopardizes the health or safety of a patient; or (b) the violation is the second or subsequent violation of the same regulation within twelve months.~~

~~16.3. Procedure for Civil Penalties.~~

~~16.3.1. Upon a determination that civil penalties are to be imposed pursuant to the West Virginia Code of 1931, as amended and Section 5.7.11 of these regulations, the director shall issue a citation to the licensee or non-licensed operator. Provided that in the case of a penalty for a facility's failure to correct a deficiency of a non life-threatening nature, the director shall prior to issuing the citation notify the licensee or non-licensed operator by registered or certified mail that civil penalties will be imposed on a date to be specified by the director unless the corrective actions specified by the director are implemented in an acceptable manner.~~

~~16.3.2. The citation shall be served personally upon the licensee or non licensed operator by an duly authorized representative of the director. If a citation is not served personally, it shall be sent by registered or certified mail, return receipt requested.~~

~~16.3.3. Each citation shall be in writing and shall include at least the following: (a) an assessment of civil penalties according to the nature of the violation or violations; and (b) a description of the nature of the violation fully stating the manner in which the licensee or non licensed operator violated a specific statutory provision or regulation and the particular place or area of the facility in which it occurred.~~

~~16.3.4. The name of any patient jeopardized by the violation shall not be specified in the citation in order to protect the privacy of the patient. However, at the time the licensee or non-licensed operator is served with the citation, the licensee or non licensed operator shall also be served with a written list of each of the names of the patients alleged to have been jeopardized by the violation. If the violation jeopardized all of the patients of the entire facility, such fact shall be specified in the citation and a written list of the names of the patients involved is not required to be furnished to the licensee or nonlicensed operator.~~

~~16.3.5. For each violation of a Class I standard, as listed in Section 5.10.5 a civil penalty of not less than one hundred dollars ($100) or more than one thousand dollars ($1,000) shall be imposed. For each violation of a Class II standard, as listed in Section 5.10.6, a civil penalty of not less than fifty dollars ($50) and not more than one hundred ($100) dollars shall be imposed. For each violation~~

~~of a Class III standard, as listed in Section 5.10.7, a civil penalty of not less than twenty five dollars ($25) and not more than fifty dollars ($50) shall be imposed.~~

~~16.3.6. Each day a violation continues, after the date by which correction was required by an approved plan of correction, or if an approved plan of correction was not submitted, the date on which such plan was due, shall constitute a separate violation.~~

~~16.3.7. In fixing the amount of the civil penalty to be imposed for violations, the director shall consider: (a) the gravity of the violation, which shall include: (1) the degree of substantial probability that death or serious physical harm will result and, if applicable, did result from the violation; (2) the severity of serious physical harm most likely to result, and if applicable, that did result, from the violation; and (3) the extent to which the provisions of the applicable statutes or regulations were violated; and (b) any previous violations committed by the licensee.~~

~~16.3.8. If a licensee or non licensed operator does not wish to contest a citation, he shall submit to the director, within four (4) business days after the issuance of the citation, the total sum of the penalty assessed.~~

~~16.3.9. If a licensee or a non licensed operator desires to contest a citation, or the date specified for correction of a violation, he shall, within four (4) business days after service of the citation or specification of time in which a violation is to be corrected, serve upon the director, either personally or by registered or certified mail, the licensee's or non-licensed operator's written notice pursuant to the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, West Virginia Department of Health Procedural Rules, 64 CSR 1, 1983.~~

~~§64-13-17. Administrative Due Process.~~

~~17.1. An applicant for a license or a licensee or any other person aggrieved by an order or other action by the director pursuant to these regulations or to Chapter 16, Article 5C of the West Virginia Code of 1931, as amended, shall have the opportunity for a hearing by the director, upon written request to the director in a manner prescribed in and by the aforementioned Rules of Procedure for Contested Case Hearings and Declaratory Rulings, West Virginia Department of Health Procedural Rules, 64 CSR 1, 1983.~~

