

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Division of Health TITLE NUMBER: 64

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 13

TITLE OF RULE BEING AMENDED: Nursing Home Licensure Rule

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

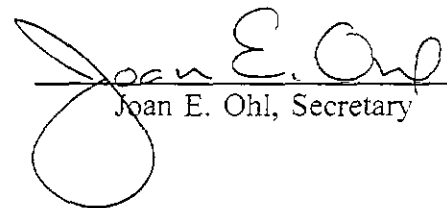
TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB2345

SECTION 64-5-1(a), PASSED ON 4-12-97

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: August 1, 1997


Joan E. Ohl, Secretary

DEPARTMENT OF HEALTH AND HUMAN RESOURCES
RULE PROMULGATION HISTORY ABSTRACT

Rule Title: Nursing Home Licensure Rule

Series Number: 13

Amendment of Existing Rule: X New Rule:

Responsible Agency: Division of Health

Date Filed for Public Hearing or Comment Period: 7-26-96

Date of Public Hearing (if any):

Date Public Comment Period Ended: 8-26-96

Date Agency-Approved Rule Filed with the
Legislative Rule-Making Review Committee: 11-8-96

Date of Filing of Modified Rule as Approved by
the Legislative Rule-Making Review Committee: 2-27-97

Date of Final Filing: 6-16-97

Effective Date: 8-1-97

Authorized by: HB2345 (With amendments? Yes No X),
Passed: April 12, 1997.

Dates Emergency Rule in Effect (if any): 9-27-96
12-19-96 (Amended) through

WEST VIRGINIA DIVISION OF HEALTH LEGISLATIVE RULES

TITLE 64, SERIES 13

NURSING HOME LICENSURE RULE

1997

**WEST VIRGINIA DIVISION OF HEALTH LEGISLATIVE RULES
NURSING HOME LICENSURE**

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TITLE 64
WEST VIRGINIA DIVISION OF HEALTH LEGISLATIVE RULES
SERIES 13
NURSING HOME LICENSURE RULE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 64-13-1. General.

1.1. Scope. -- 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. -- June 16, 1997.

1.4. Effective Date. -- August 1, 1997.

1.5. Supersession of Former Rule. -- This rule repeals and replaces West Virginia Department of Health and Human Resources Administrative Rules, 64 CSR 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. 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 resident occupancy.

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 Subdivision 3.1.h of 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 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 considered to be a controlling person solely as a result of the position or his or her official actions in the position.

2.6. Day Care Services. -- Services and supervision provided to nonresident individuals who are capable and desirous of semi-independent 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 for the deficiency.

2.9. Director. -- The secretary of the department of health and human resources or his or her designee.

2.9. Facility. -- Any nursing home as defined in Subsection 2.23 of this rule.

2.10. 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.

2.11. 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.

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

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

2.14. Legal Representative. --

2.14.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 appointing order;

2.14.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 appointing order;

2.14.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);

2.14.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 to the person executing the Medical Power of Attorney;

2.14.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;

2.14.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;

2.14.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

2.14.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.

2.15. License. -- The document issued by the secretary which constitutes the nursing home's authority to receive residents and perform services included within the scope of this rule.

2.16. Licensed or Registered. -- When applied to a person means that the person to whom the term is applied is 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 licensed by

the department.

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

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

2.19. Noncompliance. -- Any deficiency that causes a nursing home to not be in substantial compliance with this rule.

2.20. Nurse Aide Registry. -- A registry of nurse aides who have:

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

2.20.b. Been determined as meeting these requirements; or

2.20.c. Have had these requirements waived by the secretary.

2.21. 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. These procedures include but are not limited to, such procedures as: irrigations; catheterizations; the application of dressings; the supervision of special diets; the objective observation of changes in a resident's condition as a means of analyzing and determining the nursing care required and the need for further medical diagnosis and treatment; special procedures contributing to rehabilitation; the 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.

2.22. 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 hours, for four or more persons who are ill or otherwise incapacitated and in need of nursing care due to physical or mental impairment, or which provides services for the rehabilitation of persons who are convalescing from an illness or incapacitation.

2.23. Nursing Personnel. -- The director of nursing, charge nurse and all employees under the direct supervision of the director of nursing or charge nurse who attend to resident-oriented nursing functions, including registered professional and licensed practical nurses, nursing aides and orderlies, but excluding employees engaged in administration, dietetics, housekeeping, laundry and maintenance who are not considered nursing personnel.

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

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

2.27. 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 hours, to four or more persons who are dependent upon the services of others by reason of physical or mental impairment who may require limited and intermittent nursing care,

including those residents 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.

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

2.29. 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.

2.30. Regulatory Grouping. -- A set of directly-related regulatory requirements which constitute a specific subsection of the rule.

2.31. Repeat Deficiency. -- A deficiency related to requirements within the same regulatory grouping found on the most recent survey or complaint investigation for which a civil money penalty was imposed and sustained, and repeated on a subsequent survey or complaint investigation.

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

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

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

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

2.35.a. A part of the body would be

permanently removed, rendered functionally useless, or substantially reduced in capacity, either temporarily or permanently; or

2.35.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.

2.36. Sponsor. -- The person or agency legally responsible for the support of a resident.

2.37. 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.

2.38. Substandard Quality of Care. -- One or more deficiencies which constitute either immediate jeopardy to the resident's health or safety, or cause actual harm.

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

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

2.41. Stop Order. -- A written policy that definitely prescribes the number of doses or the period of time after which the administration of a drug to a resident 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.

2.42. 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 residents when needed.

2.43. 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-2(d) and this rule unless that person possesses a current valid license.

3.1.b. The original license shall be issued under this rule for a project reviewable under W. Va. Code § 16-2D-1 et seq. only if the 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 is required for nursing homes maintained or operated on separate premises even though they are 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 constitute one licensed facility, unless the secretary determines otherwise.

3.1.e. A license is 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 secretary.

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 has the effect of a valid license for three months from the date the application is received by the secretary.

3.1.i. The facility's name shall be

changed only with the secretary'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;

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

3.1.l.4. Its 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 the facilities listed in this subdivision request licensure as a nursing home, nothing contained in this rule applies to:

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

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

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

3.2.a.4. Offices of physicians;

3.2.a.5. Hotels;

3.2.a.6. Boarding homes, as defined in Subsection 2.3 of this rule, or similar places that furnish only room and board to their

guests;

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;

3.2.a.9. Personal care homes as defined in Subsection 2.28 of 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, does not constitute a nursing home within the meaning of this rule.

3.3. Initial License.

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

3.3.b. The application shall be filed not less than thirty days and not more than ninety days prior to the date proposed for commencement of the facility's operation (See also Section 4 of this rule).

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

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

3.3.e. The following information per-

taining 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 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's premises if he or she is not the applicant or the owner under Subdivision 3.3.e of 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 of the lease shall be submitted with the initial application.

3.3.g. If the owner of the facility's 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 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 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 and rules governing zoning, buildings, safety, fire prevention, sanitation, and any other laws and rules as specified in this rule;

3.3.h.7. Evidence of approval by the state health planning and development agency, if necessary (See Subdivision 3.1.b of 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 of the individuals identified in Subdivision 3.3.e of this rule is a controlling person as would be identified under Subdivision 3.3.e of this rule for the facility; and

3.3.h.9. Any additional informa-

tion which the secretary 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 secretary inspects the facility (See Subsection 4.2 of this rule).

3.3.k. A facility found on inspection to have deficiencies is subject to Subsection 3.7 and Section 14 of this rule relating to plans of correction and penalties.

3.3.l. The secretary 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 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 Subdivision 3.3.e of 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 years; and

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

3.3.m. A license is valid for one 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 secretary on a form prescribed by the secretary containing at least the following information:

3.4.a.1. A balance sheet of the facility prepared not more than one 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 month period not more than one 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 secretary; and

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

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-1 et seq., it is considered to have met the requirements of Paragraphs 3.4.a.1, 3.4.a.2 and 3.4.a.3 of this rule.

3.4.c. A completed application for renewal of a license shall be submitted not less than thirty days and not more than ninety days prior to the scheduled expiration date of the current license.

3.4.d. The fee for renewal of a license as determined by the secretary pursuant to W. Va. Code § 16-5C-6(e) and as filed with the Secretary of State shall accompany the license renewal application.

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

3.4.e.1. The secretary finds the

facility in compliance with the provisions of W. Va. Code § 16-5C-1 et seq. and with 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 is valid for one year from the date of issuance.

3.5. Provisional License.

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

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

3.5.b.1. That the care given in the facility is adequate to meet the resident's needs; and

3.5.b.2. That the facility has demonstrated improvement and the 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 months.

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

3.6. Inspections of Licensed and Unlicensed Facilities.

3.6.a. The secretary shall annually conduct at least one unannounced inspection of a licensed facility to determine compliance with the provisions of W. Va. Code § 16-5C-1 et seq. and this rule.

3.6.b. The secretary has the right to enter the premises of a facility which the secretary 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.

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

3.6.d. If the secretary 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 days for a license in accordance with the provisions of this rule or shall reduce its resident census to less than four.

3.6.e. A facility which fails to apply for a license is subject to the penalties established in Subdivision 3.7.k and Section 14 of this rule.

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

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 secretary 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 secretary within twenty 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 specified shall be the

shortest possible time within which the facility reasonably can be expected to correct the violation.

3.7.d. The time stated is subject to approval or modification by the secretary.

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

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

3.7.e.2. The number of residents 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 secretary.

3.7.g. The secretary 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 secretary rejects or modifies the plan, the reasons for the action shall be stated in the notice.

3.7.i. When the secretary 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. A facility with deficiencies resulting in immediate jeopardy or causing harm to a resident shall not be allowed to submit a revised plan of correction.

