

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FILED

JUL 1 4 24 PM '94

Form #1

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Department of Health and Human Resources TITLE NUMBER: 64

RULE TYPE: Legislative; CITE AUTHORITY §16-5C-5

AMENDMENT TO AN EXISTING RULE: YES X NO     

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 14

TITLE OF RULE BEING AMENDED: Personal Care Home Licensure

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:     

TITLE OF RULE BEING PROPOSED:     

The comment period closes August 1, 1994.

DATE OF PUBLIC HEARING: \*July 27, 1994 TIME: 10:00 a.m.\*

LOCATION OF PUBLIC HEARING: Days Inn Conference Center

Flatwoods, W. Va.

\*The public hearing precedes the close of the comment period. The public hearing on this rule will be followed by a public hearing on the proposed Residential Board and Care Homes Licensure Rule.

COMMENTS LIMITED TO: ORAL     , WRITTEN     , BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Regulatory Development

Department of Health  
and Human Resources

Building 3, Room 265

Capitol Complex

Charleston, WV 25305

ATTN: Kay Howard

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

17,20

William T. Wallace, Jr.  
William T. Wallace, Jr., M.D., M.P.H.  
Commissioner, Bureau of Public Health



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton  
Governor

June 27, 1994

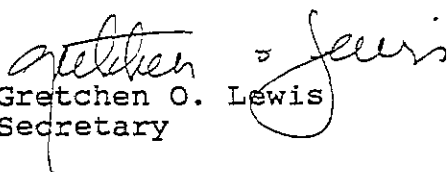
Gretchen O. Lewis  
Secretary

Honorable Ken Hechler  
Secretary of State  
Capitol Building  
Charleston, West Virginia 25305

Dear Secretary Hechler:

I hereby approve rules to be filed for public comment relative to the following subjects: aids-related medical testing and confidentiality, asbestos licensure, behavioral health facility patient rights, legally unlicensed health care facilities, personal care home licensure, radon licensure, residential board and care home licensure, and wastewater treatment works operator certification.

Sincerely,

  
Gretchen O. Lewis  
Secretary

GOL:kjs

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Personal Care Home Rule, 64 CSR 65

Type of Rule: X Legislative        Interpretive        Procedural

Agency Department of Health and Human Resources

Address Building 3, Capitol Complex

Charleston, W. Va. 25305

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 344,534	\$ 344,120	\$ 344,120
Personal Services			186,046	195,348	195,348
Current Expense			141,688	68,922	68,922
Repairs and Alterations			0	0	0
Equipment			16,800	0	0
Other			0	0	0
Revenue			\$ 5,991	\$ 5,991	\$ 5,991

2. Explanation of above estimates.

\* Currently budgeted funds are \$171,330. The proposed revisions will increase the cost of personal care home licensure by approximately \$173,200. See attachment for details.

3. Objectives of these rules:

This proposed legislative rule is a major redefinition of the general standards and procedures for licensure of personal care homes which are facilities providing accommodations, personal assistance, and nursing care to adults who are dependent upon the services of others by reason of physical or mental impairment. The proposed rule provides for the health, safety and welfare of resident of such personal care homes. This redefinition is mandated by statute and Court Order.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

According to State Code, personal care homes bear the direct cost of initial inspections; the impact of this provision is minimal since personal care home licensure is not a new program. The proposed revisions will increase the cost of personal care home licensure by approximately \$173,200.

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

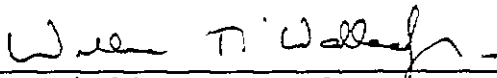
All costs to comply with the regulations will also be borne by the personal care home providers.

C. Economic Impact on Citizens/Public at Large.

Possible impact - increased costs in providing personal health care.

Date July 1, 1994

Signature of Agency Head or Authorized Representative



\_\_\_\_\_  
William T. Wallace, Jr., M.D.  
Commissioner, Bureau of Public Health  
Department of Health and Human Resources

PROPOSED RULE FISCAL NOTE ATTACHMENT  
**Personal Care Homes, 64 CSR 65**

The present fiscal note assumes a full year of operation during Fiscal Year 1995, provided that the Department of Health and Human Resources is awarded a supplemental budget package to cover the increased operating costs resulting from implementation of this rule. Other assumptions are detailed below.

Number of Facilities

Total known personal care facilities	70
Estimated licenses	70

Time Required for Inspections and Administration

The following assumptions were made concerning staff time requirements per facility:

1. Estimated time required per facility (under the revised Rule) for inspection and administrative costs for homes meeting the licensure requirements: 56 hours.
2. Estimated time required per facility (under the revised rule) for inspection, administrative, and probable legal costs for homes which may have a difficult time meeting the licensure requirements: 96 hours.

Revenue Estimates

Fiscal Year 1995

Revenues for Fiscal Year 1995 are based upon an existing 283 personal care home beds at a licensure renewal rate of \$5.25 per bed and an estimated 5 new personal care home inspections each year. Each of those facilities paying an average initial inspection cost of \$838.00. Minuscule revenues would be generated by an initial licensure fee of \$63.00 per facility application.

Initial Inspection Costs	\$838.00	x	5 Homes	\$	4,190
Licensure Application Fees	\$ 63.00	x	5 Homes		315
Renewal Licensure Fees	\$5.25	x	283 Beds		1,486
					=====
TOTAL ESTIMATED REVENUE					\$ 5,991

Estimated Increase Funding Required

1. Fiscal Year 1995

PERSONAL SERVICES:

0.50 FTEs	Assistant Program Administrator	\$ 16,500
1.00 FTEs	Clerical Staff	15,900
1.00 FTEs	Nurse III/IV	33,082
1.00 FTEs	Social Worker	22,000
		=====
3.50 FTEs	TOTAL PERSONAL SERVICES	\$ 87,482

CURRENT EXPENSE:

Fringe Benefits (Personal Services @ 22.1%)	\$ 35,259
PLUS: (Insurance @ 3.5 x \$4,550)	
Travel Expense (2 Surveyors @ \$8,200)	16,400
Vehicle Expense (1 Leased Vehicles)	6,240
Other Current Expense	11,023
(Includes Rent and Telephone Costs)	=====
TOTAL CURRENT EXPENSE	\$ 68,922

EQUIPMENT:

Office Furniture for 3 Charleston Based Staff	\$ 2,800
Computer Equipment:	14,000
2 Laptop Computers	=====
1 Desktop PCs for Office Staff	
TOTAL EQUIPMENT	\$ 16,800
TOTAL ESTIMATED COST	\$ 173,204
	=====

Estimated TOTAL Funds Required for Current & New Requirements

1. Fiscal Year 1995

PERSONAL SERVICES:

0.50 FTEs	Assistant Program Administrator	\$ 16,500
0.50 FTEs	Program Administrator	16,500
2.00 FTEs	Clerical Staff @ \$15,900	31,800
3.00 FTEs	Nurse III/IV @ \$33,082	99,246
1.00 FTEs	Social Worker	22,000
		=====
7.00 FTEs	TOTAL PERSONAL SERVICES	\$ 186,046

CURRENT EXPENSE:

Fringe Benefits (Personal Services @ 22.1%)	\$ 72,966
PLUS: (Insurance @ 7.0 x \$4,550)	
Travel Expense (4 Surveyors @ \$8,200)	32,800
Vehicle Expense (2 Leased Vehicles)	12,480
Other Current Expense	23,422
(Includes Rent and Telephone Costs)	=====
TOTAL CURRENT EXPENSE	\$ 141,688

EQUIPMENT:

Office Furniture for 3 Charleston Based Staff	\$ 2,800
Computer Equipment: 2 Laptop Computers, and 1 Desktop PCs for Office Staff	14,000
	=====
TOTAL EQUIPMENT	\$ 16,800
TOTAL ESTIMATED COST	\$ 344,534
	=====

## RULE ABSTRACT

Agency: Department of Health and Human Resources

Rule Title: Personal Care Home Licensure Rule

CSR Title and Series: 64 CSR 14

Type: Legislative

Summary: This legislative rule prescribes specific standards and procedures to provide for the health, safety, and protection of the rights and dignity of residents of personal care homes. The proposed rule rewrites the current outdated personal care home licensure rule. The major changes proposed in this rule bring it into conformance with the licensure law, including changes enacted by the 1994 Legislature in S.B. 308; respond to a Court Order; and make needed changes to further ensure the protection of the residents of such facilities based on actual field observation of needs and problems. The rule contains the following sections: general; application and enforcement; definitions; state administrative procedures; staffing and personnel requirements; admission and discharge policies; resident care and related services; resident rights; dietetic services; fire safety, disaster and emergency preparedness and training; physical facilities, construction and renovation; sanitation and safety; additional requirements related to the provision of limited and intermittent nursing or maximum personal assistance; penalties; due process; and severability.

For further information contact: Regulatory Development Section, telephone 1-304-558-3223 or Health Facilities Licensure and Certification Section, telephone 1-304-558-0050.

7/6/94



[PROPOSED]  
TITLE 64

WEST VIRGINIA ADMINISTRATIVE RULES  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

PERSONAL CARE HOMES

Series 14

199\_

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Public Hearing July 27, 1994  
Public Comment Period Ends August 1, 1994

64 CSR 14

PROPOSED - TITLE 64  
WEST VIRGINIA ADMINISTRATIVE RULES  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
SERIES 14  
PERSONAL CARE HOME LICENSURE RULE

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PROPOSED - TITLE 64  
WEST VIRGINIA ADMINISTRATIVE RULES  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
SERIES 14  
PERSONAL CARE HOME LICENSURE RULE

§64-14-1. General.

