

John D. Rockefeller IV
Governor



Sally K. Richardson
Acting Director

State of West Virginia

DEPARTMENT OF HEALTH

CHARLESTON 25305

January 16, 1981

The Honorable A. James Manchin
Secretary of State
Capitol Complex
Building 1, Room W-157
Charleston, West Virginia 25305

FILED IN THE OFFICE OF
SECRETARY OF STATE
THIS DATE 1-20-81

Dear Mr. Manchin:

Enclosed are two copies each of proposed new Rules and Regulations for Licensing Nursing Homes and a combination notice of public hearing and discussion paper. Also enclosed are two copies of notice of public hearing which can be used independently.

These copies are filed with your office in accordance with State Administrative Procedures as prescribed by State law and regulations. As discussed with your staff, we anticipate re-numbering the regulations following the hearing. This would constitute only a change in format. Also, it will be necessary to determine the appropriate Series Number.

Sincerely,

A handwritten signature in cursive script, appearing to read "John J. Jarrell".

John J. Jarrell, Director
Health Facilities Evaluation Program

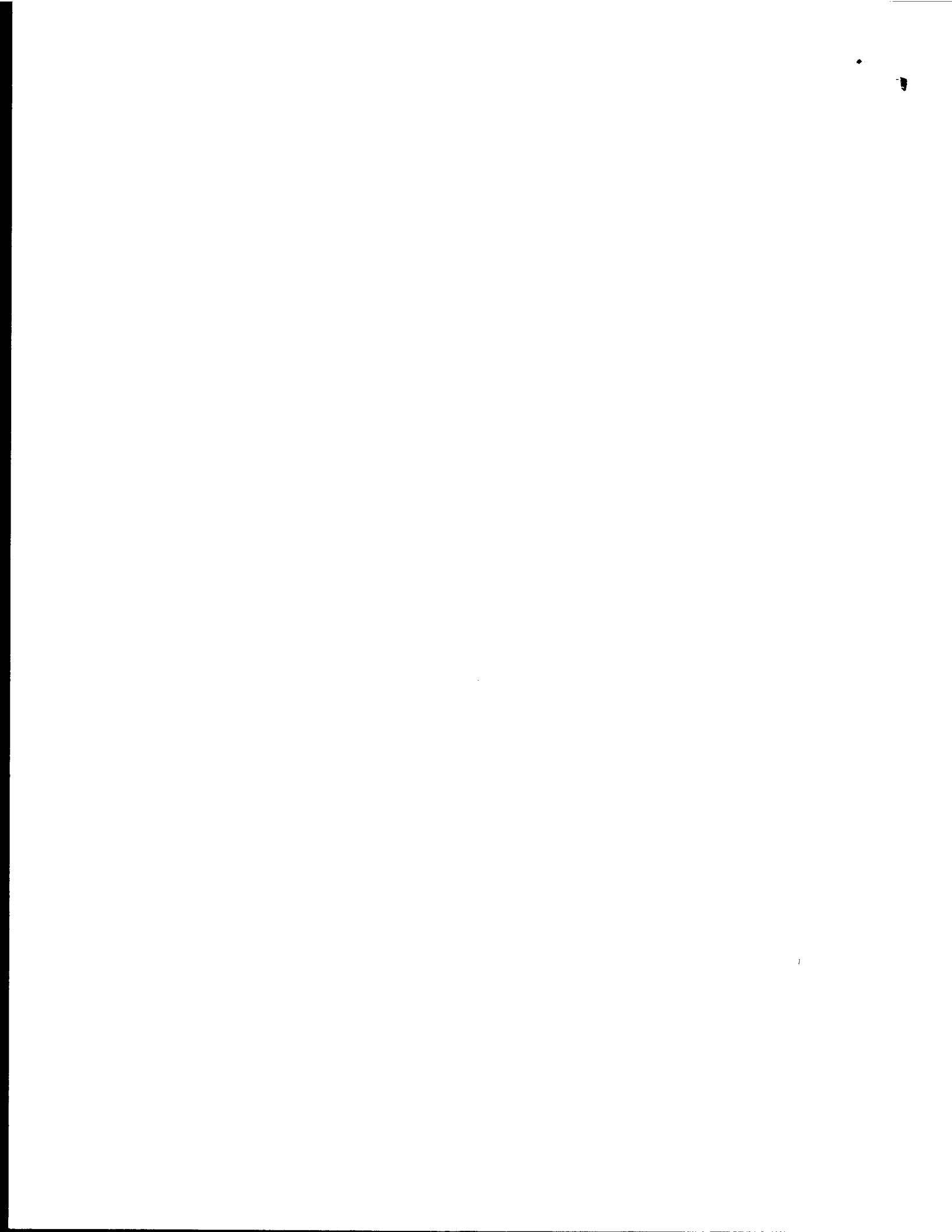
JJJ/KH/ej

OFFICE OF HEALTH PLANNING & EVALUATION

1800 WASHINGTON STREET, EAST

CHARLESTON, WEST VIRGINIA 25305

TELEPHONE (304) 348-0530





STATE OF WEST VIRGINIA
 OFFICE OF THE SECRETARY OF STATE
 CHARLESTON 25305

A. JAMES MANCHIN
 SECRETARY OF STATE

STATE REGISTER FILING

I, John J. Jarrell, Director,
 Health Facilities Evaluation Program
 WV State Health Department, hereby submit to record in
Department or Division, Title or Position

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or
- other - specify ()

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 SECRETARY OF STATE
 THIS DATE 1-20-81

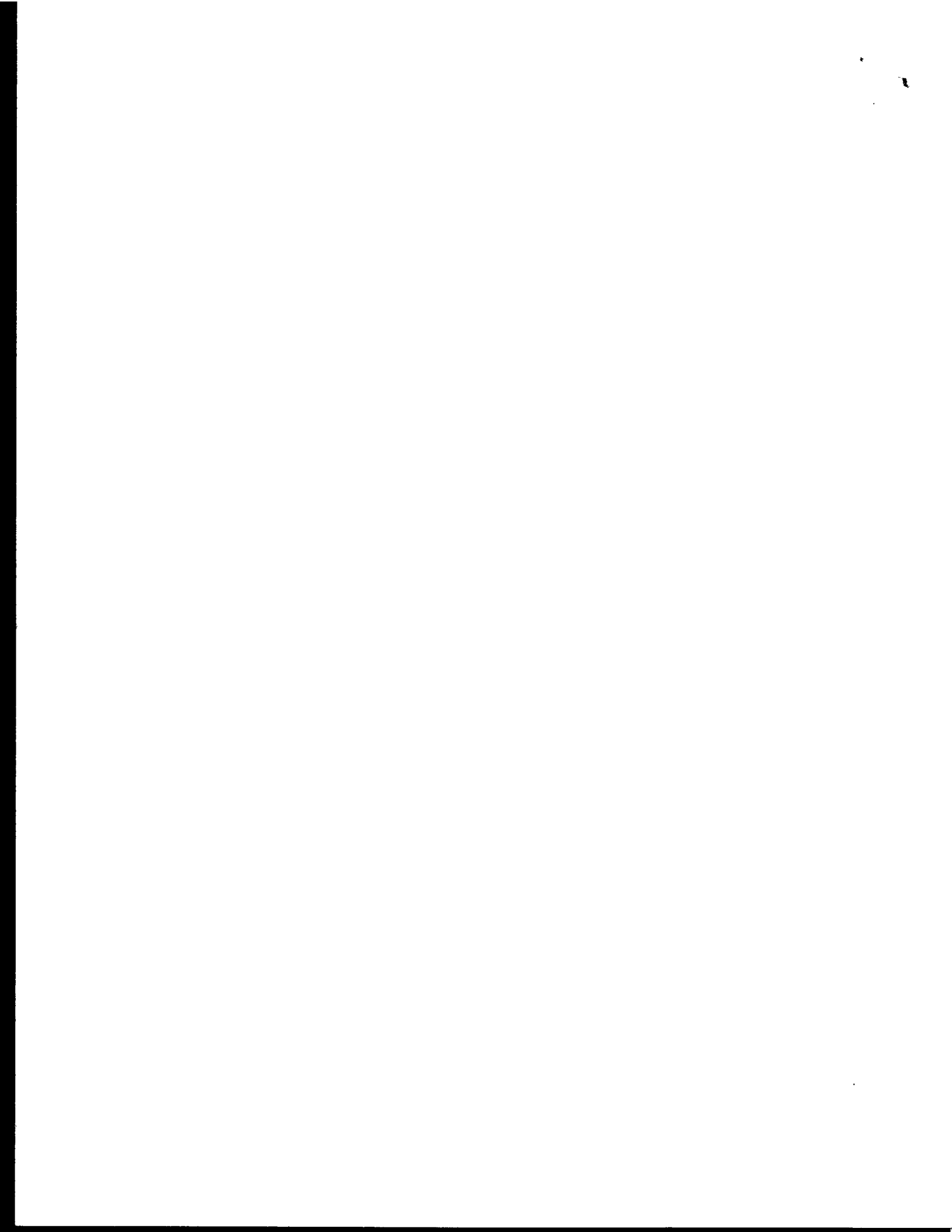
This filing pertains to

Chapter 16
 Article 5C
 Series I (tentative)
 Section _____
 Page No. _____

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

January 16, 1981
 Date Submitted

John J. Jarrell
 Signature of Person Authorizing
 this Filing



John D. Rockefeller IV
Governor




Sally K. Richardson
Acting Director

State of West Virginia

DEPARTMENT OF HEALTH
CHARLESTON 25305

NOTICE

TO: Interested Parties

FROM: John J. Jarrell, Director 
Health Facilities Evaluation Program

DATE: January 16, 1981

FILED IN THE OFFICE OF
SECRETARY OF STATE
THIS DATE 1-20-81

The State Department of Health will hold a public hearing concerning proposed nursing home licensing regulations on Tuesday, March 10, 1981 at 10:00 A.M. in Rooms A & B of the State Capitol Conference Center. Interested parties may present views and comments regarding the proposed regulations orally or in writing.

Depending on the number of persons wanting to comment at the public hearing, it may be necessary to limit the amount of time available for oral comments by each individual. We are therefore encouraging that, where possible, written comments or summaries be prepared. Please bring at least four extra copies so that the hearing board members can more easily follow comments. Extra copies for distribution to other participants in the hearing would also be appreciated.

Written comments will be accepted at any time up to and including the date of hearing. Written comments should be addressed to: Mr. John Jarrell, Director, West Virginia Department of Health, Health Facilities Evaluation Program, Room 402, 1800 Washington Street, East, Charleston, West Virginia 25305. Telephone: (304) 348-0050.

Copies of the regulations will be available for review at County Health Offices and at the Health Facilities Evaluation Program in Room 402 of Building 3 in the Capitol Complex for inspection and review.

These proposed regulations apply to nursing homes with 3 or more patients. They will not apply to personal care homes which do not have nursing patients, but may be of interest to such facilities. A separate set of regulations applies to personal care homes, for which a revision is in process.

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CHARLESTON 25305

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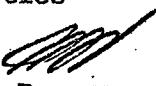
DEPARTMENT OF HEALTH

CHARLESTON 25305

NOTICE

IN THE MATTER OF: Proposed Nursing Home Licensing Regulations
Discussion and Notice of Hearing

TO: All Nursing Homes Licensed in the State of West Virginia
and All Other Interested Parties

FROM: John J. Jarrell, Director 
Health Facilities Evaluation Program

DATE: January 16, 1981

FILED IN THE OFFICE OF
SECRETARY OF STATE
THIS DATE 1-20-81

BACKGROUND

These proposed regulations set forth new and revised standards of operation and physical plant for nursing homes in conformance with §16-5C of the West Virginia Code, 1931, as amended. They also set forth new procedures for administration of the nursing home licensing law and regulations. These regulations have been approved for public hearing by the State Board of Health.

These proposed regulations are very different from the regulations presently in effect. A number of factors have contributed to this difference. Changes in the nursing home licensing law in 1977 were extensive. In essence, the licensing law was rewritten. The present regulations have not been revised since 1973. (Revisions were prepared in 1977 by the old Nursing Home Licensing Board; these revisions, however, were not in conformance with the new law of 1977 and were therefore rejected by the Legislative Rule-Making Review Committee.) Recent years have seen increasing concern for patient rights and the general quality of life of the resident in long-term care facilities, in addition to concerns for their health and safety. Problems with unlicensed facilities indicate a need for improving and amplifying the regulations and procedures for dealing with this type of facility. These and other factors, which are discussed below, have dictated a major and lengthy revision process.

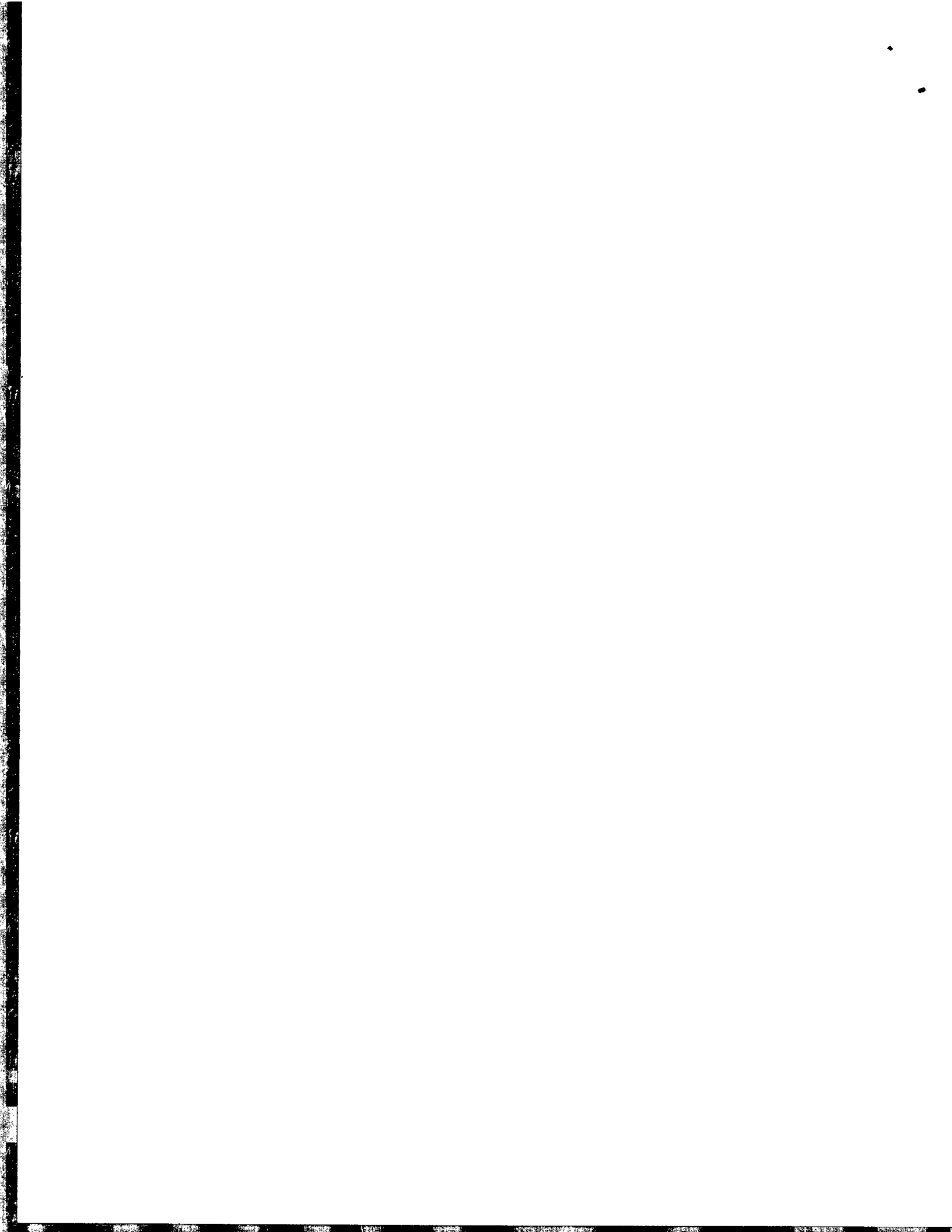
A number of drafts and other materials have been circulated, reviewed and discussed. Some of the revision has been carried out by committees of interested parties; some, by a consultant firm; and some, by Health Department staff. Drafts of the proposed regulations have also been reviewed by the Board of Health, which has the authority for promulgating nursing home licensing regulations. Efforts have been made throughout the process to provide extensive opportunity for and a receptive attitude to review and comment by interested and affected parties of many different viewpoints. Indeed, we are

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grateful for the time and thought which many individuals have given to the various drafts of these proposed regulations.

Because of the extent of the differences between these regulations and the existing regulations, and the importance of and interest in long term care facilities, we are circulating with the proposed regulations and public hearing notice, this discussion paper. It details various issues and some considerations regarding specific standards.

The discussing of issues and specific standards generally compare the present proposed regulations to the most recent draft which received general informal circulation. Some comments and issues are recent; others have arisen over the history of the revision process, but are still relevant. It is our intent, however, that this discussion be independent of previous drafts. We hope that this discussion procedure will lead to a more efficient public hearing process, and a better understanding of the proposed regulations.

PROCEDURES FOR COMMENT

These regulations are now being advertised and offered for public review and comment in accordance with state administrative procedures as specified in Chapter 29A of the West Virginia Code, 1931, as amended.

The comment period for these regulations will end on March 10 , 1981. Consideration will be given to comments received on or before that date.

Written comments should be addressed to Mr. John J. Jarrell, Director, Health Facilities Evaluation Program, West Virginia Department of Health, 1800 Washington Street East, Charleston, West Virginia, 25305 (Telephone: (304) 348-0050).

PUBLIC HEARING

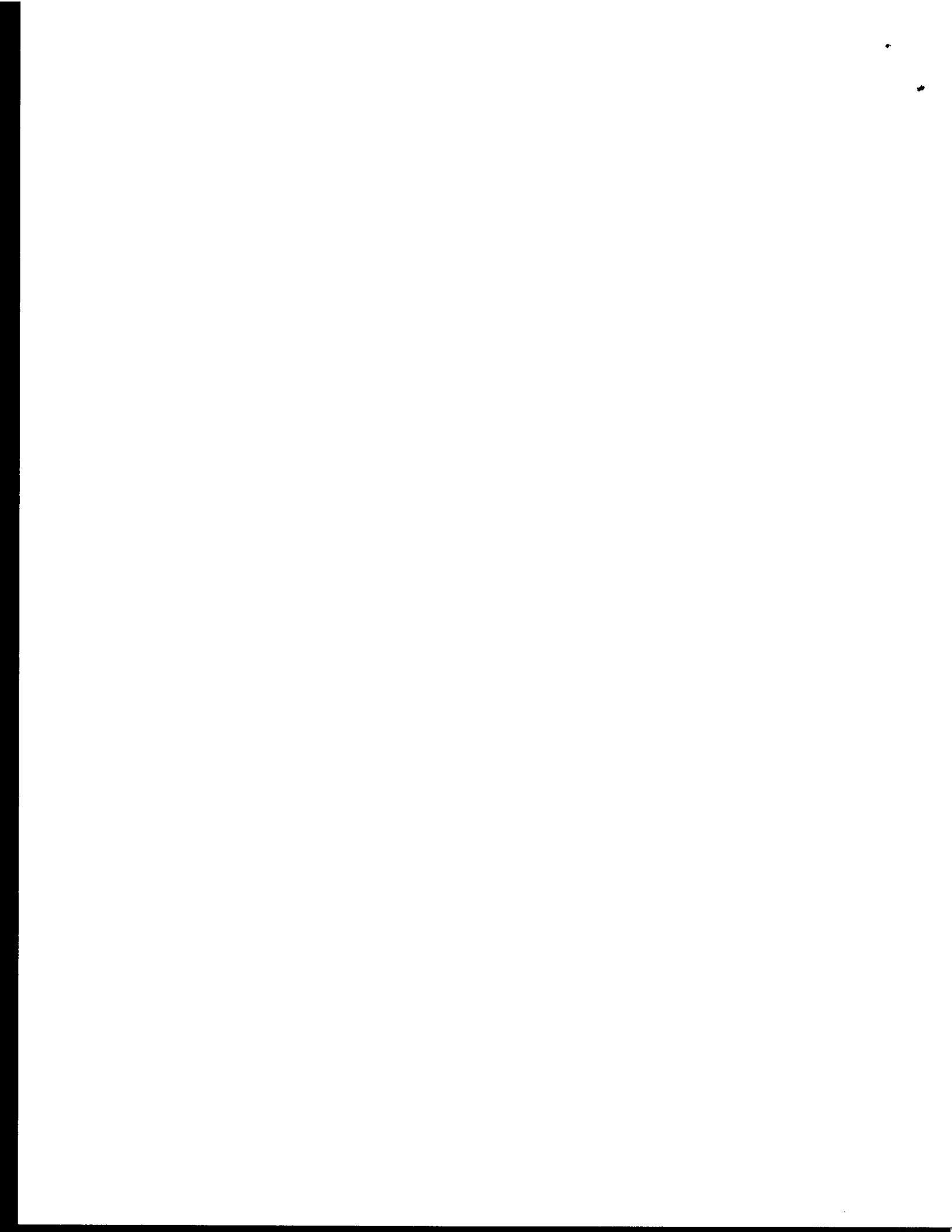
A public hearing concerning these regulations will be held in the Capitol Complex, Conference Rooms A & B, Building 7, located at 1900 Washington Street, East, Charleston, Kanawha County, West Virginia, at 10:00 A.M. on March 10 , 1981, for the purposes of receiving comments, data, objections, suggested amendments, views, evidence, and arguments orally or in writing.

Depending on the number of persons appearing at the public hearing, the time available for oral presentations may be somewhat limited. We would therefore encourage the preparation of written comments or summaries. Please bring at least four extra copies so that the hearing board members can more easily follow comments. Extra copies for distribution to other participants in the hearing would also be appreciated.

A full record of the hearings and all other comments received will be prepared. Copies of this record will be available on written request for a nominal copying fee.

GENERAL ISSUES

1. Issue: Does the subject matter of the proposed regulations exceed the limits of the authorizing legislation; and do the regulations exceed the



authority of the legislation in other ways?