~~17.2. A hearing pursuant to this Section shall be conducted in accordance with the pertinent provisions of Chapter 29A, Article 5 of the West Virginia Code of 1931, as amended and the aforementioned Rules of Procedure for Contested Case Hearings and Declaratory Rulings, West Virginia Department of Health Procedural Rules, 64 CSR 1, 1983.~~

~~17.3. Notice of an order suspending a facility's license shall specify the conditions giving rise to the suspension which the licensee must correct during the period of suspension in order to have the license reinstated.~~

~~17.4. If the director revokes a license, the director may stay the effective date of revocation by no more than ninety (90) days upon a showing that the stay is necessary to assure appropriate placement of patients.~~

~~17.5. The director's order shall be final unless vacated or modified either personally or by registered or certified mail or the licensee's or non licensed operator's written notice pursuant to the Rules of Procedures for Contested Case Hearings and Declaratory Rulings, West Virginia Department of Health Procedural Rules, 64 CSR 1, 1983.~~

~~17.6. In addition to all other powers granted to the director under Chapter 16, Article 5C of the West Virginia Code of 1931, as amended and these regulations, the director may hold a case under advisement and make a recommendation as to requirements to be met by the licensee in order to avoid suspension or revocation of a license, in accordance with Chapter 16, Article 5, Section 11 of the West Virginia Code of 1931, as amended.~~

~~17.7. Where the director takes a case under advisement, the director shall:~~

~~(a) enter an order stating the decision to hold the case under advisement;~~

~~(b) notify the licensee and his attorney of record, if any, of the action, by certified mail, return receipt requested;~~

~~(c) enter an order showing satisfactory compliance, dismissing the complaint, if the licensee meets the requirements of the order; and~~

~~(d) upon entering the second order, under this Section, the director shall notify the licensee and his attorney of record, if any, by certified mail, return receipt requested.~~

§ 64-13-14. Penalties; Hearings; Due Process.

14.1. Enforcement: Director's Powers, Duties and Rights.

14.1.a. General.

The director has the duty as well as the authority to invoke penalties against a nursing home violating the provisions of this rule in accordance with the provisions of this rule.

14.1.b. Cumulative Remedies.

14.1.b.1. The 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.

14.1.b.2. Residents, residents' families or legal representatives, and ombudsmen may also pursue independently in court violations of this rule. 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 null and void as contrary to public policy.

14.1.b.3. If after an investigation of a complaint, the director determines that the complaint is substantiated, he or she shall take appropriate action and shall advise any injured party of the possibility of civil remedy.

14.1.c. Civil Actions.

The director shall bring an action to enforce compliance with W. Va. Code § 16-5C-1 et seq. or any rule, regulation or order issued thereunder, whenever it appears to the director 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.

14.1.d. Available Remedies.

One or more of the following remedies shall be used:

14.1.d.1. License termination;

14.1.d.2. Reduction of bed capacity;

14.1.d.3. Ban on new admissions;

14.1.d.4. Temporary management;

14.1.d.5. Civil money penalties; or

14.1.d.6. Closure of the nursing home in emergency situations or transfer of residents, or both.

14.1.d.7. A nursing home may not avoid a remedy on the basis that it underwent a change of ownership.

14.1.e. Enforcement Generally.

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:

14.1.e.1. Failure to provide standard quality of care for residents;

14.1.e.2. Wilfully and knowingly falsifying the material content of resident assessments;

14.1.e.3. Failure to submit a plan of correction;

14.1.e.4. Failure to submit a plan of correction which is approved by the director;

14.1.e.5. Failure to correct deficiencies within the time frame specified in an approved plan of correction;

14.1.e.6. Repeated noncompliance with the same regulatory grouping;

14.1.e.7. Failure to cooperate with or interference with the director or an authorized representative of the director] in the inspection of the nursing home;

14.1.e.8. Failure to comply with this rule;

14.1.e.9. A violation of any provision of this rule which produces immediate jeopardy to the health or safety of residents;

14.1.e.10. Violation of the prohibitions of this rule against discharge of residents or employees for reasons of complaints regarding the nursing home;

14.1.e.11. The use of subterfuge or other dishonest action in applying for an original or renewal license;

14.1.e.12. Abuse of residents;

14.1.e.13. Neglect of residents;

14.1.e.14. Misappropriation of residents' property; or

14.1.e.15. Attempted bribery of any employee or contracted person of the department.