1.1. Scope - This legislative rule prescribes specific standards and procedures to provide for the health, safety, and the protection of the rights and dignity of residents of personal care homes. This rule must be read in conjunction with the W. Va. Code §16-5C-1 et seq. to determine the complete requirements for licensing, regulation, and complaint investigations of personal care homes.

1.2. Authority - W. Va. Code §16-5C-5.

1.3. Filing Date -

1.4. Effective Date -

1.5. Repeal of Former Rule - This rule repeals W. Va. Administrative Rules, Department of Health and Human Resources, Personal Care Home Licensure, 64 CSR 11, 1983.

§64-14-2. Application and Enforcement.

2.1. Application - This rule applies to any individual person, and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of the State establishing, maintaining or operating a personal care home as defined in W. Va. Code §16-5C-2d of this rule.

2.2. Enforcement - This rule is enforced by the secretary of the department of health and human resources or his or her designee.

§64-14-3. Definitions.

3.1. Abuse - Mistreatment of residents, including physical bodily harm, misuse of physical or chemical restraints, verbal abuse, infliction of emotional suffering, disregard for necessities of daily living, lack of care for medical problems, and illegal or improper use of a resident's personal property.

3.2. Accommodation - The provision of rooms and meals.

3.3. 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, transfer and mobility.

3.4. Administration of Medications - Opening a container of

medication and giving the medication to the person for whom it is prescribed, including giving injections and administering eyedrops.

3.5. **Administrator** - The owner or individual selected by the licensee to be responsible for the day-to-day operation of the personal care home.

3.6. **Applicant** - The person, partnership, association or corporation and any local or state governmental unit or any division, department, board or agency thereof which submits an application for an initial or renewal license to establish, operate or maintain a personal care home.

3.7. **Bed Capacity** - The number of residents for which a home is licensed to provide care.

3.8. **Bedfast** - The condition of individuals who are confined or restricted to a bed or chair for a prolonged or indefinite period of time with limited mobility and ability to turn themselves while in bed or remove themselves from a chair, making them susceptible to physiological, physical and psychological complications of immobilization and incapable of self-preservation. An individual for whom a physician has prescribed bed rest because of a short term illness (i.g. cold, flu, virus, etc.) is not considered bedfast.

3.9. **Behavioral Health Services** - Those services intended to help individuals with emotional or mental disorders, alcohol or drug abuse problems, or mental retardation or other developmental disabilities to gain or regain the capacity to function adaptively in their environment, to care for themselves and their families, and to be accepted by society.

3.10. **Boarding Home** - An establishment which is held forth to the public as providing or which is operated to provide, only room and board to persons not in need of medical or nursing services, personal supervision or assistance in performing the activities of daily living.

3.11. **Chemical Restraint** - A psychoactive drug that is used for discipline or convenience and is not required to treat medical symptoms.

3.12. **Communicable Disease** - An illness due to an infectious agent or its toxic products which is transmitted, directly or indirectly, to a susceptible host from an infected person, animal, or arthropod, or through the agency of an intermediate host or a vector or through the inanimate environment.

3.13. **Comprehensive Service Plan** - A written description of actions to be implemented by the licensee to meet all of the needs identified in the resident's functional needs assessment.

3.14. 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.

3.15. Home - A personal care home.

3.16. Household Member - A member of a family operating a personal care home who lives in the home and who is not receiving services as a resident of the personal care home.

3.17. Immediate and Serious Threat - A situation which may present a high probability of serious harm or injury to one or more residents. An immediate or serious threat need not result in actual harm to any resident. The threat of probable harm is perceived as being as serious or significant.

3.18. Imminent Danger - As applied to a violation of this rule, a danger which could reasonably be expected to immediately cause or contribute to death, serious physical harm or illness to residents, household members or staff before the threat can be eliminated through the process of Section 4.8 of this rule.

3.19. Instrumental Activities of Daily Living - Those activities individuals generally perform regularly in the course of meeting their needs such as: preparing meals, doing laundry, managing money, cleaning their rooms or homes, shopping, using public transportation, writing letters, making telephone calls, participating in recreational and leisure activities, and other similar activities.

3.20. Legal Representative -

3.20.1. A conservator appointed pursuant to W. Va. Code §§44A-1-4 et seq. within the limits set by the order;

3.20.2. A guardian appointed pursuant to W. Va. Code §§44A-1-4 et seq. within the limits set by the order;

3.20.3. A limited conservator appointed pursuant to W. Va. Code §§44A-1-4 et seq. within the limits set by the order;

3.20.4. A limited guardian appointed pursuant to W. Va. Code §§44A-1-4 et seq. within the limits set by the order;

3.20.5. A medical power of attorney appointed pursuant to W. Va. Code §§44A-1-4 et seq. within the limits set by the order; or

3.20.6. A surrogate decision-maker appointed pursuant to W. Va. Code §§44A-1-4 et seq. within the limits set by the order.

3.21. Licensed Health Care Professional - Any health care

professional currently licensed in the State of West Virginia such as a social worker, dentist, practical nurse, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, registered professional nurse, or speech-language pathologist.

Note: Responsibilities of physicians contained within this rule may be implemented by nurse practitioners or physicians' assistants as assigned by the supervising physician and within the parameters of professional licensing.

3.22. **Life Care Contract** - An agreement between a personal care home and an individual in which the personal care home agrees to provide to the individual for the duration of his or her life or for a term of more than one (1) year, nursing services, medical services or personal care services, in addition to board and lodging. The agreement is conditioned upon the individual's paying consideration to the personal care home in lieu of or in addition to the payment of the personal care home's customary charges for the care and services involved.

3.23. **Limited and Intermittent Nursing Care** - Care provided to individuals with stable medical conditions affecting one (1) or more body systems, who do not need direct, hands-on nursing care in excess of one (1) hour per day, or who have a medical condition requiring direct, hands-on nursing care in excess of one (1) hour per day which is not projected to persist for a period of greater than sixty (60) consecutive days. Individuals who have medical conditions which need direct, hands-on nursing care in excess of one (1) hour per day, or who have a medical condition requiring direct, hands-on nursing care in excess of one (1) hour per day or which has persisted for a period of greater than sixty (60) consecutive days shall be transferred to a health care facility with the capability of providing the needed level of nursing care. Residents receiving hospice care may receive such care for ninety (90) consecutive days.

3.24. **Major Incident** - An incident of the nature of the following example: death of a resident from other than natural causes; having residents missing who are likely to injure themselves or need medication or treatment on a regular basis for their well-being and who are likely to have difficulty returning to the personal care home; assaults on a resident resulting in injury; or events which cause the disruption of normal personal care home activity such as threats or occurrences of extreme violence, explosions, fire or natural disasters.

3.25. **Mobility** - The ability to move from place to place, which includes the following categories:

3.25.1. Mobile with or without assistive device; requires no assistance with transfer;



3.25.2. Mobile with or without assistive device; requires assistance with transfer;

3.25.3. Mobile with occasional personal assistance; walks with unsteady gait;

3.25.4. Mobile with continuous personal assistance;

3.25.5. Mobile with a chair or device and personal assistance; including transfer.

3.26. Neglect - Disregard for the necessities of daily living or the lack of care for significant medical problems.

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

3.28. Nursing Home - An institution, residence or place, or any part or unit thereof, however named, in this State which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodation and care, for a period of more than twenty-four (24) hours, for four (4) or more persons who are ill or otherwise incapacitated and in need of extensive, on-going nursing care due to physical or mental impairment, or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation.

3.29. Nursing Support Staff - Registered professional and practical nurses employed by the personal care home to provide direct hands-on nursing services to residents. Nursing support staff shall be licensed as required by State law and shall work under the supervision of a registered professional nurse.

3.30. On-going Nursing Care - The nursing care required when a deviation in health is expected to continue over a lengthy period of time with no minimal improvement in the unstable or unpredictable condition.

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

3.32. Personal Care Home - Any institution, residence or place, or any part or unit thereof, however named, in this State

which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and personal assistance and supervision, for a period of more than twenty-four (24) hours, to four (4) or more persons who are dependent upon the services of others by reason of physical or mental impairment who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice: Provided, That services utilizing equipment which requires auxiliary electrical power in the event of a power failure shall not be used unless the personal care home has a backup power generator.

3.33. Physical Restraint - A device which physically limits, restricts, or deprives an individual of movement or mobility.

3.34. Registered Long Term Care Nursing Assistant - Any individual who has met the requirements for entry in the long term care nursing assistant registry.

3.35. Resident - An individual living in a personal care home for the purpose of receiving personal care services from the home.

3.36. Resident Assessment Instrument - A standardized assessment form approved by the secretary which is functionally based and identifies potential service needs.

3.37. Residential Care Staff - Those employees of a personal care home whose responsibilities include the provision of direct care services to residents. Their duties may include transporting of residents, the provision of personal assistance with activities of daily living and the assistance needed to carry out instrumental activities of daily living.

3.38. Residential Support Staff - Those employees of a personal care home whose responsibilities include the provision of services to residents. Their duties may include providing housekeeping, laundry, maintenance, and food service assistance.

3.39. Residential Board and Care Home - Any residence or any part or unit thereof, however named, in this State which is advertised, offered, maintained, or operated by the owners or management, whether for consideration or not, for the express or implied purpose of providing accommodations, personal assistance and supervision, for a period of more than twenty-four (24) hours, to four (4) to ten (10) persons who are not related to the owner or manager by blood or marriage, within the degree of consanguinity of second cousin, and who are dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care but are capable of self-preservation and are not bedfast, including those individuals who qualify for and are receiving services

coordinated by a licensed hospice: Provided, That services utilizing equipment which requires auxiliary electrical power in the event of a power failure shall not be used unless the personal care home has a back up generator.

