

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #7

Do Not Mark In This Box  
Filing Date

**FILED**

2003 JUL 24 P 4: 03

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

**NOTICE OF AN EMERGENCY RULE**

AGENCY: DHHR - Bureau for Public Health TITLE NUMBER: 64

CITE AUTHORITY: W. Va. Code §§16-5D-5, -17 and 16-1-4

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

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

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_ 14

TITLE OF RULE BEING PROPOSED: Assisted Living Residences

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

This filing is to comply with the requirement in W. Va. Code § 16-5D-17 (c) that states:

"... the Secretary [of the Dep't of Health and Human Resources] shall promulgate emergency rules pursuant to the provisions of §29A-3-15 by the first date of September, two thousand three, to implement this program."

Use additional sheets if necessary

  
Authorized Signature

## **Brief Summary of the Rule**

This rule establishes minimum standards for inspection and operation of assisted living residences in the areas of: administrative policies; personnel; safety; sanitation; protective, personal, and health care services; dietary services; activity and social services; record keeping; physical facilities; nursing care and other items or considerations deemed necessary to ensure the health, safety and welfare of the residents, in accordance with West Virginia Code §16-5D-1 et seq. The major change is that this rule combines the standards for two former levels of care, personal care homes, and residential board and care homes, into one rule.

**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** Assisted Living Residences 64csr14

**Type of Rule:**  Legislative                       Interpretive                       Procedural

**Agency:** Bureau for Public Health (For the Division of Health)  
Department of Health and Human Resources

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

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
<b>Estimated Total Cost</b>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
<b>Personal Services</b>					
<b>Current Expense</b>					
<b>Repairs &amp; Alterations</b>					
<b>Equipment</b>					
<b>Other</b>					
<b>Revenue</b>	-0-	-0-	-0-	-0-	-0-

**2. Explanation of above estimates.**

Because this rule replaces existing rules which require no more or less activity than is currently expended by the State for review of affected health facilities, there is no change in the cost to the State as a result of this rule.

**3. Objectives of this rule:**

This rule, Assisted Living Residences, establishes minimum standards for inspection and operation of assisted living residences in the areas of administrative policies; personnel; safety; sanitation; protective, personal, and health care services; dietary services; activity and social services; record keeping; physical facilities; nursing care and other items or considerations deemed necessary to ensure the health, safety and welfare of the residents, in accordance with West Virginia Code §16-5D-1 *et seq.* The major change is that this rule combines the standards for two former levels of care, personal care homes and residential board and care homes into one rule.

**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government.**

Because this rule replaces current rules for licensing these type of facilities there is no additional activity required of State Government for the review and licensing of these facilities and consequently no change in the cost of doing so.

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

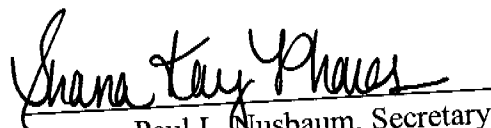
There is no additional cost to existing facilities given that this rule replaces existing rules which establish the standards as a condition of licensure.

**C. Economic Impact on Citizens/Public at Large.**

There is no additional cost to residents of existing facilities given that these requirements replace existing ones.

Date: July 23, 2003

Signature of Agency Head or Authorized Representative



Paul L. Gusbaum, Secretary  
Department of Health and Human Resources



**EMERGENCY RULE QUESTIONNAIRE**

DATE: July 24, 2003

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) John Wilkinson, Director

Office of Health Facility Licensure & Certification

350 Capitol Street, Room 206

Charleston, WV 25301

Tel: 558-0050 Fax: 558-2515

EMERGENCY RULE TITLE: Assisted Living Residences

1. Date of filing July 24, 2003

2. Statutory authority for promulgating emergency rule:

W. Va. Code § 16-5D-17(c)

3. Date of filing of proposed legislative rule: July 24, 2003 (Agency Approved filing)

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? This rule is required by amendments to WV Code §16-5D-1 et seq,

specifically §16-5D-17 and repeal of 16-5H. This rule combines

personal care homes and residential board and care homes. formerly

two levels of care, into one level of care, replacing those 2 rules with

one

5. Has the same or similar emergency rule previously been filed and expired?

no

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

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\_\_\_\_\_  
\_\_\_\_\_

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

~~Required by WV Code §16-5D-17(c).~~

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

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TITLE 64  
LEGISLATIVE RULES  
BUREAU FOR PUBLIC  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 14  
ASSISTED LIVING RESIDENCES

FILED

2003 JUL 28 A 10:01

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§64-14-1. General.**

1.1. Scope. -- This legislative rule establishes specific standards and procedures to provide for the health, safety, and the protection of the rights and dignity of residents of assisted living residences. This rule should be read in conjunction with W. Va. Code §16-5D-1 et seq. The W. Va. Code is available in public libraries and on the Legislature's web page, <http://www.legis.state.wv.us/>.

1.2. Authority. -- W. Va. Code §§16-5D-5, -17, and 16-1-4.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal and Replacement of Former Rules. -- This rule repeals and replaces Division of Health rules, "Personal Care Home Licensure Rule," 64CSR14, effective August 15, 1996 and "Residential Board and Care Homes," 64CSR65, effective August 1, 1997.

**§64-14-2. Application and Enforcement.**

2.1. Application. This rule applies to any individual person and any organization, incorporated or unincorporated, including a partnership, corporation, trust, association or political subdivision of the State establishing, maintaining or operating an assisted living residence as defined in W. Va. Code §16-5D-2 and this rule. This rule does not apply to homes or asylums operated by fraternal orders pursuant to W. Va. Code §35-3-1 et seq., or to health care facilities subject to other applicable licensure rules, such as nursing homes, residential care communities, and behavioral health centers.

2.2. Enforcement. This rule is enforced by the Commissioner of the Bureau for Public Health, or his or her designee.

**§64-14-3. Definitions.**

In addition to the following definitions, the definitions in W. Va. Code §16-5D-2 are applicable to this rule.

3.1. Abuse. -- The infliction or threat to inflict injury, unreasonable confinement, misuse of physical or chemical restraints, intimidation, or punishment with resulting physical harm, pain, or mental anguish, including the following:

3.1.a. Mental Abuse. -- Includes, but is not limited to, humiliation, harassment, threats of punishment or deprivation;

3.1.b. Physical Abuse. - Includes, but is not limited to, hitting, slapping, pinching, kicking, and use of controlling behavior through corporal punishment;

3.1.c. Sexual Abuse. - Includes, but is not limited to, harassment, coercion, or assault of a sexual nature; and

3.1.d. Verbal Abuse. - Includes, but is not limited to, the use of oral, written, or gestured language in communicating with a resident or used within the resident's hearing regardless of the resident's age, ability to comprehend or disability, that contains disparaging and derogatory terms.

3.2. Activities of Daily Living. -- The activities that individuals generally perform regularly in the course of maintaining their physical selves, such as eating, dressing, oral hygiene, toileting, personal grooming, and moving themselves from one location to another.

3.3. Administration of Medication. -- Assisting a person in the ingestion, application or inhalation of medications, including both prescription drugs and non-prescription drugs.

3.4. Administrator. -- The owner or individual selected by the licensee to be responsible for the day-to-day operation of the assisted living residence.

3.5. Adult Day Care. -- Care and supervision for elderly or disabled adults during daytime hours only.

3.6. Assisted Living Residence or Residence. -- Any living facility or place of accommodation in the state, however named, available for four (4) or more residents, that is advertised, offered, maintained or operated by the ownership or management, for the express or implied purpose of providing personal assistance, supervision, or both, to any residents who are dependent upon the services of others by reason of physical or mental impairment, and who may also require nursing care at a level that is not greater than limited and intermittent nursing care. A small assisted living residence has a bed capacity of four (4) to sixteen (16). A large assisted living residence has a bed capacity of seventeen (17) or more.

3.7. Bed Capacity. -- The number of residents an assisted living residence is licensed to house.

3.8. Classification of Standards. -- The designation assigned to the requirements in this rule indicating the level of impact the requirement has on the health, safety and welfare of the residents. There are three (3) levels used, indicated by Class I, Class II and Class III, with Class I having the most impact and Class III the least.

3.9. Commissioner. -- The Commissioner of the Bureau for Public Health or his or her designee.

3.10. Communicable Disease. -- An illness caused by an infectious agent or its toxic product that is transmitted, directly or indirectly, to a susceptible host from an infected person or animal, or through the agency of an intermediate host or a vector or through the inanimate environment.

3.11. Developmental Disorder. -- A group of disorders in which the predominant disturbance is in the acquisition of cognitive, language, motor, or social skills. The disturbance may involve a general delay, as in mental retardation, or a delay or failure to progress in a specific area of skill acquisition or multiple areas in which there are qualitative distortions of normal development.



3.12. Disability. -- Any limitation of physical, mental, or social activity of an individual as compared with other individuals of similar age, sex, and occupation. It frequently refers to limitation of the usual or major activities, most commonly vocational.

3.13. Existing Assisted Living Residence. -- A personal care home or a residential board and care home licensed or eligible for license on the effective date of this rule.

3.14. Exploitation. -- The act or process of taking unjust advantage of another for one's own benefit that includes, but is not limited to, the deliberate misplacement or wrongful use of a resident or the resident's belongings or money without the resident's consent.

3.15. Extensive Nursing Care. -- The nursing care required when there is a major deviation from normal in a body system or multiple body systems of such magnitude that the deviations are life-threatening and the individual's condition is unstable and unpredictable.

3.16. Functional Needs Assessment. -- Any measurement tool that identifies for the resident and the licensee those services that the licensee will need to obtain or provide for the resident in order to promote the resident's health, comfort, dignity and independence.

3.17. Health Care Facility. -- A public or privately owned institution, entity or adult residential facility or any part or unit thereof, that offers or provides health care services, such as personal assistance, supervision, nursing care, or behavioral health care, that is required to be licensed in accordance with State law to provide such services.

3.18. Immediate and Serious Threat. -- A situation that present a high probability of serious harm or injury to one (1) or more residents. An immediate or serious threat need not result in actual harm to any resident.

3.19. Imminent Danger. -- A situation that could reasonably be expected to immediately cause or contribute to death, serious physical harm or illness to a resident, household member or staff before the situation can be eliminated through a correction plan according to Subsection 4.10 of this rule.

3.20. Legal Representative.<sup>1</sup> --

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

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

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

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

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

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

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

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

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

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

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

3.20.j. An individual lawfully appointed in a similar or like relationship of responsibility for a consumer under the laws of this State, or another legal jurisdiction, within the limits of the applicable law.

3.21. Licensed Health Care Professional. - A health care professional currently licensed in West Virginia including, but not limited to, a social worker, dentist, practical nurse, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, registered professional nurse, or speech-language pathologist.

3.22. Life Care Contract. -- A financial agreement between the licensee and an individual in which the licensee agrees to provide specified care to the individual for the rest of the individual's life.

3.23. Limited and Intermittent Nursing Care. -- Direct hands on nursing care of an individual who needs no more than two (2) hours of nursing care per day for no longer than ninety (90) consecutive days per episode provided that this time limitation shall not apply to an individual who, after admission to an assisted living residence, subsequently qualifies for and receives services coordinated by a licensed hospice or a medicare-certified home health agency. Limited and intermittent nursing care may only be provided by or under the supervision of a registered professional nurse.