14.1.f. The director shall by order place a ban on new admissions, reduce the bed capacity of a facility, or both, when on the basis of inspection he or she makes the following findings: (a) that the licensee is not providing adequate care under the facility's existing bed capacity; and (b) that reduction in bed capacity, or placing a ban on new admissions, or both would place the facility in a position to render adequate care. A reduction in bed capacity or a ban on new admissions, or both, shall remain in effect until the facility is determined by the director to be in substantial compliance with this rule. If the residents of the facility are in immediate jeopardy of their health, safety, welfare or rights, the director may seek an order to transfer residents out of the facility as provided for in subsection (e) of this section. Any notice to a licensee of reduction in quota or a ban on new admissions shall include the terms of the order, the reasons therefor and a date set for compliance.

14.2. Inspection Procedure; Director's Obligations to Residents; Complaint Investigation.

14.2.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. Code § 16-5C-1 and this rule. The inspection shall be conducted by a team that includes a registered nurse, and, as determined by the director, other appropriate disciplines. The team members shall investigate thoroughly within the areas of their expertise and review requirements of regulations. A detailed inquiry shall be made of a representative sample of residents through resident interviews and review of their records. A statement of deficiencies referencing the noncompliance with this rule shall be completed within twenty (20) working days, with a copy provided to the nursing home who shall post the report in a prominent, easily accessible place in the nursing home and so maintain it until the next report.

14.2.a.1. Investigations of complaints involving immediate jeopardy to resident health or safety shall be made within five (5) days.

14.2.a.2. Investigations of complaints involving actual harm that is not immediate jeopardy shall be made within ten (10) days.

14.2.a.3. Investigations of complaints involving no actual harm with potential for more than minimal harm that are not immediate jeopardy shall be made at the time of the next survey.

14.2.a.4. Investigations of complaints involving no actual harm with potential for minimal harm and all other complaints shall be made at the time of the next survey.

14.2.b. All licensed nursing homes shall be inspected at an average of every twelve (12) months to determine the nursing home's compliance with applicable statutes and rules. Nursing homes with the greatest number of deficencies shall be investigated with greater frequency as determined by the director.

14.2.c. If, within one hundred twenty (120) days of an inspection or complaint investigation, a nursing home fails to comply with the requirements of this rule, the director shall inform in writing all residents of the nursing home of the violations which the nursing home has made, and 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.

14.2.d. The director shall provide all residents with a list of approved nursing homes and agencies to assist them to move if they wish. The purpose is to let the residents know they do not have the protection of this rule and to give them assistance to move if the lack of compliance by the nursing home endangers them or causes a reduction in their social security benefits or medicaid benefits.

14.2.e. The director shall make available for public inspection from the time of receipt information concerning applications, inspections, investigations and other reports. Statements of deficiency shall be made available for public inspection within fourteen (14) days of receipt by the nursing home. Copies shall be provided upon request.

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.

14.2.f. 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.

14.2.g. The director shall provide the long-term care ombudsman with the following:

14.2.g.1. A statement of deficiencies reflecting nursing home noncompliance; and

14.2.g.2. Reports of adverse actions imposed on a nursing home.

14.3. Procedure for Civil Penalties.

14.3.a. Assessment and Application of Civil Penalties.

Penalties for violations of this rule shall be assessed and applied in accordance with the provisions of W. Va. Code § 16-5C-1 et seq. and this rule. Upon completion of a report of inspection, the director shall determine what civil penalties are to be imposed.

14.3.b. When Civil Penalty Is Collected.

14.3.b.1. Hearing Requested.