3.7.k. If a facility fails to submit a plan of correction which is approved or to correct any deficiency within the time specified in an approved plan of correction, the secretary may assess civil penalties as provided in this rule or may initiate any other legal or disciplinary action available to him or her in accordance with the State law and this rule.

3.8. Interference with Official Duties.

No licensee or employee of any nursing home shall:

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

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

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

3.9. Complaint Investigation.

3.9.a. Any person may register a complaint with the secretary alleging violation of applicable laws and rules 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 secretary shall attempt to determine whether the complaint is willfully intended to harass a licensee or is without reasonable basis.

3.9.c. The secretary 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.

3.9.d. The secretary shall conduct an unannounced inspection of the facility to deter-

mine 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 secretary shall conduct other investigations necessary to determine the validity of the complaint.

3.9.g. No later than fifteen (15) working days after completing an investigation of a complaint, the secretary 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 secretary will be sent to the complainant upon receipt of a written request.

3.9.i. If a complaint has been found to have merit, the secretary shall advise any injured party of the possibility of a civil remedy under 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. 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.l. Before any complaint is disclosed to a facility, or to the public pursuant to Subsection 3.11 of this rule, any information in the complaint which could reasonably identify the complainant or a resident shall be deleted.

3.9.m. A facility is prohibited from discharging or in any manner discriminating against a resident or employee because the individual has filed a complaint or participated in a proceeding authorized by W. Va. Code § 16-5C-

1 et seq.

3.9.n. Violation of the prohibition of Subdivision 3.9.n of this rule is grounds for suspending or revoking the facility's license.

3.9.o. A rebuttable presumption of retaliatory action against a resident shall arise against any facility which in any way adversely discriminates against the resident who submitted or on whose behalf a complaint was submitted to the secretary or who is involved in any proceeding instituted under W. Va. Code § 16-5C-1 et seq., within one hundred and twenty (120) days of the filing of the complaint 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 secretary 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 secretary shall investigate the allegation.

3.10.c. If the secretary makes a preliminary determination that the abuse, neglect or misappropriation of property occurred, he or she shall 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 secretary shall notify the individuals specified in Subdivision 3.13.c of this rule within ten working days of his or her investigation. The notice shall include the:

3.10.d.1. Nature of the allega-

tion(s);

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

3.10.d.3. Right to a hearing;

3.10.d.4. Secretary'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 days from the date of the notice shall result in the secretary 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 secretary shall complete the hearing and the hearing record within one hundred twenty days from the day he or she receives the request for a hearing.

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

3.10.g. If the secretary finds that the individual has neglected or abused a resident or misappropriated resident property, or if the individual waives the right to a hearing, the secretary shall report the findings in writing within ten 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 from the facility in which the incident occurred;

3.10.g.4. The nurse aide registry for nurse aides; and

3.10.g.5. The licensing authority for individuals used by the facility who are not nurse aides.

3.11. Availability of Reports and Records.

3.11.a. The secretary 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 secretary pertaining to the compliance of a facility with applicable laws and rules.

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

3.11.c. The secretary 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 spec-

ified by the secretary pursuant to Subsection 3.7 of 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 secretary.

3.11.f. Nothing contained in this Section shall be construed to require or permit the public disclosure of the confidential medical, social, personal or financial records of any resident.

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

3.11.h. The secretary shall delete from complaints made available to the public under this Section any information required to be held confidential under Subsection 3.12 of this rule.

3.12. Registry of Organizations with Right of Access.

3.12.a. The secretary shall maintain a register of all organizations and groups approved for access to facilities under the provisions of Subsection 7.11 of this rule and W. Va. Code § 16-5C-5(b)(1)(i).

3.12.b. These organizations and groups shall render assistance to residents without charge. The primary function of these organizations and groups shall be to improve or enhance the quality of life for residents in the facility. Eligible organizations and 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 approval for access to facilities under this rule shall apply in writing to the secretary, stating the name, address and general purpose of the organization or group and the reasons why

the access privilege should be granted. The secretary may in his or her sole discretion require additional information.

3.12.d. The secretary shall review 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 secretary has the right to revoke 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 Subsection 7.11 of this rule.

3.12.f. The secretary 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 fourteen (14) member nursing home licensing advisory council which shall:

3.13.a.1. Advise the secretary on the implementation of this rule;

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

3.13.a.3. Assist the secretary 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 secretary 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 division of human services;

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

3.13.b.7. Three (3) consumers who have or have had a close family member as a resident 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 Paragraphs 3.13.b.4, 3.13.b.5, or 3.13.b.6 of this Subdivision; 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 secretary for two (2) year terms. The secretary 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 at least quarterly.

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 in-

curred 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 this rule apply to the physical facilities of all nursing homes. These requirements may be modified for existing facilities if the application would be clearly impractical as determined by the judgment of the secretary, if the alternate arrangements are not detrimental to the health or safety of the residents, employees, and visitors of the facility. The alternate methods shall conform as closely as possible to the current rule.

4.1.b. For the purposes of this rule, an existing facility is defined as a facility licensed as a nursing home or licensed as an extended care facility in accordance to Hospital Licensure, 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 April 6, 1990.

4.2. Applications Required.

4.2.a. Detailed plans for construction of a new facility, additions, renovations, and alterations to an existing facility, drawn to scale of not less than one-eighth inch equals one foot, shall be submitted to and approved by the secretary 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 secretary, and shall show, properly identified, the general arrangement and construction of the building and the 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 secretary.

4.2.e. A performance statement 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 secretary.

4.2.f. All new facilities shall be inspected by the secretary and shall have the secretary's approval prior to admitting residents. 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, the owner or architect shall secure written notification from the secretary that the plan approval for construction is still valid and in compliance with this rule.

4.2.h. Plans for the 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 secretary, prior to beginning any construction, alterations, removal or modifications.

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 this rule may require the secretary's approval. Facilities may request judgment and approval in advance from the secretary regarding a particular change or rearrangement. Areas in which changes are likely to require approval include, but are not limited to: the kitchen; the laundry; and heating equipment.

4.3. Construction, Life Safety and Related.

4.3.a. Except as provided in Subdivision 4.1.a of 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. Applicable rules of the state fire commission.

4.3.b. When standards of this rule exceed requirements of the documents listed above this rule controls.

4.4. Site Characteristics and Accessibility.

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, an 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 to the facility shall be facilitated by hard surfaced, all-weather roads which are kept passable at all times. All-weather, hard surfaced walks and parking areas shall be provided.

4.4.e. Local building codes and zoning restrictions shall be observed. Evidence of compliance with the local building codes and zoning

restrictions signed by local fire, building and zoning officials shall be available.

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

4.5. Increase in Bed Capacity - Bed capacity may be increased only with the permission of the secretary.

4.6. Equipment and Furnishing of Resident Rooms.

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

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

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

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

4.6.b.3. Rollaway beds, folding beds and cots are prohibited.

4.6.b.4. The 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 resident.

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

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

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 resident's use shall be provided for each resident in each room.

4.7. Nursing Equipment, Sterile Supplies, and Linens.

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

4.7.a.1. A wash basin;

4.7.a.2. A bedpan;

4.7.a.3. A urinal;

4.7.a.4. An emesis basin; and

4.7.a.5. A water pitcher and cup or drinking glass.

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

4.7.c. Styrofoam water pitchers and cups are prohibited.

4.7.d. Equipment constructed of enamelware or materials which cannot be sterilized is prohibited.

4.7.e. Damaged utensils shall not be used.

4.7.f. A facility shall have a sufficient number of thermometers to meet the resident's needs. They may be standard mercury thermometers or electronic or thermo-chemical thermometers.

4.7.g. Staff shall disinfect each ther-

mometer after each use.

4.7.h. A facility shall have sufficient hot water bottles with suitable covers to meet the resident's needs.

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

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 resident.

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

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

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

4.8. General Maintenance.

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 a 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 of residents and food.

4.8.f. Insecticidal strips are prohibited.

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

4.9. Waste and Refuse Disposal.

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

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

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

5.1. Governing Body.

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

5.1.b. The governing body shall adopt and enforce rules governing the health care and safety of residents, the protection of their per-

sonal and property rights, and the operation of the facility.

5.1.c. The governing body shall develop a written facility plan (See also Subdivision 3.3.h of this rule) which shall be reviewed annually. In addition to the other requirements described in law and in 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. The policies and procedures shall include as a minimum all policies and procedures required by this rule.

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

5.2. Administrator.

5.2.a. The owner or governing body of a facility shall appoint a qualified administrator who holds a currently valid license or emergency permit issued by the West Virginia nursing home administrators licensing board.

5.2.b. A facility shall notify the secretary 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 secretary which the secretary 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 or her by the facility's owner or governing body or assigned to him or her under 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 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 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.

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

5.3.b. The administrator has the authority to assure facility compliance with applicable provisions of laws and rules .

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 this rule.

5.3.f. The administrator shall partici-

pate 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 is responsible for the completion, maintenance and submission of reports and records required by the secretary.

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 secretary;

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

5.3.h.3. The facility's licensure classification; and

5.3.h.4. Any requests, orders, complaints or policy statements filed with the administrator by the secretary.

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

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

5.4. Admission, Discharge and Transfer Policies.

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

5.4.b. To ensure its responsibility for

the care provided to its residents, 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.

5.4.c. A facility shall maintain written agreements assuring that medical and remedial services required by the resident, 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 or more hospitals assuring the prompt transfer of a resident to a hospital or other appropriate provider when that resident's physical or mental condition has changed so that the facility can no longer meet that resident's needs.

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

5.5. Admission Contract.

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

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 con-

sideration for the daily, weekly or monthly rate;

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

5.5.d.4. Delineation of the responsibilities for the 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 resident, services of related medical and paramedical personnel;

5.5.d.5. Facility procedures governing emergencies including immediate care of the resident, 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. Subdivision 5.5.d of this rule does not apply to residents receiving care and treatment under the Medicare or Medicaid programs; except that those residents shall receive a written contract delineating their responsibilities in accordance with Subdivision 5.5.d of this rule.