3.24. Major Incident. -- An event or occurrence, the outcome of which places one or more resident's health and well-being in imminent danger, such as:

3.24.a. A fall, an accident or another event that seriously injures or threatens the life of the resident;

3.24.b. A resident's death occurring from other than natural causes;

3.24.c. A missing resident who is likely to injure himself or herself or who needs medication or treatment on a regular basis, and who is likely to have difficulty returning to the assisted living residence on his or her own;

3.24.d. Assault on a resident resulting in injury; and

3.24.e. Other suspected criminal activity or events that cause the disruption of normal assisted living residence activity, including threats or occurrences of extreme violence, explosions, fire or natural disasters.

3.25. Mental Disorder. -- An illness that affects the psychological well-being or behavior of an individual to the extent that the individual requires treatment for his or her own welfare or the welfare of others.

3.26. Neglect. -- Failure to provide for the necessities of daily living or the lack of care.

3.27. Nursing Care and Nursing Services. -- Those procedures commonly employed in providing for the physical, emotional and rehabilitation needs of the ill or otherwise incapacitated that require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, irrigations, catheterizations, special procedures contributing to rehabilitation and administration of medication by a method that involves a level of complexity and skill in administration not possessed by the untrained person.

3.28. Ongoing Nursing Care. -- Nursing care that continues in excess of ninety (90) days.

3.29. Personal Assistance. -- Services, including, but not limited to the following: help in walking, bathing, dressing, eating, or getting in or out of bed, or supervision required because of the physical or mental impairment of the resident.

3.30. Residence. -- An assisted living residence as defined in Subsection 3.6.

3.31. Resident. -- An individual living in an assisted living residence for the purpose of receiving personal assistance, supervision, or limited and intermittent nursing services.

3.32. Restraint. --

3.32.a. Any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the resident cannot remove at will and that physically limits, restricts, or deprives the resident of movement or mobility; or

3.32.b. Any drug used to limit movement or mental capacity of a resident beyond the requirements of therapeutic treatment.

3.33. Self-administration of Medications. -- The act of a resident, who is independently capable of reading and understanding the labels of prescribed medication, in opening and accessing a prepackaged container of medication, accurately identifying and taking the correct dosage of the medication, at the correct time and under the correct circumstances as prescribed by the physician.

3.34. Service Plan. -- A written description of the services that need to be provided to a resident

to meet all of the needs identified in his or her functional needs assessment.

3.35. Significant Change. -- A change in a resident's condition that is major, impacts on more than one area of the resident's health status and requires intervention by a health care professional.

3.36. Supervision. -- The assumption of varying degrees of responsibility for the safety and well-being of residents including, but not limited to:

3.36.a. Being aware of the resident's whereabouts, to the extent identified as a need by the resident assessment or service plan;

3.36.b. Monitoring the activities of a resident while on the premises of the residence to ensure the resident's health, safety and well-being;

3.36.c. Reminding the resident of any important activities of daily living;

3.36.d. Overseeing the administration of medication if not administering it;

3.36.e. Purchasing of food and other supplies, and meeting nutritional and food needs; and

3.36.f. Arranging for or providing transportation as necessary.

#### **§64-14-4. State Administrative Procedures.**

##### 4.1. General Licensing Provisions.

4.1.a. A person establishing, maintaining, offering, operating or advertising an assisted living residence shall first obtain from the commissioner a license authorizing the operation.

4.1.b. A license is valid for the person and for the structure named in the application and on the license only, and is not transferable. After a license is issued, if there is any change in the name of the licensee or the name of the residence, the licensee shall notify the commissioner.

4.1.c. If the licensee owns more than one assisted living residence, each residence shall have a separate identification.

4.1.d. The words "clinic," "hospital," "nursing home," "residential care community" or any other words that suggest a type of facility other than an assisted living residence shall not be used in the name or the advertising of the residence.

4.1.e. The licensee is responsible for compliance with this rule, the terms of the assisted living residence's license, W. Va. Code §16-5D-1 et seq., and other relevant federal and state laws.

4.1.f. The commissioner may issue an initial or a renewal license for a period not to exceed one year, except if an applicant submits an application for renewal of a license currently in effect in accordance with this rule and W. Va. Code §16-5D-1 et seq., together with the required fee, the license shall continue in effect until:

4.1.f.1. One year following the expiration date of the license;

4.1.f.2. The date of a revocation or suspension of the license pursuant to this rule and W. Va. Code §16-5D-1 et seq., or

4.1.f.3. The date of issuance of a new license, whichever date occurs first.

#### 4.2. Initial Licensure Application.

4.2.a. An applicant for initial licensure shall submit a completed application to the office of health facility licensure and certification, along with a non refundable fee, and any additional information the commissioner may require.

4.2.b. The applicant shall have his or her signature on the application and accompanying forms notarized, and the signature shall serve as a release for obtaining references, credit and other background information.

4.2.c. The applicant shall pay the cost of the initial licensure inspections, pursuant to W. Va. Code §16-5D-6(i) before the issuance of an initial license.

4.2.d. The applicant shall provide to the commissioner a preliminary operating plan that includes a proposed budget with projected monthly income, a balance sheet showing all expenses and income on forms provided by the commissioner, including but not limited to, reimbursement of the owners, lease payment, and monthly rates charged.

4.2.e. The applicant shall submit the application and fee at least ninety (90) days prior to the date proposed for the commencement of operations.

4.2.f. Except as specified in Subsection 4.5 of this rule, and after a satisfactory inspection to ensure compliance with this rule, the commissioner shall issue an initial license.

4.2.g. If the licensee plans to move any residents of an assisted living residence to another location owned or operated by the licensee, he or she shall apply for a license for the new location at least ninety (90) days before the move.

#### 4.3. License Renewal.

4.3.a. The licensee shall postmark or hand deliver applications for renewal of a license to the commissioner at least ninety (90) days before the expiration date of the current license.

4.3.b. Except as specified in Subsection 4.4. of this rule, the commissioner shall issue a renewal license to an assisted living residence when the following conditions are met:

4.3.b.1. The residence is found to be in substantial compliance with this rule;

4.3.b.2. The applicant has submitted a completed application and all requested financial information; and

4.3.b.3. The residence has met all Class I standards of this rule.

#### 4.4. Non-Issuance of Initial or Renewal License.

4.4.a. The commissioner may refuse to issue or may revoke either an initial or a renewal license if he or she finds evidence of the following:

4.4.a.1. The applicant or licensee has a lack of financial stability to operate, such as insufficient capital, delinquent accounts, checks returned because of insufficient funds, and nonpayment of taxes, utility expenses and other essential services;

4.4.a.2. The applicant or licensee has a personal history that has:

4.4.a.2.A. Evidence of abuse, fraud, or substantial and repeated violations of applicable laws and rules in the operation of any health care facility or service organization, or in the care of dependent persons; or

4.4.a.2.B. A conviction of crimes related to the provision of care to a dependent population as a result of a criminal investigative background check by the West Virginia state police, through the central abuse registry or is listed on any abuse registry established by the state;

4.4.a.3. The applicant or licensee has been denied a license or has had a license to operate a health care facility revoked in West Virginia or any other jurisdiction during the previous five (5) years;

4.4.a.4. The applicant or licensee has a record of noncompliance with lawful orders of the department or other licensing or certification agency for any jurisdiction in which the applicant has operated, directed or participated in the operation of a health care facility;

4.4.a.5. The applicant, licensee or person in charge of the residence has refused the commissioner entry and access to residents and records for an inspection or survey;

4.4.a.6. The applicant or licensee has converted the property of a resident for his or her own use, or has secured property, or a bequest of property, from a resident by undue influence;

4.4.a.7. The applicant, licensee or administrator has submitted false information to the commissioner during the licensure process or during the course of an inspection or survey of the residence;

4.4.a.8. The applicant or licensee has moved residents of the assisted living residence to another location owned or operated by the applicant or licensee without prior approval of the location by the commissioner;

4.4.a.9. The applicant or licensee has built or renovated a residence without complying with the requirements of Subsection 4.12. of this rule;

4.4.a.10. The applicant or licensee has failed to correct a violation of any Class I standard, or has failed to be in substantial compliance with the requirements of this rule; or

4.4.a.11. The residence has failed to receive a recommendation for licensure from the state fire marshal.

4.4.b. Before refusing to issue an initial or renewal license or revoking a license, the

commissioner shall consider all available evidence at the time of the determination, including:

4.4.b.1. The history of the residence and the applicant or licensee in complying with this rule; and

4.4.b.2. Notices of violations that have been issued to the residence and the applicant or licensee, findings of surveys and inspections, and any evidence provided by the applicant or licensee, residents, law enforcement officials, and other interested individuals.

#### 4.5. Provisional License.

4.5.a. The commissioner may issue a provisional license when:

4.5.a.1. The licensee has failed to meet all the requirements of W. Va. Code §16-5D-1 et seq., but care given in the residence is adequate for the residents' needs, and the licensee has demonstrated improvement and evidences potential for substantial compliance during the term of the provisional license; or

4.5.a.2. All requirements for renewal of a license are not met prior to the expiration of the previously issued license.

4.5.b. When the commissioner issues a provisional license, he or she shall determine the period of time for which the license is valid, but the period shall not exceed one year.

4.5.c. The commissioner shall not renew a provisional license.

4.5.d. If the commissioner denies a provisional license or a provisional license expires, the applicant for a license shall meet the requirements for an initial license, including the cost of an initial application fee and inspections as determined by the commissioner.

4.5.e. The commissioner shall not issue a provisional license when the residence is in violation of any Class I standard or has a record of noncompliance with this rule.

#### 4.6. Inspections.

4.6.a. The commissioner shall inspect an assisted living residence as necessary to carry out the intent of W. Va. Code §16-5D-1 et seq. and this rule.

4.6.b. The commissioner shall conduct at least one inspection of a residence prior to issuing an initial license, but shall not conduct an inspection until after the following conditions are met:

4.6.b.1. The application and application fee have been received and the application has been determined to be complete; and

4.6.b.2. All requested documentation has verified the readiness of the residence for an inspection.

4.6.c. The commissioner shall conduct periodic unannounced inspections to determine the residence's continued compliance with this rule.

4.6.d. The commissioner has the right to enter a home or structure that is believed to be operating or maintained as an assisted living residence without a license, to conduct inspections without prior notice. If the operator or person in charge of the suspected assisted living residence refuses entry, the commissioner may apply to the circuit court in which the suspected residence is located or the circuit court of Kanawha County for a warrant to authorize an inspection or to compel admittance to the premises of the suspected residence.

#### 4.7. Complaint Investigation.

4.7.a. Any person may register a complaint with the commissioner alleging a violation of this rule by an assisted living residence or an individual alleged to be unlawfully operating an assisted living residence, by stating the complaint, identifying the name and address of the residence.

4.7.b. The commissioner may conduct investigations as necessary to determine the validity of the complaint and shall notify the licensee of the residence or the individual alleged to be operating an illegal assisted living residence of the complaint at the time of the completion of an investigation.

4.7.c. The commissioner shall notify the licensee or the operator of an unlicensed residence of any corrective action required, the time frame for completion of the corrective action, and any disciplinary action to be taken by the commissioner.