14.3.b.1.A. A nursing home shall submit any request for a hearing on the determination of the noncompliance that is the basis for imposition of the penalty within sixty (60) days from receipt of the notice of initial, reconsidered, or revised determination of the director. For good cause shown, a hearing examiner may extend the time for filing the request for hearing.

14.3.b.1.B. If a nursing home requests a hearing within the time specified in Section 14.3.b.1.A of this rule, the director shall collect the penalty within fifteen (15) days when there is a final adjudication that upholds the director's determination of non-compliance after the

nursing home achieves substantial compliance or is terminated.

14.3.b.2. Hearing Not Requested.

14.3.b.2.A. If a nursing home does not request a hearing in accordance with Section 14.3.b.1.A of this rule, the director shall collect the penalty.

14.3.b.2.B. If the facility does not request a hearing, the penalty shall be reduced up to thirty-five percent (35%) by the director.

14.3.b.3. Right to Hearing Waived.

14.3.b.3.A. If a nursing home waives its right to a hearing in writing, the director shall collect the penalty within fifteen (15) working days of the date the written waiver is received by the director.

14.3.c. Notice of Civil Money Penalty.

14.3.c.1. The director shall send a certified written notice of intent to impose the penalty to the nursing home at the same time he or she sends the notice of the basis for imposing the penalty, for example, with the statement of deficiencies, or with a notification of failure to submit a plan of correction timely.

14.3.c.2. The notice shall include:

14.3.c.2.A. The nature of the noncompliance;

14.3.c.2.B. The statutory basis for the penalty;

14.3.c.2.C. The amount of penalty;

14.3.c.2.D. Any factors that were considered when determining the amount of the penalty;

14.3.c.2.E. When the penalty is due; and

14.3.c.2.F. Instructions for responding to the notice, including a statement of the nursing home's right to a hearing, and the implication of waiving a hearing.

14.3.d. Amount of Civil Penalty.

14.3.d.1. Civil penalties assessed against licensed nursing homes may not be less than fifty dollars ($50) nor more than eight thousand dollars ($8,000): Provided, That the director may not assess a penalty against a facility if the facility 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 puts the residents in immediate jeopardy. In either of these situations a penalty can be assessed immediately. If a penalty is assessed by the Health Care Financing Administration or the State Medicaid Agency for the same deficiency, the director shall reduce any State penalty amount by the amount of the federal penalty in determining the amount owed. The range of civil penalties shall be as follows:

14.3.d.1.A. For each violation which presents immediate jeopardy to the health,

safety or welfare of one (1) or more residents, the director may impose a civil penalty of not less than three thousand ($3,000) nor more than eight thousand dollars ($8,000).

14.3.d.1.B. For each violation which actually harms one (1) or more residents, the director may impose a civil penalty of not less than one thousand ($1,000) nor more than three thousand dollars ($3,000).

14.3.d.1.C. For each violation which has the potential to harm one (1) or more residents, the director may impose a civil penalty of not less than fifty dollars ($50) nor more than one thousand dollars ($1,000).

14.3.d.1.D. If no plan of correction is submitted as established in this Section , the director may assess a penalty in the amount of one hundred dollars ($100) a day unless the facility has provided a reasonable explanation which has been accepted by the director.

14.3.d.1.E. If a deficiency for which an acceptable plan of correction has been provided to the director is not corrected upon revisit to the facility, the deficiency will be regarded as a repeat deficiency.

14.3.d.1.F. Culpability shall not be a consideration in determining the amount of a penalty.

14.3.d.2. Penalty Procedures After Termination of a License.

14.3.d.2.A. In the case of a terminated nursing home, the director shall send the penalty information after the:

14.3.d.2.A.1. Final administrative decision is made;

14.3.d.2.A.2. Nursing home has waived its right to a hearing; or

14.3.d.2.A.3. Time for requesting a hearing has expired and the director has not received a hearing request from the nursing home.