5.6. Life Care Contract.

5.6.a. A facility or licensee shall not enter into a life care contract as a provider of services without the secretary's prior written authorization.

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

5.6.c. For the purposes of this rule, a

life care contract is an agreement between a facility and a resident in which the facility agrees to provide to the resident for the duration of his or her life or for a term of more than one year, nursing services, medical services or personal care services, in addition to board and lodging. The agreement is conditioned upon the resident'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.

5.7.a. A facility shall not advertise, assert, represent or otherwise imply 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 secretary.

5.7.b. A facility shall not rent, lease or use 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 secretary.

5.7.c. Only residents and staff may reside in a facility, unless otherwise approved in writing by the secretary.

5.8. General Recordkeeping Requirements.

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

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

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

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

5.9. Administrative Records. - 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 this rule;

5.9.c. A current copy of 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 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 this rule;

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

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 residents as required by Subdivision 7.6.a and Subsection 9.8 of this rule;

5.9.k. Records of all transactions conducted by the facility involving personal funds of residents in the facility during the previous five (5) years (See Subsection 7.9 of this rule);

5.9.l. All menus prepared by the facility in accordance with the requirements of Subsection 10.3 of this rule;

5.9.m. Records of food purchases made in compliance with Subsection 10.3 of this

rule;

5.9.n. A copy of the facility's emergency evacuation plan as required by Subsection 6.2 of this rule;

5.9.o. A chronological record of all residents 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.

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 verified by references which includes a resume of the applicant's training and experience;

5.10.a.2. An employee health record containing the results of pre-employment and annual physical examinations, 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 and 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. The job title and qualifications, including educational and skill requirements;

5.10.c.2. A general description of the employee's duties and responsibilities including limitations, if applicable; and

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

5.11. Staff Development.

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

5.11.a.1. Paragraph 5.10.a.6 which relates to in-service training records;

5.11.a.2. Subdivisions 5.10.b and 5.10.c which relate to personnel policies, job descriptions, etc.;

5.11.a.3. Subdivision 6.3.a which relates to training for disasters;

5.11.a.4. Subdivision 7.1.d which relates to residents' rights training;

5.11.a.5. Subdivision 7.10.g which relates to training in complaint procedures;

5.11.a.6. Paragraph 8.1.c.8 which relates to physician participation in training;

5.11.a.7. Paragraph 9.2.d.5 which relates to director of nursing duty to orient and train nursing service personnel; and

5.11.a.8. Subdivision 9.5.b which relates to orientation and training in restorative nursing.

5.11.b. Personnel who provide direct resident 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 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 the prevention and control of infections, fire and safety rules, accident prevention, confidentiality of resident information, protection of resident's privacy and personal property rights, and all other topics required by 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 is 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.

6.1.a. A facility shall develop and implement written policies and procedures to assure that a safe and sanitary environment exists for residents 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 residents and personnel shall be reviewed to identify health and safety hazards.

6.2. Disaster Plan.

6.2.a. The facility shall have a written disaster plan, approved by the secretary, which states the 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 the plan shall be available at the nurses station.

6.2.d. Evacuation routes shall be posted where 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. The 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 residents;

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. The frequency of fire drills.

6.3. Disaster Training.

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. - Fire drills shall be held at least quarterly for each shift.

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

6.6. Provisions for Emergency Calls.

6.6.a. A facility shall have at least one noncoinoperated telephone or one extension on each resident 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 resident telephones, in the facility. The information shall include at least the following:

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

6.6.b.2. The 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, the name and telephone number for the consulting nurse on call.

6.7. Infection and Communicable Disease Control.

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 written policies and procedures for the facility 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 at least twice a year.

6.8. Isolation.

6.8.a. Any resident who contracts a communicable disease shall be segregated from other residents as described in the policies required by Subdivision 6.7.b of this rule.

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

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

6.9. Animals.

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 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 residents 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. Where animals are present as part of a therapeutically designed and professionally supervised program which is of short duration, Subdivision 6.9.b of this Subsection does 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. Residents' areas except as specified in Subdivisions 6.9.e, 6.9.f and 6.9.g of this rule.

6.9.e. Animals may be permitted in:

6.9.e.1. Non-resident areas not otherwise prohibited by 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 the animals are leashed or caged, or in transit to and from permissible areas. Animals shall not be displayed or transported during meal times.

6.9.f. Residents shall not have pets living in their rooms.

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

6.9.h. Wild, dangerous or obviously ill animals are prohibited in a facility, except that wild animals such as squirrels, birds, chipmunks and the like which are natural to the neighborhood of the facility are not 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 Subdivision 6.9.a of this rule do not apply to fish in aquariums.

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

7.1. Implementation of Residents' Rights.

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

7.1.b. The policies that are adopted shall be consistent with the provisions of this rule.

7.1.c. The governing body is responsible for the facility's adherence to the procedures implementing residents' rights policies.

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

7.1.e. A copy of residents' rights policies and procedures shall be made available to residents, legal representatives, next of kin, and sponsoring agencies, as applicable, and upon request shall be made available to members of the public.

7.2. Residents' Legal Representatives.

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 or more of the resident's rights under this rule, the home shall afford the legal representative the full opportunity to exercise that authority. If a legal representative who is 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 a resident must be limited or restricted for medical reasons, those reasons shall be set forth in specificity in the resident's medical record and the restriction shall be only for a specific and limited period of time and authorized in writing by the resident or the resident's legal representative as defined in Subsection 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.

7.3. Civil Rights.

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

7.3.b. No resident 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.

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

7.4.b. A resident 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 resident shall acknowledge in writing that he or she has received notification of his or her rights and responsibilities, and all applicable rules.

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

7.5. Rights to Communication and Personal Property.

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

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

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

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

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

7.5.g. A resident 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 resident shall be assured privacy for visits by his or her spouse. If

both spouses are residents in a facility, they shall be permitted to share a room.

7.5.i. A resident 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 residents.

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

7.6. Rights with Regard to Treatment.

7.6.a. No resident shall be verbally, mentally or physically abused, or neglected or mistreated, or restrained by physical or chemical means except in accordance with Subsection 9.6 of this rule which relates 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 alleged violations are thoroughly investigated;

7.6.a.2. The results of the investigation are reported to the administrator or his or her designated representative within twenty-four 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 resident 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 legal representative.

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

7.6.d. A resident shall be given the opportunity to participate in the planning of his

or her total health and medical treatment.

7.6.e. A resident has the right to be fully informed of his or her medical condition.

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

7.6.g. A resident 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.

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

7.7.b. A resident 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 resident. A specific signed release shall be obtained for all other releases and no prior executed blanket release shall be used.

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

7.7.d. A resident who is being discharged has 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 resident shall be treated in a manner which assures privacy in treatment and in care for his or her personal needs.

7.8. Financial Rights.

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

7.8.b. A facility shall manage a resi-

dent's personal funds only on the written prior authorization of the resident.

7.8.c. A resident is liable only for charges which have been included in the admission contract between the resident and the facility pursuant to Subsection 5.5 or Subsection 5.6 of this rule or included in any written modification of the contract as provided in Subsection 5.5 or Subsection 5.6 of this rule. A resident may be liable for charges for emergency services which could not have been reasonably anticipated when the contract was signed or amended.

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

7.8.e. No resident shall be transferred from or discharged by a facility except for:

7.8.e.1. Medical reasons;

7.8.e.2. The resident's welfare or safety or the welfare or safety of other residents;

7.8.e.3. Nonpayment for his or her stay; or

7.8.e.4. Upon the resident's consent or request.

7.8.f. A resident whose cost of care is reimbursed under Medicare or Medicaid shall be discharged for nonpayment only in accordance with the provisions of any applicable federal regulations.

7.9. Fiduciary Responsibilities of the Facility.

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

7.9.b. The facility shall administer the

funds on behalf of the resident in the manner directed by the depositor.

7.9.c. The facility shall render a true and complete account of a resident's request to the depositor and to the secretary and at least quarterly to the resident on forms provided by the secretary.

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 secretary.

7.9.e. A facility which, in any one month, handles at least \$25 of residents' funds per resident, or at least \$500 for all residents shall give evidence of furnishing bond as assurance that the facility will comply with the requirements of this rule.

7.9.f. The amount of the bond shall be determined by using Table 64-13A of this rule.

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 secretary may require a facility to file an additional bond in the following circumstances:

7.9.h.1. When the secretary determines that the amount of the bond or collateral on deposit is insufficient to protect the residents' 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 by a person injured as a result of improper or unlawful handling of a resident's funds.

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

7.9.j. When a facility determines on the basis of medical judgment that a resident appears unable to manage his or her affairs, the administrator of the facility shall notify the resident'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 resident if the resident 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, shall not serve as a resident's legal representative, unless the employee or person is related to the resident by consanguinity as defined in Subdivision 3.2.b of this rule.

7.10. Complaint Procedures.

7.10.a. A facility shall develop and implement written procedures for registering and responding to complaints by residents, their legal representatives, 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 any 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 residents, 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 Subsection 7.10 of this rule does not obviate compliance with the provisions of Subsection 3.12 of this rule.

7.11. Access.

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 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 resident at any time.

7.11.c. A facility shall permit full and free access to the facility to representatives of recognized community organizations and groups approved for such access by the secretary in the registry described in Subsection 3.12 of this rule. The access shall be limited to normal visiting hours unless by permission of the facility or as specified in Subdivision 7.11.l of 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. The representatives shall be permitted to visit, talk with, and to make personal, social and legal services available to any resident and to inform residents of their rights, entitlements and corresponding obligations under federal and state laws and rules and regulations through distribution of educational materials and in discussion with individual residents or groups of residents.