3.40. Restorative Nursing - Nursing care directed toward assisting a resident to achieve and maintain an optimal level of self-care and independence and providing assistance to residents in learning or relearning skills needed in everyday activities.

3.41. Routine and Repetitive Administration of Drugs - Administering drugs to another individual which do not require the substantial specialized skill, judgment and knowledge required in professional nursing; administering drugs on a regular basis by a trained, responsible adult.

3.42. Secretary - The secretary of the State department of health and human resources or his or her lawful designee.

3.43. Self-Preservation - The capability of, at least, removing one's physical self from situations involving imminent danger, such as fire.

3.44. Supervision - The assumption of varying degrees of responsibility for the safety and well-being of residents including, but not limited to: being aware of the resident's whereabouts, although he or she may travel independently in the community; monitoring through observation the activities of the resident while on the premises of the home to ensure his or her health, safety and well-being; reminding the resident of any important activities of daily living and prescribed medication; purchasing of food and other supplies, and meeting nutritional and food needs; arranging for or providing transportation as necessary; and other similar activities.

3.45. Supervision of Self-Administered Medications - A personal service which includes reminding residents to take medication, opening bottle caps for residents, reading the medication label to residents, observing residents while they take medication, checking the self-administered dosage against the label on the container, and reassuring residents that they have obtained and are taking the dosage as prescribed.

3.46. Supervisor-In-Charge - The person responsible in the absence of the administrator for carrying out the services required to meet the needs of the residents and providing for their dignity, rights, safety and health.

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

##### 4.1. General Licensing Provisions

4.1.1. No person may establish, maintain, offer, operate or

advertise a personal care home without first obtaining from the secretary a license authorizing the operation; provided, however, that any person who filed an application for a personal care home license with the secretary prior to the effective date of this rule may continue to operate the personal care home without a license until such time as the secretary grants or denies the license.

4.1.2. Personal care homes which provide services for persons who require only moderate assistance in the activities of daily living and instrumental activities of daily living and do not require nursing care (limited and intermittent as permitted by this rule) are not required to comply with Section 13 of this rule.

4.1.3. Personal care homes which provide services for persons who require maximum (more than moderate) assistance in the activities of daily living or the instrumental activities of daily living, or who require limited or intermittent nursing services are required to comply all requirements of this rule.

4.1.4. A separate license shall be required for homes maintained or operated on separate premises even though maintained or operated by the same licensee. Separate buildings on the same premise operated as personal care homes shall require separate licenses, unless the secretary determines otherwise.

4.1.5. A license shall be valid only for the licensee and for the structure named in the application. A license is not transferable or assignable, and shall be surrendered to the secretary upon written demand or immediately when the personal care home ceases provision of services.

4.1.6. If there is to be a change of licensee of a personal care home, the person proposing to be the licensee shall at least ninety (90) days prior to proposed inception of the license submit an application for a license containing all information required for a license. In addition, the applicant shall submit:

4.1.6.a. An appraisal by a certified appraiser, based upon the sales approach to value and not including any consideration of income that might result to a licensed personal care home and,

4.1.6.b. A fiscal analysis of income and expenses, including all repairs, alterations, and improvements that are needed immediately and over the next five (5) years in order to bring the personal care home into compliance with these regulations.

4.1.7. The name of a personal care home shall be changed only with the secretary's approval, and the new approved name shall be on the next license issued.

4.1.8. If a person owns more than one personal care home,

each home shall have a different name.

4.1.9. The words "clinic", "hospital", "nursing home", "residential board and care home" or any other words which suggest a type of facility other than a personal care home shall not be used in the name of the home.

4.1.10. If any residents of a personal care home are to be moved to a new location, the licensee shall apply for a license for the new location at least ninety (90) days in advance of the move.

4.1.11. If there is to be a change in the leasing cost of any leased personal care home, there shall be application for a new license as provided for in this section.

#### 4.2. Licensure Application Procedure

4.2.1. An application shall be filed with the secretary through the Office of Health Facility Licensure and Certification.

4.2.2. The application shall be submitted on forms provided by the secretary and shall be accompanied by a license fee in the form of a check or money order payable to the Office of Health Facilities Licensure and Certification of the State of West Virginia.

4.2.3. Monies collected for application and inspection fees shall be deposited in a separate account designated as "the health facility licensing account" as provided in W. Va. Code §16-1-13.

4.2.4. The application fee is non-refundable and the amount is established in accordance with W. Va. Code §16-5C-6.

4.2.5. The application and fee for application shall be submitted at least ninety (90) days prior to the date proposed for commencement of operations.

4.2.6. The application and accompanying forms shall be complete and shall bear the notarized signature of the applicant.

#### 4.3. The Application for License

4.3.1. The content of the application shall consist of:

4.3.1.a. Identification information;

4.3.1.b. Information as required in W. Va. Code §16-5C-6;

4.3.1.c. Resident assessment forms;

4.3.1.d. Information the secretary deems necessary to determine that owners and operators are responsible and suitable to operate, direct or participate in the operation of a personal care home.

4.3.2. The signature on the application and accompanying forms shall serve as a release for obtaining references, credit, and other background information.

4.3.3. The secretary may deny a license if an applicant is found to be irresponsible or unsuitable to operate, direct, or participate in the operation of a personal care home as evidenced by the following reasons:

4.3.3.a. Lack of financial stability to operate, such as insufficient capital, delinquent accounts, checks returned because of insufficient funds, nonpayment of taxes, utility expenses and other essential services;

4.3.3.b. If an applicant, and, if applicable, administrator is found to have been arrested for, adjudicated, or convicted of any felony or of a misdemeanor related to providing care in a health care facility or in operating a health care facility, in which case the secretary shall, on a case by case basis, assess the seriousness of the offense, as well as the type and frequency of the offense;

4.3.3.c. When the secretary determines, based on the applicant's or administrator's past history, that there is a reason to believe that abuse, incompetent care, or exploitation of residents may occur;

4.3.3.d. The applicant has been denied a license to operate a health care facility in West Virginia or any other jurisdiction during the previous five (5) years or a revocation of the applicant's license;

4.3.3.e. There has been a record of noncompliance with lawful orders of the division 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;

4.3.3.f. If the secretary finds that the reimbursement of the owner of the personal care home or lessor of the personal care home is such that it exceeds the market for the personal care home or that it limits the ability of the personal care home to provide those improvements, the number of staff, those activities, or other necessities, or in any other way hinders the entitlement to the residents as provided for under these regulations;

4.3.3.g. If the applicant fails or refuses to submit a

completed application inclusive of all requested forms.

4.3.4. The secretary, after inspection, shall issue an initial license if it is determined that:

4.3.4.a. The applicant is responsible and suitable to operate, direct, or participate in the operation of a personal care home as required by W. Va. Code §16-5C-6 (b) (1);

4.3.4.b. The personal care home is under the supervision of an administrator who is qualified by training and experience as defined in this rule;

4.3.4.c. An inspection determines that all class I standards have been met and there is at least an overall rating of "c"; and

4.3.4.d. The costs associated with all inspections which the secretary may require prior to the issuance of an initial license have been paid by applicant.

#### 4.4. License Renewal

4.4.1. Applications for renewal of a license shall be postmarked or hand delivered to the secretary a minimum of ninety (90) days prior to the expiration date appearing on the currently held license.

4.4.2. Applicants for renewal of a license may not be required to provide proof of financial ability to operate if the home has demonstrated consistent financial stability.

4.4.3. The secretary shall issue a renewal license when the following conditions are met:

4.4.3.a. The home is found to be in compliance with the provisions of W. Va. Code §16-5C-1 et seq. and this rule; and

4.4.3.b. The applicant has submitted a complete application and all requested documentation regarding financial capacity and management of the home.

4.4.4. The secretary may issue a renewal license or a provisional license when the home has met all class I standards and has attained at least a "C" rating according to this rule and has made adequate provision for compliance with the remaining requirements of the rule within specified time periods.

#### 4.5. Provisional License

4.5.1. A provisional license may be issued when:

4.5.1.a. The home has received an "F" rating' or

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

4.5.2. A provisional license shall not be issued when the home:

4.5.2.a. Is in violation of any Class I standards;

4.5.2.b. Is assigned a rating of "F" in three (3) or more licensure categories; or

4.5.2.c. Has a record of noncompliance with this rule;

4.5.2.d. Does not demonstrate potential for at least an overall "C" rating within the expiration date of the currently issued license.

4.5.3. A provisional license shall not be renewed.

4.5.4. The secretary shall determine the period of time for which a provisional license shall be issued. However, in no instance shall this period exceed one (1) year.

4.5.5. If the owner of a home is denied a provisional license or a provisional license expires, a subsequent application for a license shall be treated as an initial license and shall meet the requirements for any initial license including the cost of an initial application fee and inspections as determined by the secretary.

#### 4.6. Inspections

4.6.1. The secretary shall make or cause to be made such inspections by duly authorized representatives as deemed necessary to carry out the intent of W. Va. Code §16-5C-1 at seq. and this rule.

4.6.2. The secretary has the right to enter upon the premises of a personal care home without prior notice to conduct inspections. If the owner or person in charge of the a home refuses entry, the secretary may apply to the circuit court in which the home is located or the circuit court of Kanawha County for a warrant authorizing an inspection.

4.6.3. The secretary or any duly authorized representative shall have the right to enter upon the premises of any building for which probable cause exists that it is being operated or maintained as a personal care home without a license. If the owner or person in charge of the home refuses entry, the secretary may apply to the circuit court in which the building is located or the circuit court of Kanawha County for a warrant authorizing an inspection.