14.3.d.2.B. Penalty payment is due fifteen (15) days after:

14.3.d.2.B.1. A final administrative decision;

14.3.d.2.B.2. The time period for requesting a hearing has expired;

14.3.d.2.B.3. Receipt of the written request to waive a hearing; or

14.3.d.2.B.4. The effective date of termination.

14.3.e. Penalty for Notification of Inspection.

The director shall assess a civil 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.

14.3.f. Payment of Penalties.

14.3.f.1. A civil money penalty payment is due fifteen (15) days after a final administrative decision is made when:

14.3.f.1.A. The nursing home achieves substantial compliance before the final administrative decision; or

14.3.f.1.B. The effective date of termination occurs before the final administrative decision.

14.3.f.2. A civil money penalty payment is due fifteen (15) days after the time period for requesting a hearing has expired and a hearing request was not received when:

14.3.f.2.A. The nursing home achieved substantial compliance before the hearing request was due; or

14.3.f.2.B. The effective date of termination occurs before the hearing request was due.

14.3.f.3. A civil money penalty payment is due fifteen (15) days after receipt of the written request to waive a hearing.

14.3.g. Interest on Civil Penalties.

The assessments for penalties and for costs of legal action taken under W. Va. Code § 16-5C-1 et seq. shall have interest assessed at two percent (2%) on the last day of each month in which occurs the thirtieth day after receipt of notice of the assessment or after the month in which occurs the thirtieth day after receipt of the director's final order following a hearing, whichever is later. 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 licensee or operator of the nursing home.

14.3.h. Action for Recovery of Civil Penalties.

The director shall, in a civil judicial proceeding, recover any unpaid assessment which has not been contested under W. Va. Code § 16-5C-12 within thirty (30) days of receipt of notice of the assessment, or which has been affirmed under the provisions of that section and not appealed within thirty (30) days of receipt of the director's final order, or which has been affirmed on judicial review, as provided in W. Va. Code § 16-5C-13. 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: (1) The protection of the health or property of facility residents; (2) Long-term care educational activities; (3) the costs arising from the relocation of residents to other facilities when no other funds are available; (4) in an emergency situation in which there are no other funds available, the operation of a facility pending correction of deficiencies or closure; and (5) the reimbursement of residents for personal funds lost.

14.4. Action When There Is Immediate Jeopardy.

14.4.a. If there is immediate jeopardy to resident health or safety, the director shall either:

14.4.a.1. Petition the circuit court for the appointment of a temporary manager;

14.4.a.2. Close the facility; or

14.4.a.3. Transfer the residents in the facility to another facility.

14.5. Temporary Management.

14.5.a. Upon petition from the director, a circuit court may divest the licensee or operator of possession and control of a nursing home in favor of a temporary management. The temporary management shall be responsible to the court and shall have such 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, including, but not limited to, the replacement of 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 so as 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. Priority shall be given to expenditures for current direct resident care or the transfer of residents.

14.5.b. The person charged with temporary management shall be an officer of the court, shall not be liable for conditions at the nursing home which existed or originated prior to his or her appointment and shall not be personally liable, except for his or her own gross negligence and intentional acts which result in injuries to persons or damage to property at the nursing home during the temporary management.

14.5.c. No person shall impede the operation of a temporary management. 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.

14.5.d. Temporary management established for the purpose of making improvements in order 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, except 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. 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.

14.5.e. The temporary manager shall bill the nursing home on a bi-weekly basis and the nursing home shall pay within fifteen (15) days at an amount no greater than one twelfth the annual salary of the administrator of the largest nursing home in the state.

14.6. Revocation or Suspension of License.

14.6.a. In order to limit, suspend or revoke a license, the director shall file a complaint stating the facts constituting the ground or grounds for the action. When the director files a complaint, the director shall notify the licensee, in writing, of the filing of the complaint.

14.6.b. When the director terminates or suspends a license on account of immediate jeopardy to residents, the director shall arrange for the safe and orderly transfer of residents.

14.6.c. Notice shall include the following terms:

14.6.c.1. A copy of the complaint; and

14.6.c.2. Notification of the availability of a hearing.