7.11.e. The representatives shall be permitted to assist residents in asserting their legal rights, including claims for public assistance, medical assistance, social security benefits and in other legal matters. The assistance may

be provided individually or on a group basis, and may include an organizational activity, counseling and litigation.

7.11.f. The representatives shall be permitted to view all areas of the facility with the following exceptions: (a) living areas of a resident who objects to the inspection; (b) business records of the facility, unless the administrator consents to the inspection; (c) personal and medical records of a resident, unless the resident consents to the inspection 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 the inspection might endanger any individual or might invade the privacy of any employee or resident.

7.11.g. A representative entering a facility pursuant to Subdivision 7.11.c of this rule shall, upon entering the facility, notify the administrator or other available agent of the facility of the representative's presence. If requested by the facility, the representative shall provide identification as an authorized representative of an agency on the registry of agencies maintained by the secretary.

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

7.11.g.2. A resident has the right to refuse a visit pursuant to Subdivision 7.11.c of this rule and the visit shall be terminated upon the resident's request.

7.11.g.3. These representatives 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 Subdivision 7.11.c of 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 the

judgment and restriction shall be documented in writing and kept on file.

7.11.i. Communications between a resident and a person visiting pursuant to Subdivision 7.11.c of this rule are confidential.

7.11.j. No resident shall be punished or harassed by a facility, its agents, its employees or its contractors because of the resident's efforts to avail himself or herself of his or her rights to communicate with others under this Section. A person who violates this provision is subject to the provisions of Subdivision 3.9.p of this rule.

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

7.11.l. The 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.

7.12.a. A facility shall post its license in a conspicuous and public place in plain view of all residents 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 Subsection 7.3 of this rule, the residents' rights requirements of Subsections 7.4 through 7.8 of this rule, the complaint procedures of Subsection 7.10 of this rule, and the access requirements required in Subsection 7.11 of this rule. In addition, a notice stating the visiting hours and access requirements of Subsection 7.12 shall be posted conspicuously at or near the entrance to

the facility.

7.12.c. A facility shall provide each resident with a personal copy of a statement setting forth the requirements of this Section.

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, are entitled under West Virginia law and 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 Subdivision 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 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 resident upon his or her admission to the facility.

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

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

7.12.h. The facility shall inform each resident of the availability within the facility of a complete copy of this rule and of W. Va. Code §16-5C-1 et seq.

7.12.i. Upon request by a resident, the facility shall provide the resident the opportunity to inspect the law and this rule.

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

8.1. Medical Director.

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 is responsible to the administrator on medico-administrative matters.

8.1.c. The medical director's responsibilities include, but are not 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 Subsection 8.3 of 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 Subdivision 5.10.a and Subsection 6.1 of this rule;

8.1.c.5. Documenting the 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 residents and personnel;

8.1.c.7. Assuming, with the administrator, responsibility for the execution of resident 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 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 retaining a medical director upon documentation of alternative means for effectuating the duties of the medical director as specified in Subdivision 8.1.c.

8.2. Availability of Medical Services.

8.2.a. Upon admission of the resident, a nursing home shall require the resident or the sponsor resident's legal representative to designate in writing a physician to attend the resident.

8.2.b. As soon as possible after the admission of the resident, a facility shall confirm with the designated physician that the physician will provide at least those services required in Subsection 8.3 of this rule.

8.2.c. A facility shall require the attending physician or the resident to designate or authorize the administrator to designate an alternate physician to attend the resident in an emergency or whenever the attending physician is unavailable.

8.2.d. The administrator or his or her designee shall assure the availability of physician services. At a minimum the administrator shall:

8.2.d.1. Verify that the resident'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 resident is visited by a physician for required visits and in response to an emergency;

8.2.d.4. Assist in the development and implementation of written procedures to provide emergency medical care;

8.2.d.5. Provide a list of physicians available to provide emergency care at each nurses' station; and

8.2.d.6. Ensure that efforts are made to notify the resident's next of kin or legal representatives with related responsibility for the resident and any sponsor promptly after the resident has had an accident or suffers a serious deterioration in condition, in accordance with Subsection 9.8 of this rule regarding accident and illness and Subsection 9.9 regarding death.

8.3. Services of Attending Physician.

8.3.a. An attending physician shall provide at least the following services:

8.3.a.1. Not more than five days before nor more than forty-eight (48) hours after a resident'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 resident as is medically necessary but at least every thirty days unless longer intervals are documented as sufficient by the physician in the resident'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 resident's record at the time of each visit;

8.3.a.4. Orders for medical care;

8.3.a.5. A documented review and 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 Subsection 9.8 of this rule which relates to incidents or accidents.

8.3.b. If the interval between physician visits to a resident is more than thirty (30) days, that resident'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 Paragraph 8.3.a.2 or Subdivision 8.3.b of this rule regarding visits to residents, 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 residents within ten days, the nursing home administrator shall declare the resident to be abandoned and notify the secretary in writing of the abandonment. The secretary shall notify the West Virginia board of medicine. The nursing home administrator shall then seek other medical care for the resident.

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 certified by the West Virginia board of medicine or the West Virginia board of osteopathy.

8.4. Availability of Dental Services.

8.4.a. A facility shall have a written plan to assist residents in obtaining routine and emergency dental care.

8.4.b. A facility shall help a resident to arrange transportation to and from a dentist, as appropriate.

8.5. In-service Training in Dental Care. - 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 Resident Care Staffing.

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 residents, their medical needs and the physical arrangement of the facility, but 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 resident 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 Table 64-13B of this rule.

In facilities with less than sixty (60) beds, the director of nursing may be included in these staff to resident 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 are made to provide for minimum coverage on all shifts. These exceptions are detailed in Table 64-13B of this rule.

For purposes of evaluating compliance with these ratios, licensed nurses are included as nursing personnel. Adequate personnel to meet residents' needs shall be employed on each nursing shift. Employees, private duty nurses, volunteers or contracted nurses who are "available" or "on call" do not meet the requirements for minimum staffing. For the 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 has the authority to require staff above the specified minimum ratios if they are required to meet residents' needs.

9.1.c. In addition to the requirements of Subdivisions 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.

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 a registered professional nurse designated in writing as the director of nursing services on duty at least five (5) days a week, eight (8) hours a day during the day shift.

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 years of nursing experience, at least one of which was in a supervisory capacity;

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 was in a supervisory capacity;

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 is 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 resident and that the plan is reviewed and modified as necessary, but at least 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 resident 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 selec-

tion of prospective residents 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 resident's medical record is completed in a timely manner in accordance with the requirements of Section 13 of this rule and includes at least the following:

9.2.e.1. A resident 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 Paragraph 13.4.a.6 of this rule;

9.2.e.4. Nursing summaries;

9.2.e.5. Summaries of conferences with the designated physician or other personnel involved in resident care;

9.2.e.6. A record of medications administered; and

9.2.e.7. The signed nursing discharge note.

9.3. Charge Nurse. - The charge nurse designated according to the provisions of Paragraph 9.2.d.7 of this rule is 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 resident, initiating the nursing care plan for meeting those needs, and coordinating the resident care plan.

9.4. Nursing Staff Responsibilities.

9.4.a. Each resident shall receive care in accordance with the physician's written orders and the nursing care plan.

9.4.b. Residents shall be kept clean, dry and comfortable.

9.4.c. Each resident shall receive care toward prevention of decubitus ulcers, infection, accidents and injury.

9.4.d. If necessary, a resident shall receive assistance in feeding.

9.4.e. All residents shall be treated in accordance with the provisions of Section 7 of this rule specifying resident rights, policies and procedures.

9.4.f. Each resident 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. The name and strength of the drug administered;

9.4.g.2. The date and time of administration;

9.4.g.3. The dosage administered;

9.4.g.4. The route of administration; and

9.4.g.5. The signature of the individual administering the drug.

9.4.h. Drugs and biologicals shall be administered to the resident 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 residents is not permitted except on written order of a physician and only permitted in special circumstances, which shall be set forth specifically in the resident's medical record.

9.5. Restorative Nursing Care.

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 resident 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 residents who need the services. The program shall include, but not be limited to, such techniques as:

9.5.a.1. Maintaining proper body alignment and the positioning of bedfast residents and those confined to chairs;

9.5.a.2. Encouraging the activity of residents 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 residents to ambulate and to carry out prescribed exercises between visits of the physical therapist;

9.5.a.6. Assisting residents to adjust to any disabilities and to direct their interest into useful activities; and

9.5.a.7. Assisting and teaching residents 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 residents 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 encourages the resident 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.

9.6.a. Restraints shall be used only when necessary to protect the resident from self-injury or from injuring others. No resident shall be restrained for the convenience of the staff.

9.6.b. The use of physical or chemical restraints are 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 resident 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 Subdivision 9.6.c of 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 the case of an 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. The following types of restraints are prohibited: canvas jackets, canvas sheets, or canvas cuffs; leather belts, leather cuffs or leather hand mitts. Locked restraints are prohibited. A resident shall not be confined to any room by locking or fastening a door from the outside.

9.6.g. A resident 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 their quick removal in case of fire or other emergency.

9.6.i. Side rails on beds are not subject to the provisions of Subdivision 9.6.g of this rule.

9.7. Notice to Physician of Accident or Illness.

9.7.a. Any accident or change in a resident's condition shall be reported immediately to a registered professional nurse who shall notify the attending physician and the resident's family, 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 resident's condition.

9.8. Accident and Incident Reports.

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

9.8.b. The report shall include the following:

- 9.8.b.1. The date;
- 9.8.b.2. The time of occurrence;
- 9.8.b.3. The place of occurrence;
- 9.8.b.4. The details of the occurrence;

9.8.b.5. The date and time the physician was notified; and

9.8.b.6. The date and signature of the reviewing physician (which is required in Paragraph 8.3.a.7 of this rule).

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

9.9. Report of Death. - The death of a resident shall be reported immediately to the attending physician and to the resident's family, legal representative and any sponsor, as relevant.