Response: We feel that the proposed regulations do not exceed the authorizing legislation. The nursing home licensing law (§16-5C of the West Virginia Code) is extremely detailed and is broad in its scope. The law identifies specific categories to be covered by "detailed" standards. It gives many specific procedures for the Department of Health to follow in administering the licensing law and associated regulations.

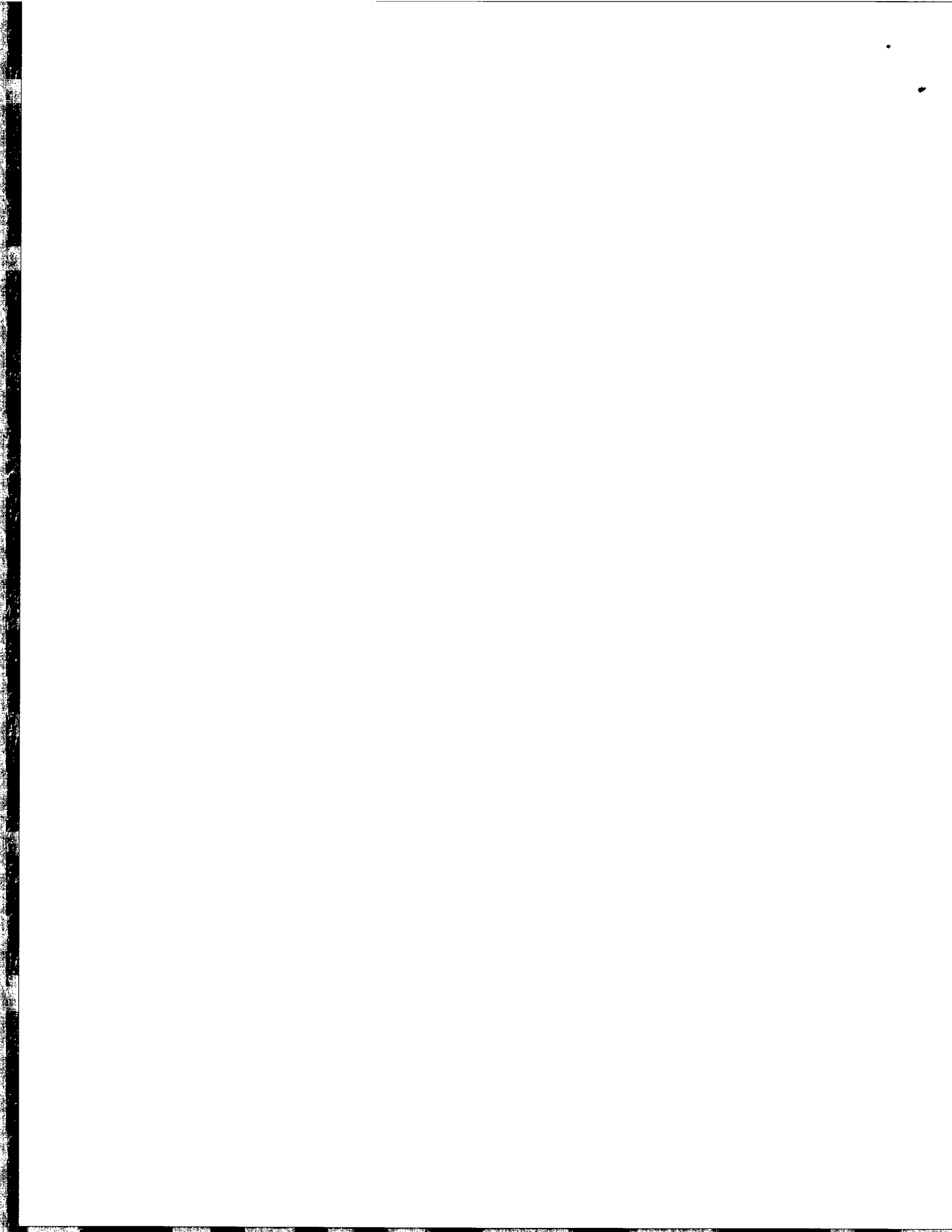
Specific categories of operation of facilities for which "detailed" standards are to be included are as follows [§16-5C-5(b)]:

- 1) Administrative policies, including:
 - (i) an affirmative statement of the right of access to facilities by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to patients, consistent with the rights of patients to privacy;
 - (ii) patient rights equivalent at a minimum to those established by HEW for intermediate care facilities, in force on the effective date of this law (1977);
- 2) Minimum numbers and qualifications of staff, including management, medical and nursing, aides, orderlies and support personnel;
- 3) Safety requirements;
- 4) Sanitation requirements;
- 5) Protective and personal services;
- 6) Dietary services;
- 7) Maintenance of health records;
- 8) Social and recreational activities; and
- 9) Such other categories as the Board of Health determines to be appropriate to ensure the patient's health, safety, and welfare.

Although the proposed regulations do not follow the above list in outline structure, standards for all of these categories are provided. In addition to the categories listed in the law, the regulations include provisions regarding the following: social services; pharmaceutical services; medical director and physician services; nursing services; infection control; dental services; and staff development. Only social services and the provision for medical director have generated questions regarding the appropriateness of their inclusion.

The law mandates a system of classification of standards, with definitions of the three classes, the use of a point system, and the use of a range of values representing compliance with, lack of compliance with, or performance exceeding the standard. The law further mandates the use of "A", "B", "C" and "F" ratings for facilities.

The law lists in detail the contents of original and renewal license applications (§16-5C-6) and findings to be made by the Director of Health. The law also requires disclosure to patients of costs of service and the posting of a bond if a facility handles a significant amount of money for patients (§16-5C-7). The law requires plans of correction and gives the Director the authority to assess civil penalties in the case of failure to file, or comply with, a plan of correction. The proposed regulations follow



these and other requirements with little deviation. They do not attempt to add to the power and authority of the Director.

2. Issue: Do the proposed regulations attempt to bring certification requirements into the licensure document?

Response: Not per se. We have tried to develop regulations which do not conflict with certification requirements. In some instances, certification standards have been adopted and/or adapted, but only on the basis of judged merit as reasonable minimum standards. In other instances, certification standards have been rejected as inappropriate or inadequate. The attempt has been to develop standards specific to perceived needs in West Virginia and the mandate and intent of the legislation to protect the health, safety and welfare of individuals in nursing homes.

3. Issue: Should the regulations distinguish between "skilled facilities" and "intermediate care facilities" as do the federal requirements for medicare and medicaid certification?

Response: We think not. Early drafts attempted to make such a distinction. A number of problems arose, however. When the distinction is made for reimbursement purposes, and a facility is certified only as an intermediate care facility for Medicare/Medicaid reimbursement purposes, the presence of one or two patients requiring skilled care is not a critical issue since the facility simply would not be reimbursed for those "skilled" services to those patients. For purposes of licensure, this would not be the case. A facility would have to be licensed as skilled or be unable to accept any patients requiring skilled care. This could create many problems for patients, nursing homes, and the Department.

The demand for skilled nursing care is small in this state. At any given time, our data indicate that in most instances no more than 5 percent of the patients in any given nursing home require skilled nursing care. To require a provider to meet facility-wide nursing staff (and other) requirements commensurate with skilled care needs on the basis of a few skilled patients would be unrealistic and counter-productive. Please note that although the regulations do not set different specific staffing requirements for skilled and intermediate care facilities, they do require that nursing staff be adequate to meet patient needs.

Additionally, the federal standards for intermediate care facilities are, in our opinion, inadequate for nursing home care. It is true that the proposed standards will impact most significantly on those facilities which are certified for intermediate care only. We judge that this impact is needed. Current thinking and draft regulations at the federal level also appear to be moving in this direction.

4. Issue: Why don't these regulations include provisions for personal care homes? After all, the new licensing law also applies to and requires revision of the personal care home licensing regulations.

Response: We feel that to include standards for personal care homes in the same document with those for nursing homes would create more problems than it would solve. An early draft which did include provisions for personal care

homes was judged by a large number of reviewers to be potentially very confusing to both consumers and providers.

A severe and prevalent problem in the area of long term care is the tendency for personal care homes to accept or fail to transfer individuals who need nursing care rather than personal care. Combining nursing and personal care home regulations would, we think, tend to further blur a distinction which is all too often ignored.

A revision of personal care licensing regulations is in progress. We expect completion of an initial draft this Summer. Because the procedures for administering the regulations and some of the standards will be the same or very nearly the same as those for nursing homes, we expect that less time will be needed for revising personal care home regulations than was necessary for revising nursing home regulations.

5. Issue: Are the proposed regulations too lengthy?

Response: We feel that there are strong arguments in favor of the length and scope of the present document.

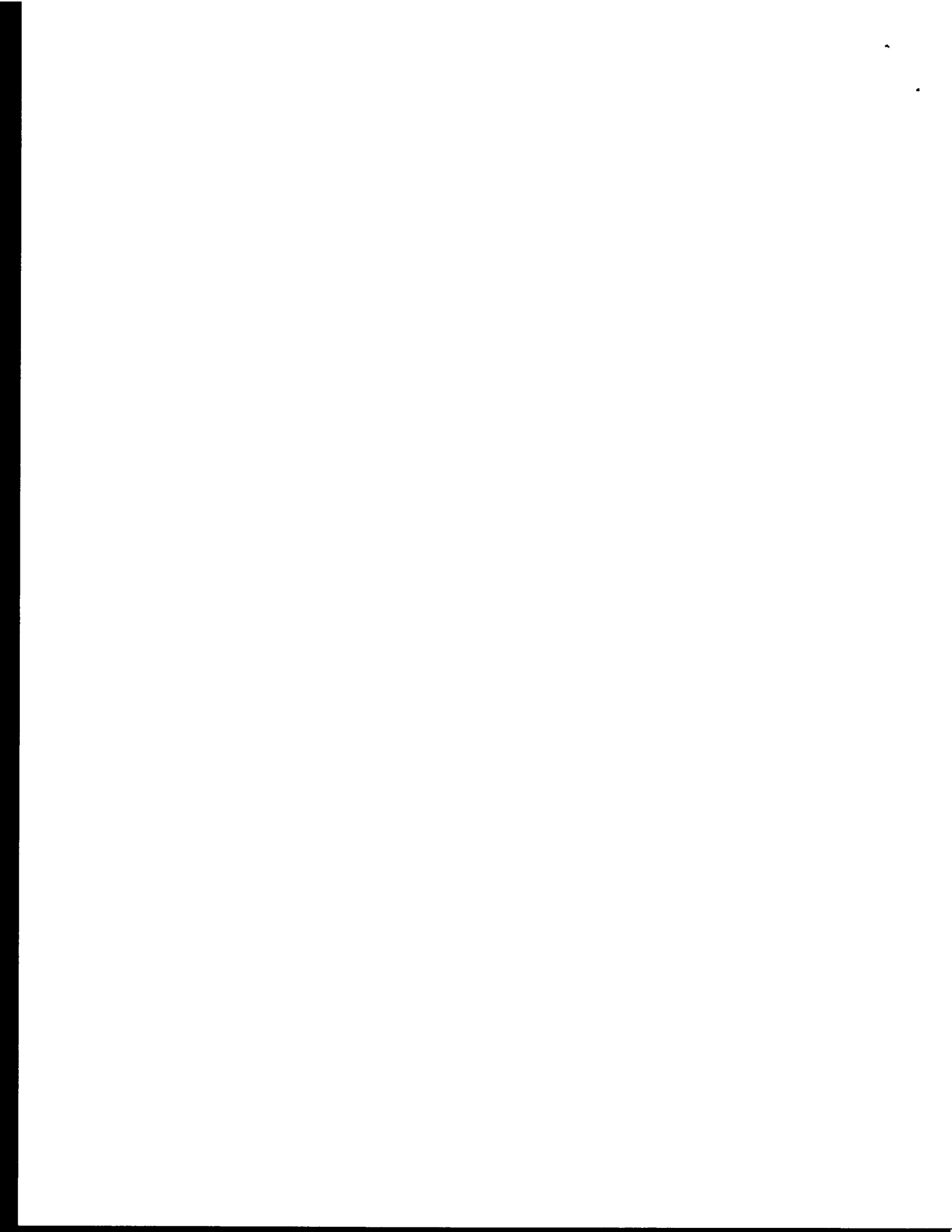
The provisions of §2000 of the proposed regulations, State Administrative Procedures, are either taken directly from the law or have been developed in accordance with specific provisions of the law. The inclusion of provisions of the law itself serves two purposes. It ensures a more coherent document and decreases the need to refer both to the law and the regulations, except in unusual circumstances, such as contested cases or rulings.

Some material from the proposed regulations could conceivably be omitted, since some language and items are included only to further define or explain a standard. If the proposed regulations were condensed, however, any deleted material would, in all probability, be retained for use by the Department in the form of guidelines. Guidelines would be more flexible, i.e., modification of guidelines would not require the cumbersome formal process of regulation revision and promulgation. Guidelines might, however, be more difficult to enforce if challenged in legal proceedings. Additionally, guidelines would undoubtedly have a tendency to proliferate.

In conclusion, we feel that having all the material needed for most purposes in a single document rather than three (law, regulations, and guidelines) is an advantage to all concerned parties. The regulations as proposed offer a detailed and comprehensive document for nursing home operators who wish to know what may be expected of them; for consumers who wish to know what services they might reasonably expect; and for staff who are charged with the responsibility for monitoring regulatory compliance.

6. Issue: Do the proposed regulations increase costs unnecessarily? Will the Department of Welfare reimburse the additional cost of compliance with provisions of these regulations?

Response: It is certainly relevant to consider the question of cost, both from the point of view of the private pay individual and the use of public tax money. The important question is not, however, "what is the cost?"; but "are the increased costs necessary to protect the health, safety and welfare of



individuals in nursing homes?" We feel that the proposed standards are minimally adequate and do not contemplate any reduction of standards on the basis of cost.

The Department of Welfare has conducted cost analyses and is generally in agreement with the proposed standards. It recognizes and will reimburse, in accordance with its system of determining amount of allowable cost, costs of compliance with state licensure regulations. These additional costs will generally be added to the existing reimbursement base.

7. Issue: Will it be necessary to maintain two separate systems of patients' rights, one to comply with federal standards and one for state standards?

Response: No. The more stringent standard prevails under federal regulations. The Department will need only to provide the Health Care Financing Administration with information regarding relevant portions of the state licensure regulations. There will be some cost associated with printing of new patients' rights statements. This should not be a continuing additional cost.

A question indirectly related to this issue is: "To what rights are patients entitled?"

The standards set out in §3000 identify only those patients' rights which do not fit well conceptually within the body of provisions regarding the physical plant and the services provided by the nursing home. Some of the standards which appear in the sections on services, for example, the provision concerning a plan of care (§5074) might, however, appear on a list of "patients' rights", depending on the philosophy and/or intent of the person preparing the list. In a very general sense, the entire body of standards regarding nursing home operation could be termed "patients' rights."

8. Issue: Have reasonable proposals to lighten the burden of regulations been overlooked?

Response: We have attempted to construct a reasonable set of regulations, given the detail and complexity of the licensing law. Some reasonable options appear to require legislative action.

One proposal which the Department supports is to use the same cost information and reporting periods for both licensure and the financial disclosure law (§16-5F of the West Virginia Code). Of particular burden and little apparent rationale is the tying of the licensure report to the license period, which may end at any point during the year, whereas the financial disclosure law accepts the facility's fiscal year.

A second legislative proposal supported by staff is a longer licensure term than one year for some facilities. A and B rated facilities could be inspected every two years and licensed for a two year term, perhaps with an interim self inspection and report. The longer period would permit the Department to concentrate limited resources on inspection of lower quality and problem facilities. It would also relieve higher quality nursing homes of some of the burden of regulatory inspection.

Also, the licensure law (§16-5C-6) requires disclosure of ten-percent ownership; the health care facility financial disclosure law (§16-5F-4) sets five percent as a criterion for reporting as ownership (except for nursing homes with less than 15 beds). This discrepancy could also be eliminated with legislative action.

SPECIFIC REGULATORY PROVISIONS

What follows is a discussion of some of the individual standards in the proposed regulations. Those items singled out for discussion are: 1) items which have been changed substantively since the most recent draft; 2) items which have been questioned and not changed; and 3) items which have generated much discussion over the history of this revision. Minor and technical changes in the most recent draft are not discussed. Generally speaking, the discussion follows the order of the proposed regulations.

1. Comment: To what does the "Board" refer? Board of Health? Nursing Home Licensing Board?

Response: A new item, §1010.3, has been added to the definition section to clarify references to the "Board" as references to the State Board of Health. The former Nursing Home Licensing Board no longer exists. The Board of Health now has the statutory authority to promulgate nursing home licensing regulations. The Department of Health has the authority to grant licenses and to enforce the licensing law and regulations.

2. Comment: Anyone might require some degree of the services listed in the definition of boarding home.

Response: We have reworded the definition of "boarding home" given in §1010.4, which clarifies the distinction between a boarding home and a nursing or personal care home. This definition is needed to enable the Department to cope more effectively with facilities which claim to be boarding homes but are actually functioning as unlicensed nursing or personal care homes. Existing laws and regulations unfortunately do not clearly define "boarding home." This type of unlicensed facility is a serious problem.

3. Comment: Thirty-two hours is more reasonable as a definition of full-time in view of shift work and some staffing pattern arrangements in use.

Response: We have changed the definition of full time in §1010.11 to 32 hours.

4. Comment: Do you need both "licensed" and "registered"? One may be a Registered Nurse without being licensed.

Response: Both registered professional and practical nurses are required to be licensed in West Virginia. The terms are not equivalent and the definition, §1010.15, is retained.

5. Comment: The definition of nursing care is too broad; the definition should also recognize judgment as a function of the nurse.

Response: The definition is quoted from §16-5C-2(e) of the law and is

retained in §1010.8.

6. Comment: A number of criticisms were made of the definition of nursing home.

Response: We have changed the definition (§1010.19) to agree precisely with the one given in §16-5C-2(c) of the law.

7. Comment: Ward clerks should not be included in the nursing personnel ratios; their duties do not normally include patient care.

Response: The definition of "nursing personnel" (§1010.20) has been changed to omit ward clerks; also "charge nurse" has been substituted for "nursing supervisor."

8. Comment: Several questions were raised concerning the definition of personal care home.

Response: The definition is taken from §16-5C-2(d) of the law and is retained (§1010.24).

9. Two terms, "substantial probability" and "serious physical harm" have been added to the definition list in conjunction with the addition of a section dealing more specifically with the assessment of civil penalties.

10. Comment: What is the authority for Certificate of Need review required by §2010.2 of the proposed regulations?

Response: The authority for Certificate of Need Review and State Health Planning and Development Agency review come from both §16-2D and §16-5C-6(a)(10) of the law. We have interpreted the "State Health Planning and Development Agency" reference in §16-5C-6(a)(10) to be equivalent to the requirements of §16-2D.

11. Comment: How will the Director determine whether or not separate buildings on the same premises require more than one license and why is this provision included (§2010.4)?

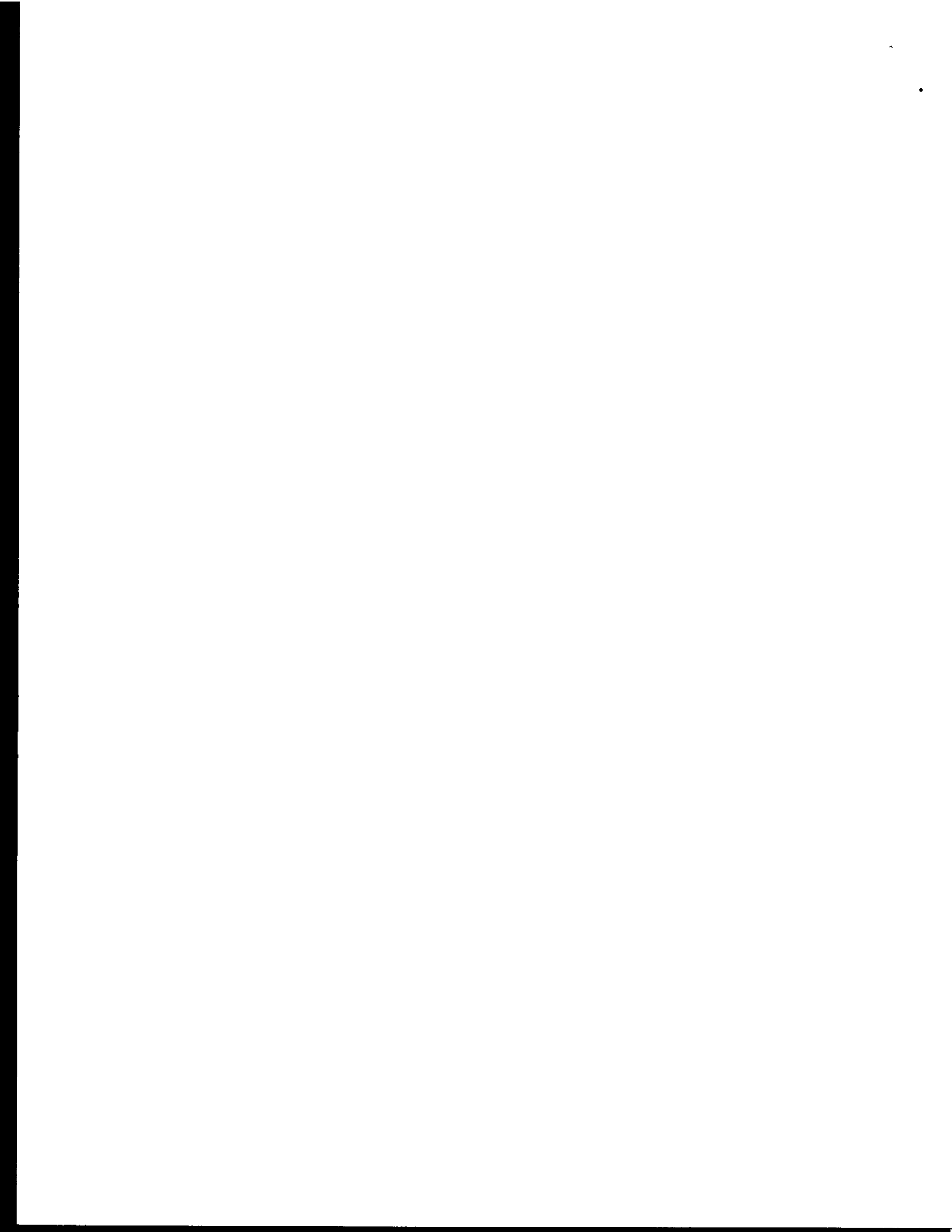
Response: If a need develops, the Department will establish guidelines. This section was added to allow for the possibility of two different types of facilities on the same premises, for example a personal care home and a nursing home.