4.6.4. The secretary's authorized representative shall conduct at least one unannounced inspection in order to assign a rating for all categories of standards prior to issuance of an initial license. Inspections will be conducted after:

4.6.4.a. The application and fee have been received and been determined to be complete;

4.6.4.b. All requested documentation verifies the readiness of the home for an inspection;

4.6.4.c. Fees for the cost of inspections have been received by the secretary; and

4.6.4.d. Necessary inspections can be scheduled.

4.6.5. Periodic unannounced inspections shall be conducted to determine the home's continued compliance with applicable statutes and regulations.

4.6.5.a. The inspection shall be conducted by a multi-disciplinary team competent to investigate health needs, life safety issues, and behavioral health needs. The team members shall inspect and review all regulatory requirements, except where proceeding under Section 4.6.5.

4.6.5.b. The team shall make a detailed inquiry into the number of residents in the personal care home and the appropriateness of their placement in the home through resident interviews and resident record reviews.

4.6.6. The secretary shall prepare a written report of inspections made pursuant to this rule and a copy shall be mailed to the licensee or operator as applicable, and the Ombudsman, specifically listing any violation of this rule.

4.6.7. The administrator shall post a copy of the secretary's report in a place where residents shall have access to it. The report shall remain posted until the next inspection.

#### 4.7. Complaint Investigation

4.7.1. Any person may register a complaint with the secretary alleging a violation or violations of this rule or of W. Va. Code §16-5C-1 et seq. by a personal care home or a facility alleged to be operating unlawfully as a personal care home. The complainant shall state the substance of the complaint and identify the home or building by name or address.

4.7.2. The secretary shall have the authority to conduct investigations as necessary to determine the validity of the complaint and will notify the personal care home or a facility alleged to be operating unlawfully as a personal care home of the

substance of the complaint at the time of the completion of any investigation.

4.7.3. The secretary shall prepare a written report of any investigation and shall notify the complainant and the personal care home, whether operating lawfully or unlawfully, in writing or the results of the investigation. The time frame shall be within ten days.

4.7.4. A description of any corrective action that a home will be required to take within a specified time frame and any disciplinary action to be taken by the secretary shall be sent to the complainant and to the licensee.

4.7.5. If a complaint has been substantiated, the secretary shall advise any injured party of the possibility of civil remedy under article 5C of Chapter 16 of the West Virginia Code as required by W. Va. Code §16-5C-8.

4.7.6. The names of a complainant and of any resident named in the complaint shall be kept confidential and shall not be disclosed to the public without written permission of the complainant and the resident or the resident's legal representative. The name of the complainant or a resident named in a complaint or the report of investigation which could reasonably identify the complainant or any resident shall be deleted unless the resident or their legal representative gives written permission for the disclosure or there is clear and convincing evidence in a particular instance which requires disclosure of names.

4.7.7. If, within one hundred twenty (120) days of an inspection or complaint investigation, a personal care home fails to comply with the requirements of this rule, the secretary shall, in writing, inform all residents of the personal care home of the violations which the personal care home has made, and of the time period during which residents may relocate if they wish prior to the deficient personal care home being reported to the Social Security Administration.

4.7.7.a. The secretary shall provide all residents with a list of approved facilities and agencies to assist them to move if they wish. The purpose is to let the residents know they do not have the protection of the regulations, and to give them assistance to move if the lack of compliance by the personal care home endangers them or causes a reduction in their Social Security Benefits.

4.7.8. If a complaint becomes the subject of a judicial proceeding, nothing in this rule shall be construed to prohibit the disclosure of information which would otherwise be disclosed in judicial proceeding.

4.7.9. Any type of discriminatory treatment of a patient by whom, or upon whose behalf, a complaint has been submitted to the secretary, within one hundred twenty days of the filing of the complaint or the institution of the action, shall raise a rebuttable presumption that the action was taken by the personal care home in retaliation for the complaint or action.

4.7.10. The division of health recognizes the lawful interests of and responsibilities of the State Commission on Aging and its recognized affiliates, including the ombudsman program, and that these entities shall enter a personal care home at a time appropriate to the complaint.

4.7.11. The secretary shall report to the division of social services of the State Department of Health and Human Resources any instances of neglect or abuse or other situations which are required to be reported under W. Va. Code §9-6-9 which are discovered or observed as a result of any complaint investigation, any inspection, or investigation of a personal care home.

#### 4.8. Plans of Correction

4.8.1. The licensee of a personal care home found on the basis of inspection or other investigation to have violations of requirements in this rule shall develop a plan of correction which shall be signed and dated by the licensee and submitted to the secretary within fifteen (15) working days of receipt of the report of the inspection or other investigation.

4.8.2. The secretary shall, when identified, require immediate correction in the case of a violation constituting immediate and serious threats to the health or safety of a resident or employee.

4.8.3. The plan of correction shall specify:

4.8.3.a. The violations to be corrected;

4.8.3.b. Action taken or proposed to correct the violations and procedures to prevent their recurrence; and

4.8.3.c. The calendar date by which each violation will be corrected, which date shall allow the shortest possible time in which the home may reasonably be expected to correct each specific violation. The time allowed shall be different for the various violations cited. The time of correction for any violation shall not exceed sixty days from the date of inspection; however, for uncontrollable circumstances, the secretary may allow more time for a specific deficiency.

4.8.4. The plan of correction shall be approved, modified or rejected in whole or in part by the secretary in writing.

4.8.5. The secretary may require the personal care home to employ a consultant who is registered, licensed or certified in their field of specialty as means of corrective action for specific cited deficiencies including but not limited to a dietitian, pharmacist, social worker, or behavioral health case manager.

4.8.6. The secretary shall require the personal care home to develop policies and procedures for activities and services being provided by the home which have resulted in negative outcomes. The secretary shall approve the required policies and procedures.

4.8.7. In modifying or rejecting a proposed plan of correction, the secretary shall state the reason for the modification or rejection.

4.8.8. When the secretary rejects a plan of correction, a reasonable amount of time, but no more than fifteen (15) working days, shall be allowed for submission of a revised plan.

4.8.9. The secretary may conduct such procedures as are reasonable and necessary including a follow-up on site inspection to verify the correction of any violations identified during an inspection or any other investigation.

4.8.10. When the personal care home fails to correct violations of this rule, the secretary shall inform residents and/or families and guardians of residents of standards which the personal care home does not meet, and the time period during which residents may relocate, if they wish, before the deficient personal care home is reported to the Social Security Administration; and provide residents with a list of approved facilities and agencies which will help them move.

4.8.11. The secretary will make available upon request, to interested individuals a single copy, at reasonable cost, of the current list of facilities (name and address) found in violation of a standard, including the details of each violation.

#### 4.9. Release of Reports and Records

4.9.1. The secretary shall make available for public inspection information concerning applications, inspections, investigations and the current list of facilities found in violation of a standard including the detail of each violation. Copies shall be provided upon request.

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

4.9.2.a. Applications and exhibits;

4.9.2.b. Inspection reports;

4.9.2.c. Reports of investigations conducted in response to complaints; and

4.9.2.d. Any other reports filed with or issued by the secretary pertaining to the compliance of the home with applicable laws and rules.

4.9.3. Within two hundred ten (210) days of an inspection or complaint investigation after which deficiencies are not timely corrected, the secretary shall cause the name and address of the deficient personal care home to be transmitted to the appropriate Regional Office of the Social Security Administrations as a deficient personal care home.

4.9.4. The secretary shall provide all residents with a list of approved facilities and agencies to assist them to move if they wish. The purpose is to let the residents know they do not have the protection of the regulations, and to give them assistance to move if the lack of compliance by the personal care home endangers them or causes a reduction in their Social Security Benefits.

4.9.5. The names of residents shall be kept confidential and shall not be disclosed without the written permission of the resident or their legal representative. 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 deemed public information, the secretary shall delete any confidential information regarding a resident which would reasonably permit identification of the resident.

#### 4.10. Exceptions to the Rule

4.10.1. The secretary may waive requirements of these rules if:

4.10.1.a. Strict enforcement of the rule would result in unreasonable hardship on the personal care home and the waiver is in accordance with the particular needs of residents and will not adversely affect the health, safety, welfare or rights of the residents; or

4.10.1.b. The waiver or variance is part of a written program plan designed to test alternative methods of delivering personal care home services, and the waiver or variance will not adversely affect the health, safety, welfare or rights of the residents.

4.10.2. The secretary shall impose specific conditions on a waiver or variance in order to protect the health, safety, rights, or welfare of the residents. Violation of the conditions

under which a waiver or variance is granted constitutes a violation of this rule.

4.10.3. In order to request a waiver, the licensee or resident shall follow the following procedure:

4.10.3.a. A request shall be in writing and shall specify the specific requirement in this rule for which a waiver is requested;

4.10.3.b. Be made at least thirty (30) days prior to the date for which the period of the waiver is to begin;

4.10.3.c. Specify the time period for which the waiver is requested;

4.10.3.d. Submit the specific and detailed reasons for the request;

4.10.3.e. Explain why the specific rule cannot be complied with;

4.10.3.f. Assure that there is no adverse effect on resident health, safety, welfare, or rights.

4.10.3.g. A copy of the notice shall be sent to the residents of the home, the ombudsman representing the residents of the home, and the guardians or next of kin for each of the residents. The names of these persons shall be provided to the secretary within fifteen (15) days of making the request. The person noticed or any other person shall have the right to oppose the request by stating the reasons therefor within twenty (20) days of the receipt of notice of the request. If there is opposition to the request, a hearing shall be afforded all parties. All of the provisions of the Department of Health rules of Procedures for contested case hearings shall apply.

#### 4.11. Classification of Standards

In accordance with W. Va. Code §16-5C-5, a classification for each standard in this rule is established according to the following:

4.11.1. Class I standards are those the violation of which would present either an imminent danger to the health, safety or welfare of any resident or substantial probability that death or serious physical harm would result.