§ 64-13-10. Dietetic Service.

10.1 Dietetic Service to be Maintained.

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 this rule concerning the dietetic service.

10.1.b. The dietetic service shall be in full compliance with current 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.

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 shall be registered, or eligible for registration with the Commission on Dietetic Registration of the American Dietetic Association.

10.2.c. If a part-time consultant dietitian is employed, the consultant's visits shall be at appropriate times and of sufficient duration to allow the carrying out of the duties set forth in Subdivision 10.2.d of 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. Resident 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 Subdivision 10.2.g of 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 Subdivision 10.2.f of this rule whenever a full-time dietitian director is not employed.

10.2.f. A qualified food service supervisor shall be:

10.2.f.1. A qualified dietitian;

10.2.f.2. A graduate of a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American Dietetic Association;

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 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, is responsible for at least the following:

10.2.g.1. The daily operation of the dietetic service;

10.2.g.2. Ensuring that therapeutic diets are served as ordered by a physician, and that no resident 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.

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 shall cover a minimum of three (3) weeks.

10.3.d. A current therapeutic diet manual approved by the dietitian 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 all menus and menu changes on file for at least ninety (90) days.

10.3.g. The dietetic service staff shall identify residents' 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 resident needs for three (3) days or such period as the department 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.

10.4.a. The dietetic service shall ensure that each resident 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 residents who refuse the food served at meal times.

10.4.c. Meals served to a resident shall provide nutrients and calories for each resident, 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 or 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 is 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 residents in accordance with a physician's written orders retained in the resident's record of care.

10.4.e. Food service personnel shall be advised in writing of 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. Breakfast shall not be served before 7:00 a.m.

10.4.h. Every resident 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 residents, unless medically contraindicated.

10.4.j. Trays served to residents 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 residents.

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.

11.1.a. A facility shall ensure the provision of pharmaceutical services. All pharmaceutical services shall be provided in accordance with this rule and all other applicable federal, state and local laws and rules, and 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 this rule and the rules of the West Virginia board of pharmacy.

11.2. Supervision of Pharmaceutical Services.

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 is 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 this rule and including at least those matters required by the rules 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 residents;

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 resident at least monthly and reporting any irregularities in writing to the attending physician, the director of nursing services and 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.

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 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.

11.4.a. All orders for medications and treatments for residents 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 resident's order sheet, noted in the resident's 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 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 ser-

vices committee to ensure that drugs are checked against physicians' orders before the drugs are administered to the resident.

11.4.f. Medication errors and adverse drug reactions shall be reported immediately to the resident's physician verbally, and entered in the resident'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. Resident Medications.

11.5.a. A resident's medications shall be labeled in accordance with this rule and the rules of the West Virginia board of pharmacy.

11.5.b. Except for single unit dose package drug distribution systems, the label of each resident's individual prescription medication container shall clearly state the following information:

11.5.b.1. The resident's name;

11.5.b.2. The name and strength of the drug;

11.5.b.3. The drug's date of issue from the pharmacy;

11.5.b.4. The name of the prescribing physician;

11.5.b.5. The pharmacy's 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 drug.

11.5.c. All drugs shall be stored in a locked cabinet or medicine cart near the nurses station, and only personnel with written authorization shall have access to the keys.

11.5.d. A resident'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 any drug, in whole or in part, or alter the drug in any way by tampering or defacing any labeled drug.

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 resident upon discharge only on the written authorization of a physician.

11.5.g. Medication released to a resident shall be properly labeled and packaged by the pharmacist with directions for use in accordance with the rules of the West Virginia board of pharmacy.

11.5.h. Documentation of medication released to a resident shall be entered in the resident's medical record.

11.5.i. Once each month or more often if needed, all discontinued, outdated, adulterated, deteriorated and deceased residents' drugs shall be disposed of or destroyed in the nursing home by the consulting pharmacist and a licensed

nurse employed by the nursing home. 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 resident 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.

11.6.a. Schedule II controlled drugs shall be stored in 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 (W. Va. Code § 60A-1-1 et seq.) shall comply with federal and state laws and rules, and the rules of the West Virginia board of pharmacy concerning procurement, storage, dispensing, administration and disposition of controlled

substances.

11.6.e. Each year the pharmaceutical services committee shall establish and approve, in writing, the list of contents of the emergency medication kits. In accordance with guidelines established by the director and the rules 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 posted near the telephone at each nursing station, stating the name, strength and quantity of the drugs present in the emergency medication kit.

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 resident'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 was administered;

11.6.g.5. The amount of the drug administered;

11.6.g.6. The amount of the 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.

12.1.a. A facility shall maintain the capacity directly or through contracted services to identify and meet social, psychosocial, emotional and cultural needs of the residents which are related to illness, stress, family and community relationships, death, treatment and the residents' 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 resident needs and community resources and where multiple-agency contacts are necessary the social work service shall serve as the coordinating agent for the resident.

12.2. Plan for Social Work Services.

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 include at least:

12.2.b.1. Preadmission contact with and assessment of the resident, including the exploration of alternative types of placement or services with both the resident 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 resident;

12.2.b.4. Communication to other services of psychosocial factors which could affect services rendered or care delivered to the resident;

12.2.b.5. Provision of counseling to resident's families;

12.2.b.6. Participation in the development of resident care plans as described in Subsection 13.1 of 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 Subdivision 13.1.g and Subdivision 13.1.h of this rule.

12.3. Social Work Services Staffing.

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 that he or she is:

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 years of experience in a health care facility, medical social work, or gerontology;

12.3.b.3. Meets the educational requirements of Paragraph 12.3.b.2 of this rule but not the experience requirements, if supervision is provided no less than quarterly for a period of two years by a qualified social work

consultant; or

12.3.b.4. A non-degreed individual or an individual with a degree in a non-related field with three year's experience in a health care facility, medical social work or gerontology. Supervision by a qualified social worker shall be provided no less than quarterly. If a facility complies with the requirements of Paragraph 12.3.b.1 or 12.3.b.2 of this rule, but does not comply with the requirements of Subsection 12.1 or Subsection 12.2 or both, the secretary may require that the facility obtain consultation until such time as the facility is judged in compliance with Subsections 12.1 and 12.2.

If a facility's director of social work services meets only the requirements of Paragraphs 12.3.b.3 or 12.3.b.4 of this rule and the facility is in compliance with the requirements of both Subsections 12.1 and 12.2, the secretary may modify or waive the requirement of Paragraphs 12.3.b.3 or 12.3.b.4 of this rule for consultation or supervision by a qualified social worker.

12.3.c. An individual, who meets the requirements of Paragraph 12.3.b.1 of this Section, shall qualify as a social work consultant for the purposes of this rule.

12.3.d. For purposes of evaluating compliance with the requirements of Subdivision 12.3.b of 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 staff person per one hundred and twenty (120) residents. 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 12 of 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 12 of this rule are met.

12.4. Social Work Services Facilities. - Facilities shall be adequate for social services personnel and easily accessible to residents, families and staff and shall provide privacy for interviews and space for confidential storage of records.

12.5. Recreation and Activities Program.

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 residents; and

12.5.b.5. Maximize the opportunity to residents 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 resident's participation in an activities program be restricted and the order shall be given in accordance with Subdivisions 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 residents:

12.5.d.1. Social and interpersonal activities which provide the 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 and provide 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 considers and has the right to express resident's grievances, to represent residents in the facility generally and to make recommendations concerning facility policies and procedures.

The activities specified in Subdivision 12.5.d are included only as examples and are not exhaustive lists setting forth minimum or maximum requirements.

12.5.e. A facility shall make provisions to enable and shall encourage relatives and friends of residents to participate in activities with residents.

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 residents 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 resident care plans.

12.6. Recreation and Activities Staffing.

12.6.a. A nursing home shall appoint a resident activities director and additional staff as needed to carry out the resident activities program, but not less than the equivalent of one staff member per one hundred and twenty (120) residents in the nursing home.

12.6.b. The resident activities director's duties include at least the following:

12.6.b.1. Developing 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 residents;

12.6.b.4. Maintenance of a current record of community services, resources, programs and facility materials accessible to the staff, residents, and residents' relatives and friends;

12.6.b.5. Developing a written

monthly activities schedule at least one (1) month in advance;

12.6.b.6. Ascertaining from each resident's care plan any physician's orders limiting any resident's participation in the activities program;

12.6.b.7. Documenting the residents' participation in activities and any reasons for their not participating 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.

12.7.a. A resident activities area with comfortable furniture shall be provided and maintained in good repair.

12.7.b. A facility shall provide transportation for residents to and from resident activities.

12.7.c. Appropriate activities shall be provided to residents unable to leave their rooms.

§ 64-13-13. Plans for Care and Medical Records.

13.1. Plans for Care and Discharge.

13.1.a. A resident care plan shall be developed for each resident 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 resident, identify the role of each service in meeting those needs, and the supportive measures each service will use to complement each other service in the accomplishment of the overall goal of care. The resi-

dent care plan shall be in writing and contain at least the following:

13.1.a.1. The goals to be accomplished;

13.1.a.2. Individually designed activities to meet the 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 resident care conferences or other methods of coordination, the resident care plan shall be reviewed and revised as needed, but at least quarterly. The review shall be noted in the medical record.

13.1.c. Policies and procedures shall delineate the rules and responsibilities of each service in relation to the resident care plan.

13.1.d. The resident care plan shall be available for use by all personnel caring for the resident.

13.1.e. Relevant information from the resident care plan shall be made available with other information that is transmitted when the resident 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 resident 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 resident.