4.7.d. Except as provided in Subdivision 4.7.e., the commissioner shall keep the names of a complainant and of any resident named in the complaint confidential and shall not disclose the names to the public without written or verbal permission of the complainant and the resident, and his or her legal representative, if any, unless there is an immediate risk to the resident. The commissioner shall delete the name of a complainant or resident named in a complaint or information contained in the report of an investigation that could reasonably identify the complainant or any resident. Information contained in any report of abuse, neglect, or an emergency situation made in accordance with W. Va. Code §9-6-8 shall be confidential and shall not be released except as provided in that article.

4.7.e. If a complaint becomes the subject of a judicial proceeding, nothing in this rule is construed to prohibit the disclosure of information that would otherwise be disclosed in judicial proceedings.

4.7.f. Any type of discriminatory treatment of a resident or employee by whom or on whose behalf a complaint has been submitted to the commissioner, within one hundred twenty (120) days of the filing of the complaint or the institution of the action, raises a rebuttable presumption that the discriminatory treatment action was taken by the licensee in retaliation for the complaint or action.

4.7.g. If, after an investigation, the commissioner determines that the complaint has merit, he or she shall advise any injured party of the possibility of a civil remedy. In addition, residents, a resident's family, or a legal representative or ombudsman, may also independently pursue civil remedies for violations of this rule.

#### 4.8. Waivers.



4.8.a. The commissioner may waive a requirement of this rule if after a thorough investigation, he or she determines that the waiver will not adversely affect the health, safety, welfare or rights of the residents.

4.8.b. The licensee shall submit a written request for a waiver and the request shall:

4.8.b.1. Specify the specific requirement in this rule for which the waiver is requested;

4.8.b.2. Specify the time period for which the waiver is requested;

4.8.b.3. Include specific and detailed reasons for the request;

4.8.b.4. Explain why the specific requirement cannot be complied with; and

4.8.b.5. Document that there will be no adverse effect on the residents' health, safety, welfare, or rights if the waiver is granted.

4.9. Reports and Records.

4.9.a. The commissioner shall prepare a written report of any inspection made pursuant to this rule within fifteen (15) days of the completion of the inspection and shall mail to the licensee or administrator, as applicable, a statement of deficiencies that contain the violations of this rule.

4.9.b. The names of residents shall be kept confidential and shall not be disclosed without the resident's written permission or by order of court of record. Nothing contained in this rule shall be construed to require or permit the public disclosure of confidential medical, social, personal or financial records of any resident. Before releasing a report or record judged public information, the commissioner shall delete any information regarding a resident that would reasonably permit identification of the resident.

4.9.c. The commissioner shall provide notification to the social security administration if a residence demonstrates continued noncompliance with this rule.

4.9.d. The commissioner shall make copies of the following available at a reasonable cost for public inspection and upon request:

4.9.d.1. Information concerning and actual applications and exhibits;

4.9.d.2. Inspection reports;

4.9.d.3. Reports of the results of investigations conducted in response to complaints;

4.9.d.4. A current list of the names and addresses of assisted living residences found to be in violation of this rule, including the details of each violation; and

4.9.d.5. Any other reports filed with or issued by the commissioner pertaining to the compliance of an assisted living residence with applicable laws and rules.

4.10. Plans of Correction.

4.10.a. The licensee of an assisted living residence, found on the basis of inspection or other investigation to have violations of requirements in this rule, shall develop, sign and date a plan of correction, and submit it to the commissioner within fifteen (15) working days of receipt of the statement of deficiencies.

4.10.b. The commissioner shall require immediate correction of violations identified as constituting immediate and serious threats to the health or safety of a resident or employee.

4.10.c. For deficiencies other than those constituting immediate and serious threats, the licensee is expected to comply with the rule within sixty (60) days of the inspection, unless the commissioner waives this requirement and allows more time to correct certain types of deficiencies.

4.10.d. The plan of correction shall specify:

4.10.d.1. The violations to be corrected;

4.10.d.2. The actions taken or proposed to correct the violations and procedures to prevent their recurrence; and

4.10.d.3. The dates on which each violation is corrected or by which each will be corrected, that allows the shortest possible time to reasonably correct each specific violation.

4.10.e. The commissioner shall notify the licensee in writing of his or her approval, suggested modifications or rejection of the plan of correction, or any part thereof.

4.10.f. If modifying or rejecting the proposed plan of correction, the commissioner shall state the reasons for the modification or rejection.

4.10.g. If the commissioner rejects the plan of correction, the licensee has up to fifteen (15) working days from the receipt of the commissioner's determination to submit a revised plan.

4.10.h. The commissioner may conduct a follow-up on-site inspection to verify the correction of any violations identified during an inspection or any other investigation.

4.11. Classification of Standards.

4.11.a. In accordance with W. Va. Code §16-5D-5c), the classification for each standard indicates the most serious classification that may be assigned to that standard. See Subsection 3.8.

4.12. New Construction, Additions, Renovations and Alterations.

4.12.a. The requirements of this section apply in total to all proposed assisted living residences. Existing residences proposing additions and renovations shall meet only the requirements deemed applicable by the commissioner to the new or renovated portion.

4.12.b. For new construction, additions, renovations, or alterations to existing residences, and before construction begins on a proposed residence, the applicant shall submit a complete set of drawings and specifications for the architectural, structural, and mechanical work as follows:

4.12.b.1. For a large assisted living residence, an architect or engineer registered in West Virginia shall prepare, sign and seal the submitted set of construction drawings and specifications and submit one set of these documents to the commissioner and the state fire marshal for approval. The registered architect or engineer shall also inspect the new residence or the additions and renovations during the construction phase.

4.12.b.2. For a small assisted living residence, the applicant shall submit a set of drawings and specifications that are drawn to scale and fully dimensioned, to the commissioner and state fire marshal for approval.

4.12.b.3. Unless substantial construction is started within one year of the date of approval of final drawings, the architect, engineer or applicant, whichever applicable, shall obtain written permission from the commissioner that the plan approval for construction is still valid and in compliance with this rule.

4.12.c. The commissioner shall inspect sites for all proposed residences and sites of additions or renovations to existing residences, prior to the applicant initiating construction. Sites shall:

4.12.c.1. Have adequate drainage to divert surface water and be located in an area above the one hundred (100) year flood plain;

4.12.c.2. Have a water supply that is safe and sized to meet all residential needs and requirements of the sprinkler system and has as its source of water either:

4.12.c.2.A. A public water system that complies with the Division of Health rule, "Public Water Systems," 64CSR3; or

4.12.c.2.B. A water well that complies with the Division of Health rules, "Water Well Regulations," 64CSR19 and "Water Well Design Standards," 64CSR46; and

4.12.c.3. Have precautions to assure the residents' safety, if located near railroads, freight yards, traffic arteries or airports.

4.12.d. A qualified soils engineer shall review any questionable soil conditions, high walls, or surface water runoff, and if conditions require, perform earth core borings and laboratory tests. If engineered soil is installed or other soil tests conducted, the applicant shall provide the commissioner with copies of the soil test reports.

4.12.e. The commissioner shall inspect and approve all construction, new additions, renovations or alterations prior to the admission of new or additional residents. When construction is substantially complete, the applicant shall submit a substantial completion form signed by all the parties involved and a completed inspection request form to the commissioner.

4.12.f. The applicant is responsible for paying all fees specified in the Division of Health rule, "Fees for Services," 64CSR51 for site inspections of new construction or major renovations, architect reviews of drawings and specifications, and inspections of new projects before they begin.

4.12.g. The applicant shall submit plans for addition, removal or modification of equipment

that is permanently affixed to the building or that may otherwise involve or necessitate new construction, alterations, or additions to the residence to the commissioner for approval.

4.12.h. Other changes involving equipment, that may or may not require physical changes in the residence, but that may relate to other standards and requirements of this rule may require the commissioner's approval. The applicant shall request approval in advance from the commissioner regarding a specific change or rearrangement. Areas in which changes are likely to require approval include, but are not limited to, the kitchen, the laundry, and the heating equipment.

4.12.i. The applicant shall submit the plan of operation to the commissioner for approval, and the commissioner shall determine the licensed bed capacity. For an increase in the licensed bed capacity, the licensee shall obtain prior written approval of the commissioner.

4.12.j. The residence shall comply with the state building code, Building Officials and Code Administrators, 13<sup>th</sup> Ed. 1996 (BOCA).

4.12.k. The residence shall comply with the Fire Commission rule, "Fire Code," 87CSR1.

4.12.l. The residence shall comply with the Americans with Disabilities Act (ADA) and the American National Standards Institute (ANSI) codes.

4.12.m. The residence shall comply with local building or zoning codes if they require standards higher than those required by this rule.

4.12.n. The applicant shall have evidence of compliance signed by local fire, building and zoning officials available onsite for review.

4.12.o. The residence shall have an all weather hard surface road that connects directly to a highway.

4.12.p. The residence shall have parking areas with:

4.12.p.1. Clean, solid earth beds, a compacted stone base and a hard surface all weather finish coat, free of broken, gaped or uneven paving, with slopes that permit good drainage; and

4.12.p.2. Adequate spaces for all staff on duty and a minimum of one (1) parking space for each five (5) beds.

4.12.q. The residence shall have hard, slip resistant surface concrete walks at all exits that connect to the main walk or parking area, that are a minimum of thirty-six (36) inches wide.

4.12.r. The applicant shall ensure that low windows, open porches, changes in floor level and similar potential hazards are designed so that the danger of accidents is minimized, and that dangerous areas on the site are safeguarded.

4.12.s. The applicant shall store oxygen outdoors in an enclosure protected from the weather or in a well ventilated oxygen storage room of approved construction, with doors locked to prevent unauthorized entry.

4.12.t. The residence shall have a call system that is audible to staff who are on duty and that can be accessed from each bed and other areas as necessary for the safety of residents. Electronic call systems may be required based on the size of the residence, the staffing patterns and the configuration of the building.

4.12.u. Bedrooms shall :

4.12.u.1. Have at least one hundred (100) square feet of floor area per resident in single occupancy rooms, and ninety (90) square feet of floor area per resident in double occupancy rooms;

4.12.u.2. Have an outside exposure through a vertical transparent window;

4.12.u.3. Not extend below ground level unless granted written approval by the commissioner; and

4.12.u.4. Not be occupied by more than two (2) persons.

4.12.v. The residence's toilet and bathing facilities shall provide the following:

4.12.v.1. A minimum of two (2) bathrooms, each containing a flushing toilet and hand washing sink, with a mirror over the sink, at a ratio of one toilet and lavatory for every six (6) residents;

4.12.v.2. A minimum of one bathing facility per floor, with a bath tub or shower, equipped with non-slip surfaces, a flushing toilet and a hand washing sink, at a ratio of one bathing facility for every ten (10) residents;

4.12.v.3. Grab-bars at toilets, tubs, and showers that are securely mounted to the finished wall with a steel plate or a two (2) inch by six (6) inch wood plate backing behind the wall. Grab bar brackets shall be spaced to support two hundred and fifty (250) pounds of a concentrated load at any point on the grab bar; and

4.12.v.4. Bathroom doors with locking type hardware that swing outward and can be opened from outside in the event of an emergency.