12. Comment: Why is it necessary to state that the application for license shall include all information (§2021.3)?

Response: Some facilities attempt to file and request action with incomplete information.

13. Comment: What is the authority for all the information required by §2022 and §2023 to be submitted to the Department?

Response: All of the items of information listed in §2022 are required by law (§16-5C-6) to be submitted. Items §2023.2, and §2023.4 through §2023.7 are



required by law. Item §2023.3 represents our interpretation of §16-5C-6(a)(6) of the law. An item regarding references was a carry-over from older regulations and has been deleted from this draft. Item §2023.9 is included to assist in identifying units of large corporations or tracking histories of persons with undesirable records in nursing home operations.

14. Comment: The requirements of §2025.3 would include a review of all stockholders with more than 10 percent of the stock. This seems excessive.

Response: The item has been changed to agree with the precise wording of the law, §16-5C-6(b)(1), which is somewhat less extensive than the former provision.

15. Comment: What is the authority for the information requirements of §2034 regarding license renewal applications?

Response: §16-5C-6(c) of the law requires §2034.1.1, §2034.1.2 and §2034.1.3. Item §2034.1.4 is included to authorize the Department to require any additional information needed to produce the licensing activity report and facility directory required by §16-5C-3(r) of the law and to substantiate continued compliance with the law and regulations.

16. Comment: Under some circumstances, denial of a license as provided for in §2035 and §2040 could cause more harm to patients than continued operation.

Response: The provisions for denying a license or issuing a provisional license are specifically mandated in the law and are not discretionary to the regulations. The entire structure of the point system, the rating system, the use of plans of correction, and the civil penalties are intended to make denial of a license for an existing facility an extreme remedy to be utilized only in cases where severe and dangerous situations exist.

17. Comment: Provisional licenses should not be issued for longer than a 6-month period.

Response: Twelve months is the upper limit authorized by the law in §16-5C-6(d). The Director may issue a provisional license for a period less than twelve months.

18. Comment: Under what authority does the Director have the right to enter a facility believed to be operating as a nursing home without a license as specified in §2037.1?

Response: §16-5C-9 of the law specifically gives this authority.

19. Comment: What is the definition of "adequate care" in §2041.2.1?

Response: The term "adequate care" is taken directly from §16-5C-11(a) of the law. Our interpretation is to evaluate "adequate" care within the context of compliance with the regulations and judgments of surveyors regarding the physical and mental condition of patients in the facility.

20. Comment: How will civil penalties be determined?

Response: We have added a new section, §2043, Procedure for Civil Penalties, to give more details of procedures for assessing civil penalties for violations of standards as provided for in the law.

21. Comment: Reviewers identified a number of problems with the compliance value and rating system of §2052 and §2053.

Response: We have revised the structuring and scoring of categories and have also revised the items dealing with degree of compliance in an attempt to correct the flaws. This has necessitated some general reorganization within categories in §3000, §4000, and §5000 which is not specifically discussed.

22. Comment: Why should the Director take an advocacy role in advising patients of the potential for civil remedies as specified in §2064.3 of the proposed regulations?

Response: The mandate for this action is stated in §16-5C-8 of the law.

23. Comment: By what authority do the regulations (§2066) take such a discriminatory position against nursing home operators?

Response: These provisions are taken from §16-5C-8 of the law.

24. Comment: There might be insufficient time to acquire written approval for an emergency administrator.

Response: Item §3012.1.2 has been changed to allow verbal approval with written confirmation.

25. Comment: What is the required time limit for contact regarding transfer of patients?

Response: A time limit of seven days has been added to §3021.5.

26. Comment: The provisions regarding admission contracts would not apply to patients whose care is funded at least in part through the Department of Welfare.

Response: A new provision, §3022.5, has been added to identify those persons and their rights regarding admission contracts.

27. Comment: Why are the provisions regarding life care contracts included?

Response: The purpose of the provisions of §3023 is to protect individuals from a facility which might provide care agreements which it could not or did not intend to honor.

28. Comment: Why is there a need for specific approval of using a facility for purposes not specified in the license and for residence of non-patients in a facility (§3024.3)?

Response: Past experience of Department staff indicates a need to keep strict monitoring of what facilities may attempt to combine with a nursing home. The intent is to prevent unsafe practices, not to hinder reasonable alternatives.

such as day care services for the elderly.

29. Comment: Why is §3031 concerning records only a Class III standard?

Response: These are general administrative records and not considered to be of imminent or immediate applicability to patient health and safety. Certain other records are identified elsewhere in the regulations are of a greater degree of concern, and, therefore a higher classification.

30. Comment: What is the need for the provisions regarding death certificates and related record keeping?

Response: These items have been eliminated from the proposed regulations as unnecessary.

31. Comment: What is an internal disaster?

Response: A definition of internal disaster has been added to §3041.1.

32. Comment: What constitutes a rehearsal of a disaster plan as required by §3042.2? Is it necessary to move all patients out of the facility? to call in all emergency services?

Response: Department staff feels that it will be necessary to make determinations individually for each facility in cooperation with facility administration. The degree of rehearsal will to some extent be dependent on individual circumstances. An adequate rehearsal will not necessarily involve moving all patients or actually bringing in various emergency service providers.

33. Comment: Patients should be reformed regularly regarding their rights.

Response: A provision for an annual reminder has been added in §3055.2.

34. Comment: Seven days to notify patients within the facility of new regulations and patient rights is too short an interval to allowing writing, copying, etc.

Response: We have increased the time of §3055.3 to fourteen days as more reasonable.

35. Comment: Two items regarding services and charges under patients' rights are also covered by the section on Admission Contracts.

Response: These items were eliminated from the present draft to eliminate dual coverage of the same material and items were renumbered accordingly.

36. Comment: Items in the patients' rights section concerning the use and limitations regarding restraints might be more conveniently and appropriately made a part of the section on nursing standards.

Response: These items have been moved to §5026 under Nursing Services.

37. Comment: Rights to privacy concerning treatment and information release



were considered inadequate.

Response: Items §3055.22 and §3055.23 have been expanded to cover points raised.

38. Comment: Certificate of Need (CON) allows some change in bed capacity without review. Why should licensure be different?

Response: The review purposes are different. CON is concerned with needs for services and the amount and types of services provided. For CON purposes a small change in number of beds would probably not be significant. For licensure, which is concerned with patient health and safety, an increase of a single bed could be critical depending on a number of variables, such as its location, for example. Furthermore, sufficient abuses have occurred to make this item (§4020) necessary, and to justify its rating as a Class I standard.

39. Comment: Not all patients need all the items listed in §4060.1.

Response: The item has been reworded to indicate that when needed, each patient shall have the items, which are not to be shared between patients.

40. Comment: The requirement for a medical director is costly and unnecessary.

Response: Past experiences and observations of staff who inspect nursing homes indicate a definite need for oversight of medical practice in nursing homes. The proposed regulation does not state a minimum time to be spent in the facility by the medical director; it specifies responsibilities which are to be implemented. The amount of time necessary will vary in conjunction with the size of the facility and the patient needs for medical care. The intent of this regulation as well as §5012, Availability of Attending Physician, is to do as much as feasible to ensure that necessary medical care is readily available.

41. Comment: Thirty days between physician visits is more frequent than necessary for 90-95 per cent of the patients in nursing homes, and will not be a reimbursable cost under Medicaid.

Response: This standard has been and remains controversial. The problem involves the need to ensure that physicians do visit with sufficient frequency when necessary. Consumer advocates were particularly concerned about the potential hazard of a longer interval as a routine expectation.

It is most important in evaluating this standard to note that the standard, §5013.1.2 does not set a flat interval. It states first that the patient must be seen as medically necessary. Then it sets a general standard of every 30 days unless the physician specifies that a longer interval is sufficient for routine visits. Thus, the standard in actuality allows the physician full freedom to determine how often routine visits are necessary. Section §5013.2 does, however, require a telephone review of the plan of care every 30 days if the routine visit interval is longer than 30 days. This measure is intended to help prevent patients from being "forgotten", "lost", or "neglected."

42. Comment: It is difficult for a nursing home administrator to do anything about those instances where a physician does not see his nursing home patients. Yet in such instances, the nursing home may be penalized for something not under the administrator's control.

Response: Item §5013.3 has been added to the proposed regulations to provide both the nursing home and the Health Department with significant potential action to be taken in the event of an uncooperative physician.

43. Comment: You have failed to allow for or set any standards concerning the use of physician assistants.

Response: We have added several items to allow for the use of appropriately certified physician assistants, under Medical Director, Services of Attending Physician, Personnel Records, and Pharmaceutical Services.

44. Comment: Should the Director of Nurses be a registered professional nurse, or might the position be filled by a licensed practical nurse?

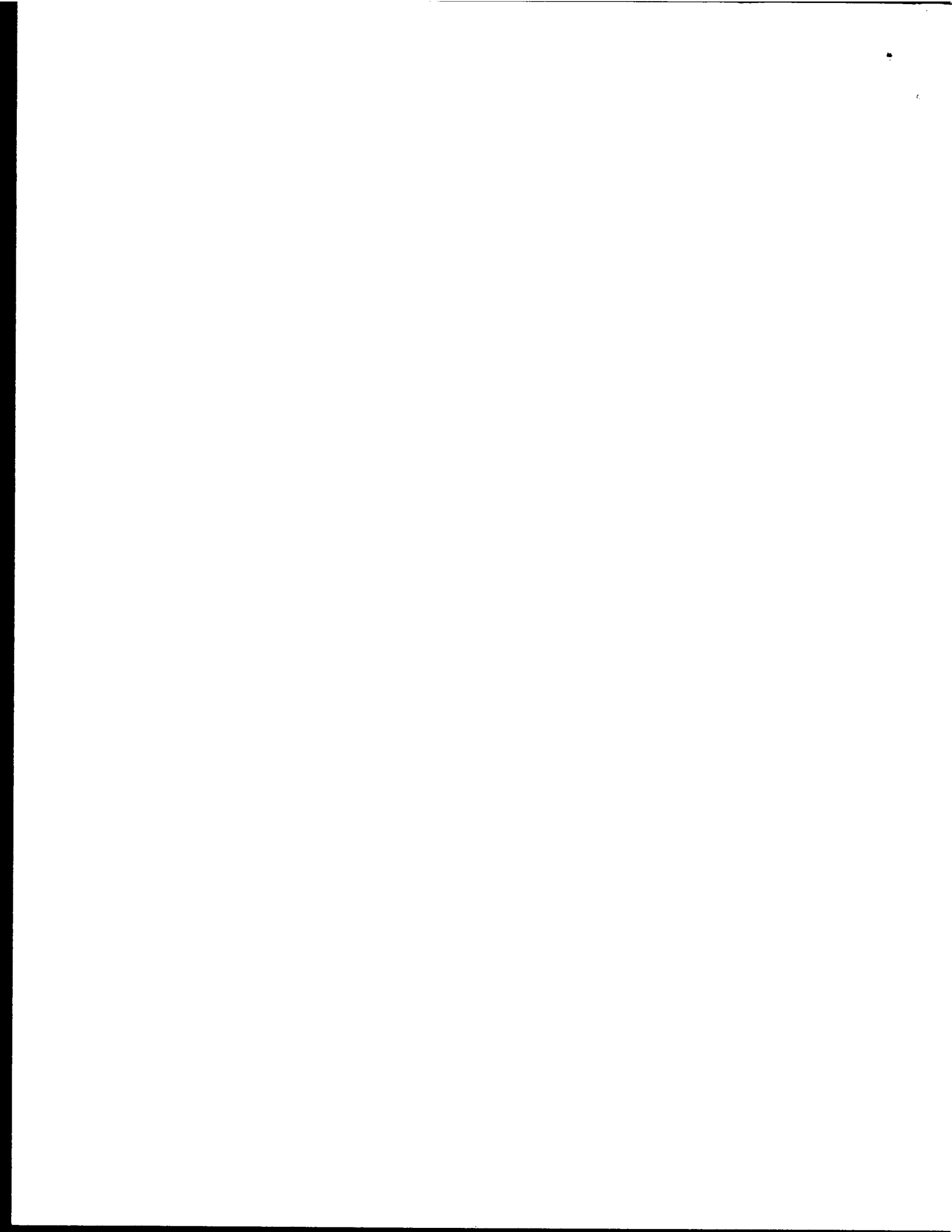
Response: A few providers and L.P.N.'s argued that if a medical director is required, then supervision of an L.P.N. Director of Nurses by the medical director would meet the requirements of the nurse practice law governing L.P.N.'s. Furthermore, R.N. supervision could be provided on a consultant basis. Or perhaps in a small facility where the care is mostly custodial, an L.P.N. Director of Nurses would be adequate. They further stated that there are some experienced L.P.N.'s who are quite capable of performing the required functions, better in fact than some R.N.'s who have not had geriatric and/or other appropriate training and experience.

However, representatives of the various nurses associations, the two licensing boards and the West Virginia University School of Nursing presented forceful arguments on this question. They stated that the duties required of the Director of Nursing are beyond the training requirements for L.P.N.'s. They also stated that the two nurse practice laws do not permit L.P.N.'s to perform those functions requiring supervisory skills or skilled judgments and analyses regarding patient care. We find that our analysis of the relevant laws, in particular §30-7A of the Code of West Virginia, concerning licensed practical nurses, is supportive of these views. We have, therefore, retained the requirement that the Director of Nurses be an R.N.

45. Comment: The proposed nursing staff to patient ratios are: "too high," "too low."

Response: As the comment above suggests, reactions to the proposed minimum ratios were extremely varied, and ran true to commentator's interests. Many providers believe 24 hour nurse coverage to be unnecessary. Nurses consider the ratios inadequate, but accept current proposals as an improvement over past requirements. Consumer advocates also want more staff.

Present regulations do not set a minimum, although they call for adequate staffing to "insure safe nursing care." The proposed regulations clearly state a minimum of licensed nurse coverage on a 24 hour per day basis. They further give opportunity for requiring additional staff based on patient needs.



We have modified the proposed minimum ratios for the evening and night shifts to 1:60 to conform with current construction standards; but have made no other changes.

46. Comment: A number of comments related to organization of the last draft and to the class ratings for some standards have influenced changes in the section on nursing services.

Response: Some of the items concerning the use of Restraints which were in the section titled Patient Rights have been judged to be more appropriate as part of nursing care. Use of restraints has also been made a separate Class I Standard.

The provision regarding the use of half doors has been omitted in order to avoid confusion and possible misconceptions. Although some types of half doors can meet life safety standards, such half doors are expensive and not very practical alternatives.

Also, some items have been moved from Pharmaceutical Services to Nursing Care. Restorative Nursing has been made an entire Class I Standard. Other changes of less significance have occurred which we have not attempted to fully document as we felt it would be more confusing than helpful to the reader.

47. Comment: Should social services be mandated? Is the requirement for at least M.S.W. consultation reasonable?

Response: The proposed draft keeps the requirement for social services either directly or through contractual arrangements, but does relax the minimum qualifications for consultation.

Arguments on this issue vary widely. Providers regard the requirement as unnecessary and as a cost likely not to be covered fully by Medicaid. Consumer advocates believe the section lacks detail on function and should be strengthened.

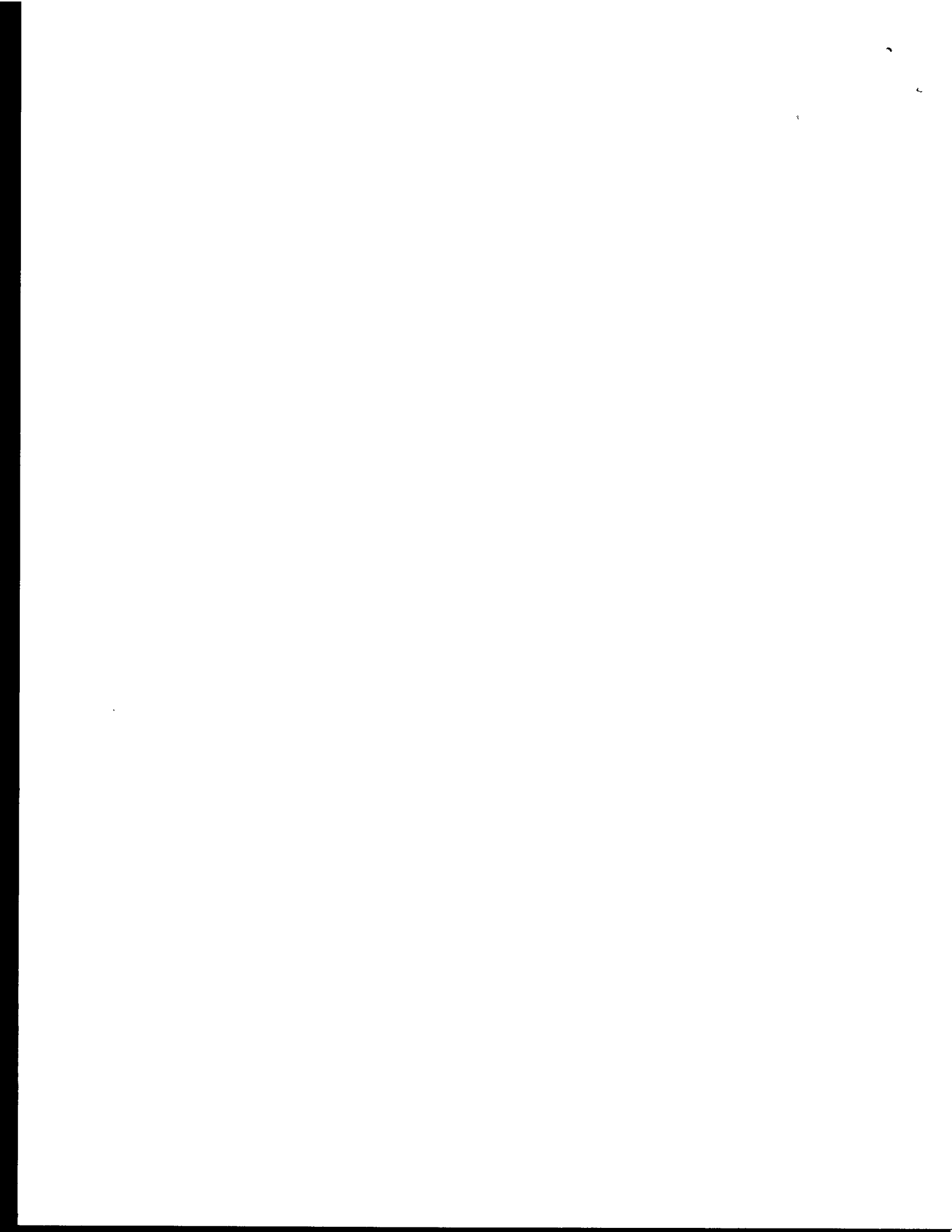
We see social services as an important function, but recognizing that this is a new requirement, have agreed to a relaxation of the qualifications as proposed in earlier drafts.

48. Comment: One hour per week per 15 patients for a consultant dietician is more time than is necessary and might not be a reimbursable cost.

Response: We have adjusted the required minimum of \$5052.2 to one hour per week per 30 patients. The dietetic section has also been reorganized.

49. Comment: The wording concerning pharmaceutical services may be interpreted as requiring a facility to have its own pharmaceutical service.

Response: Our intent was to ensure that patients are able to obtain necessary medication. We have rephrased standards \$5061.1 and \$5062.2 to reflect this concern more accurately. Some items in older drafts concerning medication administration have been moved to the nursing section.



50. Comment: The medical record section was criticized as being confused.

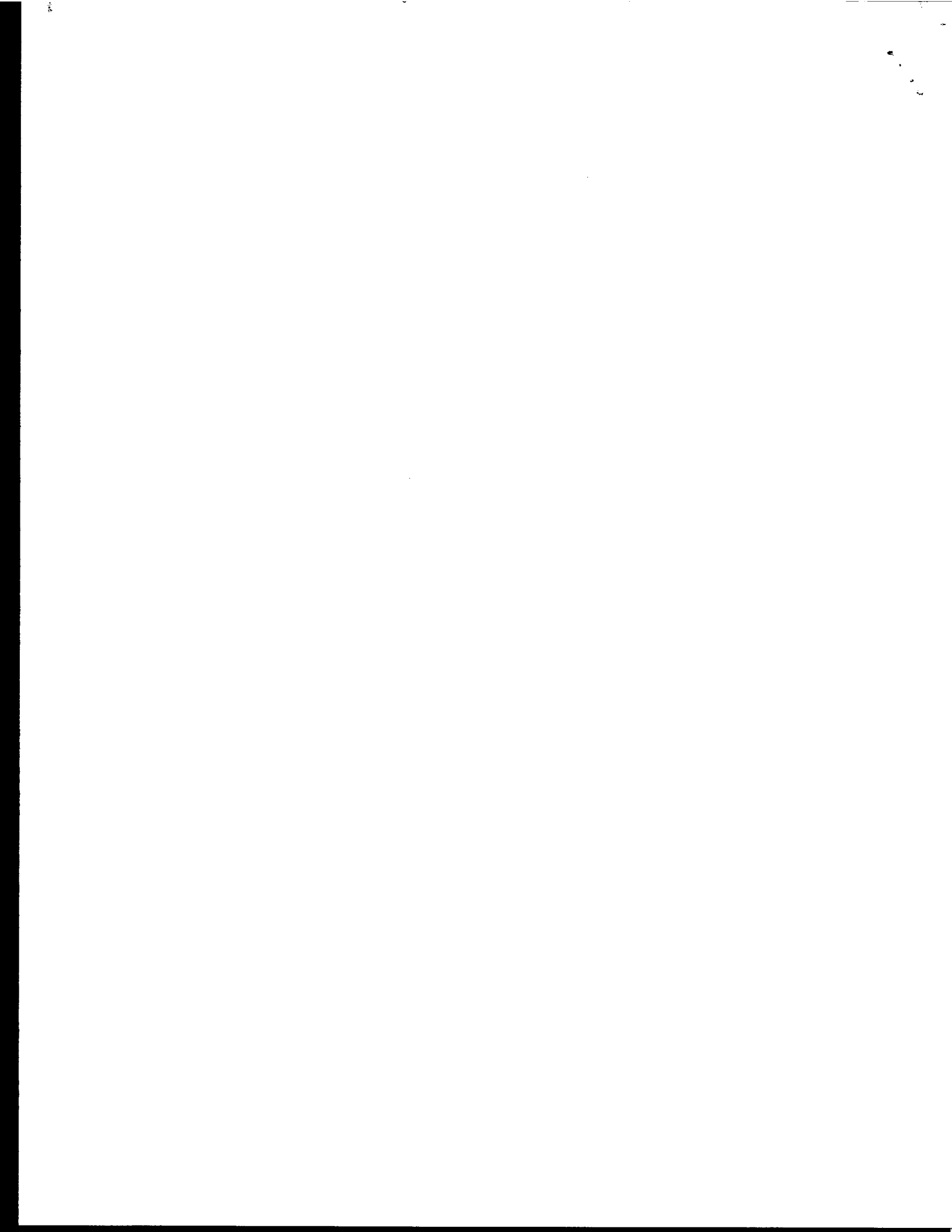
Response: We have reorganized and reworded this section extensively.