4.11.2. Class II standards are those the violation of which would have a direct or immediate relationship to the health, safety or welfare of any resident by which would not create imminent danger.

4.11.3. Class III standards are those the violation of which would have an indirect or potential impact on the health, safety or welfare of any resident.

#### 4.12. Point System

4.12.1. A Class I standard shall be assigned a value of ten (10) points if the home fully complies with the standard. If the home fails to comply fully with the Class I standard and the secretary determines that the lack of compliance presents either an imminent danger to any resident or substantial probability that death or serious harm to any resident would result, the score assigned to the Class I standard shall be zero (0). If the home fails to demonstrate full or substantial compliance with the standard but partial compliance is in evidence, a score of five (5) points may be assigned to the standard. If the home fails to demonstrate partial compliance or if the violation is a repeat of a deficiency cited during the previous licensure inspection, a partial score shall not be assigned and the standard shall be scored as zero (0).

4.12.2. A Class II standard shall be assigned a value of nine (9) points if the home fully complies with the standard. If the home fails to comply fully with the Class II standard and the secretary determines that the lack of compliance may result in substantial probability that serious harm to the health, safety, or welfare of any resident would result, the score assigned to the Class II standard shall be zero (0). If the home fails to comply fully with the standard but does demonstrate substantial compliance a score of six (6) points may be assigned to the standard. If the home fails to demonstrate full or substantial compliance with the standard by partial compliance is in evidence a score of four (4) points may be assigned to the standard. If the home fails to demonstrated partial compliance or if the violation is a repeat of the deficiency cited during the previous licensure inspection, a partial score shall not be assigned and the standard shall be scored as a zero (0).

4.12.3. A Class III standard shall be assigned a value of eight (8) points. If the home fails to comply fully with the standard but does demonstrate substantial compliance a score of five (5) points may be assigned to the standard. If the home fails to demonstrate full or substantial compliance with the standard but partial compliance is in evidence, a score of four (4) points may be assigned to the standard. If the home fails to demonstrate partial compliance or if the violation is a repeat of a deficiency cited during the previous licensure inspection, a partial score shall not be assigned and the standard shall be scored as a zero (0).

4.12.4. The secretary shall determine substantial, partial, or lack of compliance with a standard based on the severity or scope, or both, of the noncompliance rather than the quantity of

components out of compliance under a specific standard.

4.12.5. If a standard is not applicable for a particular personal care home, a full compliance value shall be assigned for that item for scoring and rating purposes.

#### 4.13. Personal Care Home Rating

4.13.1. The secretary shall assign a rating to each personal care home based on the result of the licensure inspection.

4.13.2. The rating shall be assigned and included on the license issued to the personal care home based on the results of the licensure inspection.

4.13.3. Scores and ratings for individual categories are shown in Table 64-14.1 found at the end of this rule.

4.13.4. Points scored in any individual category shall not be permitted to offset deficiencies within another category. Therefore, no total of value points is computed. An overall rating for the home cannot be determined solely on the basis of total points earned.

4.13.5. For purposes of assigning an overall rating, a category rating of "A" shall be assigned a score of four; a category rating of "B" shall be assigned a score of three; a category rating of "C" shall be assigned a score of two; and a category rating of "F" shall be assigned a score of zero. These category ratings scores shall be totaled and an average category rating score shall be computed. An overall personal care home rating shall be assigned based on considerations of both the average category rating score and the number of categories rated "F" as follows:

4.13.5.a. If a home is given a rating of "F" on as many as one category or has an average category rating score of less than 2.0, an overall rating of "F" shall be assigned:

4.13.5.b. For an average score of 2.0 through 2.59, an overall rating of "C" shall be assigned;

4.13.5.c. For an average score of 2.6 through 3.59, an overall rating of "B" shall be assigned; and

4.13.5.d. For an average score of 3.6 through 4.0 an overall rating of "A" shall be assigned.

4.13.6. A home with an overall rating of "F" may be issued a provisional license as described in Section 4.5 of this rule and in W. Va. Code §16-5C-6d. However, any home demonstrating an "F" in three or more licensure categories shall not be issued a license and shall be ordered to close or be subject to other



actions by the secretary as described in W. Va. Code §16-5C-11 and W. Va. Code §16-5C-15.

4.13.7. Any home which has been determined by the secretary to be not in compliance with any Class I standard shall not be assigned a rating and shall not be issued a provisional license as specified in Section 4.5.2 of this rule.

4.13.8. A rating of no greater than a "B" shall be assigned to a home which has been denied a provisional license based on violation of a Class I standard and is subsequently reapplying for an initial license as specified in Section 4.5.5 of this rule.

#### §64-14-5. Staffing and Personnel Requirements.

##### 5.1. The Licensee (Class II)

5.1.1. The licensee is responsible for compliance with this rule; the terms of the home's license; W. Va. Code §§16-5C-1 et seq.; other relevant federal, State or local laws and regulations; and with the home's policies.

5.1.2. The licensee shall:

5.1.2.a. Give evidence of financial responsibility;

5.1.2.b. Be of good character and reputation;

5.1.2.c. Protect the physical and mental well-being of the residents;

5.1.2.d. Keep the records and make the reports required by this rule for personal care homes. The secretary may inspect these records and reports at any reasonable time in order to determine compliance with this rule; and

5.1.2.e. Meet the qualifications of the administrator if he or she assumes those duties.

5.1.3. A personal care home sponsored by a religious organization, a corporation or a voluntary association shall be controlled by a governing board of directors that shall fulfill the duties of the licensee.

##### 5.2. The Administrator (Class II)

5.2.1. The administrator of a personal care home shall:

5.2.1.a. Be at least twenty-one (21) years of age;

5.2.1.b. Obtain ten (10) continuing education units (C.E.U.'s) per year;

5.2.1.c. Know the requirements of this rule;

5.2.1.d. Be able to conform to applicable statutes, rules and regulations;

5.2.1.e. Be able to keep or supervise the keeping of financial and other records; and

5.2.1.f. Have a personal history which 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; and of convictions within the previous five (5) years of a crime relevant for the provision of care to a dependent population.

5.2.2. The administrator is responsible and accountable for the development and execution of the policies and procedures required by this rule.

5.2.3. The licensee shall notify the secretary in writing within ten days of any permanent change in the administrator, house physician, consultant registered nurse or supervising nurse (if required) of the home. An emergency administrator or supervising nurse may be employed only upon prior verbal approval from the secretary. The emergency administrator or supervising nurse shall be capable of protecting the physical and mental well-being of residents. The secretary shall confirm approval of the emergency administrator in writing. A licensee shall not operate a home more than sixty days without a qualified administrator or supervising nurse or an individual acting in these positions, unless the secretary grants an extension, based on a determination that a reasonable attempt has been made to find a suitable replacement.

5.2.4. The administrator is responsible for the development and implementation of a quality assurance plan to include at a minimum:

5.2.4.a. Review of incidents and accidents (including falls);

5.2.4.b. Medication errors;

5.2.4.c. Pharmacy review;

5.2.4.d. Sanitation and pest control;

5.2.4.e. Food services;

5.2.4.f. Preventative maintenance;

5.2.4.g. Customer satisfaction;

- 5.2.4.h. Disaster preparedness;
- 5.2.4.i. Inservice training;
- 5.2.4.j. Resident and employee health;
- 5.2.4.k. Resident finances and accounts;
- 5.2.4.l. Outside service arrangements;
- 5.2.4.m. Resident records.
- 5.2.4.n. How often each area will be evaluated;
- 5.2.4.o. A summary of problems which are identified; and
- 5.2.4.p. Methods to prevent recurrences of identified problems.

5.2.5. The administrator is responsible for arranging for outside services to ensure the provision of needed services to the residents. Copies of the written arrangements shall be maintained in the home.

### 5.3. Personnel (Class I)

5.3.1. The administrator shall assure that all staff are:

5.3.1.a. Assigned duties in accordance with their level of education, preparation for their responsibilities, and experience;

5.3.1.b. Of good character;

5.3.1.c. At least eighteen (18) years of age, unless certified as a nurse aide;

5.3.1.d. Able and willing to accept supervision and training;

5.3.1.e. Clean and well-groomed;

5.3.1.f. Licensed in accordance with any applicable State law;

5.3.1.g. Not known to him or her as indicated by reference checks and a criminal record report screening as an individual who has abused or neglected dependent persons;

5.3.1.h. Free from communicable disease in an infectious stage;

5.3.1.i. Screened for tuberculosis prior to employment by the personal care home; and

5.3.1.j. Caring for residents with needs that are within the scope of their practice and training.

5.4. Staff Training and Orientation (Class II)

5.4.1. All employees and household members shall be made aware of:

5.4.1.a. The purpose of the personal care home;

5.4.1.b. Services provided by the home;

5.4.1.c. The home's daily routines; and

5.4.1.d. Required compliance with this rule as it relates to their duties and responsibilities.

5.4.2. Orientation and training for resident care staff shall be provided within the first 15 days of employment and shall include:

5.4.2.a. Procedures to be followed in the event of a missing resident, accidents, fire, natural disaster or other emergencies;

5.4.2.b. CPR and first aid;

5.4.2.c. Abuse, neglect, mistreatment and procedures to address their occurrence;

5.4.2.d. The rights and responsibilities of residents;

5.4.2.e. Confidential treatment of personal information;

5.4.2.f. Their specific duties and responsibilities toward residents;

5.4.2.g. Personal assistance procedures with return demonstration of staff proficiency;

5.4.2.h. Documentation requirements;

5.4.2.i. Communication skills and procedures;

5.4.2.j. Transportation procedures; and

5.4.2.k. Infection control.