4.12.w. The residence shall have a dining area of at least fifteen (15) square feet per resident and an area of at least fifteen (15) square feet per resident for leisure space. The dining room may serve as part of the leisure room, and if combined, a dining and leisure room area shall have a minimum of thirty (30) square feet per resident.

4.12.x. If the residence provides laundry services, the laundry room shall have separation between the soiled and clean laundry, mechanical ventilation in the soiled area, a clean area large enough for folding linens, and venting to the outside for any electric or gas dryer.

4.12.y. The residence shall have at least one service sink per floor for a sanitary means of disposal of waste water in an area inaccessible to residents.

4.12.z. The residence shall have sewage disposal in accordance with Division of Health rules, "Sewage System Rules," 64CSR9, and "Sewage Treatment and Collection System Design

Standards," 64CSR47.

#### **§64-14-5. Administrative Requirements.**

##### **5.1. General Administrative Requirements.**

5.1.a. The licensee shall develop and adopt written policies and procedures that are consistent with this rule and specific to the assisted living residence, governing the care and safety of residents, and all other policies and procedures required by this rule. The licensee shall sign and date the policies and procedures at the time of adoption and of any changes. (Class III)

5.1.b. The licensee shall have a copy of the policies and procedures available for review on request by employees, residents and the general public. (Class III)

5.1.c. The licensee shall have a resident bill of rights, and house rules governing resident behavior and responsibilities, that are both in writing and consistent with this rule. (Class III)

5.1.d. Unless otherwise approved in writing by the commissioner, a licensee shall not rent, lease or use any part of the residence for any purpose other than the operation of housing residents. (Class III)

5.1.e. A licensee that intends to provide adult day care shall obtain prior approval from the commissioner by notifying the commissioner of the number of individuals the residence proposes to serve in addition to the residence's licensed bed capacity. Individuals to be served shall have the same health screening as required for the residents and shall not have extensive or ongoing nursing care needs. The commissioner's determination shall be based on space requirements, services proposed to be provided, staffing, and the residence's history of compliance with this rule. (Class III)

5.1.f. Any individual, including an employee, or his or her spouse having a financial interest in the residence shall not serve as a resident's legal representative, with the exception of a representative payee under the United States Social Security Act, unless he or she is related to the resident within the consanguinity of second cousin. (Class III)

5.1.g. Prior to hiring an individual, the licensee shall submit the required information for central abuse registry screening and keep documentation of the information submitted. The licensee shall also determine if the individual is listed on the nurse aide abuse registry or any other abuse registry maintained by the state. The licensee shall not hire or maintain as an employee any individual who is listed on these registries. (Class II)

##### **5.2. The Licensee.**

5.2.a. The licensee shall comply with this rule, the terms of the assisted living residence's license, W. Va. Code §16-5D-1 et seq., other applicable federal, state or local laws, and with the residence's policies. (Class II)

5.2.b. The licensee shall protect the physical and mental well-being of residents. (Class II)

5.2.c. The licensee shall maintain accurate records and reports required by this rule.

(Class II)

5.2.d. The licensee shall administer the residence on a sound financial basis consistent with good business practices and shall maintain fiscal records that accurately identify, summarize, and classify funds received and disbursed for the operation of the residence. The issuance of bad checks or accumulation of delinquent bills shall constitute evidence that the licensee lacks satisfactory proof of financial ability to operate the residence in accordance with the requirements of W. Va. Code §16-5D-6. (Class II)

5.2.e. The licensee shall notify the commissioner in writing within ten (10) days of any permanent change in the administrator and in the consulting or supervising registered professional nurse of the residence. A licensee shall not operate a residence more than thirty (30) days without a qualified administrator or supervising registered professional nurse, unless the commissioner grants an extension, based on a determination that a reasonable attempt has been made to find a suitable replacement. (Class III)

5.2.f. The licensee shall report major incidents, as defined in Subsection 3.24, to the office of health facility licensure and certification as soon as possible, and no later than the next business day. (Class III)

### 5.3. Administrator.

5.3.a. A large residence shall have an administrator who is at least twenty-one (21) years of age and has an associate degree or its equivalent in a related field, except an individual who was approved as an administrator prior to August 15, 1996, who shall have at least a high school education or its equivalent approved by the state department of education. A small residence shall have an administrator who is at least twenty-one (21) years of age and has completed high school or a general education development (GED) certificate. (Class III)

5.3.b. The administrator shall have a personal history that is free of evidence of abuse, fraud, or substantial and repeated violations of applicable laws and rules in the operation of any health or social care facility or service organization, or in the care of dependent persons; or conviction of crimes related to the care to a dependent persons as evidenced by a criminal investigative background check by the West Virginia state police through the central abuse registry. (Class II)

5.3.c. The administrator shall participate in eight (8) hours of training related to the operation of a residence annually and a record of this training shall be available for review. (Class III)

5.3.d. The administrator shall know the requirements of this rule, develop and execute all policies and procedures required by this rule, ensure compliance with all applicable laws, and ensure the adequacy and appropriateness of services delivered to the residents. (Class II)

5.3.e. The administrator or a responsible employee, designated in writing, shall be present and in charge of the residence at all times. (Class II)

### 5.4. Staffing Requirements.

5.4.a. Each assisted living residence shall have a minimum of one direct care staff person twenty-four (24) hours per day, who can read and write, and shall have a sufficient number of

qualified employees on duty to provide the residents with all of the care and services they require. (Class I)

5.4.b. The residence shall have one additional direct care staff on the day shift for each ten (10) residents identified on their functional needs assessment to have two (2) or more of the following care needs: dependence on staff for eating, toileting, ambulating, bathing, dressing, repositioning, special skin care, or one or more inappropriate behaviors that reasonably requires additional staff to control, such as sexually acting out, stripping in public settings, refusing basic care, or destroying property; or injurious behavior to self or others; one additional direct care staff on the evening shift for each fifteen (15) residents identified on their functional needs assessment to have two (2) or more of these care needs; and one additional direct care staff on the night shift for each eighteen (18) residents identified with two (2) or more of these care needs. (Class I)

5.4.c. One employee who has current first aid training and current cardiopulmonary resuscitation (CPR) training, as applicable, shall be on duty at all times. A record of this training shall be available for review. (Class I)

5.4.d. The licensee shall have awake staff present in the residence during normal resident sleeping hours when residents require sleep time supervision. (Class I)

5.4.e. A multi story residence shall have at least one awake staff per story while residents are sleeping, unless the residents are certified by a physician or psychologist as not in need of sleep time supervision, and the residence has an emergency call system from the residents to the awake staff person. (Class I)

5.4.f. The residence shall have sufficient staff to meet the laundry, food service, housekeeping, and maintenance requirements of this rule. (Class II)

5.4.g. The licensee shall maintain staffing records that accurately reflect the actual employees on duty in the residence at any given time, including the hours they have worked, and provide them to the commissioner upon request. (Class III)

5.4.h. If a resident experiences a poor outcome related to a lack of supervision or unmet care needs, the commissioner may require the licensee to add staff. (Class I)

#### 5.5. Employee Orientation and Training.

5.5.a. The licensee shall provide and maintain a record of training to new employees prior to scheduling them to work unsupervised, and no later than within the first fifteen (15) days of employment, in accordance with a written plan that includes at a minimum emergency procedures and disaster plans; the residence's policies and procedures; resident rights; confidentiality; abuse prevention and reporting requirements; the ombudsmen's role; complaint procedures; specialty care based on individualized resident needs and service plans; care of residents with dementia; the provision of group and individual resident activities; and infection control. (Class II)

5.5.b. The licensee shall provide and maintain a record of in-service training annually to all staff on the topics of resident rights, confidentiality, abuse prevention and reporting requirements, care of residents with dementia, the provision of resident activities, infection control, and fire safety and evacuation plans. (Class II)



## 5.6. Personnel Records.

5.6.a. The licensee shall maintain a confidential personnel record for each employee, including the administrator, and for volunteers who provide personal assistance to more than one resident. Each record shall contain at least the following:

5.6.a.1. The date of employment, current home address and telephone number, social security number, and proof of compliance with age requirements of applicable federal and state laws;

5.6.a.2. Documentation of the results of screening through the West Virginia state police central abuse registry regarding previous convictions involving abuse, mistreatment or neglect of dependent populations, or theft of the property of those populations, and a check of the state nurse aide abuse registry.

5.6.a.3. A position title and proof of any required education or license; and

5.6.a.4. A health record containing the results of a pre-employment and annual screening for tuberculosis and other communicable diseases as indicated by exposure, prevalence or currently accepted medical practice in congregate living situations as indicated by the commissioner. (Class III)

5.6.b. The licensee shall maintain personnel records on file at the residence for at least three (3) years following the termination of an employee and shall document the date and reason for the termination. (Class III)

## 5.7. Administrative Admission and Discharge.

5.7.a. The licensee shall not discriminate against residents or a prospective resident on the basis of race, national origin, religion, age, gender, sexual orientation or disability. (Class III)

5.7.b. The licensee shall enter into a written contract with the resident on admission to the residence that specifies, at a minimum, the following information:

5.7.b.1. The type of resident population that the residence is licensed to serve and will serve;

5.7.b.2. The health and nursing care services that the residence will provide to meet the resident's needs, including cardiopulmonary resuscitation, and how they will be provided;

5.7.b.3. An annual or monthly contract price, full disclosure of all costs including what changes in care needs will result in increases, additions or modifications to the costs, the refund policy and an assurance that the resident shall not be held liable for any cost that was not disclosed;

5.7.b.4. Discharge criteria, including notification policies;

5.7.b.5. How to file a complaint;

5.7.b.6. Medication storage, handling, distribution, and disposition, and responsibility for payment;

5.7.b.7. Management of residents' funds; and

5.7.b.8. Whether or not the residence has liability insurance coverage. (Class III)

5.7.c. The licensee shall provide a copy of the contract to each party in the contract. If the existing contract does not meet the requirements of this rule, the licensee shall provide current residents with a new or updated contract that includes the required provisions within ninety (90) days of the effective date of this rule. (Class III)

5.7.d. At the same time as providing the contract, the licensee shall also provide the resident with the following information: (Class III)

5.7.d.1. House rules governing resident behavior and responsibilities;

5.7.d.2. The resident's bill of rights;

5.7.d.3. How the resident's personal property will be protected from loss and theft;

5.7.d.4. The requirements for medical examinations and treatment orders;

5.7.d.5. How the resident will be assisted in making appointments for medical, dental, nursing or mental health services, and how transportation to and from these services will be arranged; and

5.7.d.6. How to access the residence's policies and procedures.