51. Comment: A number of criticisms were made concerning the section on Recreation and Activities.

Response: We have reduced the staffing requirement and reorganized this section.

52. Comment: Dental technicians are not qualified by training to conduct staff development programs.

Response: We have changed this requirement (§5093.1.1) to permit only a dentist or a dental hygienist to conduct staff development.



PROPOSED

West Virginia Rules and Regulations for
Licensing Nursing Homes

December, 1980

FILED IN THE OFFICE OF
SECRETARY OF STATE
THIS DATE 1-20-81

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
WEST VIRGINIA BOARD OF HEALTH
Chapter 16-5C
SERIES I
(1980)

SUBJECT: Licensing of Nursing Homes

1000 GENERAL PROVISIONS

1001 PURPOSE

These regulations are intended to fulfill the requirements of Chapter 16, Article 5C, Section 1 et seq. of the West Virginia Code of 1931, as amended, regarding the licensing of nursing homes.

1002 AUTHORITY

These rules are issued under the authority of Chapter 16, Article 5C, Section 5 of the West Virginia Code, 1931, as amended.

1003 FILING DATE

These regulations were filed with the Secretary of State, of the State of West Virginia, as prescribed by state law on _____, 19____.

1004 LEGISLATIVE REVIEW

These regulations were approved by the Legislative Rule-Making Review Committee on _____, 19____.

1005 EFFECTIVE DATE

These regulations became effective on _____, 19____.

1006 SEVERABILITY

If any provision of these regulations, or the application thereof to any person or circumstance, shall be held invalid, such invalidity shall not affect the provisions or application of these regulations which can be given effect without the invalid provisions or application, and to this end these regulations are declared to be severable.

1010 DEFINITIONS

The following definitions shall apply to terms used in these regulations unless a different meaning appears from the context.

- 1010.1 Applicant: The person who submits an application for a license, or renewal of a license, to operate a nursing home.
- 1010.2 Bed capacity: The maximum number of beds the facility is currently licensed to offer for patient occupancy.
- 1010.3 Board: The West Virginia Board of Health.
- 1010.4 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.
- 1010.5 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 §2027.4 of these regulations).
- 1010.6 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 shall, by reason of his official position, be deemed to be a controlling person of any facility, nor shall any person who serves as an officer, administrator or other employee or as a member of a board of directors or trustees of any facility be deemed to be a controlling person solely as a result of such position or his official actions in such position (See §2022 of these regulations).
- 1010.7 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.
- 1010.8 Department: West Virginia Department of Health.
- 1010.9 Director: The director of the West Virginia Department of Health or other employee acting on behalf of the Director with written designation and identification.
- 1010.10 Facility: Any nursing home as defined in §1010.19 of these regulations.
- 1010.11 Full time: A work week of not less than thirty-two hours.

- 1010.12 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.
- 1010.13 Immediate family: Each parent, child, spouse, brother, sister, first cousin, aunt and uncle of an individual, whether such relationship arises by reasons of birth, marriage or adoption.
- 1010.14 License: The document issued by the Director which constitutes the authority to receive patients and perform services included within the scope of these regulations.
- 1010.15 Licensed or registered: When applied to a person, means that the person to whom the term is applied is duly licensed or registered by the proper authority within the state of West Virginia to follow a profession, and when applied to a facility means that the facility is duly licensed by the Department of Health.
- 1010.16 Licensed nursing personnel: Registered professional nurses and licensed practical nurses.
- 1010.17 Licensee: The person or body to whom the license is issued, who shall be held responsible for compliance with all rules, regulations and minimum standards.
- 1010.18 Nursing care: Those procedures commonly employed in providing for the physical, emotional and rehabilitational needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: irrigations; catheterization; application of dressings; supervision of special diets; objective observation of changes in patient condition as a means of analyzing and determining nursing care required and the need for further medical diagnosis and treatment; special procedure contributing to rehabilitation; administration of medication by any method ordered by a physician, such as hypodermically, rectally, or orally; and carrying out other treatments prescribed by a physician which involve a like level of complexity and skill in administration.
- 1010.19 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 three or more persons who are ill or otherwise incapacitated and in need of nursing care due to physical or mental impairment, or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation.

- 1010.20 Nursing personnel: The director of nursing, charge nurse and all employees under the direct supervision of the director of nursing or charge nurse who attend to patient-oriented nursing functions, including registered professional and licensed practical nurses, nursing aides and orderlies, but excluding employees engaged in administration, dietetics, housekeeping, laundry and maintenance.
- 1010.21 Patient: An individual under care in a nursing home.
- 1010.22 Person: An individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association, or political subdivision of the state.
- 1010.23 Personal assistance: Personal services, including, but not limited to, the following: help in walking; bathing; dressing; feeding; or, getting in or out of bed; or supervision required because of the age or mental impairment of the patient.
- 1010.24 Personal care home: Any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and personal assistance, for a period of more than twenty-four hours, to six or more persons who are dependent upon the services of others by reason of physical or mental impairment but who do not require nursing care.
- 1010.25 Principal stockholder: Any person who beneficially owns, holds or has the power to vote ten percent or more of any class of securities issued by a corporation.
- 1010.26 Restraint: Any device which limits movement by the patient and which cannot be removed easily by the patient, or any chemical or drug used to limit movement by a patient.
- 1010.27 Serious physical harm: That type of bodily injury in which:
- 1010.27.1 A part of the body would be permanently removed, rendered functionally useless, or substantially reduced in capacity, either temporarily or permanently; or
- 1010.27.2 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.

- 1010.28 Sponsor: The person or agency legally responsible for the welfare and support of a patient.
- 1010.29 Substantial probability: The more likely consequences.
- 1010.30 Stop order: A written policy that definitely prescribes the number of doses or the period of time after which administration of a drug to a patient must be stopped automatically, unless the physician's order for the drug specified the number of doses or the period of time the order was to be in effect.
- 1010.31 Transfer agreement: An agreement with a hospital which provides the basis for arrangements under which inpatient hospital care or other services are available promptly to the facility's patients when needed.
- 1010.32 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.

2000 STATE ADMINISTRATIVE PROCEDURES

2010 INSTITUTIONS TO BE LICENSED

2010.1 No person may establish, operate, maintain, offer or advertise within the State of West Virginia, a nursing home as defined in these regulations, unless that person obtains a current valid license.

2010.2 Neither an original nor a renewal license shall be issued under these regulations for a project reviewable under West Virginia Code §16-2D unless the West Virginia Certificate of Need Program 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.

2010.3 A separate license shall be required for nursing homes maintained or operated on separate premises even though maintained or operated under the same ownership and/or management.

2010.3.1 For purpose of this sub-section, the term premises means a tract of land, together with all buildings, equipment, fixtures and facilities erected, constructed or situated thereon, and all rights, powers, easements, and rights-of-way, and all interests in property, real, personal or mixed, now owned or hereafter acquired by a licensed person and appurtenant to or used in connection with the licensed facility.

2010.4 Separate buildings on the same premises operated under the same ownership and management shall constitute one licensed facility, unless the Director determines otherwise.

2010.5 Any person may request in accordance with §29A-4-1, West Virginia Code, a declaratory ruling from the Director with respect to the applicability of these regulations to said person.

2011 Exceptions

2011.1 Unless such facilities wish to be licensed as a nursing home, nothing contained in these regulations shall apply to:

2011.1.1 a hospital as defined in §16-5B-1 of the West Virginia Code;

2011.1.2 a state operated institution, as defined in §27-1-6 or §25-1-3 of the West Virginia Code;

2011.1.3 institutions operated for the care and treatment of alcoholic patients;

- 2011.1.4 offices of physicians;
- 2011.1.5 hotels;
- 2011.1.6 boarding homes, as defined in §1010 of these regulations, or similar places that furnish to their guests only room and board;
- 2011.1.7 extended care facilities operated in conjunction with a hospital;
- 2011.1.8 facilities, including intermediate care facilities for the mentally retarded, required to be licensed under §27-9-1 of the West Virginia Code; or,
- 2011.1.9 personal care homes as defined in §1010 of these regulations.
- 2011.2 The care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home within the meaning of these regulations.
- 2020 APPLICATION FOR AND ISSUANCE OF ORIGINAL LICENSE
- 2021 Submitting Application
- 2021.1 An applicant shall submit an application to the Director, on a form prescribed by the Director, containing information sufficient to demonstrate that the facility is in compliance with the standards for nursing homes established in §16-5C of the West Virginia Code and these regulations.
- 2021.2 The application shall be filed not less than thirty days and not more than sixty days prior to the date proposed for commencement of operation (See also §4000 of these regulations).
- 2021.3 The application shall contain at least the information required by this section.
- 2021.4 Where the information required pertains to activities proposed to be undertaken by the applicant, the applicant shall provide information on said proposed activities.
- 2022 Information Pertaining to Ownership
- 2022.1 The following information pertaining to ownership shall be submitted:
- 2022.2 The name and address of the individual submitting the application.

- 2022.3 The name, address and principal occupation of the following:
- 2022.3.1 each person, who as a stockholder or otherwise, has a proprietary interest of ten percent or more in the facility;
 - 2022.3.2 each officer and director of an incorporated facility;
 - 2022.3.3 each trustee and beneficiary of a facility which is a trust; and,
 - 2022.3.4 each officer and director of any corporation which has a proprietary interest of fifty percent or more in the facility.
- 2022.4 The name and address of the owner of the facility if the owner is not the applicant.
- 2022.5 The name and address of the owner of the facility premises if he or she is not the applicant or the owner under §2022.4 of these regulations.
- 2022.6 If the owner of the facility premises is a corporation, the name and address of the following:
- 2022.6.1 each person who, as a stockholder or otherwise has a proprietary interest of ten percent or more in the corporation;
 - 2022.6.2 each officer and director of the corporation;
 - 2022.6.3 each trustee and beneficiary of the corporation if it is a trust; and,
 - 2022.6.4 each officer and director of any corporation which has a proprietary interest of fifty percent of more in the owning corporation.
- 2023 Information Pertaining to Operation of the Facility
- 2023.1 The following information pertaining to operation of the facility shall be submitted:
- 2023.2 The specific name and address of the facility.
- 2023.2.1 The facility name shall be changed only with the Director's approval.
 - 2023.2.2 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.

- 2023.3 The level of participation, if any, in the Medicare and/or Medicaid programs (e.g., skilled nursing facility, intermediate care facility);
- 2023.4 The proposed bed capacity of the facility, by unit where units will be specialized;
- 2023.5 An organizational plan for the facility indicating the number of employees and their positions and duties;
- 2023.6 The name and address of the administrator;
- 2023.7 Evidence of compliance with applicable laws and regulations governing zoning, buildings, safety, fire prevention and sanitation as specified in §4000 of these regulations;
- 2023.8 Evidence of approval by the state health planning and development agency, if necessary (See §2010.2 of these regulations);
- 2023.9 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 §2022 of these regulations is a controlling person as would be identified under §2022 of these regulations for such facility;
- 2023.10 Additional information which the Director may require.
- 2024 Filing Fee
- 2024.1 A nonrefundable application fee of one hundred dollars shall be submitted with the application.
- 2025 Initial License Determination
- 2025.1 A license shall be issued only after the Director inspects the facility (See §4014.4 of these regulations).
- 2025.2 A facility found on inspection to have deficiencies shall be subject to §2039 and §2040 of these regulations relating to plans of correction and penalties relating thereto.
- 2025.3 The Director shall issue an initial license if he or she finds:
- 2025.3.1 that the individual applicant, and every partner, trustee, officer, director and controlling person of an applicant which is not an individual is a person responsible and suitable to operate, direct or participate in the operation of a facility by virtue of the following:
- (a) financial capacity;

(b) appropriate business or professional experience;

(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 §2022 of these regulations has operated, directed, or participated in the operation of a facility; and,

(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,

2025.3.2 that the facility substantially complies with these regulations.

2026 Contents of License

2026.1 A license shall state the following information:

2026.1.1 the maximum bed capacity for which it is granted;

2026.1.2 the date of issuance; and,

2026.1.3 the expiration date.

2026.2 A license issued after the effective date of these regulations shall state the rating assigned to the facility pursuant to §2050 of these regulations.

2026.3 A license shall state the name of the facility to which it applies.

2026.3.1 The name on the license shall be that used in the application which specifically identifies the facility.

2026.3.2 An approved name change shall be shown in the next license issued (See §2023.2 of these regulations).

2027 License Applicability

2027.1 A license issued after the effective date of these regulations shall be valid for one year from the date of issuance.

2027.2 A license shall be valid only for the premises and persons named in the application.

2027.3 A license is not transferable or assignable.

2027.4 If the ownership of a facility with a valid unexpired license changes, the new owner shall apply for a new license.

2027.4.1 The application of the new owner for a license shall have the effect of a valid license for three months from the date the application is received by the Director.

2030 RENEWAL OF LICENSE

2031 Conditions for Renewal

2031.1 The Director shall renew an original license when the following conditions are met:

2031.1.1 the Director finds the facility in compliance with the provisions of §16-5C of the West Virginia Code and with these regulations;

2031.1.2 the licensee applied for a renewal within the time period specified in this section; and

2031.1.3 the licensee submits the correct renewal fee with the application.

2032 Fee

2032.1 The fee for renewal of a license shall be four dollars per bed, determined according to the licensed bed capacity of the facility.

2033 Time of Application

2033.1 An application for renewal of a license shall be submitted not less than thirty days prior to the scheduled expiration date of the current license.

2034 Application Contents

2034.1 An application for renewal of a license shall include at least the following information:

2034.1.1 a balance sheet of the facility as of the application date, setting forth assets and liabilities, including all capital, surplus, reserve, depreciation and similar accounts;

2034.1.2 a statement of operations of the facility for the licensed term, setting forth all revenues, expenses, taxes, extraordinary items and other credits or charges;

2034.1.3 a statement showing any changes in the name, address, management or ownership information on file with the Director; and,

2034.1.4 a report on the facility in the form prescribed by the Director.

2034.2 For a facility having a valid license on the effective date of these regulations, the first application for renewal after the effective date of these regulations shall include the information required to be submitted by initial applicants pursuant to §2020 of these regulations.

2035 Provisional License

2035.1 If the Director finds that a facility applying for renewal of a license is not in substantial compliance with the requirements of these regulations and the provisions of Article 5C, Chapter 16, West Virginia Code, the Director may, at his or her discretion issue a provisional license.

2035.2 A provisional license may be issued only when the Director makes the following findings:

2035.2.1 that the care given in the facility is adequate to meet patient needs; and,

2035.2.2 that the facility has demonstrated improvement and potential for substantial compliance within the term of the license for which renewal is requested.

2035.3 A provisional license shall not be issued for a period greater than twelve months.

2035.4 A provisional license shall not be renewed.

2035.5 A provisional license shall not be issued to a facility with uncorrected violations of a Class I standard as specified in §2050 of these regulations.

2036 Annual Inspection

2036.1 The Director shall conduct at least one unannounced inspection annually of a facility holding a license to determine compliance with the provisions of §16-5C of the West Virginia Code and these regulations.

2037 Inspection of Unlicensed Facilities

2037.1 The Director shall have the right to enter the premises of a facility which the Director has reason to believe is being operated or maintained as a nursing home without a license in accordance with §16-5C-9 of the West Virginia Code.

2037.2 If the owner or person in charge of an unlicensed facility refuses entry pursuant to this section, the Director shall apply to the circuit court of the county in which the facility is located for a warrant authorizing inspection.

2037.3 If the Director finds on the basis of the inspection that the facility is operating as a nursing home without a license, the facility shall apply immediately for a license in accordance with the provisions of these regulations.

2037.4 Failure to apply for a license shall be subject to the penalties established in §2039.8 and §2040 of these regulations.

2038 Report of Inspection

2038.1 A report of an inspection made pursuant to these regulations shall be made in writing and shall be maintained on file by the Director.

2038.2 An inspection report shall list each deficiency in the facility's compliance with statutes and regulations indicating for each deficiency specifically which provision has not been met.

2038.3 The Director shall send a copy of a report of an inspection to the facility.

2039 Plans of Correction

2039.1 A facility found on the basis of an inspection to have deficiencies shall develop a plan of correction and submit it to the Director within thirty days of receipt of a report of inspection.

2039.2 A plan of correction shall specify a reasonable time by which the facility shall correct each violation cited in the report.

2039.2.1 The time shall be the shortest possible time within which the facility reasonably can be expected to correct the violation.

2039.2.2 The time stated shall be subject to approval or modification by the Director.

2039.2.3 In determining whether to approve the time submitted by the facility, the Director shall consider the following factors:

(a) the seriousness of the violation;

(b) the number of patients affected;

(c) the availability of required equipment or personnel;

(d) the estimated time required for delivery and installation of required equipment; and,

(e) any other relevant circumstances.

- 2039.3 A plan of correction submitted by a facility shall be approved, modified or rejected by the Director.
- 2039.4 The Director shall notify each facility as to whether a plan of correction has been approved, modified or rejected.
- 2039.5 If the Director rejects or modifies the plan, the reasons for the action shall be stated.
- 2039.6 When the Director rejects a plan of correction, a reasonable time for submission of a revised plan may be allowed before civil penalties are assessed.
- 2039.7 The Director shall not allow time for submission of a revised plan where the deficiency to be corrected is a Class I deficiency.
- 2039.8 Upon the failure by a facility with deficiencies to submit a plan of correction, which is approved by the Director, or to correct any deficiency within the time specified in an approved plan of correction, the Director may assess civil penalties as hereinafter provided or may initiate any other legal or disciplinary action available to him in accordance with the West Virginia Code and these regulations.
- 2040 PENALTIES
- 2041 Director's Authority
- 2041.1 The Director shall have the authority to invoke penalties against a facility violating the provisions of these regulations in accordance with the provisions of these regulations and pursuant to §16-5C of the West Virginia Code.
- 2041.2 The Director shall by order reclassify a facility, or reduce the bed capacity of a facility, or both, when, on the basis of inspection, he or she makes the following findings:
- 2041.2.1 that the licensee is not providing adequate care under the facility's existing classification or bed capacity; and,
- 2041.2.2 that reclassification, reduction in bed capacity or both would place the facility in a position to render adequate care.
- 2041.3 The Director shall notify a licensee of reclassification, reduction in bed capacity or both, stating the terms of the order, the reasons therefore, and the date set for compliance.
- 2041.4 The Director may suspend or revoke a license if he or she finds upon inspection that there has been a substantial failure to comply with the provisions of these regulations or §16-5C of the West Virginia Code.

- 2041.5 The Director may refuse to grant a license and may revoke a license if he or she determines there has been subterfuge or other dishonest action in applying for an original or renewal license.
- 2041.6 The suspension, expiration, forfeiture or cancellation by operation of law or order of the Director of a license issued by the Director shall not deprive the Director of the authority as provided by law and these regulations to take any of following actions:
- 2041.6.1 Institute or continue a disciplinary proceeding;
 - 2041.6.2 Institute or continue a proceeding for the denial of a license application;
 - 2041.6.3 Enter an order denying a license application; and,
 - 2041.6.4 Take any other disciplinary action as provided by the West Virginia Code or these regulations.
- 2041.7 Withdrawal of a license application shall not deprive the Director of the right to penalize the applicant on any other ground using any authority otherwise provided by law or these regulations.
- 2042 Procedure for Action
- 2042.1 When the Director takes action pursuant to §2041 of these regulations, the Director shall file a complaint stating the facts constituting a ground or grounds for the action.
- 2042.2 When the Director files a complaint, the Director shall notify the licensee, in writing, of the filing of the complaint.
- 2042.3 Notice shall include the following items:
- 2042.3.1 a copy of the complaint; and,
 - 2041.3.2 notification of the availability of a hearing pursuant to §2043 of these regulations.
- 2042.4 Notice shall be served by certified mail, return receipt requested.
- 2042.5 The Director has the right to enforce a regulation, administratively or in court, without first affording an opportunity to correct a deficiency pursuant to §2039 of these regulations, when the Director finds either of the following:
- 2042.5.1 that violation of the regulation jeopardizes the health or safety of a patient; or,

2042.5.2 that the violation is the second or subsequent violation of the same regulation within twelve months.