14.6.d. Notice shall be served by personal service or by registered or certified mail, return receipt requested.

14.7. Hearings and Due Process.

14.7.a. The director has the right to enforce this rule, administratively or in court, without first affording an opportunity to correct a deficiency pursuant to Subsection ~~5.7~~ 3.7 of this rule when the director finds either of the following:

14.7.a.1. That the violation of this rule jeopardizes the health or safety of a patient; or

14.7.a.2. The violation is the second or subsequent violation of the same provision of this rule within twelve (12) months.

14.7.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:

14.7.b.1. Institute or continue a disciplinary proceeding;

14.7.b.2. Institute or continue a proceeding for the denial of license application;

14.7.b.3. Enter an order denying a license application; or

14.7.b.4. Take any other disciplinary action as provided by state law or rules.

14.7.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.

14.7.d. 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 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 Rulings, 64 CSR 1.

14.7.e. A hearing pursuant to this rule shall be conducted in accordance with the pertinent provisions of W. Va. Code § 29A-5-1 et seq. and § 29A-4-1 et seq. and West Virginia Department of Health and Human Resources Administrative Rules, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

14.7.f. The nursing home shall have the right to request a hearing and seek judicial review pursuant to W. Va. Code §§ 16-5C-12 and 16-5C-13 to contest the citation issued by the director of a deficiency on an inspection report, irrespective of whether the deficiency results in the imposition of civil penalty.

14.7.g. Informal Dispute Resolution.

14.7.g.1. The director shall offer a nursing home an informal opportunity, at the nursing home's request, to dispute survey findings upon the nursing home's receipt of the official statement of deficiencies. The request shall be made when the plan of correction is submitted.

14.7.g.2. Informal dispute resolution shall be scheduled within twenty (20) working days of the timely request. Failure of the director to complete informal dispute resolution timely cannot delay the effective date of any enforcement action against the nursing home.

14.7.g.3. If a nursing home is subsequently successful during the informal dispute resolution process at demonstrating that deficiencies should not have been cited, the deficiencies shall be removed from the statement of deficiencies and any enforcement actions imposed solely as a result of those cited deficiencies shall be rescinded.

14.7.g.4. At the informal hearing neither the licensee nor the director can be represented by an attorney at law. All communications during an informal conference are confidential and can not be used by or against the licensee in the event that a formal hearing takes place.

14.7.g.5. Upon request, the director shall provide the nursing home with written notification of the informal dispute resolution process.

14.7.h. In addition to all other powers granted to the director under W. Va. Code § 16-5C-1 et seq. and this rule, the director may hold a case under advisement and make a recommendation as to requirements to be met by the licensee in order to avoid suspension or revocation of a license, in accordance with W. Va. Code § 16-5C-11.

14.7.i. When the director takes a case under advisement, the director shall:

14.7.i.1. Enter an order stating the decision to hold the case under advisement;

14.7.i.2. Notify the licensee and his or her attorney of record, if any, of the action, by certified mail, return receipt requested; and

14.7.i.3. Enter order showing satisfactory compliance dismissing the complaint if the licensee meets the requirements of the order.

14.7.j. Upon entering the second order, under this Section, the director shall notify the licensee and his or her attorney of the record, if any, by certified mail, return receipt requested.

14.7.k. Following a hearing, the director shall make and enter a written order either dismissing the complaint or taking such action as is authorized by W. Va. Code § 16-5C-1 et seq. and this rule. The written order of the director shall be accompanied by findings of fact and conclusions of law as specified in W. Va. Code § 29A-5-3, and a copy of the order and accompanying findings and conclusions shall be served upon the licensee and his or her attorney of record, if any, by personal service or certified mail, return receipt requested.

14.7.l. If the director suspends a nursing home's license, he or she shall also specify the conditions giving rise to the suspension, to be corrected by the licensee during the period of suspension in order to entitle the licensee to reinstatement of his or her license.

14.7.m. 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.