5.7.e. The licensee is prohibited from entering into a life care contract without the prior written permission of the commissioner. In making a determination to grant permission, the commissioner shall consider the licensee's financial situation by reviewing the licensee's financial statements for a minimum of three (3) years and any related information he or she requests; the licensee's experience in the management of a life care community; and the licensee's ability to potentially manage residents with a catastrophic illness or disease. (Class III)

5.7.f. Thirty (30) days prior to any increase, addition, or other modification of the rates of the resident's care or services, the licensee shall give the resident a written notice of the proposed change. However, when the increase, addition or modification in cost is required by the resident's increased care needs as determined by a licensed health care professional, and the licensee has informed the residents, in writing, of the possibility of such increase, addition or modification at the time of admission and periodically during his or her stay, the thirty (30) day notice shall be waived. The licensee shall instead give the residents a choice between paying the increase, addition or modification or moving to another residence. If the resident chooses to move, the resident is required to give notice of the move as set out in the admission contract. (Class III)

5.7.g. The licensee shall give the resident notice of and file a copy of the notice in the resident's record of the thirty (30) day written notice prior to discharge, unless an emergency situation arises that requires the resident's transfer to a hospital or other higher level of care, or if the resident is a danger to him or herself or others. (Class III)

5.7.h. The licensee shall maintain a register of all residents in order by the dates of the residents' admissions. The register shall include each resident's name, the date of admission, the date of his or her last day in the residence and if transferred, the name of the place to which the resident was transferred. (Class III)

5.7.i. The licensee shall keep resident records in safe storage for at least five (5) years from the date of the death, discharge or transfer of the resident. If the residence ceases to operate, the licensee shall procure a holding area for the resident records that will ensure the confidentiality and safety of the records from loss, destruction or unauthorized use. (Class III)

#### 5.8. Management and Control of Resident Funds.

5.8.a. The licensee shall manage a resident's funds at the written request of the resident only, in the manner directed by the resident, in the resident's best interests, using generally accepted accounting principles to manage the funds, and in accordance with this rule. (Class III)

5.8.b. The licensee shall assure that the accounting system does not commingle resident funds with the assisted living residence's funds or with the funds of any other person. (Class III)

5.8.c. The licensee shall deposit a resident's personal funds exceeding two-hundred dollars (\$200) in an interest bearing account at a local bank. (Class III)

5.8.d. If the licensee handles resident funds in excess of twenty-five dollars (\$25) per resident and in excess of five-hundred dollars (\$500) for all residents in any month, he or she shall file a bond in an amount and with such surety as the commissioner approves that is sufficient to cover all resident funds at all times. The sum of the bond to be fixed by the commissioner based upon the amount of resident funds may not be less than two-thousand five-hundred dollars (\$2,500), as shown in Table 64-14 A at the end of this rule. When the amount of any bond that is filed is insufficient to adequately protect the resident funds, or when the amount of the bond is impaired, the licensee shall file an additional bond in an amount necessary to adequately protect the resident funds. (Class III)

5.8.e. The licensee shall maintain an account record with supporting documentation for each resident that shows in detail all funds received on behalf of the resident and the disposition of all funds received. Persons shopping for residents shall provide a list with a description and price of items purchased if the purchase exceeds ten dollars (\$10), along with payment receipts for these items. (Class III)

5.8.f. The licensee shall provide upon request a complete, accurate accounting of the receipt, management and disposition of resident funds to the resident or his or her representative, any authorized entity, and to the commissioner, and at least quarterly to the resident if not requested. (Class III)

5.8.g. If the resident or legal representative requests to terminate the resident's account, the licensee shall provide an accounting for all funds received and expended and refund any money remaining in the account to the resident or legal representative. (Class III)

#### **§ 64-14-6. Resident Rights.**

## 6.1. General Rights.

6.1.a. The licensee shall post in a conspicuous place the assisted living residence's license, a copy of the residents' rights, the house rules including visiting hours, and the phone numbers for the abuse hotline, the office of the licensing agency, and the state ombudsman. (Class III)

6.1.b. The licensee shall also post the name, address and telephone number of the designated long-term care ombudsman program serving the region in which the residence is located, with a brief description of the services provided by the long-term care ombudsman program, and a statement of the penalties for willful interference and retaliation. (Class III)

6.1.c. The licensee shall provide one or as many copies as needed of the residents' rights to the resident. (Class III)

6.1.d. The licensee shall promptly notify the resident and the resident's legal representative or designated family member when there is a change in residents' rights. (Class III)

6.1.e. The licensee shall notify the resident and his or her representative or designated family member at least seventy-two (72) hours prior to a change in room or roommate assignment unless an emergency situation occurs. (Class III)

6.1.f. If a legal representative has been appointed for, or designated by, any resident as having the authority to exercise one (1) or more of the resident's rights for the resident, the licensee shall permit the legal representative to exercise the authority. If the legal representative exercises the authority for a resident, it shall be in a manner consistent with applicable federal and state laws. The licensee shall keep a copy of the document granting legal authority to a representative in the resident's record. (Class III)

6.1.g. Nothing in this rule shall in any way be construed to diminish or deprive any individual of his or her rights under federal and state laws. (Class III)

6.1.h. A resident shall be encouraged and assisted to exercise his or her rights as a resident and as a citizen, including voting in governmental elections. (Class III)

6.1.i. A resident has the right to be free from restraint, interference, coercion, discrimination, or reprisal from the licensee in exercising his or her rights. (Class II)

6.1.j. A resident has the right to be free from discriminatory practices related to admission or services on the grounds of race, religion, national origin, age, gender, sexual orientation or disability. (Class II)

6.1.k. A resident has the right to manage his or her financial affairs and shall not be required to deposit his or her personal funds with the residence. (Class III)

6.1.l. A resident has the right to inspect all of his or her records, to obtain one free copy of the records, and to purchase additional copies at a reasonable cost. (Class III)

6.1.m. A resident has the right to view the results of inspections and complaint investigations conducted by the licensing agency. The licensee shall make available, in a place accessible to

residents, the deficiencies cited during the most recent survey, any complaint investigation conducted within the preceding twelve (12) months, and the residence's plan of correction. (Class III)

6.1.n. A resident has the right to retain and use personal possessions including furnishings and clothing as space permits, unless to do so would infringe upon the rights, health or safety of other residents. (Class III)

## 6.2. Treatment.

6.2.a. A resident has the right to participate in planning his or her overall care, to use the physician and pharmacist of his or her choice, to be fully informed in advance about care and treatment that may affect him or her, to make advanced directives about his or her medical care and to refuse treatment. (Class II)

6.2.b. The licensee shall ensure that no resident is abused, exploited, neglected, mistreated, or restrained by physical or chemical means. Staff shall only use physical restraints in an emergency under physician's order, for the safety of the resident or others in the assisted living residence until professional help arrives on the premises. Restraint use shall not exceed a twenty-four (24) hour period. Restraints utilized during emergencies are limited to a cloth vest or soft belt restraints, and only trained staff shall apply a restraint. Staff shall release the restraint every two (2) hours for at least ten (10) minutes. Staff shall document in the resident record the reason for restraint use and all procedures followed. Only half length bed side rails are permissible. (Class I)

6.2.c. The licensee or staff shall report neglect, abuse or emergency situations immediately, in accordance with W. Va. Code § 9-6-9, to the local adult protective services office or contact the adult protective services hotline number. In all situations of suspected abuse or neglect the WV Department of health and human resources adult protective services reporting form must be completed within forty-eight (48) hours and sent to the appropriate parties as written follow-up to the immediate report. In addition, the licensee or staff shall contact the assisted living residence's licensing agency as provided in Subsection 6.2.f. of this rule. The commissioner may report alleged failures by a licensed health care professional to report alleged incidents of neglect or abuse or emergency situations to the individual's licensing board. (Class I)

6.2.d. The licensee shall ensure that all allegations involving abuse, exploitation or neglect are immediately and thoroughly documented and investigated by the licensee, or his or her designee, on receipt of the allegation. While the investigation is in progress, the licensee shall take measures to ensure that further abuse does not occur. (Class I)

6.2.e. If the allegation is substantiated, the licensee shall assure that appropriate sanctions are invoked or actions are taken to prevent a recurrence of alleged abuse, exploitation or neglect. (Class I)

6.2.f. The licensee shall notify the licensing agency within seventy-two (72) hours of the date of an allegation of abuse, exploitation, or neglect. The licensee shall concurrently forward to the licensing agency documentation of the investigation, the results of the investigation and the response to the investigation. (Class III)

6.2.g. A resident has the right to refuse to participate in experimental research. A resident may participate in experimental research only when he or she has given prior written informed

consent that conforms with applicable federal and state laws. (Class II)

6.2.h. A resident has the right to make choices regarding the activities of his or her daily life, such as when to retire at night or arise in the morning. (Class III)

6.2.i. A resident has the right to be free to leave the residence and grounds according to his or her needs and capabilities as documented in the service plan. (Class II)

6.2.j. A resident has the right to personal privacy and confidentiality, including accommodations, medical treatment, records, written and telephone communications, personal assistance, visits and meetings of family and resident groups. (Class II)

6.2.k. The use of visual and auditory devices to monitor areas of the assisted living residence is restricted to common areas only. The licensee shall provide written notice to the resident or his or her legal representative of the use of these devices at the time of admission and also post a notice about their use in a prominent place in the residence. (Class III)

6.2.l. No person shall enter a resident's room without identifying him or herself to the resident and receiving the resident's permission to enter. (Class III)

6.2.m. A resident has the right to voice grievances with respect to treatment or care provided without discrimination or reprisal for voicing the grievance. (Class II)

6.2.n. A resident has the right to prompt action by the licensee to resolve any complaints the resident has, including those with respect to the behavior of other residents. The licensee shall respond to the complainant in writing no later than four (4) days after the complaint is filed. (Class III)

6.2.o. A resident has the right to refuse to perform services for the residence. (Class III)

6.2.p. A resident has the right to be employed in or outside the residence if the resident enters into the agreement voluntarily and the agreement to work in the residence is not a condition for admission or continued stay in the residence. A resident who performs staff duties shall meet the personnel and health requirements for that position and shall not perform work that creates conditions potentially hazardous for himself or herself or others. (Class II)

### 6.3. Access, Visitation and Communication.

6.3.a. A resident has the right to participate in social, religious, and community activities of his or her choice. (Class III)

6.3.b. A resident has the right to meet and communicate privately with persons of his or her choice. (Class III)

6.3.c. A resident has the right to assemble and organize with other residents to solicit and recommend improvements in the assisted living residence's services and to resolve problems that arise between the residents and the licensee. (Class III)

6.3.d. A resident has the right to send and promptly receive unopened mail. A staff member

shall only open and read correspondence when requested by a resident. (Class III)

6.3.e. A resident shall have access to stationery, postage and writing tools. (Class III)

6.3.f. A resident shall have access to a telephone and privacy during its use. (Class III)

6.3.g. A resident has the right to receive visitors during established and mutually agreed upon visiting hours, but relatives and members of the clergy may visit at any time, subject to the resident's right to withdraw consent. (Class II)

6.3.h. A resident has the right to receive information from agencies acting as client advocates, such as the state's long term care ombudsman program, and to contact these agencies. (Class II)

6.3.i. All of the following shall have immediate access to any resident and the premises of the assisted living residence: any representative of the state acting in an official capacity related to assisted living residences; the resident's individual physician; the state and local long term care ombudsmen; and agencies responsible for the protection and advocacy system for mentally retarded or developmentally disabled individuals and the mentally ill. (Class I)

#### **§64-14-7. Health Care Standards.**

##### **7.1. Admission and Discharge.**

7.1.a. The licensee shall not admit to the assisted living residence individuals requiring ongoing or extensive nursing care and shall not admit or retain individuals requiring a level of service that the residence is not licensed to provide or does not provide. (Class I)