2043 Procedure for Civil Penalties

- 2043.1 Upon a determination that civil penalties are to be imposed pursuant to the West Virginia Code and §2039.8 of these regulations, the Director shall issue a citation to the licensee or non-licensed operator.
- 2043.2 The citation shall be served personally upon the licensee or non-licensed operator by a duly authorized representative of the Director. If a citation is not served personally, it shall be sent by registered or certified mail, return receipt requested.
- 2043.3 Each citation shall be in writing and shall include at least the following:
- 2043.3.1 a description of the nature of the violation fully stating the manner in which the licensee or non-licensed operator violated a specific statutory provision or regulation, and the particular place or area of the facility in which it occurred. The name of any patient jeopardized by the violation shall not be specified in the citation in order to protect the privacy of the patient. However, at the time the license or non-licensed operator is served with the citation, the licensee or non-licensed operator shall also be served with a written list of each of the names of the patients alleged to have been jeopardized by the violation. If the violation jeopardized all of the patients of the entire facility, such fact shall be specified in the citation, and a written list of the names of the patients involved is not required to be furnished to the licensee or non-licensed operator; and,
- 2043.3.2 an assessment of civil penalties according to the nature of the violation or violations.
- 2043.4 For each violation of a Class I standard, as defined in §2051.1, a civil penalty of not less than one hundred or more than one thousand dollars shall be imposed. For each violation of a Class II standard, as defined in §2051.2, a civil penalty of not less than fifty dollars and not more than one hundred dollars shall be imposed. For each violation of a Class III standard, as defined in §2051.3, a civil penalty of not less than twenty-five dollars and not more than fifty dollars shall be imposed.

- 2043.5 Each day a violation continues, after the date by which correction was required by an approved plan of correction, or if an approved plan of correction was not submitted, the date on which such plan was due, shall constitute a separate violation.
- 2043.6 In fixing the amount of the civil penalty to be imposed for violations, the Director shall consider:
- 2043.6.1 the gravity of the violation, which shall include:
- (a) the degree of substantial probability that death or serious physical harm will result, and, if applicable, did result, from the violation;
 - (b) the severity of serious physical harm most likely to result, and if applicable, that did result, from the violation; and
 - (c) the extent to which the provisions of the applicable statutes or regulations were violated.
- 2043.6.2 any previous violations committed by the licensee; and,
- 2043.6.3 the "Good Faith" exercised by the licensee. Indications of good faith include awareness of the applicable statutes and regulations, reasonable diligence in complying with such requirements, prior accomplishments manifesting the licensee's desire to comply with such requirements, and any other mitigating factors in favor of the licensee.
- 2043.7 If a licensee or non-licensed operator does not wish to contest a citation, he or she shall submit to the Director, within four business days after the issuance of the citation, the total sum of the penalty assessed.
- 2043.8 If a licensee or a non-licensed operator desires to contest a citation, or the date specified for correction of a violation, he or she, shall, within four business days after service of the citation or, specification of time in which a violation is to be corrected, shall serve upon the Director, either personally or by registered or certified mail, the licensee's or non-licensed operator's written notice pursuant to the Rules of Procedures for Contested Case Hearings of the Department of Health.
- 2044 Hearing Process
- 2044.1 An applicant for a license or a licensee aggrieved by an order pursuant to §2020 - application for an original license,

\$2030 - application for renewal of a license, \$2040 - relating to penalties or \$2050 - facility rating system, shall have the opportunity for a hearing by the Director, upon written request to the Director.

- 2044.2 A hearing pursuant to this section shall be conducted in accordance with the pertinent provisions of §29A-5 of the West Virginia Code and Rules of Procedure for Contested Case Hearings of the Department of Health.
- 2044.3 The aggrieved party has the right at the hearing to contest the Director's order as contrary to law or unwarranted by the facts, or both.
- 2044.4 Following a hearing, the Director shall make and enter a written order dismissing the complaint or taking other action authorized by §16-5C of the West Virginia Code.
- 2044.5 The order shall be accompanied by findings of fact and conclusions of law as specified in §29A-5-3 of the West Virginia Code.
- 2044.6 The Director shall send a copy of the order and accompanying findings and conclusions to the licensee or applicant and his or her attorney of record, if any, certified mail, return receipt requested.
- 2044.7 Notice of an order suspending a facility's license shall specify the conditions giving rise to the suspension which the licensee must correct during the period of suspension in order to have the license reinstated.
- 2044.8 If the Director revokes a license, the Director may stay the effective date of revocation by no more than ninety days upon a showing that the stay is necessary to assure appropriate placement of patients.
- 2044.9 The Director's order shall be final unless vacated or modified by judicial review in accordance with the provisions of §16-5C-13 of the West Virginia Code.
- 2044.10 In addition to all other powers granted to the Director under §16-5C of the West Virginia Code and these regulations, the Director may hold a case under advisement and make a recommendation as to requirements to be met by the licensee in order to avoid suspension or revocation of a license, in accordance with the West Virginia Code, §16-5C-11.
- 2044.11 Where the Director takes a case under advisement, the Director shall:
- 2044.11.1 enter an order stating the decision to hold the case under advisement;

2044.11.2 notify the licensee and his or her attorney of record, if any, of the action, by certified mail, return receipt requested;

2044.11.3 enter an order showing satisfactory compliance, dismissing the complaint, if the licensee meets the requirements of the order; and,

2044.11.4 upon entering the second order, under this section, the Director shall notify the licensee and his or her attorney of record, if any, by certified mail, return receipt requested.

2045 Interference with Official Duties

2045.1 No licensee or employee of any nursing home shall engage in the following activities:

2045.1.1 willfully prevent, interfere with or attempt to impede in any way the work of any duly authorized representative of the Director or of the State Fire Marshal in the lawful enforcement of inspection duties;

2045.1.2 willfully prevent or attempt to prevent any such representative from examining any relevant books or records in the conduct of inspection duties; or,

2045.1.3 willfully prevent or interfere with any such representative in the preserving of evidence of any violation of these regulations.

2050 CLASSIFICATION OF STANDARDS, COMPLIANCE VALUES, AND FACILITY RATING

2051 Classification of Standards

2051.1 The Director establishes the following Classes for standards contained in these regulations:

2051.1 Class I standards are those which when violated would present either an imminent danger to the health, safety or welfare of any patient or a substantial probability that death or serious physical harm would result.

2051.1.2 Class II standards are those which when violated would have a direct or immediate relationship to the health, safety or welfare of any patient but which would not create imminent danger, if violated.

2051.1.3 Class III standards are those which if violated would have an indirect or a potential impact on the health, safety or welfare of any patient.

2052 Compliance Values

2052.1 A nursing home shall achieve value points which meet or exceed the total points for each category as required by this section.

2052.2 Value points sufficient for compliance with a category are as follows (See §§3000, 4000 and 5000 for details):

<u>Category</u>	<u>Points by Class</u>			<u>Total Points</u>
	<u>I</u>	<u>II</u>	<u>III</u>	
Governance and Management		45		45
Administrative Policies and Procedures	20	30	10	60
Recordkeeping			40	40
Disaster Preparedness	40	45		85
Patients' Rights Policies and Procedures		105	20	125
Construction, Life Safety and Related	20			20
Site Characteristics/Accessibility	20			20
Increase in Bed Capacity	20			20
Physical Plant and Equipment		15		15
Nursing Unit and Sterile Supplies and Linens	20			20
Housekeeping and Maintenance		45	10	55
Physician Services	40	15		55
Nursing Services	80	30		110
Accident, Illness and Death		30	10	40
Social Services		60		60
Dietetic Services	40	45		85
Pharmaceutical Services	60	30	10	100
Medical Record Services	20	45		65
Recreation and Activities Services		45		45
Dental Services		30	10	40
Infection Control		30	10	40
Staff Development		30	20	50

2052.3 If a nursing home fails to comply with any standard, the Director shall decrease the value points assigned for that standard by an amount representing a reduction of at least twenty percent (20%) depending, in the Director's judgment, upon the extent of the deficiency.

2052.4 If a nursing home performs significantly in excess of a standard which permits measurement in graduated terms, the Director shall increase by not more than thirty percent (30%) the value points assigned for compliance with the standard.

2052.5 Excess value points achieved by exceptional compliance with standards within a category may be used to offset a disallowance of value points recorded against another standard within the same category; provided however, offsetting standards must be of the same classification.

2052.6 A facility shall be in substantial compliance with these regulations and shall be issued a license when it has accumulated value points equal to ninety percent (90%) of the total base value points for each category of these regulations applicable to the facility.

2052.7 A facility shall be in substantial compliance with these regulations and shall be issued a license with it has accumulated value points for each category of these regulations applicable to the facility as follows:

2052.7.1 Ninety percent (90%) of the total base value points for any Class I standards in a category; plus,

2052.7.2 Eighty percent (80%) of the total base value points for any Class II standards in a category; plus,

2052.7.3 Seventy-five percent (75%) of the total base value points for any Class III standards in a category.

2053 Facility Rating

2053.1 The Director shall assign a rating to each facility licensed under these regulations.

2053.2 The rating shall be assigned and included on the license issued to the facility.

2053.3 Ratings shall be assigned as follows:

2053.3.1 An "A" rating shall be assigned to any facility compiling points in excess by ten percent of the points required in §2052.7 of these regulations and which has no Class I or II deficiencies and an approved plan of correction for any Class III deficiencies.

2053.3.2 A "B" rating shall be assigned to any facility compiling at least enough points to meet the requirements of §2052.7 of these regulations and which has no Class I deficiencies and no deficiencies in §3010-3023 (relating to Governance and Administration) and §5020-5026 (relating to Nursing Services).

2053.3.3 A "C" rating shall be assigned to any facility compiling ninety (90) percent of the points to meet the requirement of §2052.7 of these regulations and which has no Class I deficiencies and has an approved plan of correction of other deficiencies.

2053.3.4 An "F" rating shall be assigned to any facility which does not compile enough points to meet the requirement of §2052.7 of these regulations but to which the Director grants a provisional license.

2060 COMPLAINT INVESTIGATION

2061 Procedure for Registering a Complaint

2061.1 Any person may register a complaint with the Director alleging violation of applicable laws or regulations by the facility. A complainant shall state the substance of the complaint and shall identify the facility involved.

2062 Initial Determination

2062.1 Upon receipt of a complaint, the Director shall attempt to determine whether the complaint is willfully intended to harass a licensee or is without reasonable basis.

2062.2 The Director shall notify a complainant presenting a complaint determined either as intended to harass a licensee or as without reasonable basis that no further investigation will be conducted.

2063 Investigation

2063.1 A complaint which is viable after initial determination pursuant to §2062 of these regulations shall be investigated.

2063.2 The Director shall conduct an unannounced inspection of the facility to determine the validity of the complaint.

2063.3 The Department shall provide the facility with notice of the substance of the complaint only at the time of the inspection.

2063.4 The Director shall conduct such other investigation as is necessary to determine the validity of the complaint.

2064 Report of Investigation

2064.1 No later than five working days after completing an investigation of a complaint, the Director shall notify the complainant and the facility, in writing, of the results of the investigation.

2064.2 A description of the corrective action the facility will be required to take, and of any disciplinary action to be taken by the Director will be sent to the complainant upon receipt of written request.

2064.3 If a complaint has been found to have merit, the Director shall advise any injured party of the possibility of a civil remedy under §16-5C of the West Virginia Code.

2065 Confidentiality

2065.1 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.

2065.2 Disclosure of the name of a patient identified in a complaint, who is not the complainant, shall be subject to the confidentiality provisions otherwise in effect in these regulations, and shall not be disclosed without the patient's prior written authorization.

2065.3 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.

2065.4 Before any complaint is disclosed to a facility, or to the public pursuant to §2070 of these regulations, any information in the complaint which could reasonably identify the complainant or a patient shall be deleted.

2066 Retaliation Prohibited

2066.1 A facility is prohibited from discharging or in any manner discriminating against a patient or employee because the individual has filed a complaint or participated in a proceeding authorized by §16-5C of the West Virginia Code.

2066.2 Violation of this prohibition shall be grounds for suspending or revoking the facility's license.

2066.3 A rebuttable presumption of retaliatory action against a patient shall arise against any facility which in any way adversely discriminates against a patient:

2066.3.1 by whom or on whose behalf a complaint has been submitted to the Director; and/or,

2066.3.2 who is involved in any proceeding instituted under §16-5C of the West Virginia Code.

2070 AVAILABILITY OF REPORTS AND RECORDS

2071 Director's Responsibilities

2071.1 The Director shall make available for public inspection and, upon request, provide at a nominal cost copies of the following documents:

2071.1.1 applications and exhibits;

2071.1.2 inspection reports;

2071.1.3 reports of investigations conducted in response to complaints; and,

2071.1.4 any other reports filed with or issued by the Director pertaining to the compliance of a facility with applicable laws and regulations.

- 2071.2 If the Director determines it is in the best interests of the public, the Director may provide copies of records and reports free of charge to non-profit community organizations.
- 2071.3 The Director shall treat a report of inspection of a facility as public information from the time a written plan of correction is submitted.
- 2071.4 If the facility does not submit a written plan of correction within the time specified by the Director pursuant to §2039 of these regulations, reports pertaining to the facility shall be made public at the expiration of the specified time.
- 2071.5 Other records and reports shall be treated as public information from the time they are submitted to or issued by the Director.

2072 Confidentiality

- 2072.1 Nothing contained in this section shall be construed to require or permit the public disclosure of confidential medical, social, personal or financial records of any patient.
- 2072.2 Before releasing a report or record deemed public information the Director shall delete any confidential information regarding a patient which could reasonably permit identification of the patient.
- 2072.3 The Director shall delete from complaints made available to the public under this section any information required to be held confidential under §2065 of these regulations.

3000 FACILITY GOVERNANCE AND MANAGEMENT

3010 GOVERNANCE AND MANAGEMENT REQUIREMENTS

3011 Governing Body

[Class: II Points: 15]

3011.1 A facility shall have an effective governing body, or designated persons so functioning, which is legally responsible for the operation of the facility.

3011.2 The governing body shall adopt and enforce rules and regulations governing the health care and safety of patients, the protection of their personal and property rights, and the operation of the facility.

3011.3 The governing body shall develop a written facility plan (See §2023 of these regulations) which shall be reviewed annually. In addition to the other requirements described in law and in these regulations, the facility plan shall include:

3011.3.1 an annual operating budget including all anticipated income and expenses; and

3011.3.2 a capital expenditure plan for at least a three-year period.

3011.4 The governing body shall assure the development and maintenance of written policies which govern the services the facility provides.

3011.4.1 A copy of each written policy shall be available for inspection on request by the staff, residents, patients, and members of the public.

3012 Administrator

[Class: II Points: 15]

3012.1 The owner or governing body of a facility shall appoint a qualified administrator who holds a currently valid license or an emergency permit issued by the West Virginia Nursing Home Administrators Licensing Board, pursuant to Article 25, Chapter 30 of the West Virginia Code.

3012.1.1 A facility shall notify the Director in writing within ten days of any change in administrators.

3012.1.2 An emergency administrator shall be employed only upon prior verbal approval from the Director which the Director shall confirm in writing.

- 3012.2 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 owner or governing body or assigned to him or her under these regulations.
- 3012.3 A facility having an administrator performing in that capacity on other than a full-time basis shall have a written contract, or, if the owner functions as the administrator, a written statement, specifying the extent of the administrator's responsibility to the facility and stating specifically how the facility will assure that the functions assigned to the administrator under these regulations will be performed.
- 3012.4 An individual shall not act as or be the administrator of more than two nursing homes, and shall otherwise conform to the West Virginia Rules and Regulations for the Licensing of Nursing Home Administrators including limitations and documentation of service.
- 3012.5 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.
- 3013 Administrator Functions
- [Class: II Points: 15]
- 3013.1 The administrator shall be responsible for managing the operations of the facility and delegating his or her authority as necessary.
- 3013.2 The administrator shall have the authority to assure facility compliance with applicable provisions of laws and regulations.
- 3013.3 The administrator shall assure that public information describing the facility's services is accurate and fully descriptive.
- 3013.4 The administrator shall serve as liaison to the governing body, medical staff, and other professional and supervisory staff.
- 3013.5 The administrator shall evaluate and implement recommendations from the facility's committees established pursuant to these regulations.
- 3013.6 The administrator shall participate regularly in continuing education programs and other professional activities in the field of long-term care and health services administration.
- 3013.7 The administrator shall be responsible for the completion, maintenance and submission of reports and records required by the Director.

- 3013.8 The administrator shall provide each member of the governing body, or each owner, with copies of the following documents:
- 3013.8.1 official inspection reports issued by the Director or the Director's agents;
- 3013.8.2 plans of correction submitted by the facility to the Director;
- 3013.8.3 reports by the Director or the Director's agents following investigations of complaints regarding the facility; and,
- 3013.8.4 other orders or complaints concerning the facility issued or filed by the Director.
- 3013.9 Where these regulations require either statements of policy, or procedures, or documentation, the administrator shall be responsible for ensuring that all such statements are in writing, and unless these regulations state otherwise, such statements shall be reviewed annually, and signed and dated by the administrator at the most recent review.

3020 ADMINISTRATIVE POLICIES AND PROCEDURES

3021 Admission, Discharge and Transfer

[Class: II Points: 15]

- 3021.1 A facility shall develop and implement written policies regarding the admission, discharge and transfer of patients. Policies shall include but are not limited to those in this section.
- 3021.2 A facility shall admit only those persons whose needs it can meet with its services alone, or in cooperation with other providers with whom it has appropriate written agreements to ensure its responsibility for the care provided to its patients.
- 3021.3 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.
- 3021.4 A facility shall have written transfer agreements with one or more hospitals assuring prompt transfer of a patient to a hospital or other appropriate provider when that patient's physical or mental condition has changed so that the facility can no longer meet that patient's needs.
- 3021.5 Except in an emergency, a facility shall consult the patient, his next of kin, his physician, and the responsible agency if any, at least seven days in advance of a patient's transfer or discharge.

3022 Admission Contract

[Class: II Points: 15]

- 3022.1 The relationship of a patient to the facility shall be covered by a contract entered into at the time of or prior to the patient's admission, between the patient or his legal representative, and the facility.
- 3022.2 Each party to the contract shall have a copy of the contract.
- 3022.3 The facility shall keep each contract on file for five years after the date it is terminated.
- 3022.4 A contract shall include at least the following provisions:
- 3022.4.1 the daily, weekly or monthly rate charged by the facility, and refund provisions for unused portions;
- 3022.4.2 the services and accommodations to be provided by the facility in consideration for the daily, weekly or monthly rate;
- 3022.4.3 the services for which the facility will make arrangement;
- 3022.4.4 delineation of responsibilities for provision of payment for services not covered by basic rate, including but not limited to medical treatment, medications, special equipment and appliances, dressings, clothing, personal supplies of the patient, services of related medical and paramedical personnel;
- 3022.4.5 facility procedures governing emergencies including immediate care of the patient, persons to be notified, and reports to be prepared;
- 3022.4.6 provision for review and renegotiation of the contract thirty days prior to any change in the terms of the contract;
- 3022.4.7 the specification of any rights, duties, and obligations of the parties in addition to those required by law.
- 3022.5 Section 3022.4 shall not apply to patients receiving care and treatment pursuant to a provider agreement between the nursing home and the Department of Welfare under Title XIX and Chapter 9 of the Public Welfare Law of West Virginia; except that such patients shall receive a written contract delineating their responsibilities in accordance with §3022.4.4.

3023 Life Care Contract

[Class: III Points: 10]

3023.1 A facility or licensee is prohibited from entering into a life care contract as a provider of services without the Director's prior written authorization.

3023.2 An application for authorization must be submitted to the Director, on forms provided by the Director, stating fully the terms and conditions of the contract, the financial conditions of the applicant and other information as the Director may require.

3023.3 For the purposes of this subsection, a life care contract is an agreement between a facility and an individual in which the facility agrees to provide to the individual for the duration of his 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 individual's paying consideration to the facility in lieu of or in addition to the payment of the facility's customary charges for the care and services involved.

3024 Unlawful Activities

[Class: III Points: 10]

3024.1 A facility is prohibited from advertising, asserting, representing, or otherwise implying in any manner that it may render care or services other than those specifically within the scope of the license issued to it by the Director.

3024.2 A facility is prohibited from renting, leasing, or using its premises for any purposes not related to that for which it is licensed, unless the use is specifically authorized in advance, in writing, by the Director.

3024.3 Residence in a facility is restricted to patients and staff, unless otherwise approved in writing by the Director.

3025 Health and Safety Hazards

[Class: I Points: 20]

3025.1 A facility shall develop written policies and procedures to assure that a safe and sanitary environment exists for patients and personnel. Policies and procedures shall include but are not limited to the following:

3025.1.1 Reporting and control of reportable disease is in compliance with the West Virginia Public Health Laws and relevant rules and regulations.

- 3025.1.2 Employees with symptoms or signs of communicable diseases or infected skin lesions are not permitted to work.
- 3025.1.3 Incidents and accidents to patients and personnel are reviewed to identify health and safety hazards.
- 3025.2 No facility shall fail to obtain the written authorization or approval of the Director as required in §3024 of these regulations.
- 3030 RECORDKEEPING REQUIREMENTS
- 3031 General
- [Class: III Points: 10]
- 3031.1 The facility shall maintain records in accordance with these regulations and accepted professional standards and practices.
- 3031.2 Compliance with this section shall not preclude compliance with other specific provisions in these regulations.
- 3031.3 Records and reports required by the provisions of these regulations shall be completed legibly in ink or typewritten.
- 3031.4 Complete legible photocopies of records will be accepted in fulfillment of the requirements of these regulations.
- 3032 Administrative Records
- [Class: III Points: 10]
- 3032.1 The facility shall maintain on file in its administrative office the records required by this section.
- 3032.2 Records shall include the following:
- 3032.2.1 documentation of the facility's professional and administrative staff meetings;
- 3032.2.2 documentation of visits by professional consultants and the medical director employed by the facility in accordance with the requirements of these regulations;
- 3032.2.3 a current copy of these regulations;
- 3032.2.4 a copy of the facility's current policy and procedures manual containing copies of all policies and procedures required by the provisions of these regulations;

- 3032.2.5 reports of all inspections by government agencies together with summaries of corrective action taken in response to each report during the previous five years;
- 3032.2.6 reports of any other inspections required by these regulations;
- 3032.2.7 copies of contracts and agreements, including agreement for the provision of professional services by outside agencies or contractors, to which the facility is a party;
- 3032.2.8 documents demonstrating control and ownership of the facility;
- 3032.2.9 by-laws of the governing body, if applicable;
- 3032.2.10 reports of accidents or incidents involving patients as required by §5030 of these regulations;
- 3032.2.11 records of all transactions conducted by the facility involving personal funds of patients in the facility during the previous five years (See §3056 of these regulations);
- 3032.2.12 all menus prepared by the facility in accordance with the requirements of §5050 of these regulations;
- 3032.2.13 records of food purchases made in compliance with §5050 of these regulations;
- 3032.2.14 a copy of the facility's emergency evacuation plan as required by §3040 of these regulations;
- 3032.2.15 a record of all patients admitted to the facility with date of admission and, where appropriate date of discharge; and,
- 3032.2.16 all other records required by state or federal laws and regulations, except those for which maintenance elsewhere is required.