13.1.g. A discharge plan shall be maintained and shall include at least the following:

13.1.g.1. An initial assessment, including discharge potential and goals, at admission or within no less than seven (7) days after the date of admission;

13.1.g.2. Relevant information concerning such areas as nursing assessment, social history, rehabilitation potential, resident needs at discharge and available community resources;

13.a.g.3. Periodic review and reevaluation at regular intervals, preferably on a monthly basis for the first three months after admission and in no instance less than quarterly. The detail and content of the discharge plan after the initial assessment will vary with the condition of the resident.

13.1.h. When a resident 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 resident is discharged to his or her home, the resident shall be given appropriate information concerning his or her needs for care and medication. The discharge summary shall include:

13.1.h.1. The resident's name and identifying number;

13.1.h.2. The name of the attending physician;

13.1.h.3. The date of admission;

13.1.h.4. The date of discharge;

13.1.h.5. A provisional and final diagnosis;

13.1.h.6. The course of treatment and care in the facility;

13.1.h.7. Pertinent diagnostic findings;

13.1.h.8. Essential information regarding the residents' illness or problems;

13.1.h.9. Restorative procedures;

13.1.h.10. Medication instructions;

13.1.h.11. The facility, agency or location to which the resident was discharged; and

13.1.h.12. A dated physician signature.

13.2. Medical Record Required.

13.2.a. A facility shall maintain a medical record for each resident, 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 days after the resident is discharged.

13.2.c. All clinical information pertaining to a resident's stay and medical care

shall be centralized in a single medical record following discharge.

13.2.d. Medical records of discharged residents shall be maintained for at least three (3) years from the date of discharge, or in the case of a minor, three (3) years after the resident 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 the 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 the 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.

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, authorized representatives of federal or state departments of health, agencies designated by a third party payment contract, the resident or a person or agency given written permission by the resident or by the resident's legal representative.

13.4. Contents of Medical Records.

13.4.a. A resident's medical record shall contain at least:

13.4.a.1. Basic identifying information as listed in Subdivision 13.4.d of this rule;

13.4.a.2. The date and time of admission;

13.4.a.3. A signed, dated admission and medical history, completed in accordance with Paragraph 8.3.a.1 of this rule;

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 who are 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 these procedures have been ordered;

13.4.a.8. A resident care plan as required in Subdivision 13.1.a of this rule;

13.4.a.9. A nursing care plan as required in Subdivision 13.1.f of this rule;

13.4.a.10. A discharge plan as required in Subdivision 13.1.g of this rule and

13.4.a.11. A discharge summary as required in Subdivision 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 if returned by mail within ten (10) days.

13.4.c. Policies shall specify the authority of these practitioners in addition to phy-

sicians to write progress notes in medical records. Types of practitioners, whose authority shall be specified, include nurses, social workers, therapists, psychologists, dentists and podiatrists.

13.4.d. The basic identifying information required in a resident's medical record includes:

13.4.d.1. The resident's name and any identification number;

13.4.d.2. The resident's room number;

13.4.d.3. The resident's social security number;

13.4.d.4. The resident's marital status;

13.4.d.5. The resident's date of birth;

13.4.d.6. The resident's sex;

13.4.d.7. The resident's home address;

13.4.d.8. The telephone number of the referral agency including the hospital from which the resident was admitted;

13.4.d.9. The name, address, telephone number of attending physician;

13.4.d.10. The name, address and telephone number of the resident's next of kin or other responsible person;

13.4.d.11. The resident's religious preference; and

13.4.d.12. Any pre-burial arrangements.

13.4.e. Nursing notes shall include at least:

13.4.e.1. A description of the care provided;

13.4.e.2. A nursing history;

13.4.e.3. An assessment of observed signs and symptoms;

13.4.e.4. The resident's reactions to treatments and medications;

13.4.e.5. Changes in the resident's physical or emotional condition;

13.4.e.6. Documentation of any unusual incident involving a resident; and

13.4.e.7. A nursing summary as indicated by the resident's needs.

§ 64-13-14. Hearings; Due Process; Penalties.

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. 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.b.1. Failure to provide standard quality of care for residents;

14.1.b.2. Wilfully and knowingly falsifying the material content of resident assessments;

14.1.b.3. Failure to submit a plan of correction required by W. Va. Code § 16-SC-1 et seq. of this rule;

14.1.b.4. Failure to submit a plan of correction which is approved by the director;

14.1.b.5. Failure to correct deficiencies within the time frame specified in an approved plan of correction;

14.1.b.6. Repeated noncompliance within the same regulatory grouping as defined in § of this rule;

14.1.b.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.b.8. Failure to comply with this rule;

14.1.b.9. Violation of any provision of this rule which produces immediate jeopardy to the health or safety of residents;

14.1.b.10. Violation of the provisions of this rule relative to the discharge of residents or employees for reasons of complaints regarding the nursing home;

14.1.b.11. Use of subterfuge or other dishonest action in applying for an original or renewal license;

14.1.b.12. Abuse of residents;

14.1.b.13. Neglect of residents;

14.1.b.14. Misappropriation of residents' property; or

14.1.b.15. Attempted bribery of any employee or contracted person of the department.

14.1.c. Notice of Civil Money Penalty.

14.1.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.

14.1.c.2. The notice shall include:

14.1.c.2.A. The nature of the noncompliance;

14.1.c.2.B. The statutory basis for the penalty;

14.1.c.2.C. The amount of penalty;

14.1.c.2.D. Any factors that were considered when determining the amount of the penalty;

14.1.c.2.E. When the penalty is due; and

14.1.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.

14.1.d. Informal Dispute Resolution.

14.1.d.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.

14.1.d.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.

14.1.d.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.

14.1.d.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.

14.1.d.5. Upon request, the director shall provide the nursing home with written notification of the informal dispute resolution process. _

14.1.e. 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 for the order 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 of the date of receipt of the complaint.

14.2.a.2. Investigations of complaints involving actual harm that is not immediate jeopardy shall be made within ten (10) days of the date of the complaint.

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 deficiencies 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 in moving 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 information concerning applications, inspections, investigations and other reports available for public inspection from the time of receipt. 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 he or she shall assess.

14.3.b. When A Civil Penalty Is Collected.

14.3.b.1. Hearing Requested.

14.3.b.1.A. A nursing home shall within sixty (60) days from receipt of the notice of initial, reconsidered, or revised determination of the director submit any request for a hearing on the determination of the noncompliance that is the basis for imposition of the penalty. 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 of 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 within seventy-five (75) days of the notice of determination of the director.

14.3.b.2.B. If the nursing

home does not request a hearing, the penalty shall be reduced by 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. Cumulative Remedies.

14.3.c.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.

14.3.c.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.

14.3.c.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.

14.3.d. 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.

14.3.e. Available Remedies.

One or more of the following remedies shall be used:

14.3.e.1. License termination;

14.3.e.2. Reduction of bed capacity;

14.3.e.3. Ban on new admissions;

14.3.e.4. Temporary management;

14.3.e.5. Civil money penalties;

or
14.3.e.6. Closure of the nursing home in emergency situations or transfer of residents, or both.

14.3.e.7. A nursing home may not avoid a remedy on the basis that it underwent a change of ownership.

14.3.f. 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.

14.3.g. When the director takes a case under advisement, the director shall:

14.3.g.1. Enter an order stating the decision to hold the case under advisement;

14.3.g.2. Notify the licensee and his or her attorney of record, if any, of the action, by certified mail, return receipt requested; and

14.3.g.3. Enter order showing satisfactory compliance dismissing the complaint if the licensee meets the requirements of the order.

14.3.h. 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.

14.3.i. 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.

14.3.j. 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.

14.3.k. 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.

14.3.l. 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.

14.4. Hearings and Due Process.

14.4.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 3.7 of this rule when the director finds either of the following:

14.4.a.1. That the violation of this rule jeopardizes the health or safety of a patient; or

14.4.a.2. The violation is the second or subsequent violation of the same provision of this rule within twelve (12) months.

14.4.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:

14.4.b.1. Institute or continue a disciplinary proceeding;

14.4.b.2. Institute or continue a proceeding for the denial of license application;

14.4.b.3. Enter an order denying a license application; or

14.4.b.4. Take any other disciplinary action as provided by state law or rules.

14.4.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.

14.4.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.

14.4.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.

14.4.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.

14.4.g. Amount of Civil Penalty.

14.4.g.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:

14.4.g.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).

14.4.g.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).

14.4.g.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).

14.4.g.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.

14.4.g.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.

14.4.g.1.F. Culpability shall not be a consideration in determining the amount of a penalty.

14.4.g.2. Penalty Procedures After Termination of a License.

14.4.g.2.A. In the case of a terminated nursing home, the director shall send the penalty information after the:

14.4.g.2.A.1. Final administrative decision is made;

14.4.g.2.A.2. Nursing home has waived its right to a hearing; or

14.4.g.2.A.3. Time for requesting a hearing has expired and the director has not received a hearing request from the nursing home.

14.4.g.2.B. Penalty payment is due fifteen (15) days after:

14.4.g.2.B.1. A final administrative decision;

14.4.g.2.B.2. The time period for requesting a hearing has expired;

14.4.g.2.B.3. Receipt of the written request to waive a hearing; or

14.4.g.2.B.4. The effective date of termination.

14.4.h. 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.

14.4.i. Payment of Penalties.

14.4.i.1. A civil money penalty payment is due fifteen (15) days after a final administrative decision is made when:

14.4.i.1.A. The nursing home achieves substantial compliance before the final administrative decision; or

14.4.i.1.B. The effective date of termination occurs before the final administrative decision.

14.4.i.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:

14.4.i.2.A. The nursing home achieved substantial compliance before the hearing request was due; or

14.4.i.2.B. The effective date of termination occurs before the hearing request was due.

14.4.i.3. A civil money penalty payment is due fifteen (15) days after receipt of the written request to waive a hearing.

14.4.j. 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 accrue interest at the rate of two percent (2%) on the last day of each month after receipt of notice of the assessment or 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 licensees or operators of the nursing home.

14.4.k. 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 the facility's 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.