7.1.b. A resident whose condition declines after admission, and is receiving services coordinated by a licensed hospice or certified home health agency, may receive these services in the residence if the residence has a backup power generator for services using equipment that requires auxiliary electrical power in the event of a power failure. The licensee shall ensure that a resident who requires ongoing or extensive nursing care is provided the care and services necessary to meet his or her needs. The provision of services to the resident receiving nursing care or hospice care shall not interfere with the provision of services to other residents. (Class I)

7.1.c. If a resident exhibits symptoms of a mental or developmental disorder that seems to pose a risk to self or others, and the resident is not receiving behavioral health services, the licensee shall advise the resident or his or her legal representative of the behavioral health service options within the community. The resident shall have thirty (30) days to obtain necessary services. If the resident or his or her legal representative fails to seek treatment in a timely manner, then the licensee after consultation with the resident's physician, shall refer the resident to a licensed behavioral health provider. (Class II)

7.1.d. The licensee shall seek immediate treatment for a resident or may refuse to admit or retain a resident if there is reason to believe that the resident may suffer serious harm, or is likely to cause serious harm to himself, herself or to others, if appropriate interventions are not provided in a timely manner. (Class I)

7.1.e. If a resident has care needs that exceed the level of care for which the residence is licensed or can provide, the licensee shall inform the resident, or his or her legal representative, of the need to move to a health care facility that can provide the needed level of care. (Class III)

7.1.f. The licensee shall assist the resident, or his or her legal representative, to secure placement in another health care facility and shall document in the resident's record the efforts made to obtain placement. (Class III)

7.1.g. Prior to transfer or discharge of a resident, the licensee shall prepare a summary to accompany the resident that includes the resident's medical history, functional needs assessment and service plans, the current physician's orders, the resident's advanced directives, any allergies and pertinent progress notes. (Class II)

## 7.2. Records.

7.2.a. The licensee shall retain residents' records in a secure area in the residence and shall make the records available for inspection by the commissioner. (Class III)

7.2.b. Upon a resident's admission, the licensee shall start a record for him or her that includes:

7.2.b.1. The resident's name, social security number, date of birth, sex, marital status,; and religious preference, if any;

7.2.b.2. The names, addresses and telephone numbers of the following, if applicable: the resident's physician, dentist, legal representative, person or agency responsible for the resident's support payments, next of kin or person to be notified in case of an emergency, and any case management agency involved in the resident's care.

7.2.b.3. All agreements or contracts entered into between the resident and the licensee;

7.2.b.4. Advanced directives, allergies, the dates of appointments with physicians, dentists, or other health care providers, all contacts by the residence's staff with the resident's physician, and observations by licensed nurses, physicians, and others authorized to care for the resident; and

7.2.b.5. Any other information as required in Subsections 7.3, 7.4, 7.5, 7.6, 7.7, and 9.1. (Class III)

7.2.c. The licensee shall keep in each resident's record current documentation regarding the resident's health status, any changes in health status, and staff responses to the changes. (Class II)

## 7.3. Assessments and Service Plans.

7.3.a. Each resident shall have a written, signed and dated health assessment by a physician or other licensed health care professional, authorized under state law to perform this assessment, not more than sixty (60) days prior to the resident's admission, or no more than five (5) working days following admission, and at least annually after that. The admission and annual health assessment shall include screening for tuberculosis and other communicable diseases if indicated by exposure,



prevalence or risk according to current medical practice in congregate living situations as indicated by the secretary. The licensee shall maintain documentation of the assessment in the resident's medical record. (Class II)

7.3.b. Within seven (7) days of admission, each resident shall have an individualized functional needs assessment completed in writing by a licensed health care professional which is maintained in the resident's medical record. At a minimum, the resident's assessment shall include a review of health status and functional, psycho social, activity and dietary needs. (Class II)

7.3.c. Within seven (7) days of admission, each resident shall have a service plan based upon his or her functional needs assessment and individual needs that includes, but is not limited to, the type of assistance needed to perform activities of daily living, to receive prescribed medications and treatments, to follow any planned diet, rest or activity regimen, to engage in activities and programs appropriate to the individual's level of functioning, and to use equipment such as hearing aides, glasses, and canes. Staff shall have access to the service plan, use it as a guide for providing resident care, and maintain it as a part of the resident's medical record. (Class II)

7.3.d. The licensee shall ensure that the assessment and service plans reflect the resident's current needs and are updated annually or as indicated by a significant change in the resident's condition. (Class II)

#### 7.4. Medications and Treatments.

7.4.a. The licensee shall ensure that resident care is provided by appropriately licensed health care professionals, and that medications and treatments given to residents are administered as required by applicable federal and state law, including W. Va. Code § 16-50-1 et seq. and Division of Health rule, "Medication Administration by Unlicensed Personnel," 64CSR60. (Class I)

7.4.b. A prescription, written or verbal order from a professional authorized by state law to prescribe medications is required for obtaining, altering, discontinuing and administering or self-administering prescription and over-the-counter medications, treatments, and therapies. The licensee shall keep copies of the prescriptions or written orders in the resident's record. (Class I)

7.4.c. A licensed health care professional shall determine whether or not a resident is capable of self-administration of medications in accordance with Subsection 3.33. of this rule and shall document it in the resident's medical record prior to the resident self administering medications, and also on a significant change of the resident's condition. (Class II)

7.4.d. The prescribing health care professional who gives a verbal order shall review and sign the order within thirty (30) working days of the original order date. (Class II)

7.4.e. The attending physician, prescribing health care professional, or a consulting pharmacist shall review the medication regimen of each resident as needed, and at least annually. The resident's record shall contain documentation of this review. (Class II)

7.4.f. The licensee shall keep a record of all medications given to each resident indicating each dose given. The record shall include the resident's name; the name of the medication; the dosage to be administered and route of administration; the time or intervals at which the medication is to be administered; the date the medication is to begin and end; the printed name, initials and

signature of the individual who administered the medication; and any special instructions for handling or administering the medication, including instructions for maintaining aseptic conditions and appropriate storage. (Class I)

7.4.g. The licensee shall keep medications in a locked room, cabinet or other storage receptacle, accessible only to the staff responsible for medications. If a resident is capable of self administration of medication, the licensee shall provide him or her resources to store medications in a manner to be inaccessible to other residents. (Class I)

7.4.h. The licensee shall store all medications in their original containers, legally dispensed and labeled in accordance with the rules of the West Virginia board of pharmacy, for the resident for whom it has been prescribed, including the name and strength of medication, manufacturer name, lot number, and expiration date. Only a licensed pharmacist shall re-label medications. If the prescribing health care provider changes medication directions, the licensee shall have a written signed and dated order for the change in the resident's record. (Class I)

7.4.i. If refrigeration of medication is required, the licensee shall provide: a refrigerator in a locked room; a locked refrigerator; or a locked box within the refrigerator for storage. A thermometer is required in a refrigerator storing medications. The licensee shall store refrigerated medications within the recommended temperature range on the medication package. (Class II)

7.4.j. If Schedule II drugs of the Uniform Controlled Substances Act W. Va. Code §60 A -1-101 et seq. are administered, a copy of the written prescription signed by the physician shall be in the resident's record and a proof of use record shall be maintained. Schedule II drugs shall be stored in a manner so that they are securely protected by two (2) locks. The key to the separately locked Schedule II drugs shall not be the same key that is used to gain access to non-scheduled drugs. (Class I)

7.4.k. The licensee shall not return unused, discontinued, or outdated drugs listed in Schedules II, III, IV or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 21 U.S.C. §801 et seq. to the pharmacy, but shall destroy them in the presence of a pharmacist and a registered nurse; and keep a record for at least two (2) years that contains the resident's name that was on the prescription, the name and strength of the drug, the prescription number, the amount destroyed, the date of destruction and the signatures of the witnesses. (Class III)

7.4.l. When a resident requires oxygen, the licensee shall assure there is a portable source available for out-of-room activities and in the event of power failure. The licensee shall post no smoking signs conspicuously and prohibit smoking in any location when oxygen is in use. (Class I)

7.4.m. The licensee shall provide all resident care and services in accordance with current standards of practice using appropriate infection control techniques. (Class I)

#### 7.5. Accident, Illness and Major Incident Procedures.

7.5.a. The licensee shall have readily available at all times a standard first-aid kit, or its equivalent, to provide emergency aid for commonly occurring household injuries. (Class III)

7.5.b. When a resident has an illness or accident that results in an injury or a resident

complaint, the staff shall contact an appropriately licensed health care professional to assess the severity and cause of the illness or accident, advise of the treatment needed related to the accident or illness, and record actions taken in the resident's record. If the resident needs emergency assistance, the staff on duty shall first obtain the necessary assistance. (Class I)

7.5.c. Staff shall monitor and document the resident's condition at least once every eight (8) hours for a period of twenty-four (24) hours following the accident or the onset of the illness, more frequently if specified by the licensed health care professional or at least every four (4) hours if the resident suffers from Alzheimer's disease or a related dementia and cannot communicate his or her condition or needs. (Class II)

7.5.d. When a major incident or any significant change in the resident's condition occurs, the staff shall promptly notify the resident's physician or other appropriately licensed health care professional, such as emergency medical personnel, and the responsible party or next of kin, and document this notification in the resident's record. (Class I)

7.5.e. If an epidemic occurs or a reportable disease is diagnosed, the licensee shall comply with the recommendations of the local public health authority in handling and reporting it. (Class I)

#### 7.6. Limited and Intermittent Nursing Care.

7.6.a. The licensee shall arrange for a registered professional nurse to assume responsibility for the oversight of nursing care and services. Arrangements for nursing services may be made by contract with a registered nurse or a nursing service with a management entity; or the licensee may employ a registered nurse. Arrangements with a home care agency will satisfy the requirement for nursing oversight, if they meet all the requirements of this section. (Class I)

7.6.b. The licensee shall ensure that the registered nurse is notified immediately when a resident with nursing care needs is admitted or readmitted, and immediately when a nursing care need for a current resident is identified. (Class I)

7.6.c. Within reasonable expectations the licensee shall implement the recommendations of the registered nurse regarding care, services and staff training. (Class I)

7.6.d. Unless the licensee employs a full time registered nurse, he or she shall ensure that the registered nurse maintains a record with an entry for each visit which shall include at least the date, time in and time out; a list of duties performed during each visit; a brief statement regarding identified concerns and recommended actions taken to resolve them; and a complete signature. (Class III)

7.6.e. The licensee shall develop a plan that provides for twenty-four (24) hour accessibility between the residence, the registered nurse, and other emergency personnel. (Class I)

7.6.f. A registered nurse shall perform and document a nursing assessment for each resident with nursing needs within twenty-four (24) hours following admission, and update the assessment at the time of any significant temporary or permanent change in the resident's condition. (Class I)

7.6.g. A registered nurse shall develop and document a service plan to meet any identified

nursing and medical needs of the resident within seven (7) days after admission and shall update the plan at the time of a significant temporary or permanent change in condition. (Class I)

7.6.h. A registered nurse shall see the resident weekly and more often if indicated by the needs of the resident, and document a progress note in the resident's record reflecting the status of the resident and any changes in his or her condition. (Class II)

7.6.i. A registered nurse shall provide needed training or recommend to the licensee appropriate training for staff, including when to contact the registered nurse regarding changes in a resident's condition. (Class II)