14.7.n. The director's order shall be final unless vacated or modified by court order pursuant to West Virginia Department of Health and Human Resources Administrative Rules, Rules of Procedures for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

14.7.o. Any licensee adversely affected by an order of the director rendered after a hearing held in accordance with the provisions of W. Va. Code § 16-5C-12 is entitled to judicial review thereof. All of the pertinent provisions of W. Va. Code § 29-5-4 shall apply to such appeals with like effect as if the provisions of W. Va. Code § 16-5C-13 were set forth in this rule.

14.7.p. The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of W. Va. Code § 29A-6-1.

~~Table 64-13.A. Class I Standards List~~

~~6.3. Construction, Life Safety and Related~~
~~*6.4. Site Characteristics/Accessibility~~
~~6.5. Increase in Bed Capacity~~
~~6.7. Nursing Equipment, Sterile Supplies, and Linens~~
~~6.11. Laundry~~
~~*8.1. General Health and Safety Requirements~~
~~8.4. Fire Drills~~
~~8.6. Provisions for Emergency Calls~~
~~8.7. Infection and Communicable Disease Control~~
~~8.8. Isolation~~
~~9.6. Rights with Regard to Treatment~~
~~*10.2. Availability of Medical Services~~
~~10.3. Services of Attending Physician~~
~~*11.1. Nursing and Patient Care Staffing~~
~~11.2. Management of Nursing Services~~
~~*11.4. Nursing Staff Responsibilities~~
~~*11.5. Restorative Nursing Care~~
~~*11.6. Use of Restraints~~
~~11.7. Notice to Physician of Accident or Illness~~
~~12.1. Dietetic Service to be Maintained~~
~~*12.4. Meals~~
~~13.1. Provision of Pharmaceutical Services~~
~~*13.4. Pharmaceutical Policies and Procedures~~
~~*13.5. Patient Medications~~
~~*15.1. Plans for Care and Discharge.~~

~~*Extra Credit Item~~

~~Table 64-13.B. Class II Standards List~~

~~* 6.6. Equipment and Furnishing of Patient Rooms~~
~~* 6.8. General Maintenance~~
~~6.9. Waste and Refuse Disposal~~
~~7.1. Governing Body~~
~~7.2. Administrator~~
~~7.3. Administrator Functions~~
~~* 7.4. Admission, Discharge and Transfer Policies~~
~~7.5. Admission Contract~~
~~* 7.11. Staff Development~~
~~* 8.2. Disaster Plan~~
~~* 8.3. Disaster Training~~
~~8.5. Disaster Rehearsal and Fire Drill Reports~~
~~8.9. Animals~~
~~* 9.1. Implementations of Patients' Rights~~
~~9.2. Limitation of Patients' Rights and Derivative Rights~~
~~9.3. Civil Rights~~
~~* 9.4. Rights to be Informed~~
~~* 9.5. Rights to Communication and Personal Property~~
~~9.7. Rights to Confidentiality~~
~~9.8. Financial Rights~~
~~* 9.10. Complaint Procedures~~
~~* 9.11. Access~~
~~10.1. Medical Director~~
~~*10.4. Availability of Dental Services~~
~~*10.5. Inservice Training in Dental Care~~
~~11.3. Charge Nurse~~
~~11.8. Accident and Incident Reports~~
~~12.2. Director and Staffing of Dietetic Service~~
~~*12.3. Menus and Supplies~~
~~*13.2. Supervision of Pharmaceutical Services~~
~~13.6. Medication Storage~~
~~14.1. Social Work Services to be Provided~~
~~*14.2. Plan for Social Work Services~~
~~*14.3. Social Work Services Staffing~~
~~14.4. Social Work Services Facilities~~
~~*14.5. Recreation and Activities Program~~
~~*14.6. Recreation and Activities Staffing~~
~~14.7. Recreation and Activities Facilities~~
~~15.2. Medical Record Required~~
~~15.3. Confidentiality of Medical Records~~
~~*15.4. Contents of Medical Records.~~