5.4.3. The home shall provide in-service training on appropriate fire evacuation procedures for residents and staff of the personal care home at least annually. This training shall include at a minimum: evacuation procedures and routes, emergency assistance phone numbers, and safe areas. New admissions and employees shall be trained within the first

twenty-four (24) hours of their association with the home.

5.4.4. All residential care staff shall be trained to have general knowledge in the care of aged, infirm or disabled adults with consideration for individual capabilities and needs within the first thirty (30) days of employment.

5.4.5. The personal care home shall provide ongoing inservice training to the residential staff. The training shall be relevant to the provision of services to individuals residing in the home and shall be provided through in-service training programs or institutes, workshops, classes, or conferences. Training shall be provided annually in the following areas:

5.4.5.a. Resident rights;

5.4.5.b. Abuse, neglect, mistreatment, and procedures to address their occurrence;

5.4.5.c. Emergency care of residents (first aid and CPR);

5.4.5.d. Emergency plans for the home, including fire safety and evacuation plans; and

5.4.5.e. The responsibilities of the residential care staff toward assisting residents (i.e. individualized service plans).

5.4.5.f. The personal care home shall maintain a record of staff orientation and ongoing training.

#### 5.5. Resident Work (Class III)

5.5.1. Any resident who performs any staff duties shall meet the personnel and health requirements for that position.

5.5.2. A resident may perform services for the home when:

5.5.2.a. The home has documented the resident's need or desire for work in the service plan in the resident's record;

5.5.2.b. The agreement specifies duties, hours of work and compensation;

5.5.2.c. The agreement is not a condition for admission or continued residence; and

5.5.2.d. The resident enters into the agreement voluntarily.

#### 5.6. Volunteers (Class III)

5.6.1. Any volunteers rendering services in the personal care home shall:

5.6.1.a. Have qualifications appropriate to the services they render;

5.6.1.b. Be subject to the laws and regulations governing confidential treatment of residents' personal information; and

5.6.1.c. Be free from communicable disease in an infectious stage.

5.6.2. The duties and responsibilities of volunteers shall be clearly differentiated from those of regular staff.

5.6.3. At least one (1) staff member shall be assigned the responsibility for overall selection, supervision and orientation of all volunteers.

#### 5.7. Personnel Records (Class III)

5.7.1. The personal care home shall maintain a confidential personnel record on each employee, including the administrator and the operator, and household members who provide services to residents. Each record shall contain at least the following:

5.7.1.a. An employment application which includes at least the individual's current home address and telephone number, emergency contacts, social security number and the names and telephone numbers of references;

5.7.1.b. Documentation of the results of a criminal record investigation regarding previous convictions involving abuse, mistreatment or neglect of dependent populations;

5.7.1.c. Verification of qualifications related to education, training, licensure, registration or certification of all health care professionals and support staff;

5.7.1.d. The date of employment and position title;

5.7.1.e. A record of orientation and ongoing training;

5.7.1.f. The date and reason for termination of employment;

5.7.1.g. A health record containing the results of pre-employment and annual physical examinations, including screening for tuberculosis and other contagious diseases as indicated by exposure, prevalence or currently accepted medical practice in congregate living situations as indicated by the director of health of the State department of health and human resources.

5.7.2. Personnel records shall be maintained on file at the personal care home for at least five (5) years following termination of employment.

5.8. First Aid Qualifications and Supplies (Class III)

5.8.1. A complete first aid kit containing those items specified in the Standard First Aid and Personal Safety Manual that is available from all chapters of the American Red Cross shall be available at the personal care home and located in a designated place that is easily accessible.

5.8.2. There shall be at least one staff member on the premises at all times who has a current first aid certificate issued within the past three years by the American Red Cross, a community college, a hospital, a volunteer rescue squad, a fire department, or a similarly approved program, unless the personal care home has a registered professional or practical nurse on duty.

5.8.3. There shall be at least one staff member on the premises at all times who has a current CPR certificate in issued within the past year by the American Red Cross, a community college, a hospital, a volunteer rescue squad, a fire department, or a similarly approved program. The CPR certificate shall be renewed annually by a certifying entity.

5.9. Minimum Standards for Staffing (Class I)

5.9.1. There shall be no time when residents are left unsupervised in the home. There shall always be at least one responsible adult personal care home family member or employee present in the home who shall be designated as supervisor-in-charge when the administrator is not present.

5.9.2. An administrator or supervisor-in-charge shall be on duty at all times. No more than fifty (50) percent of this person's time shall count toward meeting the minimum staffing requirements. When regular and supervisory staff are absent due to illness and vacations, there shall be coverage by substitute personnel with comparable qualifications.

5.9.3. The minimum residential care staff requirements established by do not include staffing requirements for licensed nurses or provide for additional staff needed to meet the needs of residents who require limited or intermittent nursing services.

5.9.4. Each personal care home shall maintain a minimum of 1 residential care staff between the hours of 6:00 am and 11:00 pm who shall be designated as supervisor-in-charge when the administrator is not present.

5.9.5. Awake staff shall be present in the personal care home during normal resident sleeping hours unless the residents are certified by a licensed health care professional as not being in need of sleep time supervision and the personal care home has a

bed capacity of ten (10) or less beds.

5.9.6. A multi-story home shall maintain at least one (1) awake staff during resident sleep time hours and shall maintain one (1) staff per story if the personal care home has a bed capacity of eleven (11) or more beds.

5.9.7. The secretary shall establish for each personal care home the daily minimum number of residential care staff hours based on an average numerical assessment of the residents' personal assistance needs as identified by the resident assessment instrument provided by the secretary.

5.9.8. Each resident shall be rated utilizing the resident assessment instrument provided by the secretary to determine his or her personal assistance needs. The ratings shall then be totaled and divided by the total number of residents. Staffing shall be provided based upon Table 64-14.2 found at the end of this rule, except that multi-story personal care homes shall have one (1) staff per story at all times.

5.9.9. The number of resident care employees who are responsible and capable of providing personal care services and who work according to a specific established schedule shall be sufficient to provide those services to all residents as identified in their individualized service plans.

5.9.10. Each personal care home shall maintain and furnish to the secretary upon request information from personnel records setting forth the number (in full-time equivalents) and types of employees on duty in the home at any given time.

5.9.11. The personal care home shall provide for qualified relief personnel to substitute for staff during vacation, illness, or other absences from the home.

5.9.12. Other residential support staff shall be retained as necessary to meet the laundry, food service, housekeeping, and maintenance requirements of these rules.

#### 5.10. Communication Between Staff (Class II)

5.10.1. A method of communication shall be utilized as a means of keeping staff on all shifts informed of significant happenings or problems experienced by residents, including physical and mental complaints or injuries.

#### §64-14-6. Admission and Discharge Policies.

##### 6.1. Admission Policies and Procedures (Class II)

6.1.1. A personal care home shall have written admission policies which shall be kept on the premises and be immediately



available to the public upon request. The policies shall be enforced by the licensee and operator as written and shall be consistent with this rule.

6.1.2. A personal care home shall develop a written description of the home which shall include a description of the characteristics of the residents to be served and the program components and services provided by the home. This description shall be available to prospective residents and the general public. The home shall update the program description as the characteristics of the residents change and shall review the description at least annually.

6.1.3. The home shall not discriminate against residents or prospective residents on the basis of race, national origin, religion, age, gender, sexual orientation, or disability.

6.1.4. A personal care home shall not admit an individual before a determination has been made that the personal care home can meet the needs of the resident. The decision-making process shall involve an interview between the administrator, or a designee responsible for admission and retention decisions, the resident, and the resident's legal representative, if any.

6.1.5. All prospective residents shall have a physical examination by a physician no more than seven (7) days prior to admission. A copy of the physical shall be retained in the residents record.

6.1.6. The personal care home shall obtain a medical and family history for each resident prior to admission.

6.1.7. The personal care home shall obtain the following information concerning the prospective resident in writing from the resident's physician or any licensed health care practitioner or agency approved by the secretary prior to admission:

6.1.7.a. Diagnosis;

6.1.7.b. Recurring health problems;

6.1.7.c. Impairments;

6.1.7.d. Physician's orders for care and treatments, including diet, aids to physical functioning and medications;

6.1.7.e. A statement that the services provided by the personal care home are appropriate to meet the needs of the prospective resident;

6.1.7.f. A statement that specifies whether the prospective resident does or does not need to have a staff member awake during resident sleep time hours, if the personal care home has a

licensed bed capacity of 10 or less; and

6.1.7.g. Any other information relevant for the care and supervision of the prospective resident by the personal care home.

6.1.8. When an individual is accepted for respite care or on an intermittent basis, the physical examination report shall be valid for six months.

6.2. Admission Agreement (Class III)

6.2.1. There shall be a written agreement with each resident who is admitted and it shall provide written assurance to the resident that the personal care home offers the services necessary to meet his or her care needs.