14.5. Action When There Is Immediate Jeopardy.

14.5.a. If there is immediate jeopardy to resident health or safety, the director shall either:

14.5.a.1. Petition the circuit court for the appointment of a temporary manager;

14.5.a.2. Close the facility; or

14.5.a.3. Transfer the residents in the facility to another facility.

14.6. Temporary Management.

14.6.a. Upon petition from the director, a circuit court may divest the licensee or operator of a nursing home of possession and control of a nursing home and appoint temporary management. The temporary management shall be responsible to the court and shall have any powers and duties as the court may grant to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare and rights of the residents of the nursing home. These powers include but are 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.

14.6.b. The person charged with temporary management shall be an officer of the court, is not liable for conditions at the nursing home which existed or originated prior to his or her appointment and is 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.

14.6.c. No person shall impede the operation of the 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 capi-

tal costs, foreclosures, evictions and repossessions of equipment used in the nursing home.

14.6.d. The 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. 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.

14.6.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.

14.7. Revocation or Suspension of License.

14.7.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.

14.7.b. When the director terminates or suspends a license based on immediate jeopardy to residents, the director shall arrange for the safe and orderly transfer of residents.

14.7.c. Notice shall include the fol-

lowing terms:

14.7.c.1. A copy of the complaint; and

14.7.c.2. Notification of the availability of a hearing.

14.7.d. Notice shall be served by personal service or by registered or certified mail, return receipt requested.

14.7.e. 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.f. 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 64.13A. 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

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$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
\$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

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$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
\$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 ¹

¹ 1.25 times the prior year's average monthly balance of client's funds

Table 64-13B. Minimum Ratios^a of Resident Care Personnel to Residents

NUMBER OF RESIDENTS	LICENSED NURSES		AIDES		TOTAL RESIDENT 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.

0 HET

1 Bill-Health, Nursing (By Delegate(s) Douglas, Hunt, Compton,
2 Faircloth, Linch and Riggs)

3
4 [Introduced March 3, 1997; referred to the
5 Committee on Health and Human Resources then
6 the Judiciary.]
7
8
9

10 A BILL to amend and reenact section one, article five,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of health to promulgate a
14 legislative rule relating to nursing home licensure.

15 *Be it enacted by the Legislature of West Virginia:*

16 That section one, article five, chapter sixty-four of
17 the code of West Virginia, one thousand nine hundred
18 thirty-one, as amended, be amended and reenacted, to read
19 as follows:

20 ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND
21 HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

22 §64-5-1. State board of health; division of health.

23 (a) The legislative rules rule filed in the state

64-13

1 register on the thirty-first day of July, one thousand nine
2 hundred ninety-five, authorized under the authority of
3 section two-a, article five-a, chapter sixteen of this
4 code, relating to the division of health (cancer registry,
5 64 CSR 68), ~~are~~ is authorized.

6 (b) The legislative ~~rules~~ rule filed in the state
7 register on the thirty-first day of July, one thousand nine
8 hundred ninety-five, authorized under the authority of
9 section seven, article one, chapter sixteen of this code,
10 modified by the division of health to meet the objections
11 of the legislative rule-making review committee and refiled
12 in the state register on the sixth day of December, one
13 thousand nine hundred ninety-five, relating to the division
14 of health (standards for local boards of health, 64 CSR
15 73), ~~are~~ is authorized.

16 (c) The legislative ~~rules~~ rule filed in the state
17 register on the fourth day of August, one thousand nine
18 hundred ninety-five, authorized under the authority of
19 section eight, article three-c, chapter sixteen of this
20 code, modified by the division of health to meet the
21 objections of the legislative rule-making review committee
22 and refiled in the state register on the twenty-third day
23 of January, one thousand nine hundred ninety-six, relating

1 to the division of health (AIDS-related medical testing and
2 confidentiality, 64 CSR 64), ~~are~~ is authorized.

3 (d) The legislative ~~rules~~ rule filed in the state
4 register on the fourth day of January, one thousand nine
5 hundred ninety-six, authorized under the authority of
6 section five, article five-c, chapter sixteen of this code,
7 modified by the division of health to meet the objections
8 of the legislative rule-making review committee and refiled
9 in the state register on the twenty-third day of January,
10 one thousand nine hundred ninety-six, relating to the
11 division of health (personal care home licensure, 64 CSR
12 14), ~~are~~ is authorized with the amendments set forth below:

13 "On page nine, section 4.3.1.d, after the word
14 'provisions' by inserting the words 'in policy';

15 .. On page nine, section 4.3.1.d, by striking out the
16 following: 'The provisions may be in the form of a bond, a
17 property lien, or other form of guaranty acceptable to the
18 secretary. The guaranty shall be in the amount of three
19 hundred dollars (\$300) per resident or ten thousand dollars
20 (\$10,000), whichever is greater.' and inserting in lieu
21 thereof the following: 'If the owner does not provide
22 continuing care to all residents during this thirty (30)
23 day period, any expenses incurred by the Department to

1 provide continuing resident care (i.e., food, staff, etc.)
2 during this thirty (30) day period, is the responsibility
3 of the owner.';

4 On page seventeen, section 4.10.4, by striking out the
5 word 'State' and inserting in lieu thereof the word
6 'Secretary';

7 On page seventeen, section 4.10.4, after the words
8 'for each of the residents' by inserting the words
9 'affected by the waiver request,';

10 On page twenty-four, section 5.8.2, after the words
11 'an additional' by striking out the words 'direct care' and
12 inserting in lieu thereof the words 'personal care';

13 On page twenty-four, section 5.8.2, after the word
14 'day' by striking out the words 'and evening shifts' and
15 inserting in lieu thereof the word 'shift';

16 On page twenty-four in section 5.8.2, after the words
17 'to have' by striking out the words 'no more than';

18 On page twenty-four in section 5.8.2, after the words
19 'two (2)' by inserting the words 'or more';

20 On page twenty-four, line sixty-seven, by striking out
21 the words 'no more than';

22 On page twenty-four, section 5.8.2, after
23 'residents.' by inserting the following sentence: 'At a

1 minimum, an additional personal care staff will be
2 available on the evening shift for each fifteen (15)
3 residents identified on their functional needs assessment
4 to have no more than two (2) or more of the above care
5 needs.';

6 On page twenty-four, section 5.8.2, after the words
7 'An additional' by striking out the word 'employee' and
8 inserting in lieu thereof the words 'personal care staff';

9 On page twenty-four, section 5.8.2, after the word
10 'with' by striking out the words 'one (1)' and inserting in
11 lieu thereof the words 'two (2)';

12 On page twenty-seven, section 6.1.7, after the words
13 'valid for' by striking out the words 'six (6) months' and
14 inserting in lieu thereof the words 'one (1) year';

15 On page thirty-five, section 7.3.9, after the words
16 'personal care home' by striking out the words 'in need of
17 nursing services as specified in this rule' and inserting
18 the following: 'The frequency with which a registered
19 professional nurse shall provide services to the personal
20 care home not providing limited and intermittent nursing
21 services shall be based upon the needs of the residents,
22 but not less than weekly.';

23 On page thirty-five, subsection 7.3.9, after the word

1 'Section' by striking out the number '13' and inserting in
2 lieu thereof the number '12';

3 On page thirty-five, section 7.3.9, after the words
4 'professional registered nurse.' by striking out the
5 following: 'The frequency with which a registered
6 professional nurse shall provide services to the personal
7 care home not providing limited and intermittent nursing
8 services shall be based upon the needs of the residents.'

9 On page fifty-four, section 11.3.1, by striking out
10 the sentence 'Existing and newly constructed buildings to
11 be offered, maintained, and operated as personal care homes
12 shall provide for accessibility in their entirety to
13 individuals with a physical disability.' and inserting in
14 lieu thereof the sentence 'Those personal care homes
15 housing any resident with a physical disability shall
16 provide access to areas used in common by all residents as
17 well as to the resident's personal area.';

18 On page fifty-five, section 11.3.8, in the second
19 sentence, after the word 'widths' by inserting the words
20 'for new construction';

21 On page fifty-five, section 11.3.10, after the words
22 'shall have a' by striking out the word 'central';

23 On page fifty-five, section 11.3.10, after the word

1 'weather' by striking out the following: 'Individual room
2 units known as 'through the wall heating and cooling units'
3 are acceptable.';

4 On page fifty-five, section 11.3.17, after the word
5 'residents.' by adding the following: 'However, if
6 existing facilities cannot comply with the janitor closet
7 requirement on each floor, the facility must demonstrate a
8 sanitary means of disposal of wastewater in an area that is
9 not a resident sleeping area.';

10 On page fifty-seven, section 11.4.10, at the beginning
11 of the first sentence, by striking out the word 'The' and
12 inserting in lieu thereof the words 'In new facilities
13 the';

14 On page fifty-seven, section 11.4.10, after the word
15 'area.' at the end of subsection ten by adding the
16 following sentence: 'In existing facilities residents'
17 rooms shall have an outside exposure through a vertical
18 transparent window. In existing facilities rooms extending
19 below ground level shall be allowed only if approved by the
20 Secretary.';

21 On page fifty-eight, section 11.5.2, after the word
22 'every' by striking out the words 'four (4)' and inserting
23 in lieu thereof the words 'five (5)';

1 On page fifty-eight, section 11.5.3, after the word
2 'per' by striking out the words 'five (5)' and inserting in
3 lieu thereof the words 'ten (10)';

4 On page fifty-eight, section 11.5.3, after the word
5 'residents.' by striking out the following sentence: 'If
6 the facility can show a process that functions well for
7 residents, upon application, the secretary will grant a
8 waiver of this requirement.'