[1]~~Extra Credit Item~~

~~Table 64-13.C. Class III Standards List~~

~~6.10. Cleaning Supplies~~
~~7.6. Life Care Contract~~
~~7.7. Prohibited Activities~~
~~* 7.8. General Recordkeeping Requirements~~
~~7.9. Administrative Records~~
~~7.10. Personnel Records~~
~~9.9. Fiduciary Responsibilities of the Facility~~
~~9.12. Notice and Posting Requirements~~
~~11.9. Report of Death~~
~~13.3. Pharmaceutical Services Committee.~~

~~*Extra Credit Item~~

~~Table 64-13.D. Scores Required for A, B AND C Ratings in Each Category of the Regulations~~

~~Sec No~~	~~CATEGORY~~	~~RATING~~			
		~~F[1]~~	~~C~~	~~B~~	~~A~~
~~6~~	~~Physical Facilities, Equipment & Related~~	~~≤70~~	~~71-74~~	~~75-79~~	~~80-88~~
~~7~~	~~Facility Governance and Management~~	~~≤66~~	~~67-78~~	~~79-87~~	~~88-97~~
~~8~~	~~General Health & Safety~~	~~≤72~~	~~73-75~~	~~76-80~~	~~81-89~~
~~9~~	~~General Patients' Rights & Procedures~~	~~≤81~~	~~82-91~~	~~92-10~~	~~101-112~~
~~10~~	~~Medical & Dental Services~~	~~≤38~~	~~39-41~~	~~42-45~~	~~46-50~~
~~11~~	~~Nursing Services~~	~~≤72~~	~~73-78~~	~~79-82~~	~~83-90~~
~~12~~	~~Dietetic Services~~	~~≤31~~	~~32-34~~	~~35-36~~	~~37-40~~
~~13~~	~~Pharmaceutical Services~~	~~≤44~~	~~45-50~~	~~51-53~~	~~54-59~~
~~14~~	~~Social Work Services & Recreation & Activity Services~~	~~≤48~~	~~49-55~~	~~56-60~~	~~61-67~~
~~15~~	~~Plans for Care & Medical Records~~	~~≤29~~	~~30-32~~	~~33-34~~	~~35-39~~

~~[1] ≤ = Less than or equal to~~

Table 64.13A. 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
$4,901 to $5,000	$6,250

Table 64.13A. Surety Bond Schedule (Cont'd)

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
$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
$7,901 to $8,000	$10,000

Table 64.13A. Surety Bond Schedule (Cont'd)

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
$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[2]

[2] 1.25 times the prior year's average monthly balance of client's funds

Table 64-13B. Minimum Ratios[a] of Patient Care Personnel to Patients

NUMBER OF PATIENTS	LICENSED NURSES		AIDES		TOTAL PATIENT CARE PERSONNEL	
	NUMBER PER DAY	HOURS PER DAY	NUMBER PER DAY	HOURS PER DAY	NUMBER PER DAY	HOURS PER DAY
3-10	3[b]	24	3	24	6	48
11-20	3[b]	24	4	32	7	56
21-30	3[b]	24	6	48	9	72
31-40	3[b]	24	8	64	11	88
41-50	3[b]	24	10	80	13	104
51-60	3[b]	24	12	96	15	120
61-70	3.5	28	14	112	17.5	140
71-80	4	32	16	128	20	160
81-90	4.5	36	18	144	22.5	180
91-100	5	40	20	160	25	200
101-110	5.5	44	22	176	27.5	220
111-120	6	48	24	192	30	240
121-130	6.5	52	26	208	32.5	260
131-140	7	56	28	224	35	280
141-150	7.5	60	30	240	37.5	300
151-160	8	64	32	256	40	320
161-170	8.5	68	34	272	42.5	340
171-180	9	72	36	288	45	360
181-190	9.5	76	38	304	47.5	380
191-200	10	80	40	320	50	400
Over 200	Shall be calculated for each facility					

[a] Numbers are full-time personnel equivalents based on forty (40) hours per week per shift.

[b] May include the director of nurses.