3033 Personnel Records

[Class: III Points: 10]

- 3033.1 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:
 - 3033.1.1 a dated application for employment which includes a resume of the applicant's training and experience, and verification by references;

- 3033.1.2 an employee health record containing the results of pre-employment and annual physical examination including tuberculin tests, and/or x-rays to verify the absence of active communicable disease;
 - 3033.1.4 evaluations of work performance signed by employee and supervisor;
 - 3033.1.5 subsequent change of status forms including change of address, salary adjustments, merit increases, promotions;
 - 3033.1.6 current licensure, registration, or certification status demonstrating appropriate licensure, registration or certification and periodic verification; and,
 - 3033.1.7 a summary record of each employee's in-service training and what the program included.
- 3033.2 The facility shall make available to employees and assure explanation of written personnel policies, procedures, organizational charts and job descriptions.
- 3033.3 The facility shall maintain a job description for each job category, including the following:
- 3033.3.1 job title and qualifications, including educational and skill requirements;
 - 3033.3.2 general description of duties and responsibilities including limitations, if applicable; and,
 - 3033.3.3 supervision to be given and/or received.
- 3034 Vital Statistics Reports
- [Class: III Points: 10]
- 3034.1 The facility shall report a death to proper authorities.
- 3040 DISASTER PREPAREDNESS
- 3041 Disaster Plan
- [Class: II Points: 15]
- 3041.1 The facility shall have a written Department-approved disaster plan which states procedures to be followed in the event of fire, explosion, or other internal disaster or occurrence which severely affects the functioning of the facility.
 - 3041.2 The disaster plan shall be developed and maintained with the assistance of qualified fire, safety, and other appropriate experts.

- 3041.3 Brief instructions and guidelines regarding procedure shall be available at the nurses station.
- 3041.4 Evacuation routes shall be posted as appropriate.
- 3041.5 There shall be policies and procedures for implementing the plan.
- 3041.6 The disaster plan shall include at least the following:
- 3041.6.1 assignment and training of personnel for specific tasks and responsibilities;
 - 3041.6.2 procedures for identification and prompt transfer of casualties and records, when necessary, to the facility most appropriate for the administration of definitive care;
 - 3041.6.3 policies and procedures with regard to transporting casualties and uninjured individuals;
 - 3041.6.4 instructions regarding the location and use of alarm systems and signals, and of firefighting equipment;
 - 3041.6.5 information regarding methods of fire containment;
 - 3041.6.6 procedures for notification of appropriate personnel;
 - 3041.6.7 specification of evacuation routes and procedures; and,
 - 3041.6.8 frequency of fire drills.

3042 Disaster Training

[Class: II Points: 15]

- 3042.1 The facility shall operate an internal disaster preparedness program which includes orientation and ongoing training and drills in procedures and specific assignments.
- 3042.2 The disaster plan shall be rehearsed at least annually.

3043 Fire Drills

[Class: I Points: 20]

- 3043.1 Fire drills shall be held at least quarterly for each shift.

3044 Reports

[Class: II Points: 15]

3044.1 A dated written report and evaluation of each disaster and fire drill rehearsal shall be maintained on file for at least two years.

3045 Provisions for Emergency Calls

[Class: I Points: 20]

3045.1 A facility shall have at least one non-coin operated telephone or one extension on each patient occupied unit, and additional telephones and extensions if needed to summon help in case of emergency.

3045.2 A facility shall post emergency call information conspicuously near each telephone, exclusive of patient telephones, in the facility. Such information shall include at least the following:

3045.2.1 telephone number of fire and police and/or other appropriate emergency services;

3045.2.2 names and telephone numbers of all personnel to be called in case of fire or emergency;

3045.2.3 name and telephone number of physician on call; and,

3045.2.4 where applicable, name and telephone number for consulting nurse when on call.

3050 PATIENTS' RIGHTS POLICIES AND PROCEDURES NOT ELSEWHERE SPECIFIED

3051 Implementation

[Class: II Points: 15]

3051.1 The governing body of a facility shall develop written policies regarding the rights and responsibilities of patients.

3051.2 Policies adopted shall be consistent with this section.

3051.3 The governing body shall be responsible for the facility's adherence to procedures implementing patients' rights policies.

3051.4 The staff of a facility shall be oriented to and trained at least annually in proper implementation of patients' rights policies.

3051.5 A copy of patients' rights policies and procedures shall be made available to patients, guardians, next of kin, sponsoring agency(ies), representative payees, and upon request shall be made available to members of the public.

3052 Suspension of Patients' Rights

[Class: II Points: 15]

3052.1 A patient's rights shall be suspended only when dictated by medical indications only for those rights noted in, and, in accordance with specific authority set forth in §3055.

3052.2 When a patient's rights have been suspended, the medical justification for the suspension shall be recorded in the patient's health care record, and other records as appropriate, and shall be signed by either the attending physician or, in the case of a mentally retarded individual, a qualified mental retardation professional.

3052.3 The record of the suspension of a patient's rights shall state specifically which right has been suspended and the duration of the suspension.

3052.4 Nothing in this section shall in any way be construed to diminish or deprive any individual of rights recognized and established under other laws of the State of West Virginia or of the United States.

3053 Derivative Rights

[Class: II Points: 15]

3053.1 The rights and responsibilities set forth in §3055 of these regulations shall devolve to a patient's guardian, next of kin, sponsoring agency(ies) or representative payee (except when the facility is representative payee) in any of the following three circumstances:

3053.1.1 a patient is adjudicated incompetent;

3053.1.2 a patient is found to be medically incapable of understanding his rights by the attending physician or, in the case of a mentally retarded individual, by a qualified mental retardation professional; or,

3053.1.3 a patient exhibits a communication barrier which would preclude his or her understanding of his or her rights.

3054 Civil Rights

[Class: II Points: 15]

3054.1 No facility which offers services to members of the general public shall deny admission to a prospective patient on the grounds of race, color, religion or national origin.

3054.2 No patient shall be segregated, given separate treatment, restricted in the enjoyment of any advantage or privilege enjoyed by others in the facility, or provided with any aid, care services, or other benefits which are different or are provided in a different manner from those provided to others in the facility, on the grounds of race, color, religion, or national origin.

3055 Patients' Rights

[Class: II Points: 15]

Rights to be Informed

3055.1 A patient shall be fully informed of these rights and of all rules and regulations governing patient conduct and responsibilities during the duration of the patient's stay.

3055.2 A patient shall be notified and informed of his or her rights, responsibilities, and any applicable rules and regulations prior to or at the time of admission, and at least annually thereafter.

3055.3 A patient shall acknowledge in writing that he or she has received notification of rights, responsibilities, rules and regulations.

3055.3.1 An individual already in a facility at the time these regulations become effective shall be given notification within fourteen days of the effective date of these regulations;

3055.3.2 When a mentally retarded person is notified, notification shall be witnessed by a third person.

3055.4 A patient shall be fully informed of his or her medical condition unless medically contraindicated.

Rights to Communication and Personal Property

3055.5 A patient shall be encouraged and assisted throughout the duration of his stay, to exercise his or her rights as a patient and as a citizen.

3055.6 A patient shall be permitted to express grievances and to communicate to facility staff and outside representatives of the patient's choice the need for changes in facility policies.

3055.7 A patient shall be free from restraint, interference, coercion, discrimination or reprisal as a result of exercising any of his or her rights.

3055.8 A patient has the right to associate and communicate privately

with persons of his or her choice.

3055.9 A patient has the right to send and receive personal mail unopened.

3055.10 A patient shall have access to telephones to make and receive calls in privacy, unless medically contraindicated.

3055.11 A patient has the right to meet with and participate in the activities of social, religious and community groups, at his or her discretion, unless medically contraindicated.

3055.12 A married patient shall be assured privacy for visits by his or her spouse. If both spouses are in-patients in a facility, they shall be permitted to share a room unless medically contraindicated.

3055.13 A patient has the right to retain and use personal clothing and possessions subject to space limitations, medical contraindications, and the potential for infringing upon the rights of other patients.

3055.13.1 A facility may specify in the admission contract conditions of facility liability.

Rights with Regard to Treatment

3055.14 A patient shall participate in experimental research only on the basis of prior written informed consent.

3055.15 A patient shall be given the opportunity to participate in the planning of his or her total health and medical treatment.

3055.16 No patient shall be verbally, mentally or physically abused, or neglected or mistreated; or restrained by physical or chemical means except in accordance with §5026 of these regulations (relating to use of restraints). Alleged violations shall be reported immediately and there shall be evidence that:

3055.16.1 all such alleged violations are thoroughly investigated;

3055.16.2 the results of such investigation are reported to the administrator or his designated representative within 24 hours of the report of the incident; and,

3055.16.3 appropriate sanctions are invoked when the allegation is substantiated.

3055.17 A mentally retarded individual shall participate in a behavior modification program involving the use of restraints or aversive stimuli, only upon the prior written informed consent of his or her parent or guardian.

3055.18 A patient shall not be required to perform services for the facility, nor be required to participate in any social, recreational or religious activity.

3055.19 A patient has the right to refuse any medical treatment.

Rights to Confidentiality

3055.20 A patient shall be assured confidential treatment of his personal and health care records and condition, which shall not be discussed without the patient's consent with persons not treating or caring for the patient.

3055.21 A patient has the right to refuse the release of his or her personal or health care records to any individual outside the facility, except as required by law or third-party payment contracts applicable to that patient. A specific signed release shall be obtained for all other releases and no prior executed blanket release shall be used.

3055.22 A patient shall have access to his or her records unless medically contraindicated.

3055.23 A patient who is being discharged shall have the right to obtain a copy of his or her records subject to paying the facility's reasonable fee to cover the expense of copying the records.

3055.24 A patient shall be treated in a manner which assures privacy in treatment and in care for his or her personal needs.

Financial Rights

3055.25 A patient has the right to manage his or her personal financial affairs.

3055.26 A facility shall manage a patient's personal funds only on the written prior authorization of the patient.

3055.27 A patient shall be liable only for charges which have been included in the admission contract between the patient and the facility pursuant to §3022 of these regulations, or included in any written modification of the contract as provided in §3022 of these regulations, except in the case of charges for emergency services which could not have been reasonably anticipated when the contract was signed or amended.

3055.27.1 If emergency services provided are not included in the admission contract, the facility shall, when feasible, obtain the prior written consent of the patient, the next of kin, or other financially responsible persons or agency, stating the amount of the applicable charges.

3055.28 No patient shall be transferred or discharged by a facility except for medical reasons; for the patient's welfare or safety or the welfare or safety of other patients; for nonpayment for his or her stay; or, upon the patient's consent or request.

3055.28.1 A patient whose cost of care is reimbursed under Titles XVIII or XIX of the Social Security Act shall be discharged for nonpayment only in accordance with the provisions of the Social Security Act and regulations.

3056 Fiduciary Responsibilities

[Class: III Points: 10]

3056.1 A facility which handles money for patients within the facility shall hold separately and in trust all patients' funds.

3056.1.1 The facility shall administer the funds on behalf of the patient in the manner directed by the depositor.

3056.1.2 The facility shall render a true and complete account upon request, to the depositor and to the Director.

3056.1.3 The facility shall render a true and complete account at least quarterly to the patient.

3056.1.4 Upon termination of the deposit the facility shall account for all funds received, expended, and held on hand.

3056.2 A facility which, in any one month, handles at least \$25 of patients' funds per patient, or at least \$500 for all patients shall furnish bond as assurance that the facility will comply with the requirements of this subsection.

3056.2.1 The amount of the bond shall be at least \$2,500.

3056.2.2 The Director shall have the discretion to require more than \$2,500 bond based on the amount of patients' funds handled by the facility.

3056.2.3 The facility shall file the bond on a form to be furnished by the Director.

3056.2.4 The facility shall execute the bond with a corporate surety licensed to do business in the state of West Virginia.

3056.3 A facility required to furnish bond under this subsection may deposit with the Director collateral in one of the following forms in lieu of corporate surety:

- 3056.3.1 cash;
- 3056.3.2 bonds of the United States or its possessions, of the federal land banks, or of the home owners' loan corporation;
- 3056.3.3 full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state of West Virginia or other states; or,
- 3056.3.4 certificates of deposit in a bank in West Virginia.
- 3056.4 The cash deposit or market value of securities or certificates deposited as collateral with the Director shall be equal to or greater than the amount of the bond which would be required.
- 3056.5 The Director may require a facility to file an additional bond in the following circumstances:
 - 3056.5.1 when the Director determines that the amount of the bond or collateral on deposit is insufficient to protect the patients' money; or,
 - 3056.5.2 when the amount of the bond or collateral is impaired by recovery against it pursuant to the provisions of §16-5C-7 of the West Virginia Code, by a person injured as a result of improper or unlawful handling of a patient's funds.
- 3056.6 When a facility ceases to handle patients' funds in amounts which require a bond under this section, the Director shall allow the release of the bond upon the facility's rendering a true and complete account to the depositors of patients' funds.
- 3056.7 When a facility determines on the basis of medical judgment that a patient appears unable to manage his affairs, the administrator of the facility shall notify the patient's next of kin to initiate guardianship or incompetency proceedings.
- 3056.8 A facility may initiate guardianship or competency proceedings on behalf of the patient if the patient has no family or if the family, once notified, fails to act.
- 3056.9 An employee of a facility, or a person having a financial interest in the facility, with the exception of anyone related to such a person by consanguinity as defined in §2011.2 of these regulations is prohibited from accepting appointment as guardian, committee, or conservator of the estate of a patient, or from accepting a power of attorney for a patient.
 - 3056.9.1 An individual serving in a prohibited capacity under this section on the effective date of these regu-

lations shall initiate proceedings within thirty days following the effective date of these regulations, to have himself removed from the prohibited capacity and to have another qualified person appointed.

3057 Complaint Procedures

[Class: II Points: 15]

- 3057.1 A facility shall develop and implement written procedures for registering and responding to complaints by patients, their sponsors, and the public.
- 3057.2 A facility shall designate an employee to be responsible for receiving complaints.
- 3057.3 A facility shall establish a method to inform the administrator of all complaints.
- 3057.4 A facility shall establish a process for investigation and assessment of the validity of all complaints.
- 3057.5 A facility shall provide a mechanism to record all complaints received and action taken on them.
- 3057.6 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.
- 3057.7 A facility shall establish a program to assure that its personnel are familiar with complaint policies and procedures.
- 3057.8 A facility shall establish a program to educate patients, their next of kin, and sponsors about the facility's complaint policies and procedures.
- 3057.9 A facility's compliance with this section shall not obviate compliance with the provisions of §2060 of these regulations.

3058 Access

[Class: II Points: 15]

- 3058.1 A facility shall establish visiting hours, consisting of at least eight 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.
- 3058.1.1 Visiting hours for an individual patient may be restricted by the attending physician for medical reasons.

3058.1.2 Relatives and members of the clergy shall be permitted to visit a critically ill patient at any time, unless otherwise restricted by the attending physician for medical reasons.

3058.2 A facility shall permit full and free access to the facility, during visiting hours to representatives of appropriate groups, agencies and organizations, including the West Virginia Commission on Aging and all organizations affiliated with it, which render assistance to patients without charge. A facility shall permit such visitors to engage in activities including but not limited to the following activities:

3058.2.1 Visitors may visit, talk with, and make personal, social and legal services available to any patient;

3058.2.2 Visitors may inform patients of their rights, entitlements, and corresponding obligations under federal and West Virginia laws, through distribution of educational materials and in discussion with individual patients and groups of patients;

3058.2.3 Visitors may assist patients in asserting their legal rights including claims for public assistance, medical assistance, social security benefits and in other legal matters. Assistance may be provided individually and on a group basis, and may include organizational activity, counseling and litigation.

3058.2.4 Visitors may inspect all areas of the facility with the following exceptions:

(a) living areas of a patient who objects to such inspection;

(b) business records of the facility, unless the administrator consents;

(c) personal records of a patient, unless the patient consents;

(d) drug storage areas which are not secure from access by unauthorized persons;

(e) food service areas requiring sanitary conditions; and,

(f) any other areas where inspection might endanger any individual or inappropriately invade the privacy of any employee or patient.

3058.2.5 Visitors may engage in any other methods to represent, advise, and assist patients in efforts to enjoy their rights.

- 3058.2.6 A facility may restrict a particular visitor from the facility, if the visitor's behavior is, in the judgment of the administrator, unreasonably disruptive of the functioning of the facility. The reasons for such judgment and restriction must be documented in writing and kept on file.
- 3058.3 An individual entering a facility pursuant to §3058.2 of these regulations shall, upon entering the facility, notify the administrator or other available agent of the facility of his presence.
- 3058.3.1 No such person shall enter a patient's room without identifying himself to the patient and receiving the patient's permission to enter.
- 3058.3.2 A visit pursuant to §3058.2 of these regulations shall be terminated upon the patient's request.
- 3058.3.3 A visit pursuant to §3058.2 of these regulations shall be subject to medical restrictions otherwise applicable to visitors pursuant to §3058.1 of these regulations.
- 3058.3.4 A patient shall have the right to refuse a visit by persons obtaining access pursuant to §3058.2.
- 3058.4 Communications between a patient and a person visiting pursuant to §3058.2 of these regulations are confidential unless the patient authorizes the release of information pertaining to the visit.
- 3058.5 No patient shall be punished or harassed by a facility, its agents, or its employees, because of his or her efforts to avail himself of his or her rights to communicate with others under this section.
- 3058.6 Nothing in this section shall be construed to restrict the rights of a patient to receive visitors other than those obtaining access under this section.
- 3059 Notice and Posting Requirements
- [Class: III Points: 10]
- 3059.1 A facility shall post its license in a conspicuous and public place in plain view of all patients and visitors to the facility.
- 3059.2 A facility shall post in a conspicuous place on each floor a notice stating the civil rights requirements of §3054, the patients' rights requirements of §3050 of these regulations, the access requirements of §3058 of these regulations, and the complaint procedures required in §3057 of these regulations.

In addition, a notice stating the access requirements shall be posted conspicuously at or near the entrance to the facility.

- 3059.3 A facility shall provide each patient with a personal copy of a statement setting forth the requirements of §3054, §3055, §3056, §3057 and §3058, of these regulations.
- 3059.4 The document shall include in a prominent position the following statement:
- 3059.4.1 "This Bill of Rights sets forth some fundamental human rights to which you, as a facility resident or patient, are entitled under West Virginia law and regulations. 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 §3057 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 West Virginia Department of Health [insert the telephone number of the Health Facilities Evaluation Program here] to report the violation and to request an inspection of the facility. The names of those filing complaints will be kept confidential."
- 3059.4.2 A copy of the statement shall be given to each patient on admission.
- 3059.4.3 A copy of the statement shall be given to each person already a patient or resident in a facility within fourteen days of the effective date of these regulations.
- 3059.4.4 A facility staff member shall read the statement to any patient who, for any reason cannot read the notice, and shall also give the patient a written copy.
- 3059.4.5 A facility shall include in the patient's record a certification that the patient has received the required document, and where necessary, that it has been read to him. The certification shall be signed both by the patient and the administrator of the facility and shall be dated to show when actual notice was received by the patient.
- 3059.5 The facility shall inform each patient of the availability within the facility of a complete copy of these regulations, and of §16-5C of the West Virginia Code.
- 3059.6 Upon request by a patient, the facility shall provide the patient the opportunity to inspect the law and regulations.

4000 PHYSICAL FACILITIES, EQUIPMENT, AND RELATED

4010 GENERAL REQUIREMENTS

4011 Applicability

4011.1 The provisions of this part shall apply to the physical facilities and services of all nursing homes, except that the requirements may be modified for existing facilities if their application clearly would be impractical in the judgment of the Director, and provided that such alternate arrangements are not, in the opinion of the Director, considered to be detrimental to the health and/or safety of the occupants and employees of such facility. Such modification shall conform as nearly as is practicable to the current regulations.

4011.2 For purposes of these regulations, an existing facility shall be defined as a facility having either a valid nursing home license or licensed as an extended care facility according to West Virginia Rules and Regulations and Law for Licensing Hospitals as of or within a period of one year prior to the effective date of these regulations.

4012 Construction, Life Safety and Related

[Class I Points: 20]

4012.1 Except as provided in §4011.1 of these regulations, the Board of Health has adopted the following documents 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:

4012.1.1 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) 79-14500);

4012.1.2 minimum Property Standards for Care-Type Housing (4920.1) and Minimum Property Standards (4930.1), U.S. Department of Housing and Urban Development;

4012.1.3 the National Building Code;

4012.1.4 National Fire Protection Association - National Fire Codes; and Fire Prevention Code known as the Fire-safety Code, as adopted by the West Virginia State Fire Marshal's Office and the additional promulgated fire safety regulations as filed by the State Fire Marshal's Office with the Secretary of State; and,

4012.1.5 Article 10F, Chapter 18 of the West Virginia Code,

and any rules and regulations promulgated thereunder regarding handicapped persons and public buildings and facilities.

4012.2 When standards of the Board exceed requirements of the documents listed above the Board's standards as promulgated in relevant regulations shall prevail.

4013 Site Characteristics/Accessibility

[Class I Points: 20]

4013.1 The facility shall be accessible to physicians, medical facilities and other necessary services.

4013.2 There shall be good drainage, approved sewerage disposal, approved potable water supply, electricity, telephone, and other necessary facilities available on or near the site.