9 On page sixty-one, section 11.13.3.a, at the beginning
10 of the first sentence, by striking out the word 'Outlets'
11 and inserting in lieu thereof the words 'In new facilities
12 electrical outlets';

13 On page sixty-one, section 11.13.3.a, after the word
14 'walls;' by inserting a period and the words 'In existing
15 facilities electrical outlets to meet the needs of the
16 residents shall be provided;';

17 On page sixty-six, section 12.2.5.a, after the word
18 'services' by striking out the words 'through daily contact
19 with the home and visits to the residents at least eight
20 (8) hours a week'; and inserting in lieu thereof the words
21 'to residents';

22 On page sixty-six, by striking out section 12.2.5.d;

23 And,

1 By relettering the remaining subdivisions."

2 (e) The legislative rule filed in the state register
3 on the eighth day of November, one thousand nine hundred
4 ninety-six, authorized under the authority of section five,
5 article five-c, chapter sixteen, of this code, modified by
6 the division of health to meet the objections of the
7 legislative rule-making review committee and refiled in the
8 state register on the twenty-seventh day of February, one
9 thousand nine hundred ninety-seven, relating to the
10 division of health (nursing home licensure, 64 CSR 13), is
11 authorized.

12
13 NOTE: The purpose of this bill is to authorize the
14 Division of Health to promulgate a legislative rule
15 relating to Nursing Home Licensure.

16
17 Strike-throughs indicate language that would be
18 stricken from the present law, and underscoring indicates
19 new language that would be added.

Senate Bill No. 178

1 (By Senator(s) Ross, Anderson, Macnaughtan,
2 Boley and Buckalew)

3 [Introduced March 3, 1997; referred to the
4 Committee on Health and Human Resources; and
5 then to the Committee on the Judiciary.]
6
7
8
9

10 A BILL to amend and reenact section one, article five,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of health to promulgate a
14 legislative rule relating to nursing home licensure.

15 *Be it enacted by the Legislature of West Virginia:*

16 That section one, article five, chapter sixty-four of
17 the code of West Virginia, one thousand nine hundred
18 thirty-one, as amended, be amended and reenacted, to read
19 as follows:

20 ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND
21 HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

22 §64-5-1. State board of health; division of health.

23 (a) The legislative ~~rules~~ rule filed in the state

1 register on the thirty-first day of July, one thousand nine
2 hundred ninety-five, authorized under the authority of
3 section two-a, article five-a, chapter sixteen of this
4 code, relating to the division of health (cancer registry,
5 64 CSR 68), ~~are~~ is authorized.

6 (b) The legislative ~~rules~~ rule filed in the state
7 register on the thirty-first day of July, one thousand nine
8 hundred ninety-five, authorized under the authority of
9 section seven, article one, chapter sixteen of this code,
10 modified by the division of health to meet the objections
11 of the legislative ~~rule-making~~ review ~~committee~~ and refiled
12 in the state register on the sixth day of December, one
13 thousand nine hundred ninety-five, relating to the division
14 of health (standards for local boards of health, 64 CSR
15 73), ~~are~~ is authorized.

16 (c) The legislative ~~rules~~ rule filed in the state
17 register on the fourth day of August, one thousand nine
18 hundred ninety-five, authorized under the authority of
19 section eight, article three-c, chapter sixteen of this
20 code, modified by the division of health to meet the
21 objections of the legislative rule-making review committee
22 and refiled in the state register on the twenty-third day
23 of January, one thousand nine hundred ninety-six, relating

1 to the division of health (AIDS-related medical testing and
2 confidentiality, 64 CSR 64), ~~are~~ is authorized.

3 (d) The legislative ~~rules~~ rule filed in the state
4 register on the fourth day of January, one thousand nine
5 hundred ninety-six, authorized under the authority of
6 section five, article five-c, chapter sixteen of this code,
7 modified by the division of health to meet the objections
8 of the legislative rule-making review committee and refiled
9 in the state register on the twenty-third day of January,
10 one thousand nine hundred ninety-six, relating to the
11 division of health (personal care home licensure, 64 CSR
12 14), ~~are~~ is authorized with the amendments set forth below:

13 "On page nine, section 4.3.1.d, after the word
14 'provisions' by inserting the words 'in policy';

15 On page nine, section 4.3.1.d, by striking out the
16 following: 'The provisions may be in the form of a bond, a
17 property lien, or other form of guaranty acceptable to the
18 secretary. The guaranty shall be in the amount of three
19 hundred dollars (\$300) per resident or ten thousand dollars
20 (\$10,000), whichever is greater.' and inserting in lieu
21 thereof the following: 'If the owner does not provide
22 continuing care to all residents during this thirty (30)
23 day period, any expenses incurred by the Department to

1 provide continuing resident care (i.e., food, staff, etc.)
2 during this thirty (30) day period, is the responsibility
3 of the owner.';

4 On page seventeen, section 4.10.4, by striking out the
5 word 'State' and inserting in lieu thereof the word
6 'Secretary';

7 On page seventeen, section 4.10.4, after the words
8 'for each of the residents' by inserting the words
9 'affected by the waiver request,';

10 On page twenty-four, section 5.8.2, after the words
11 'an additional' by striking out the words 'direct care' and
12 inserting in lieu thereof the words 'personal care';

13 On page twenty-four, section 5.8.2, after the word
14 'day' by striking out the words 'and evening shifts' and
15 inserting in lieu thereof the word 'shift';

16 On page twenty-four in section 5.8.2, after the words
17 'to have' by striking out the words 'no more than';

18 On page twenty-four in section 5.8.2, after the words
19 'two (2)' by inserting the words 'or more';

20 On page twenty-four, line sixty-seven, by striking out
21 the words 'no more than';

22 On page twenty-four, section 5.8.2, after
23 'residents.' by inserting the following sentence: 'At a

1 minimum, an additional personal care staff will be
2 available on the evening shift for each fifteen (15)
3 residents identified on their functional needs assessment
4 to have no more than two (2) or more of the above care
5 needs.';

6 On page twenty-four, section 5.8.2, after the words
7 'An additional' by striking out the word 'employee' and
8 inserting in lieu thereof the words 'personal care staff';

9 On page twenty-four, section 5.8.2, after the word
10 'with' by striking out the words 'one (1)' and inserting in
11 lieu thereof the words 'two (2)';

12 On page twenty-seven, section 6.1.7, after the words
13 'valid for' by striking out the words 'six (6) months' and
14 inserting in lieu thereof the words 'one (1) year';

15 On page thirty-five, section 7.3.9, after the words
16 'personal care home' by striking out the words 'in need of
17 nursing services as specified in this rule' and inserting
18 the following: 'The frequency with which a registered
19 professional nurse shall provide services to the personal
20 care home not providing limited and intermittent nursing
21 services shall be based upon the needs of the residents,
22 but not less than weekly.';

23 On page thirty-five, subsection 7.3.9, after the word

1 'Section' by striking out the number '13' and inserting in
2 lieu thereof the number '12';

3 On page thirty-five, section 7.3.9, after the words
4 'professional registered nurse.' by striking out the
5 following: 'The frequency with which a registered
6 professional nurse shall provide services to the personal
7 care home not providing limited and intermittent nursing
8 services shall be based upon the needs of the residents.'

9 On page fifty-four, section 11.3.1, by striking out
10 the sentence 'Existing and newly constructed buildings to
11 be offered, maintained, and operated as personal care homes
12 shall provide for accessibility in their entirety to
13 individuals with a physical disability.' and inserting in
14 lieu thereof the sentence 'Those personal care homes
15 housing any resident with a physical disability shall
16 provide access to areas used in common by all residents as
17 well as to the resident's personal area.';

18 On page fifty-five, section 11.3.8, in the second
19 sentence, after the word 'widths' by inserting the words
20 'for new construction';

21 On page fifty-five, section 11.3.10, after the words
22 'shall have a' by striking out the word 'central';

23 On page fifty-five, section 11.3.10, after the word

1 'weather' by striking out the following: 'Individual room
2 units known as 'through the wall heating and cooling units'
3 are acceptable.';

4 On page fifty-five, section 11.3.17, after the word
5 'residents.' by adding the following: 'However, if
6 existing facilities cannot comply with the janitor closet
7 requirement on each floor, the facility must demonstrate a
8 sanitary means of disposal of wastewater in an area that is
9 not a resident sleeping area.';

10 On page fifty-seven, section 11.4.10, at the beginning
11 of the first sentence, by striking out the word 'The' and
12 inserting in lieu thereof the words 'In new facilities
13 the';

14 On page fifty-seven, section 11.4.10, after the word
15 'area.' at the end of subsection ten by adding the
16 following sentence: 'In existing facilities residents'
17 rooms shall have an outside exposure through a vertical
18 transparent window. In existing facilities rooms extending
19 below ground level shall be allowed only if approved by the
20 Secretary.';

21 On page fifty-eight, section 11.5.2, after the word
22 'every' by striking out the words 'four (4)' and inserting
23 in lieu thereof the words 'five (5)';

1 On page fifty-eight, section 11.5.3, after the word
2 'per' by striking out the words 'five (5)' and inserting in
3 lieu thereof the words 'ten (10)';

4 On page fifty-eight, section 11.5.3, after the word
5 'residents.' by striking out the following sentence: 'If
6 the facility can show a process that functions well for
7 residents, upon application, the secretary will grant a
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KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

CATHERINE FREROTTE
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WILLIAM H. HARRINGTON
Chief of Staff
RECEIVED
JUL 16 1997
JUDY COOPER
Director, Administrative Law
PENNEY BARKER
Director, Corporations

STATE OF WEST VIRGINIA REGULATORY DEVELOPMENT

SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

(Plus all the volunteer help we can get)

TO: KAY HOWARD

AGENCY: DIVISION OF HEALTH

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 14, 1997

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 4 3 54 PM '97

FILED

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 13 TITLE: 64 DIVISION OF HEALTH

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Kay Howard

TITLE OF PERSON SIGNING: Director, Regulatory Development

DATE: 8/4/97

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.