7.6.j. A registered nurse shall participate in the decision to admit or discharge a resident with nursing care needs. (Class II)

#### 7.7. Resident Death.

7.7.a. Staff shall immediately report the suspected death of a resident to the resident's physician, to the resident's next of kin or legal representative, and hospice staff if applicable. Any death suspected to be the result of abuse or neglect shall be immediately reported to the coroner. (Class III)

7.7.b. Upon the death of a resident, the following information shall be entered in the resident's record:

7.7.b.1. A record of the date and time of the notification of the resident's physician or hospice staff, the resident's representative or next of kin; and

7.7.b.2. The date, time and circumstance of death, including the name of person to whom the body was released and any other details specific to the death. (Class III)

7.7.c. Upon a resident's death, the licensee shall release all of the resident's belongings and funds to the estate administrator or executor. (Class III)

#### **§64-14-8. Activities.**

8.1. The licensee shall provide an activity program designed to promote the highest level possible in all dimensions of life including physical, psychological, social, and spiritual, for each resident. (Class III)

8.2. The program shall:

8.2.a. Provide information and referral services and opportunities for using the social, recreational and vocational activities within the community;

8.2.b. Provide a minimum of seven (7) hours per week, one hour per day, unless the residents request more, of various types of scheduled activities, including activities appropriate for individuals with Alzheimer's disease or a related dementia; and

8.2.c. Provide a monthly calendar that lists the type, the time and duration of all social

and recreational activities for the residents and documentation that activities did or did not take place. (Class III)

**§64-14-9. Dietary Services.**

9.1.a. The licensee shall provide meals that are in substantial compliance with current Recommended Dietary Allowances of the Food and Nutrition Board of National Academy of Sciences, National Research Council, or as specified in this rule, except as ordered by a physician. (Class II)

9.1.b. The licensee shall ensure that each resident is offered at least three (3) freshly prepared meals seven (7) days a week, and also special diets and snacks that meet resident needs and choices, as identified in his or her needs assessment. The meals shall provide a variety of foods as follows: (Class II)

9.1.b.1. Breakfast: fruit or juice, cereal, whole-grain or enriched bread products, and Grade A vitamin D milk.

9.1.b.2. Noon and evening meals: protein sources, such as meat, poultry, fish, eggs, cooked dried legumes, cheese or peanut butter; vegetables or fruit; whole-grain or enriched grain food products; and Grade A vitamin D milk.

9.1.c. When therapeutic or modified diets are provided by the residence, the licensee shall maintain on file a physician's order for each diet. The licensee shall prepare therapeutic or modified diets, as ordered by the physician, according to written instructions that includes types and amounts of food to be served, obtained from the resident's physician or a dietitian. At no time shall a resident be offered less than one thousand four hundred (1,400) calories daily, unless specifically ordered by a physician. (Class I)

9.1.d. The licensee shall provide each resident with the amount of food and fluid on a daily basis necessary to maintain his or her appropriate minimum average weight. Staff shall weigh residents upon admission and monthly thereafter and document the resident's weight in his or her record. If staff notes an unplanned weight loss or gain of five (5) pounds or more in the resident's record, the staff shall report it to the resident's physician. (Class III)

9.1.e. The licensee shall encourage resident participation in menu planning and shall serve meals at times mutually agreed upon by residents in the assisted living residence with consideration of individual resident preferences. (Class III)

9.1.f. The licensee shall accommodate residents who are unable to eat at the planned mealtime and provide for a meal substitution if the resident does not tolerate or like the foods planned for the meal. (Class II)

9.1.g. The licensee shall maintain a daily record of actual foods served for each meal and vary the menu content. (Class III)

9.1.h. The licensee shall keep grocery receipts and records of actual food served to the residents on file in the assisted living residence for at least thirty (30) days. (Class III)

9.1.i. The licensee's food service facilities shall comply with Division of Health rule, "Food Establishments," 64CSR17. (Class II)

**§64-14-10. Fire Safety, Disaster and Emergency Preparedness and Training.**

10.1. Fire Safety.

10.1.a. The licensee shall provide evidence of compliance with applicable rules of the state fire commission. The state fire marshal's and commissioner's written approval are required for any variation from compliance with the fire code. (Class I)

10.2. Disaster and Emergency Preparedness Plan.

10.2.a. The assisted living residence shall have a written disaster and emergency preparedness plan with procedures to be followed in any emergency that could severely affect the operation of the residence. (Class II)

10.2.b. The disaster and emergency preparedness plan shall have procedures with specific tasks and responsibilities for each class of employee in the event of missing residents, high winds, tornadoes, floods, bomb threats, utility failure, and severe winter weather. (Class II)

10.2.c. The disaster and emergency preparedness plan shall include a minimum of an emergency alternate shelter agreement, an emergency transportation policy, and a three (3) day food and drinking water supply. (Class II)

10.2.d. The licensee shall provide copies of the disaster and emergency preparedness plan at all staff stations, and staff shall know the location of the plan at all times. (Class I)

10.2.e. The licensee or administrator shall review and update the disaster and emergency preparedness plan on an annual basis and shall sign and date the plan to verify review. (Class III)

10.2.f. The licensee shall conspicuously post emergency call information near each telephone in the residence, excluding telephones in residents' rooms, with the telephone numbers of the fire department, the police, an ambulance service and other appropriate emergency services, and key staff telephone numbers. (Class I)

10.2.g. The licensee shall rehearse the disaster and emergency preparedness plan with all staff from each shift annually and shall keep documentation of the rehearsal that includes verification of participation by each employee's signature and a critique of the rehearsal by the licensee or administrator. (Class I)

10.2.h. The licensee shall within twenty-four (24) hours of their admission, show all new residents how to evacuate the residence in an emergency and shall document this in the resident's record.

**§64-14-11. Physical Facilities.**

11.1. Physical Facilities and Equipment.

11.1.a. The licensee of an assisted living residence built, renovated, or altered after the effective date of this rule shall maintain the residence in accordance with the requirements of Subsection 4.12. of this rule. (Class I)

11.1.b. The licensee shall provide maintenance and housekeeping to the interior and exterior of the residence that maintains a safe, sanitary and accident free living environment. (Class I)

11.1.c. The licensee shall establish and conduct a program of preventive maintenance for all equipment as recommended by the manufacturer. (Class III)

11.1.d. The licensee shall keep the interior and exterior of the residence clean and in good repair. (Class II)

11.1.e. The licensee shall keep the residence free of insects, rodents and vermin. (Class III)

11.1.f. Any method of extermination of insects, rodents and vermin used by the licensee in the residence shall not create a fire or health hazard. (Class I)

11.1.g. The residence shall have a heating system capable of maintaining a temperature in all rooms used by residents of at least seventy-two degrees Fahrenheit (72°F). (Class II)

11.1.h. The residence shall have cooling devices or a system so that inside temperatures do not exceed eighty degrees Fahrenheit (80°F). Acceptable cooling devices include, but are not limited to, air conditioners, electric fans and heat pumps. (Class II)

11.1.i. The residence shall have a call system that is audible to staff and can be accessed from each bed and other areas as necessary for the safety of residents. (Class II)

11.1.j. The commissioner may require the licensee to provide alarm systems for resident safety if a resident exhibits potentially harmful behaviors such as wandering from the residence. (Class I)

11.1.k. The residence shall have space for the storage of linens, maintenance and housekeeping supplies, equipment, and food supplies. (Class II)

## 11.2. Bedrooms.

11.2.a. The licensee shall provide each resident with a bed in a bedroom and shall not place beds in corridors, living rooms, kitchens, dining rooms, a basement, attic, or any other area not commonly used as a bedroom. (Class II)

11.2.b. In an existing large assisted living residence, bedrooms shall contain at least eighty (80) square feet of floor area per resident. In an existing small assisted living residence, semi-private bedrooms shall contain at least sixty (60) square feet of floor area per resident and private rooms shall contain eighty (80) square feet. (Class III)

11.2.c. In a newly constructed or renovated residence no more than two (2) persons shall occupy a bedroom. In an existing residence no bedroom shall be occupied by more residents than the bed capacity approved by the commissioner on the effective date of this rule. (Class III)

11.2.d. Staff of the residence shall not share bedrooms with residents and shall not use resident bedrooms for any purpose other than to house residents. (Class III)

11.2.e. At least three (3) feet of space shall separate beds. (Class III)

11.2.f. The licensee shall ensure that each resident has a bed and mattress at least thirty-six (36) inches wide that are substantially constructed, in good repair, comfortable, and able to accommodate the resident's needs and promote independence. (Class III)

11.2.g. Each bed shall have a clean comfortable pillow, pillow case, two (2) sheets, a bed spread or other type of covering, and additional bed covering to keep residents warm during emergencies and cold weather. (Class III)

11.2.h. The licensee shall ensure that there is a supply of sheets, pillow cases, bed coverings, towels, wash cloths, and other linens necessary to provide a minimum of two (2) changes per bed, and clean bed linens for each resident at least once a week and more often if needed. (Class III)

11.2.i. The licensee shall ensure that every closet door latch can be readily opened from inside in case of emergency. (Class II)

11.2.j. The licensee shall ensure that windows have curtains, shades, or blinds that may be opened and closed and are kept clean and in good repair. (Class III)

11.2.k. The licensee shall ensure that each bedroom has at least the following furniture for each resident: (Class III)

11.2.k.1. A night stand and chest or its equivalent;

11.2.k.2. A closet, locker, or wardrobe space with a minimum dimension of twenty inches (20") by twenty-two inches (22") by sixty inches (60"), excluding shelf and storage space;

11.2.k.3. A chest of drawers, or the equivalent, with at least three (3) drawers for the storage of clothing and personal items; and

11.2.k.4. A chair suitable to the resident's needs and an adequate light source for reading.