6.2.2. The admission agreement shall contain:

6.2.2.a. A detailed explanation of all costs and refunds;

6.2.2.b. All policies of the home;

6.2.2.c. The agreement to provide a copy of all reports of inspections in response to complaints;

6.2.2.d. The details of access to all activities;

6.2.2.e. House rules governing resident behavior and responsibilities including, the home's policies on smoking, alcohol consumption, visitation, recreational activities (including television), personal laundry, and use and storage of personal belongings such as furnishings, and clothing. All house rules shall be consistent with this rule;

6.2.2.f. A resident's bill of rights which shall be consistent with the provisions of this rule;

6.2.2.g. How residents, their sponsors, and the public can lodge complaints and raise concerns within the home;

6.2.2.h. How the home will address and prepare for emergency situations that affect the well-being of the residents which may include but is not limited to the following: fire evacuation, natural disasters, severely inclement weather, industrial accidents, major incidents, missing residents and immediate or serious threats;

6.2.2.i. How the home will protect the residents' personal property from loss and theft;

6.2.2.j. How the home will manage the personal finances of the resident;

6.2.2.k. How to gain access to rules and regulations for personal care homes, copies of current government inspection reports and written plans of correction;

6.2.2.l. How the home will assist the resident in making appointments for appropriate medical, dental, nursing or mental health services as needed by the resident;

6.2.2.m. How the home will arrange access for transportation to and from services;

6.2.2.n. The responsibility of the resident's physician for required medical exams and treatment orders; and

6.2.2.o. The resident's and the home's responsibility for notification regarding transfers and discharges.

6.2.3. The admission agreement shall specify the resident's and home's responsibility for:

6.2.3.a. The procurement and payment for prescribed medications; and

6.2.3.b. The storage, administration and disposition of medication.

6.2.4. Thirty (30) days prior to any increases, additions, or other modifications of the rates, the personal care home shall give written notice of the proposed changes to the residents or their legal representatives.

6.2.5. A personal care home is prohibited from entering into a life care contract without prior permission of the secretary.

### 6.3. Restricted Admissions to Personal Care Homes (Class I)

6.3.1. A personal care home shall not admit a resident in need of extensive or ongoing nursing care.

6.3.2. No resident shall be admitted or retained if:

6.3.2.a. The home does not have the capability or services to provide appropriate care;

6.3.2.b. The resident requires a level of service for which the home is not licensed or does not provide; or

6.3.2.c. The home does not have the staff appropriate in numbers and with appropriate skill to provide such services.

6.3.3. If an individual has an identified mental or developmental disorder, he or she shall not be admitted to a personal care home unless the personal care home can provide

evidence of continued professional follow up to address the individual's current mental health needs or he or she is a client of a licensed behavioral health agency which has assigned a case-manager, who coordinates, monitors and integrates all aspects of the individual's behavioral health service needs.

6.3.4. Individuals who are bedfast shall not be admitted.

6.4. Retention of Residents Whose Condition and Functional Ability Declines after Admission (Class I)

6.4.1. If, at any time after admission to a home, a resident is determined to have needs beyond that which the home is licensed to provide, or that the resident's needs are not being met, the secretary shall instruct the home's owner to require the resident to be assessed for physical health by a physician or behavioral health by a physician or licensed psychologist. Pursuant to the examinations, the examining physician or psychologist, as appropriate, shall complete, sign and date a form provided by the secretary within thirty (30) days from the date the home's owner is notified by the secretary that the assessment is required. After the secretary consults with the physician or psychologist who performed the examination, the secretary shall then determine whether the resident is appropriate for the home. The secretary's determination shall be final and binding upon the home and the resident. Any resident who is determined by the secretary to be inappropriately residing in a home shall be given thirty (30) days written notice to relocate by the owner or operator unless the resident's continued residence in the home presents an imminent danger to the health, safety, or welfare of any resident or a substantial probability exists that death or serious physical harm would result to the resident if allowed to remain in the home.

6.4.2. If a resident has individual one-on-one needs that are not met by the allowable service provision in the home as established by this rule, and the individual has medical coverage that permits accessing of additional services, the operator shall make a referral to an appropriate agency or shall seek to arrange for the provision of these services. These services are subject to the secretary's approval as identified in Section 7.4.1. of this rule.

6.4.3. Individuals who qualify for and are receiving services coordinated by a licensed hospice may receive these services in a personal care home, except that services utilizing equipment which requires auxiliary electrical power in the event of a power failure, such as ventilators, suction apparatus, oxygen concentrators, and intravenous or tube feeding pumps, shall not be used unless the personal care home has a backup power generator. In the event that a resident is receiving limited or intermittent nursing care or hospice services, the personal care home shall assure that the resident has privacy in care and the

ability to evacuate in an emergency. The provision of services to the resident receiving limited or intermittent nursing care or hospice care shall not interfere with the provision of services to other residents.

6.4.4. If a resident exhibits symptoms of, a mental or developmental disorder, and the resident is not receiving services to meet his or her current needs, is not a client of a behavioral health center, or does not have a case manager, the home shall advise the individual or their legal representative of their behavioral health service options within the community. The resident shall have thirty (30) days to obtain necessary services. If the resident or their legal representative fails to meet the resident's needs in this area in a timely manner then the personal care home shall refer the individual to a licensed behavioral health agency.

6.4.5. Individuals who become bedfast subsequent to admission may be retained during a temporary illness or recovery from surgery if the resident's care does not require nursing care in excess of limited and intermittent nursing care, and the following criteria are substantiated through resident interview:

6.4.5.a. The resident requests to remain in the home;

6.4.5.b. The resident is advised of the availability of other specialized health care facilities to treat his or her condition;

6.4.5.c. The need for such care is the result of a medical pathology or a result of the normal aging process;

6.4.5.d. The home can maintain the resident's safety and continue to meet the resident's needs.

#### 6.5. Discharges and Transfers (Class I)

6.5.1. When a discharge or transfer is initiated by the home, the operator shall provide the resident, his or her family, or legal representative with thirty (30) days prior written notification citing the reason for the discharge or transfer except where a delay in discharge or transfer would jeopardize the health or safety of the resident or another person in the personal care home.

6.5.2. Prior to the discharge of any resident, the personal care home shall notify outside service providers of the pending discharge, the date of discharge, and the address or location to which the resident is relocating.

6.5.3. The home shall make provisions for transfer of the resident to another personal care home when the resident's physical or mental condition has changed such that the personal care home can no longer meet the resident's personal care needs

as required and defined by these regulations.

6.5.4. The discharge of any resident is prohibited if it would violate any provision of this rule or the resident's rights.

6.5.5. The date, place, and the person to which the resident has been discharged or transferred shall be recorded in the resident register and in the resident's individual record.

6.6. Other Uses of the Home (Class III)

6.6.1. A personal care home is prohibited from renting, leasing or using its premises for any purposes that disrupts the activities of the residents.

6.6.2. Residence in a personal care home is restricted to residents, owners, operator, and employees, unless otherwise approved in writing by the secretary.

6.6.3. A personal care home is prohibited from advertising, asserting, representing or otherwise implying in any manner that it may render care or services other than those specifically within the scope of its license.

§64-14-7. Resident Care and Related Services.

7.1. Standard Personal Care Services (Class II)

7.1.1. The personal care home shall evaluate the continued appropriateness of residence of an individual in the home.

7.1.2. The home shall provide personal supervision and assistance in performing activities of daily living or instrumental activities of daily living.

7.1.3. The home shall provide supervision by designated staff for daily awareness of the general health, safety, and physical and emotional well-being of the resident.

7.1.4. The home shall provide general household services essential for the health and comfort of residents such as floor cleaning, dusting, and bedmaking.

7.1.5. The home shall provide three (3) meals daily, seven (7) days a week and special diets and snacks which meet resident needs and choices.

7.1.6. The home shall provide information and referral services and opportunities for utilization of social, recreational, vocational activities within the community.

7.1.7. The home shall provide or arrange for transportation

of the resident to receive medical and social services.

7.1.8. The personal care home shall allow a resident to refuse any treatment. The home may inform a resident, however, that failure to follow his or her service plan may result in a behavioral or medical condition which requires services which are not available in a personal care home.

7.2. Functional Assessment and Comprehensive Service Plans  
(Class I)

7.2.1. Every resident shall have an individualized functional needs assessment which shall be completed within thirty (30) days after admission and shall include:

7.2.1.a. A periodic health assessment which includes a list of treatments, therapies and activities necessary to meet physical health needs;

7.2.1.b. A psychological assessment for any person with behavioral health needs, completed upon admission and every three (3) years thereafter unless the resident has experienced significant changes that would warrant re-evaluation;

7.2.1.c. A social needs assessment, reviewed at least once annually, which shall include a resident history, emergency contact names and telephone numbers, a list of activity and recreational preferences, current financial status (if the home is managing resident funds), and information related to the resident's directives; and

7.2.1.d. A nursing assessment, reviewed at least once annually, unless the resident is receiving limited and intermittent nursing services which would increase the frequency of the review to once every six (6) months, or as required by standards governing services provided by an outside agency if an agency is providing services to the individual within the home, which shall include a review of systems, vital signs, allergies, nutritional status, psychosocial status, medications and reason for use, and progress related to any therapy provided during the current review period.

7.2.2. Every resident shall have a service plan consistent with the functional needs assessment which shall be developed within forty-five (45) days of admission and updated at the time of any significant or permanent change in condition, but at least once every six (6) months and shall include but not be limited to the following areas of needs:

7.2.2.a. Activities of daily living services;

7.2.2.b. Instrumental activities of daily living services;

- 7.2.2.c. Social and recreational services;
- 7.2.2.d. Therapy services;
- 7.2.2.e. Medical and nursing services;
- 7.2.2.f. Medication administration services; and
- 7.2.2.g. Transportation services.

7.2.3. The home shall provide treatment and care in accordance with the functional needs assessment and service plan.

7.2.4. Formal reassessment and an individualized service plan review shall be documented in the resident's record at least annually based upon the month of the resident's admission.

7.2.5. The individualized service plan shall reflect the resident's assessed needs and support the principles of individuality, personal dignity, freedom of choice and homelike environment.

7.2.6. The licensee or administrator shall designate a staff person to review, monitor, implement and make appropriate modifications to the individualized service plan.

7.2.7. The personal care home shall encourage residents to actively participate in the planning of their care and supervision.