4013.3 The facility shall be located in an environment which is free from flooding, 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.

4013.4 Accessibility shall be facilitated by hard surfaced, all-weather roads which are kept passable at all times. There shall be all-weather, hard surfaced walks and parking areas provided.

4013.5 Local building codes and zoning restrictions shall be observed.

4013.5.1 Evidence of compliance, signed by local fire, building, and zoning officials, shall be available.

4013.5.2 Where local codes or regulations permit standards lower than those required by these regulations, the facility shall meet the standards set forth in this section.

4014 Application

4014.1 Detailed plans for new construction, additions, renovations, and/or alterations, drawn to scale of not less than one-eighth inch equals a foot, shall be submitted to and approved by the Director before construction is started.

4014.2 Two copies of these plans and specifications signed by an architect registered in the State of West Virginia shall be submitted to the Director, and shall show, properly identified, the general arrangement and construction of the building and location of all fixed equipment.

4014.2.1 Preliminary drawings and outline specifications

shall be submitted for approval prior to preparation of working drawings.

4014.2.2 The requirement for a registered architect may be waived by the Director.

4014.3 A performance statement must be obtained by the owner from the builder of a proposed facility stating that, in constructing the facility, the builder has followed the architect's plans which are on file with and approved by the Director.

4014.4 All new facilities shall be inspected by the Director and shall have the Director's approval prior to admitting patients.

4014.1.1 A request for a pre-opening inspection shall be made in writing thirty days prior to the proposed opening date.

4014.5 Unless substantial construction is started within one year of the date of approval of final drawings, it will be necessary for the owner and/or architect to secure written notification from the Director that such plan approval for construction is still valid and in compliance with this section.

4014.6 Plans for addition, removal or modification of equipment which is of the type which is permanently affixed to the building or which may otherwise involve or necessitate new construction, alteration of, or addition to the facility shall be submitted to and approved by the Director, prior to beginning any construction, alterations, removal or modification.

4014.7 Additionally, certain other changes involving equipment, which may or may not require physical changes in the facility, but which may relate to other standards and requirements of these regulations may require the Director's approval. Facilities may request judgment and approval in advance from the Director regarding a particular change or rearrangement. Areas in which changes are likely to require approval include, but are not limited to: kitchen; laundry; and heating equipment.

4020 INCREASE IN BED CAPACITY

[Class I Points: 20]

4021 Requirements

4021.1 Bed capacity may be increased only with the permission of the Director.

4030 PHYSICAL PLANT AND EQUIPMENT REQUIREMENTS

4031 Equipment and Furnishing of Patient Rooms

[Class: II Points: 15]

4031.1 Equipment and furnishings in patient rooms shall include at least the items in this section.

4031.2 A bed shall be provided for each patient.

4031.2.1 It shall be substantially constructed, not less than 36" wide, and in good repair.

4031.2.2 Each non-ambulant patient shall be provided with a hospital-type bed.

4031.2.3 Rollaway beds, folding beds, and cots shall not be used.

4051.2.4 Bed springs and mattress shall be in good repair and fit the bed.

4031.3 At least one clean, comfortable pillow shall be provided for each bed.

4031.3.1 Additional pillows shall be available to meet the needs of the patient.

4031.4 Each patient shall be provided with a bedside stand with a drawer to accommodate toilet articles and utensils.

4031.5 Each patient room shall have reasonable closet and drawer space for clothing and personal items currently being used by the patient.

4031.6 Each room shall have individual towel and wash cloth racks or an equivalent substitute.

4031.7 Window shades, and curtains or draperies shall be provided and maintained in good condition.

4031.8 One comfortable chair suitable for the patient's use shall be provided for each patient in each room.

4040 NURSING EQUIPMENT, STERILE SUPPLIES, AND LINENS

[Class: I Points: 20]

4040.1 Nursing equipment shall be sufficient to meet patients' needs. If warranted by a patient's condition, each individual shall have the following:

4040.1.1 wash basin;

4040.1.2 bedpan;

- 4040.1.3 urinal;
- 4040.1.4 emesis basin; and,
- 4040.1.5 water pitcher and cup or drinking glass.
- 4040.2 Utensils shall be sterilized between use by different patients.
 - 4040.2.1 Styrofoam water pitchers and cups shall not be used.
 - 4040.2.2 Equipment constructed of enamelware or materials which cannot be sterilized shall not be used.
 - 4040.2.3 Damaged utensils shall not be used.
- 4040.4 A facility shall disinfect each thermometer after each use.
 - 4040.4.1 A facility shall have sufficient individual or auto thermometers to meet patient needs.
- 4040.5 A facility shall have sufficient hot water bottles with suitable covers to meet patient needs.
- 4040.6 Nursing equipment and sterile supplies shall be stored in an area which is completely separate from contact with patients.
- 4040.7 Sterile supplies shall not be stored beyond their dated shelf life.
- 4040.8 Storage space shall be provided on each nursing unit for clean linen.
- 4040.9 Sufficient quantities of linens shall be available to nursing personnel to assure the cleanliness and comfort of each patient.
 - 4040.9.1 Individual towels, wash cloths, and blankets shall be provided for each patient.
 - 4040.9.2 Waterproof mattresses or mattress covers shall be provided for each patient.
- 4040.10 When electric blankets are used they shall be UL approved and checked periodically for safety.

4050 HOUSEKEEPING AND MAINTENANCE

4051 General Maintenance

[Class: II Points: 15]

- 4051.1 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.

- 4051.1.1 Maintenance and housekeeping services may be provided by another organization under written contract.
- 4051.2 Stairwells and corridors shall be kept free from obstruction at all times.
- 4051.3 The grounds shall be kept in sanitary, safe, and presentable condition.
- 4051.3.1 The grounds shall be free from accumulated rubbish and other health hazards of a similar nature.
- 4051.4 A facility shall be kept free from insects, rodents, and vermin through operation of a pest control program.
- 4051.4.1 Pesticides shall be applied so as to prevent contamination to patients and food.
- 4051.4.2 Insecticidal strips shall not be used.
- 4051.5 All essential mechanical, electrical, and patient care equipment shall be maintained in safe operating condition.
- 4052 Waste and Refuse Disposal
- [Class: II Points: 15]
- 4052.1 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.
- 4052.2 A facility shall have procedures for disposing of soiled dressings and similar items in a safe and sanitary manner.
- 4053 Cleaning Supplies
- [Class: III Points: 10]
- 4053.1 A facility shall have sufficient supplies and equipment, properly stored and conveniently located, to permit frequent cleaning of floors, walls, woodwork, windows, screens, and to facilitate all necessary building and grounds maintenance.
- 4054 Laundry
- [Class: II Points: 15]
- 4054.1 The facility shall have written procedures for handling, storing, processing and transporting of linens and other laundered goods in such a manner to prevent the spread of infection.

5000 SERVICES AND PROGRAMS

5010 PHYSICIAN SERVICES

5011 Medical Director

[Class: II Points: 15]

- 5011.1 Pursuant to a written agreement, a nursing home shall retain a physician licensed in West Virginia to serve as a medical director.
- 5011.2 The medical director shall be responsible to the administrator as to medico-administrative matters.
- 5011.3 The medical director's responsibilities shall include, but are not limited to, the following:
- 5011.3.1 delineating the responsibilities of attending physicians;
 - 5011.3.2 communicating with attending physicians to ensure that medical care plans are written as required by 5012.5.4 of this section;
 - 5011.3.3 establishing written policies for utilization of medical consultants and specialist services;
 - 5011.3.4 monitoring the health status of the facility's personnel, as required by §3026 and §3033.1.3 of these regulations;
 - 5011.3.5 documenting investigation of incidents and accidents that occur on the premises;
 - 5011.3.6 providing documented information to the administrator, in order to ensure a safe and sanitary environment for patients and personnel;
 - 5011.3.7 assuming with the administrator responsibility for the execution of patient care policies;
 - 5011.3.8 participating in the development of ongoing staff educational programs;
 - 5011.3.9 participating or ensuring physician participation in facility committees, such as: Pharmaceutical; and Infection Control; and,
 - 5011.3.10 reviewing and approving the credentials of any physician's assistant who will be working in the facility. A physician assistant shall be duly certified by the West Virginia Board of Medicine or the West Virginia Board of Osteopathy.

5012 Availability of Attending Physician

[Class: I Points: 20]

- 5012.1 A nursing home shall require upon admission the patient or the patient's sponsor to designate in writing a physician to attend the patient.
- 5012.2 A facility shall confirm with a designated physician that the physician will provide at least those services required in §5013 of this section (relating to services of attending physician).
- 5012.3 A facility shall require the attending physician, the patient or the patient's sponsor to designate, or authorize the administrator to designate, an alternate physician to attend the patient in an emergency or whenever the attending physician is unavailable.
- 5012.4 The administrator or his designee shall assure availability of physician services in at least the following ways:
- 5012.4.1 verify that the patient's medical record contains documentation of the name, address and telephone number of the attending physician and the alternate physician;
- 5012.4.2 notify the attending physician whenever a physician is required or in an emergency;
- 5012.4.3 ensure that the patient is visited by a physician for required visits and in response to an emergency;
- 5012.4.4 assist in the development of, and implement, written procedures to provide emergency medical care;
- 5012.4.5 provide at each nurses' station, a list of physicians available to provide emergency care; and,
- 5012.4.6 ensure that efforts are made to notify the patient's next of kin or sponsor promptly after the patient has had an accident or suffers a serious deterioration in condition, in accordance with §5030 of these regulations regarding accident, illness and death.

5013 Services of Attending Physician

[Class: I Points: 20]

- 5013.1 An attending physician shall provide at least the following services:

- 5013.1.1 not more than five days before nor more than forty-eight hours after a patient's admission to a nursing home, a signed, dated admission and medical history including: a current physical examination; a current assessment of mental status; an admission diagnosis; and, an estimate of rehabilitation potential.
- 5013.1.2 A medical visit to the patient as is medically necessary but at least every thirty (30) days unless longer intervals are documented as sufficient by the physician in the patient's record;
- 5013.1.3 A written, signed and dated progress note in the patient's record at the time of each visit;
- 5013.1.4 Orders for medical care;
- 5013.1.5 A documented review and such revision as is necessary in the patient care plan at each visit;
- 5013.1.6 Emergency medical service when available; and
- 5013.1.7 A review, documented by the physician's signature, of any report made under §5032 of these regulations (relating to incidents of accidents).
- 5013.2 If the interval between physician visits to a patient is more than thirty (30) days, that patient's medical plan of care shall be reviewed with a licensed nurse by telephone and rewritten at least every thirty (30) days.
- 5013.3 Whenever a physician fails to comply with the requirements of §5013.1.2 or §5013.2 of these regulations regarding visits to patients, the nursing home shall notify the physician of record of the requirements by registered mail and request the physician's compliance. If the physician then fails either to comply with the requirements or to make other arrangements for his or her patients within ten (10) days, the nursing home administrator shall declare the patient to be abandoned and notify the Director in writing. The Director shall notify the West Virginia Board of Medicine. The nursing home administrator shall then be allowed to seek other medical care for the patient.
- 5013.4 If a physician uses a physician's assistant in a nursing home, the physician first shall write to the medical director identifying the physician assistant, delineating the physician assistant's functions and limitations, and documenting that the physician assistant is duly certified as required by §5011.3.10 of these regulations.

5020 NURSING SERVICES

5021 Staffing

[Class: I Points: 20]

5021.1 A nursing home shall provide licensed nursing services twenty-four hours a day, seven days a week.

5021.2 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.

5021.3 The number of nursing personnel on duty in addition to the director of nursing shall be determined by the number of patients, their medical needs and the physical arrangement of the facility, but will at no time (other than during short unforeseeable emergencies) be less than indicated on the minimum staffing chart in §5021.4 of these regulations. The minimum staffing chart refers to the number of personnel on duty on a given shift. Adequate personnel must be employed to meet the requirements on each nursing shift. "Available" or "on call" does not meet the requirements for minimum staffing. For purposes of determining compliance with the minimum staffing allowable, no individual shall be counted as meeting these numerical requirements on any two consecutive shifts, unless the facility can demonstrate extenuating circumstances and only then as a non-routine occurrence.

5021.4 MINIMUM RATIOS OF NURSING PERSONNEL TO PATIENTS

<u>Day Shift</u>	<u>Evening Shift</u>	<u>Night Shift</u>
Nursing Personnel 1:10	Nursing Personnel 1:15	Nursing Personnel 1:20
Licensed Nurses 1:30	Licensed Nurses 1:60	Licensed Nurses 1:60

5022 Director of Nursing

[Class: II Points: 15]

5022.1 The facility shall have on duty at least four (4) days a week during the day shift a full-time registered professional nurse designated in writing as the Director of Nursing services.

5022.1.1 By written designation, a licensed practical nurse or a registered professional nurse shall act in the Nursing Director's absence and on the other three (3) days of the week.

- 5022.2 The Director of Nursing Services shall be responsible for the direction, provision and quality of nursing care, including, but not limited to, the following:
- 5022.2.1 assuring that a nursing care plan is established for each patient and the plan is reviewed and modified as necessary, but not less often than quarterly;
 - 5022.2.2 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;
 - 5022.2.3 evaluating nursing care practice;
 - 5022.2.4 coordinating nursing services with other patient care services such as medical, physical therapy, occupational therapy, recreational activities, social services, and dietary services;
 - 5022.2.5 planning and conducting orientation and training programs for new nursing service personnel; and a continuing inservice education program for all nursing service personnel;
 - 5022.2.6 participating in the selection of prospective patients in terms of nursing services they need and nursing competencies available; and
 - 5022.2.7 designating in writing a charge nurse on each nursing unit for each shift, seven days a week.
- 5022.3 The Director of Nursing Services shall establish procedures to assure that the patient's medical record is completed in a timely manner in accordance with the requirements of §5070 of these regulations and includes at least the following:
- 5022.3.1 patient care plan, in accordance with the orders of the attending physician establishing and maintaining the plan;
 - 5022.3.2 treatment notes;
 - 5022.3.3 nursing notes in accordance with §5073.7 of these regulations;
 - 5022.3.4 nursing summaries;
 - 5022.3.5 summaries of conferences with the designated physician or other personnel involved in patient care;
 - 5022.3.6 a record of medications administered, with the following to be noted in the record after each administration of medication:

- (a) name and strength of the drug administered;
- (b) date and time of administration;
- (c) dosage administered;
- (d) route of administration; and
- (e) signature of the individual administering the drug; and,

5022.3.7 the signed nursing discharge note.

5023 Charge Nurse

[Class: II Points: 15]

5023.1 The charge nurse shall be responsible for at least the following:

5023.1.1 supervising all nursing and ancillary personnel and activities related to nursing care in the nursing unit; and,

5023.1.2 assessing the needs of each patient, initiating the nursing care plan for meeting those needs, and coordinating the patient care plan.

5024 Staff Responsibilities

[Class: I Points: 20]

5024.1 The nursing personnel shall ensure that each patient is treated at least as follows:

5024.1.1 receives care in accordance with the physician's written orders;

5024.1.2 receives care in accordance with the nursing care plan;

5024.1.3 is kept clean, dry and comfortable;

5024.1.4 receives care toward prevention of decubitus ulcers;

5024.1.5 receives care toward prevention of infection, accident and injury;

5024.1.6 receives assistance in feeding as needed; and

5024.1.7 is treated in accordance with the provisions of §3050 of these regulations specifying patient rights, policies and procedures.

- 5024.2 Drugs and biologicals shall be administered as follows:
- 5024.2.1 Each patient shall have an individual medication record.
 - 5024.2.2 The dose administered to a patient shall be recorded promptly on the medication record by the person who administers the drug.
 - 5024.2.3 Drugs and biologicals shall be administered to the patient as soon as possible after the doses have been prepared.
 - 5024.2.4 The medication shall be administered by the same person who prepared the doses for administration, except under single unit dose package distribution systems.
 - 5024.2.5 Self-administration of medications by patients is not permitted except on written order of a physician.

5025 Restorative Nursing Care

[Class: I Points: 20]

- 5025.1 An active restorative nursing care program shall be an integral part of the nursing service. The purpose of the program is to assist the patient to achieve and maintain an optimum level of functioning and self-care through education and retraining in the activities of daily living. Restorative nursing care services shall be performed daily for those patients who need such services. The program shall include, but not be limited to, such techniques as:
- 5025.1.1 maintaining proper body alignment and positioning of bedfast patients, and those confined to chairs;
 - 5025.1.2 encouraging the activity of patients by getting them out of bed for reasonable periods of time, except when this is contraindicated by physician's orders;
 - 5025.1.3 maintaining a program of skin care to prevent pressure sores;
 - 5025.1.4 maintaining a bowel and bladder training program;
 - 5025.1.5 assisting patients to ambulate and to carry out prescribed exercises between visits of the physical therapist;
 - 5025.1.6 assisting patients to adjust to any disabilities and to direct their interest into useful activities; and,

5025.1.7 assisting and teaching patients the activities of daily living such as: eating, dressing, grooming, and toilet activities.

5025.2 Restorative nursing shall be a distinct part of the inservice education program. There shall be orientation and training of new employees and continuing education of all the nursing service employees.

5025.3 Observation of patients documented in the nursing notes shall give evidence that care is adequate and that the restorative nursing care program is followed. Observations which assist in determining if care is adequate may include such items as personal appearance and grooming; freedom from offensive odors; absence of pressure sores; clean mouth and dentures. There shall be evidence that the staff encourage the patient to be out of bed, maintain good body positioning, eat in the dining room if able, and to take part in diversional or recreational activities.

5026 Use of Restraints

[Class: I Points: 20]

5026.1 Restraints shall be used only when necessary to protect the patient from self-injury or from injuring others. No patient shall be restrained for the convenience of the staff.

5026.2 The use of physical or chemical restraints shall be authorized in writing by a physician for a specified and limited period of time.

5026.2.1 The use of restraints on a mentally retarded individual shall be permitted when authorized by a physician or qualified mental retardation professional for use during behavior modification sessions.

5026.3 In case of emergency, licensed nursing personnel authorized by the facility in writing may order the use of restraints. Non-physician personnel shall notify the attending physician promptly.

5026.4 Patients shall not be subjected to the following types of restraints under any conditions: canvas jackets, canvas sheets, or canvas cuffs; leather belts, leather cuffs or leather hand mitts. Locked restraints are prohibited.

5026.4.1 A patient shall not be confined to any room by locking or fastening a door from the outside.

5026.5 A patient who is restrained shall have his position changed and the restraints removed long enough to give skin care every two hours.

5026.6 Methods of restraint shall permit quick removal in case of fire or other emergency.

5026.7 Side rails on beds are not restraints.

5030 ACCIDENT, ILLNESS AND DEATH

5031 Notice to Physician

[Class: II Points: 15]

5031.1 Any serious accident or change in a patient's condition shall be reported immediately to the attending physician and to the patient's family, guardian, or sponsor, as relevant.

5031.1.1 The physician shall be notified within a reasonable period of time, depending upon the seriousness of the patient's condition, but not to exceed 48 hours.

5032 Reports

[Class: II Points: 15]

5032.1 A written report shall be made of any incident or accident in which a patient is involved, either inside or outside the nursing home.

5032.2 The report shall include the following:

5032.2.1 date;

5032.2.2 time of occurrence;

5032.2.3 place of occurrence;

5032.2.4 details of the occurrence;

5032.2.5 date and time physician was notified;

5032.2.6 date and signature of reviewing physician (as required in §5012.5.7 of these regulations).

5032.3 The report shall be written and signed by the person who is responsible for the patient at the time that the accident or change in condition occurred.

5033 Report of Death

[Class: III Points: 10]

5033.1 The death of a patient shall be reported immediately to the attending physician and to the patient's family, guardian or sponsor as relevant.

5040 SOCIAL SERVICES

5041 Requirement

[Class: II Points: 15]

5041.1 A facility shall maintain the capacity directly or through contracted services to identify and meet social and emotional needs arising out of the patient's illness, treatment and stay in the facility.

5041.2 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.

5042 Plan for Services

[Class: II Points: 15]

5042.1 If social services are provided by the facility, they shall be provided under a clearly defined plan.

5043 Staffing

[Class: II Points: 15]

5043.1 A designated staff member shall be responsible for arranging for social services and for integration of social services with other services and care provided for the patient.

5043.2 If the designated staff member is not a qualified social worker, the facility shall have a written agreement with a qualified social worker or recognized social agency for consultation and assistance on a regular basis.

5043.3 Either a B.S.W. or an M.S.W. or an individual with a B.A. or B.S. degree in a related field with one year of experience in social work shall be considered as a qualified social worker. Consultation shall be provided for an individual who is not a B.S.W. or an M.S.W. by a B.S.W., an M.S.W. or an individual with a master's degree in a related field and at least three years experience in social work.

5044 Facilities

[Class: II Points: 15]

5044.1 Facilities shall be adequate for social services personnel and easily accessible to patients and staff and shall provide privacy for interviews.

5050 DIETETIC SERVICE

5051 Requirements

[Class: I Points: 20]

5051.1 A nursing home shall maintain a dietetic service which complies with this section. The dietetic service shall be organized either directly by the nursing home or through written agreement with a contractor who complies with the standards of this section.

5052 Director and Staffing

[Class: II Points: 15]

5052.1 The dietetic service shall be under the direction of a qualified dietitian employed by the nursing home on a full, or part-time basis.

5052.2 If a part-time consultant dietitian is employed, the consultant visits must be of sufficient duration to allow the carrying out of the duties set forth in §5052.2.1 and §5052.3 of these regulations, but shall not be less than one (1) hour per week per 30 patients.

5052.2.1 A consultative visit shall consist of the dietitian's direct observation of all aspects of the dietetic service in the course of a work week.

5052.3 The duties of a dietitian director or consultant dietitian shall include at least the following:

5052.3.1 planning and approval of all menus;

5052.3.2 participating in patient care planning;

5052.3.3 guidance to the food service supervisor and staff;

5052.3.4 all duties of the food service supervisor as set forth in §5052.5 of these regulations if a food service supervisor is not employed on a full-time basis.