11.2.l. The licensee shall provide bedroom furnishings in good repair, reasonably attractive and comfortable, of a nature to suggest a private home setting, and with residents' individual tastes taken into consideration. When space permits, residents' personal furniture may be used. (Class III)

11.3. Toilets, Hand Washing and Bathing Facilities.

11.3.a. An existing residence's toilet and bathing facilities shall consist of the following:

11.3.a.1. A bathroom containing a flushing toilet and hand washing sink, with a mirror over the sink, at a ratio of one (1) toilet and lavatory for every six (6) residents; (Class III) and

11.3.a.2. A minimum of one (1) bathing facility per floor, with a bath tub or shower, equipped with non-slip surfaces, a flushing toilet and a hand washing sink; at a ratio of one (1) per



ten (10) residents. (Class III)

11.3.b. The licensee shall ensure that toilet and bathing facilities are provided with liquid soap, toilet tissue and a sanitary method for drying hands. (Class III)

11.3.c. The licensee shall provide towel bars either in the residents bedroom or the bathroom. Space for towel bars shall accommodate the number of residents using the bathing facility. (Class III)

11.3.d. Bath tubs, showers and sinks shall not be used for storage of linens and clothing to be laundered or for laundering of soiled linens and clothing. (Class III)

#### 11.4. Dining Area and Leisure Area.

11.4.a. The residence shall have a dining area of at least fifteen (15) square feet per resident. (Class III)

11.4.b. The residence shall have an area of at least fifteen (15) square feet per resident for leisure space that is equipped for reading and recreational purposes. The leisure area shall have furniture that provides good lower back support, arm rests, and that is clean, odor free and in good repair. (Class III)

11.4.c. The dining room may serve as part of the leisure room. A combined dining and leisure room shall have a minimum of thirty (30) square feet per resident. (Class III)

#### 11.5. Water Supply and Sewage.

11.5.a. The residence shall have hot and cold running water in sufficient supply to meet the needs of the residents, household members and employees. (Class I)

11.5.b. The licensee shall maintain hot water temperatures above one hundred five degrees Fahrenheit (105°F) and no higher than one hundred fifteen degrees Fahrenheit (115°F) at all hot water sources, except for dishwashers and laundry facilities. (Class II)

11.5.c. Hot water temperatures exceeding one hundred twenty degrees Fahrenheit (120°F) shall be considered an immediate and serious threat. (Class I)

11.5.d. The licensee shall use a thermostatic mixing valve to control the temperature of hot water tanks exceeding eighty (80) gallon capacity. (Class II)

11.5.e. The residence shall have a sewage system that is adequate to meet the residents' needs, kept in good working order, and properly operated and maintained. (Class II)

#### 11.6. Laundry.

11.6.a. The licensee shall ensure that all laundry is dried mechanically in an electric or gas clothes dryer that is vented to the outside, or that a chemical sanitizing agent is added to the rinse water, and the laundry air-dried. (Class II)

11.6.b. The licensee shall ensure that soiled and clean laundry are not stored together at any time; that soiled laundry is stored in non-absorbent, easily cleanable covered containers or disposable plastic bags; that table and kitchen linens are laundered separately from other washable goods; and that sanitizing agents are used when laundering kitchen, bath, and bed linens. (Class II)

11.6.c. The licensee shall use locked storage facilities, separate from food and drugs, for laundry supplies, housekeeping supplies, insecticides, work supplies and any other toxic or hazardous material or equipment. (Class I)

#### 11.7. Pets and Other Animals.

11.7.a. Pets are permitted at assisted living residences, provided that all residents are advised prior to admission that pets are kept on the premises. If pets are added after the admission of residents, all residents shall agree to the addition of the pets. (Class III )

11.7.b. Wild, dangerous or obviously ill animals are prohibited. (Class I)

11.7.c. The licensee shall keep animals and the animal's quarters in a clean condition at all times. (Class II)

11.7.d. The licensee shall maintain proof that dogs and cats kept in the assisted living residence or on the grounds are properly vaccinated. For dogs this includes rabies, leptospirosis, distemper, and parvo, and for cats this includes rabies. (Class II)

### **§64-14-12. Civil Penalties, License Restrictions and Revocations.**

#### 12.1. Civil Penalties.

12.1.a. Anyone who violates the provisions of W. Va. Code §16-5D-1 et seq. and this rule is subject to the penalties provided in W. Va. Code §§16-5D-10, 16-1-17 and -18.

12.1.b. Upon completion of an inspection report, the commissioner shall determine what, if any, civil penalties, are to be imposed. The commissioner shall issue citations and assess supplemental penalties for failure to submit an approved plan of correction, for failure to correct continuing violations, and for continued failure to correct violations of a non-life threatening nature.

12.1.c. If a licensee or a non-licensed operator does not plan to contest a citation that imposes a penalty, he or she within fifteen (15) business days after the issuance of the citation, shall submit to the commissioner the total sum of the penalty assessed.

#### 12.2. License Restrictions and Revocations.

12.2.a. The commissioner may ban new resident admissions, reduce the bed capacity of the assisted living residence or both, pursuant to W. Va. Code §16-5D-11, when on the basis of inspection he or she determines that:

12.2.a.1. There is an immediate and serious threat to one or more residents;

12.2.a.2. There are poor care outcomes resulting in an avoidable decline in a resident's

condition;

12.2.a.3. There has been a decline in the functional abilities of one or more residents resulting from neglect or abuse; or

12.2.a.4. An admission ban or reduction in bed capacity or both would place the assisted living residence in a position to render adequate care.

12.2.b. The commissioner shall notify a licensee of an admissions ban, a reduction in bed capacity or both, stating the terms of the order, the reasons for the order and the date set for compliance.

12.2.c. The commissioner may place restrictions upon or revoke the current license of an assisted living residence, if he or she finds on an inspection that there has been a substantial failure to comply with W. Va. Code §16-5D-1 et seq. and this rule, or evidence of one or more of the criteria for denial of license in Subsection 4.5. of this rule.

12.2.d. When a license is limited, suspended or revoked the commissioner shall file an administrative complaint in accordance with W. Va. Code §16-5D-11.

12.2.e. When the commissioner determines that an assisted living residence's deficiencies constitute an emergency that immediately jeopardizes the health, safety, welfare or rights of its residents, he or she shall petition the circuit court for remedy pursuant to W. Va. Code §16-5D-11.

#### **§64-14-13. Administrative Appeal and Judicial Review.**

13.1. Administrative Appeal. Anyone adversely affected by the enforcement of this rule or other order issued by the Commissioner under this rule:

13.1.a. Prior to an administrative appeal, may pursue informal remedies as follows:

13.1.a.1. Submit a plan of correction for cited deficiencies for approval by the commissioner within the designated time frame; and

13.1.a.2. Submit the reasons for the appeal and request for an informal hearing in writing to the commissioner within fifteen (15) days of receipt of the statement of deficiencies or order; or

13.1.b. May request a contested case hearing in accordance with the Division of Health rule, "Rules and Procedures for Contested Case Hearings and Declaratory Rulings," 64CSR1.

13.1.c. The commissioner shall conduct the informal hearing in accordance with W. Va. Code §16-5D-12 and shall provide a written decision to the assisted living residence regarding the appeal.

13.2. Judicial Review.

13.2.a. Any licensee adversely affected by an order of the commissioner rendered after a hearing is entitled to judicial review pursuant to W. Va. Code §§16-5D-13 and 29A-5-4.

**Table 64-14 A Surety Bond Schedule**

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$ 1 to \$2,000	\$2,500
\$2,001 to \$2,100	\$2,625
\$2,101 to \$2,200	\$2,750
\$2,201 to \$2,300	\$2,875
\$2,301 to \$2,400	\$3,000
\$2,401 to \$2,500	\$3,125
\$2,501 to \$2,600	\$3,250
\$2,601 to \$2,700	\$3,375
\$2,701 to \$2,800	\$3,500
\$2,801 to \$2,900	\$3,625
\$2,901 to \$3,000	\$3,750
\$3,001 to \$3,100	\$3,875
\$3,101 to \$3,200	\$4,000
\$3,201 to \$3,300	\$4,125
\$3,301 to \$3,400	\$4,250
\$3,401 to \$3,500	\$4,375
\$3,501 to \$3,600	\$4,500
\$3,601 to \$3,700	\$4,625
\$3,701 to \$3,800	\$4,750
\$3,801 to \$3,900	\$4,875
\$3,901 to \$4,000	\$5,000
\$4,001 to \$4,100	\$5,125
\$4,101 to \$4,200	\$5,250
\$4,201 to \$4,300	\$5,375
\$4,301 to \$4,400	\$5,500
\$4,401 to \$4,500	\$5,625
\$4,501 to \$4,600	\$5,750

Table 64-14 A Surety Bond Schedule (Contd.)

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$4,601 to \$4,700	\$5,875
\$4,701 to \$4,800	\$6,000
\$4,801 to \$4,900	\$6,125
\$4,901 to \$5,000	\$6,250
\$5,001 to \$5,100	\$6,375
\$5,101 to \$5,200	\$6,500
\$5,201 to \$5,300	\$6,625
\$5,301 to \$5,400	\$6,750
\$5,401 to \$5,500	\$6,875
\$5,501 to \$5,600	\$7,000
\$5,601 to \$5,700	\$7,125
\$5,701 to \$5,800	\$7,250
\$5,801 to \$5,900	\$7,375
\$5,901 to \$6,000	\$7,500
\$6,001 to \$6,100	\$7,625
\$6,101 to \$6,200	\$7,750
\$6,201 to \$6,300	\$7,875
\$6,301 to \$6,400	\$8,000
\$6,401 to \$6,500	\$8,125
\$6,501 to \$6,600	\$8,250
\$6,601 to \$6,700	\$8,375
\$6,701 to \$6,800	\$8,500
\$6,801 to \$6,900	\$8,625

**Table 64-14 A Surety Bond Schedule (Contd.)**

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$6,901 to \$7,000	\$8,750
\$7,001 to \$7,100	\$8,875
\$7,101 to \$7,200	\$9,000
\$7,201 to \$7,300	\$9,125
\$7,301 to \$7,400	\$9,250
\$7,401 to \$7,500	\$9,375
\$7,501 to \$7,600	\$9,500
\$7,601 to \$7,700	\$9,625
\$7,701 to \$7,800	\$9,750
\$7,801 to \$7,900	\$9,875
\$7,901 to \$8,000	\$10,000
\$8,001 to \$8,100	\$10,125
\$8,101 to \$8,200	\$10,250
\$8,201 to \$8,300	\$10,375
\$8,301 to \$8,400	\$10,500
\$8,401 to \$8,500	\$10,625
\$8,501 to \$8,600	\$10,750
\$8,601 to \$8,700	\$10,875
\$8,701 to \$8,800	\$11,000
\$8,801 to \$8,900	\$11,125
\$8,901 to \$9,000	\$11,250
\$9,001 to \$9,100	\$11,375
\$9,101 to \$9,200	\$11,500

Table 64-14 A Surety Bond Schedule (Contd.)

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$9,201 to \$9,300	\$11,625
\$9,301 to \$9,400	\$11,750
\$9,401 to \$9,500	\$11,875
\$9,501 to \$9,600	\$12,000
\$9,601 to \$9,700	\$12,125
\$9,701 to \$9,800	\$12,250
\$9,801 to \$9,900	\$12,375
\$9,901 to \$10,000	\$12,500
\$10,001 or more	Calculate <sup>2</sup>

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<sup>2</sup> 1.25 times the prior year's average monthly balance of client's funds



**HOUSE OF DELEGATES  
WEST VIRGINIA LEGISLATURE**

BUILDING 1, ROOM 208-E  
1900 KANAWHA BLVD., EAST  
CHARLESTON, WV 25305-0470  
PHONE (304) 340-3269

DON C. PERDUE, Chair  
HEALTH AND HUMAN RESOURCES  
ROUTE 1, BOX 98  
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Committees:  
Banking and Insurance  
Government Organization

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

FILED

Ms. Judy Cooper  
Team Leader  
Office of Secretary of State, Hon. Joe Manchin III  
VIA FAX

Dear Ms. Cooper:

I am in receipt of yours of July 28 vis the new rule on "Assisted Living Residences". Thank you so much for your kind consideration.

Insofar as the intent of the Legislature is concerned; ie., to "combine standards for two former levels of care", I believe the objective has been met.

While some of the new rules may well require revision over time (4.6.d, for instance, seems a little broadly crafted, in terms of constitutional guarantces against illegal search and seizure), I do believe that, taken as a body, the whole rule is well done and sufficient as an emergency vehicle.

I therefore offer my support of the work as it has been presented, and compliment your office for granting this chance of review by

Your humble servant,

Don Perdue