5052.4 A dietetic service shall employ a full-time qualified food service supervisor whenever a full-time dietitian director is not employed.

5052.5 The food service supervisor, under the direction of the dietitian director or consultant dietitian, shall be responsible for at least the following:

5052.5.1 daily operation of the dietetic service;

- 5052.5.2 ensuring that therapeutic diets as ordered by a physician are served, and that no patient receives a therapeutic diet except as ordered by a physician;
- 5052.5.3 recommending the quantity, kinds and variety of food and supplies to be purchased; and,
- 5052.5.4 maintaining a file of recipes for menu items which shall be used in preparing foods listed on the posted menus.
- 5052.6 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.

5053 Menus and Supplies

[Class: II Points: 15]

- 5053.1 A facility shall have written dated menus which state portion sizes, planned at least fourteen days in advance by a qualified dietitian, for all diets. Menus shall be posted in the food preparation area.
- 5053.2 A menu shall not be used more than once in a week.
- 5053.3 If cycle menus are used, the cycle must cover a minimum of three weeks.
- 5053.4 A current approved diet manual must be on the area's premises in the food preparation area at all times.
- 5053.5 All menu changes shall be recorded.
- 5053.6 The dietetic service shall keep on file all menus and menu changes for at least ninety days.
- 5053.7 The dietetic service staff shall identify patients' likes and dislikes and substitute foods and drinks with equivalent nutritional values.
- 5053.8 A supply of non-perishable foods sufficient to meet all patient needs for three days (or such period as the Department shall direct) shall be kept on the premises and used only in the event of an unforeseen interruption in normal food service.

5054 Meals

[Class: I Points: 20]

- 5054.1 The dietetic service shall ensure that each patient receives at least three meals daily, or their equivalent which are prepared and served that day.

- 5054.2 Dietetic service staff shall offer substitute foods and drinks with equivalent nutritional value to all patients who refuse the food served at meal times.
- 5054.3 Meals served to a patient shall provide nutrients and calories for each patient, as ordered by a physician, based upon current recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council as adjusted for age, sex, weight, physical activity, and therapeutic needs; or, as follows:
- 5054.3.1 Meat Group: Two or more servings of lean meat, fish, poultry, eggs, or cheese with dried beans, other legumes or peanut butter as occasional alternatives. At least four ounces of edible meat or its equivalent shall be served daily. Eggs shall be served at least four times per week.
- 5054.3.2 Milk: Two or more cups of milk or its equivalent. Cheese, cottage cheese, yogurt, or ice cream may be used to meet part of the milk requirement.
- 5054.3.3 Vegetables: Two or more servings each day including yellow, orange or leafy green vegetables of other good source of Vitamin A at least four times per week.
- 5054.3.4 Fruit: Two or more servings each day, at least one of which shall be a citrus fruit or other good source of Vitamin C.
- 5054.3.5 Whole Grain or Enriched Bread and Cereal Products: One or more servings each meal with at least four servings each day.
- 5054.4 Therapeutic or special diets shall be served to patients in accordance with a physician's written orders retained in the patient's record of care.
- 5054.4.1 Food service personnel shall be advised in writing of such orders for therapeutic diets and any changes in orders.
- 5054.4.2 Physician orders for therapeutic diets shall be reviewed at the same time all other orders are reviewed and at least every three months.
- 5054.5 Not more than fourteen hours shall elapse between an evening meal and breakfast the next morning, which shall not be served before 7:00 a.m.
- 5054.6 Every patient shall be encouraged to eat in the dining room, unless medically contraindicated.

- 5054.7 Trays served to patients in their rooms shall be provided with firm supports.
- 5054.8 Self-help feeding devices shall be provided as appropriate.
- 5054.9 Foods shall be prepared by methods that conserve nutritional value, flavor, and appearance, and shall be attractively served at optimum temperatures in a form to meet the needs of individual patients.
- 5054.10 Iodized salt shall be used in cooking and available for table use.
- 5054.11 Salt shall not be omitted in food preparation except according to a physician's orders.

5060 PHARMACEUTICAL SERVICES

5061 Requirements

[Class: I Points: 20]

- 5061.1 A facility shall ensure the provision of pharmaceutical services. All pharmaceutical services shall be provided in accordance with this section and all other applicable Federal, State and local laws and Rules and Regulations of the West Virginia Board of Pharmacy.
- 5061.2 The nursing home shall have a written agreement with any pharmacist consultant in accordance with Rules and Regulations of the West Virginia Board of Pharmacy.

5062 Supervision

[Class: II Points: 15]

- 5062.1 The pharmaceutical service shall be under the supervision of a pharmacist currently registered with the West Virginia Board of Pharmacy.
- 5062.2 A staff or consultant pharmacist shall be responsible for the receipt, control and distribution of drugs and biologicals and for maintaining at least those records required by applicable Federal, state and local laws and regulations.
- 5062.3 The staff or consultant pharmacist shall further be responsible for the following:
- 5062.3.1 developing in consultation with the pharmaceutical services committee a manual of policies and procedures not inconsistent with this section and including at least those matters required by the Rules and Regulations of the West Virginia Board of Pharmacy;

- 5062.3.2 providing at least one educational program each quarter for all nursing personnel on subjects pertaining to the pharmaceutical service of the facility and maintaining written records on all inservice educational programs to indicate the content of and attendance at the program;
- 5062.3.3 participating in the activities of the Pharmaceutical Services Committee;
- 5062.3.4 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 incident reports relating to drug therapy;
- 5062.3.5 reviewing in the medical record the drug regimen of each patient at least monthly and reporting any irregularities to the attending physician, the Director of Nursing, and to the facility administrator; and,
- 5062.3.6 inspecting each nursing station and all other areas of the nursing home where drugs and biologicals are stored at least once every thirty days. The inspection shall be documented in writing with a signed and dated report by the pharmacist.

5063 Pharmaceutical Services Committee

[Class: III Points: 10]

- 5063.1 A nursing home shall have a pharmaceutical services committee which develops written policies and procedures for safe and effective drug therapy, distribution, control and use.
- 5063.2 The committee shall be composed of at least the pharmacist, the director of nursing services, the nursing home administrator, and one physician.
- 5063.3 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.
- 5063.4 The committee shall meet at least quarterly and document its activities, findings and recommendations in writing.
- 5063.5 The pharmaceutical services committee shall review incidents relating to drug therapy and the quarterly report of the pharmacist.

5064 Policies

[Class: I Points: 20]

- 5064.1 All orders for medications and treatments for patients shall be in writing and signed by the attending physician.
- 5064.2 A physician's verbal or telephone order for medications or treatments may be received only by licensed nurses or a certified physician assistant, if identified as a responsibility in the physician assistant's job description.
- 5064.3 A physician's verbal or telephone orders shall be written immediately on the patient's order sheet, noted in the permanent medical record and signed by the accepting licensed nurse or certified physician's assistant and shall be countersigned by the physician on his or her next visit or by mail if returned within ten (10) days.
- 5064.4 Drugs and biologicals shall be administered only by physicians, licensed nurses, or certified physician assistants as detailed in their job descriptions.
- 5064.5 Written policies and procedures shall be established by the pharmaceutical services committee to ensure that drugs are checked against physicians' orders.
- 5064.6 Medication errors and adverse drug reactions shall be reported immediately to the patient's physician verbally, and entered in the patient's medical record.
- 5064.7 An adverse drug reaction and/or allergy shall also be documented on the outside cover of the medical record.
- 5064.8 A current medication reference text and sources of information, determined by the pharmaceutical service committee, concerning drugs, their indications, actions, reactions, interactions, counterindications, cautions, precautions, and dosages, shall be kept at each nursing station.
- 5064.9 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.

5065 Patient Medications

[Class: I Points: 20]

- 5065.1 A patient's medications shall be labeled in accordance with this section and other applicable Federal, state and local laws and regulations.
- 5065.2 Except for single unit dose package distribution systems, the label of each patient's individual medication container shall clearly state the following information:

5065.2.1 the patient's full name;

- 5065.2.2 the name and strength of the drug;
 - 5065.2.3 drug's date of issue from the pharmacy;
 - 5065.2.4 name of prescribing physician;
 - 5065.2.5 the pharmacy name, address and telephone number;
 - 5065.2.6 the prescription number; and,
 - 5065.2.7 the directions on how and when to administer the medication.
- 5065.3 All drugs and biologicals shall be stored in a locked cabinet or medicine cart near the nurses station, and only personnel authorized in writing shall have access to the keys.
- 5065.4 A patient's prescription medication shall be stored in the container in which it is received from the pharmacy; and all nonprescription drugs and biologicals shall be stored in their original container as labeled and distributed by the manufacturer.
- 5065.5 A medication container with an incomplete, or illegible label shall be returned to the issuing pharmacist for relabeling.
- 5065.6 Medication shall be released to a patient upon discharge only on the written authorization of a physician.
- 5065.6.1 Medication released to a patient shall be relabeled and repackaged by the facility pharmacist with directions for use in accordance with the regulations of the West Virginia Board of Pharmacy.
 - 5065.6.2 Documentation of medication released to a patient shall be entered in the patient's medical record.
- 5065.7 All discontinued, outdated, adulterated, deteriorated and deceased patients' medications and biologicals shall be disposed of or destroyed in the nursing home by the consulting pharmacist and a licensed nurse employed by the nursing home once every thirty (30) days or more often if needed. This procedure shall be documented in writing in accordance with guidelines established by the Director. All medication destruction sheets shall be signed and dated by the pharmacist and by the licensed nurse. All medication destruction sheets shall be kept on file at the nursing home for a period of one (1) year. The medication destruction sheet shall clearly state the following information:
- 5065.7.1 the name of the patient for whom the drug or biological was prescribed;
 - 5065.7.2 the prescription number;

5065.7.3 the name of the pharmacy;

5065.7.4 the name and strength of the drug or biological;
and,

5065.7.5 the amount of drug or biological that was destroyed.

5066 Medication Storage

[Class: II Points: 15]

5066.1 Schedule II Drugs as defined in the Rules and Regulations of the West Virginia Board of Pharmacy shall be stored separately in permanently affixed containers in such a manner so that they are securely protected by two locks.

5066.2 A record of administering Schedule II Drugs as defined in the Rules and Regulations of the West Virginia Board of Pharmacy shall be maintained which lists on a separate log sheet for each type of Schedule II drug the following information:

5066.2.1 the patient's name;

5066.2.2 date and time the drug is administered;

5066.2.3 amount of the drug administered;

5066.2.4 signature of licensed nurse administering the drug;

5066.2.5 name of physician who prescribed the drug; and,

5066.2.6 amount of the drug remaining in the container.

5066.3 Medications which require refrigeration shall be kept in a medication refrigerator or in a locked box in a refrigerator separate from food. The refrigerator shall have a thermometer to indicate temperature.

5066.4 Medication for external^{use} only shall be kept separate from medications which are taken internally.

5066.5 The control of drugs subject to the Uniform Controlled Substances Act (§60A of the West Virginia Code) shall comply with federal and state laws and Rules and Regulations of the West Virginia Board of Pharmacy concerning procurement, storage, dispensing, administration and disposition of controlled substances.

5066.6 In accordance with federal, state and local laws, and Rules and Regulations of the West Virginia Board of Pharmacy, an emergency medication kit, approved by the pharmaceutical service committee shall be kept readily available at each nursing station.

5070 MEDICAL RECORD SERVICES

5071 Requirements

[Class: II Points: 15]

- 5071.1 A facility shall maintain a medical record for each patient, which complies with the standards set forth in this section.
- 5071.1.1 Medical records shall be completed promptly within a time specified in the facility's policies and procedures, not to exceed thirty days past discharge.
- 5071.1.2 All clinical information pertaining to a patient's stay and medical care shall be centralized in a single medical record following discharge.
- 5071.1.3 Medical records of discharged patients shall be maintained for at least five years from date of discharge, or in the case of a minor, three years after the patient becomes of age under state law.
- 5071.2 Overall supervisory responsibility for the maintenance of medical records services shall be assigned to a full-time employee of facility.
- 5071.2.1 The facility shall employ sufficient personnel competent to perform the functions required of a medical record service.
- 5071.2.2 Records shall be maintained at a location that is accessible to appropriate staff.
- 5071.3 Medical records shall be kept in a manner which is orderly and which maintains ready accessibility and retrieval of information.

5072 Confidentiality

[Class: II Points: 15]

- 5072.1 The facility shall safeguard medical record information against loss, destruction or unauthorized use.
- 5072.2 The facility shall establish written policies 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.
- 5072.3 Access to medical records shall be limited to designated staff members, physicians, representatives of the West Virginia Board of Health, authorized representatives of federal or state departments of health, agencies designated by a third party payment contract, or a person or agency given written permission by the patient (or by a responsible person designated to act on his behalf).

5073 Contents

[Class: II Points: 15]

- 5073.1 A patient's medical record shall contain at least the information specified in this section.
- 5073.2 Basic identifying information:
- 5073.2.1 patient's name and any identification number;
 - 5073.2.2 room number;
 - 5073.2.3 social security number;
 - 5073.2.4 marital status;
 - 5073.2.5 date of birth;
 - 5073.2.6 sex;
 - 5073.2.7 home address;
 - 5073.2.8 telephone number of referral agency including hospital from which admitted;
 - 5073.2.9 name, address, telephone number of attending physician;
 - 5073.2.10 name, address and telephone number of next of kin, or other responsible person;
 - 5073.2.11 religious preference; and,
 - 5073.2.12 any pre-burial arrangements.
- 5073.3 Date and time of admission.
- 5073.4 A signed, dated admission and medical history, completed in accordance with §5012.5.1.
- 5073.5 Signed physician's orders, including those pertaining to medication, special procedures, treatments, diet and medical procedures.
- 5073.5.1 A physician shall countersign all verbal orders at the time of his or her next visit or by mail if returned within ten (10) days.
- 5073.6 Progress notes signed and dated at the time of each entry by appropriate staff authorized to write notes according to the written policies of the facility.
- 5073.6.1 Policies shall specify the authority of at least the following types of practitioners to write progress notes in medical records: nurses; social workers; therapists; psychologists; dentists; and, podiatrists.

- 5073.7 Nursing notes kept current and signed by nursing personnel including at least the following:
- 5073.7.1 description of the care provided;
 - 5073.7.2 nursing history;
 - 5073.7.3 assessment of observed signs and symptoms;
 - 5073.7.4 reactions to treatments and medications;
 - 5073.7.5 changes in patient's physical or emotional condition;
 - 5073.7.6 documentation of any unusual incidents involving a patient; and
 - 5073.7.7 nursing summary as indicated by patient needs.
- 5073.8 Signed and dated laboratory and x-ray reports, when such procedures have been ordered.
- 5073.9 An patient care plan as required in §5074.1; and
- 5073.10 A nursing care plan as required in §5074.1; and
- 5073.11 A discharge plan as required in §5074.4.
- 5074 Plans for Care
- [Class: I Points: 20]
- 5074.1 A patient care plan shall be developed for each patient upon admission and maintained by the nursing service in cooperation with all other services. The plan of care shall provide a profile of the needs of the individual patient, identify the role of each service in meeting those needs, and the supportive measures each service will use to complement each in the accomplishment of the overall goal of care. The patient care plan shall be in writing and contain at least the following:
- 5074.1.1 goals to be accomplished;
 - 5074.1.2 individually designed activities to meet goals;
 - 5074.1.3 therapies;
 - 5074.1.4 treatments, including diet requirements; and,
 - 5074.1.5 a statement of which professional service or individual is responsible for each element prescribed in the plan.
- 5074.2 A nursing home shall have written policies and procedures as to patient care plans including the following:

- 5074.2.1 Through patient care conferences or other methods of coordination, the patient care plan shall be reviewed and revised as needed but at least quarterly. Such review shall be noted in the medical record.
- 5074.2.2 Policies shall delineate the rules and responsibilities of each service in relation to the patient care plan.
- 5074.2.3 The patient care plan shall be available for use by all personnel caring for the patient.
- 5074.2.5 Relevant information from the patient care plan shall be made available with other information that is transmitted when the patient is transferred to another facility or referred for continuing care by other agencies upon discharge to the community.
- 5074.3 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:
- 5074.3.1 how the nursing staff will provide care needed to achieve the goals in the patient care plan;
- 5074.3.2 medications and treatments;
- 5074.3.3 diets and special dietary needs;
- 5074.3.4 activity limitations, if any;
- 5074.3.5 a bathing and grooming schedule; and,
- 5074.3.6 recreational activities and limitations for the patient.
- 5074.4 A discharge plan shall be maintained and shall include at least the following:
- 5074.4.1 an appropriate summary of information about the discharged patient to ensure optimal continuity of care; and,
- 5074.4.2 details concerning any medications and instructions given to the patient and/or family or sponsor.

5080 RECREATION AND ACTIVITIES SERVICES

5081 Requirements

[Class: II Points: 15]

- 5081.1 A nursing home shall provide a planned and diversified program of patient activities.
- 5081.2 The patient activities program shall be planned to maximize self care, resumption of normal activities and an active level of patient participation.
- 5081.3 A diversity of physical, social, spiritual and recreational activities shall be planned and available seven days a week.
- 5081.4 A facility shall make provisions to enable relatives and friends of a patient to participate in activities with a patient.

5082 Policies

[Class: II Points: 15]

- 5082.1 A patient activities area shall be provided with comfortable furniture in good repair.
- 5082.2 A facility shall provide transportation for patients to and from patient activities.
- 5082.3 Only upon a physician's orders shall a patient's participation in an activities program be limited and such order shall be given in accordance with §3055.11, §3055.18, and §3052 of these regulations.
- 5082.4 Appropriate activities shall be provided to patients unable to leave their rooms.

5083 Director

[Class: II Points: 15]

- 5083.1 A nursing home shall appoint a patient activities director and such additional staff as needed to carry out the patient activities program, but not to be less than one staff member per 120 patients in the nursing home.
- 5083.1.1 A patient activities director shall be qualified by training and/or experience and if not qualified, a qualified consultant may be used to assist the director.
- 5083.2 A patient activities director's duties shall include at least the following:
- 5083.2.1 maintenance of a current record of community services, resources, programs and facility materials accessible to the staff, patients, and patients' relatives and friends;

5083.2.2 development of a written monthly activities schedule at least one month in advance;

5083.2.3 ascertaining from each patient's care plan any physician's orders limiting any patient's participation in the activities program; and,

5083.2.4 providing inservice training to other staff members on patient activities.

5090 DENTAL SERVICES

5091 Organization

[Class: II Points: 15]

5091.1 A facility shall have a written plan to assist patients in obtaining routine and emergency dental care.

5091.2 A facility shall maintain a list of dentists in the community for patients who do not have a private dentist.

5092 Transportation

[Class: II Points: 15]

5092.1 A facility shall help a patient to arrange transportation to and from a dentist, as appropriate.

5093 Inservice Training

[Class: II Points: 10]

5093.1 A facility shall ensure that a dentist participates at least annually in its staff development program on dental and oral hygienic practices.

5093.1.1 If approved in writing by a dentist, this requirement may be satisfied by a licensed dental hygienist.

5100 INFECTION AND COMMUNICABLE DISEASE CONTROL

5101 Committee

[Class: III Points: 10]

5101.1 A nursing home shall establish an infection control committee.

5101.2 The infection control committee shall consist of at least the following persons:

5101.2.1 the administrator;

5101.2.2 the medical director or a physician;

- 5101.2.3 the director of the nursing services;
- 5101.2.4 the director of the dietetic service; and,
- 5101.2.5 the housekeeper.

5102 Policies and Procedures

[Class: II Points: 15]

- 5102.1 The infection control committee shall develop for the facility written policies and procedures on at least the following:
 - 5102.1.1 preventing and controlling infection in the facility;
 - 5102.1.2 maintaining a sanitary environment;
 - 5102.1.3 identifying infections within the facility;
 - 5102.1.4 reviewing the health status of employees; and,
 - 5102.1.5 ensuring staff compliance with infection control policies and procedures.
- 5102.2 The infection control committee shall establish written policies and procedures in aseptic and insolation technique.
- 5102.3 The infection control committee shall meet no less than quarterly.

5103 Isolation

[Class: II Points: 15]

- 5103.1 Any patient who contracts a communicable disease shall be segregated from other patients as described in the policies required by §5102.1 of these regulations.
- 5103.2 Isolation techniques to prevent the transfer of the disease to other patients and staff of the facility shall be employed.
- 5103.3 The patient shall be removed from the facility as soon as suitable arrangements are made for continuing his or her care and for the prevention of exposure of other persons to the disease.

5110 STAFF DEVELOPMENT

5111 Orientation

[Class: II Points: 15]

- 5111.1 A facility shall provide each employee with documented orientation to the facility, its policies, and to the employee's position.

5111.1.1 Reference should be made to the following sections of these regulations to determine the minimum appropriate orientation and/or training:

- \$3033.1.7 (relating to in-service training records)
- \$3033.3 (relating to personnel policies, job descriptions, etc.)
- \$3042 (relating to training for disaster plans)
- \$3051.4 (relating to patients' rights training)
- \$3057.7 (relating to training on complaint procedures)
- \$5011.3.8 (relating to physician participation in training)
- \$5022.2.5 (relating to Director of Nursing duty to orient staff)
- \$5025.2 (relating to orientation to restorative nursing)

5112 In-Service Training

[Class: II Points: 15]

5112.1 Personnel who provide direct patient care but are not required to be licensed, registered or certified shall receive special instruction under the direction of the director of nursing services.

5113 Twelve-Month Training Plan

[Class: III Points: 10]

5113.1 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:

- 5111.3.1 training related to problems and needs of the aged, ill and disabled;
- 5111.3.2 inservice training concerning prevention and control of infections, fire and safety rules, accident prevention, confidentiality of patient information, protection of patient privacy and personal property rights, and all other topics required by these regulations; and,
- 5111.3.3 provisions for monthly inservice training for all employees of the facility.

5113.2 A facility shall document the contents of, and attendance at, inservice training.

5114 Staffing

[Class: III Points: 10]

5114.1 A facility shall designate an inservice training coordinator who shall be responsible for:

5114.1.1 implementing the planned program of inservice training; and,

5114.1.2 ensuring the documentation of attendance at all inservice training programs.