### 7.3. Resident Health (Class I)

7.3.1. Each prospective resident shall provide the name, address, and telephone number of his or her personal physician prior to or upon admission.

7.3.2. The personal care home shall provide each resident a written, signed and dated health assessment by a licensed physician or other licensed health care professional authorized to perform such assessments by applicable State laws and rules not more than forty-five (45) days prior to the resident's admission, or no more than five (5) working days following admission, and at least annually thereafter. 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 director of the division of health of the department of health and human resources.

7.3.3. All physician orders shall be reviewed at least once every three (3) months for accuracy by the registered professional nurse unless there is a medical condition requiring a more frequent review by the resident's physician.



7.3.4. No medication, diet, medical procedure or treatment shall be started, changed or discontinued by the personal care home without an order by a licensed health care professional. The resident's record shall contain the written order or a notation of a verbal order. Verbal orders shall be signed by the authorizing practitioner within ten (10) working days.

7.3.5. The personal care home shall measure and record the resident's height in his or her record upon admission and annually thereafter.

7.3.6. The personal care home shall weigh and record each resident's weight in his or her record upon admission and at least quarterly thereafter, except that a resident requiring limited and intermittent nursing care shall be weighed at least monthly or as ordered by the physician.

7.3.7. The personal care home shall report changes in weight of five (5) pounds or more to the resident's physician within seventy-two (72) hours of the weighing.

7.3.8. All personal care homes shall make arrangements for a registered nurse to manage and provide nursing services for all residents of the personal care home as specified in this rule. Those personal care homes that provide limited and intermittent nursing care shall comply with the requirements established in this rule. Arrangements for nursing services may be made by contract with an individual, a nursing service, or the personal care home may employ a registered nurse, or the administrator of the personal care home may act in this capacity. The frequency with which a registered professional nurse shall provide services to the personal care home not providing limited and intermittent nursing services shall be as follows:

7.3.8.a. Facilities with a licensed bed capacity of ten (10) or less shall secure the services of a registered professional nurse based upon the needs of the residents;

7.3.8.b. Facilities with a licensed bed capacity of eleven (11) to twenty-nine (29) shall secure the services of a registered professional nurse at least sixteen (16) hours per week; and

7.3.8.c. Facilities with a licensed bed capacity of thirty (30) or more shall secure the services of a registered professional nurse at least thirty-five (35) hours per week.

7.3.9. Arrangements with a home health agency do not satisfy requirements for nursing management oversight of all residents as specified in this rule, but may be used to satisfy the requirements for services to individual residents.

7.3.10. Homes whose administrator or supervisor-in-charge is

a registered professional nurse are not required to employ another individual to meet the responsibilities of the registered professional nurse if there are sufficient numbers of nursing support staff to meet the needs of residents.

7.3.11. If the personal care home does not employ a registered professional nurse, the home shall have a written agreement which includes the duties established in this rule for services to be provided by a registered professional nurse.

7.3.12. The registered professional nurse shall provide the personal care home with a system that provides for twenty-four (24) hour accessibility between the personal care home and the registered professional nurse.

7.3.13. The personal care home shall maintain documented evidence of visitation by the registered professional nurse or consultation with the registered professional nurse.

7.3.14. The responsibilities of the supervising nurse shall include:

7.3.14.a. Liaison between the personal care home resident, the resident's physician, and the administrator (if applicable) on an as needed basis;

7.3.14.b. Supervision and monitoring as identified by physician orders, resident's individual functional needs assessments, and as specified within the resident's individual service plan;

7.3.14.c. Assessment of each resident at the time of admission and at least annually thereafter to evaluate the individual resident's needs;

7.3.14.d. Recording a progress note in the resident's record as indicated by the needs of the resident to document the status of the resident and any changes in their health or welfare;

7.3.14.e. In-service training as applicable of residential care staff related to the implementation of care procedures or personal assistance services provided to the resident's in the home;

7.3.14.f. Supervision of supervised or assisted self-administration of medication procedures;

7.3.14.g. Supervision of medication storage, dispensing systems and disposition; and

7.3.14.h. Admission and discharge planning as it relates to the medical component of resident care.

7.4. Administration of Medications and Related Services  
(Class I)

7.4.1. The personal care home shall arrange for pharmaceutical services and shall permit the residents to use the pharmacist of their choice.

7.4.2. The personal care home shall retain a consultant pharmacist who shall conduct annual pharmacy reviews on all residents, except that the reviews shall be conducted quarterly if the resident is receiving medication which is psychoactive, cardiogenic, steroidal, anticonvulsant, or is a scheduled drug according to the State Uniform Controlled Substances Act, Chapter 60A, W. Va. Code.

7.4.3. The licensee or administrator is responsible for obtaining a drug regimen review for unnecessary drugs of all prescribed medication of each resident. This requirement may be met by the nursing assessment process specified within this rule.

7.4.4. The personal care home shall establish and implement written procedures for the use of medications by residents in the home that are in accordance with this rule.

7.4.5. Drugs, both prescription and non-prescription, shall be obtained, administered or self-administered only on the written order or prescription of a practitioner authorized by law to prescribe drugs in this State.

7.4.6. The ability of a resident to self-administer medication shall be certified by a licensed health care professional and documented in the resident's record.

7.4.7. Copies of the prescriptions or written orders for drugs shall be retained in the resident's record. Verbal orders shall be reviewed and signed by a practitioner authorized by law to prescribe medications within ten (10) working days from the original order date.

7.4.8. Dispensing of drugs is restricted to a registered pharmacist. Repackaging of drugs is an act of dispensing.

7.4.9. The use of PRN (as needed) medications is prohibited, unless one or more of the following conditions exist:

7.4.9.a. The resident is capable of determining when the medication is needed;

7.4.9.b. Licensed health care professionals are responsible for medication management; or

7.4.9.c. The resident's physician has provided detailed instructions or personal care home staff have telephoned the

doctor prior to administering the medication, explained the symptoms and received a documented oral order to assist the resident in self-administration of the medication. The physician's instructions shall include symptoms that might indicate the use of the medication, the dosage, the route of administration, the frequency with which the medication may be administered, and directions for follow-up care if the symptoms persist in excess of twenty-four hours.

7.4.10. When oxygen therapy is provided, the following safety precautions shall be met and maintained:

7.4.10.a. Oxygen therapy shall only be administered by using oxygen concentrates except that a portable source must be available for resident use for out of room activities;

7.4.10.b. Equipment shall be maintained electrically safe and service available as needed;

7.4.10.c. Oxygen tubing shall be stored in a sanitary manner when not in use and replaced as indicated by accepted infection control measures;

7.4.10.d. Smoking shall be prohibited in any location when oxygen is in use and no smoking signs shall be posted conspicuously and enforced; and

7.4.10.e. Plastic tether lines in excess of twelve feet (12') in length are prohibited.

7.4.11. Non-prescription drugs shall bear the manufacturer's label with expiration dates clearly visible.

7.4.12. The container label of each prescription drug shall be legible, legally dispensed and labeled for the resident for whom it has been prescribed. When the prescriber's directions change, the container shall be relabeled by a licensed pharmacist or there shall be a written document signed and dated by the physician to verify the change in a medication prescription which is stored in the resident record.

7.4.13. The personal care home shall ensure that persons administering medications are trained in programs approved by the secretary.

7.4.14. The personal care home shall keep a record of all drugs given to each resident indicating each dose given. The record shall include the following:

7.4.14.a. Resident's name;

7.4.14.b. Name, strength, and quantity of the drug;

7.4.14.c. Instructions for giving the drug;

7.4.14.d. Date and time drug is administered; and

7.4.14.e. Name or initials of persons giving the drug. If initials are used, a signature equivalent to those initials shall be entered on the record.

7.4.15. Self-administration of insulin injectables is permitted. Other injectables shall be administered by a physician or a licensed nurse.

7.4.16. The licensed registered nurse immediately available (on call) shall be responsible for immediately reporting medication side effects and adverse reactions to the practitioner.

7.4.17. Administration of supervised self-administration of medications shall be promptly recorded in the resident's record.

7.4.18. All medications shall be kept in their original labeled containers and shall be labeled in accordance with the rules and regulations of the West Virginia board of pharmacy and in a manner that the name and strength of medication, manufacturer name, lot number, and expiration date can be readily identified by the personal care home's nursing staff and by the resident.

7.4.19. Medication shall be centrally stored under the following conditions:

7.4.19.a. If the preservation of medicine requires refrigeration;

7.4.19.b. When medication is determined, and documented by the personal care home to be hazardous if kept in the personal possession of the person for whom it was prescribed;

7.4.19.c. If the resident is not capable of self-administering medications as prescribed; or

7.4.19.d. When, because of physical arrangements and conditions or habits of other persons in the personal care home, the medications are determined by the operator to be a safety hazard to others.

7.4.20. Centrally stored medications shall be:

7.4.20.a. Kept in a locked cabinet or other storage receptacle;

7.4.20.b. Accessible only to the staff responsible for medications; and

7.4.20.c. Located in an area free of dampness and stored between forty-six degrees (46°F) and eighty-six degrees (86°F) Fahrenheit, except in the case of a medication requiring refrigeration.

7.4.21. If schedule II drugs of the controlled substances act 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.

7.4.22. 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.

7.4.23. If refrigeration is required, the home shall provide: a refrigerator in a locked room, a locked refrigerator or a locked box within the refrigerator for storage. A thermometer shall be required in a refrigerator storing medications. The temperature within the refrigerator storing medications shall not exceed forty degrees (40 F) Fahrenheit.

7.4.24. Medications shall not be stored with hazardous chemicals and cleaning supplies.

7.4.25. First aid supplies shall be immediately available and stored separately in a secure and orderly manner, not accessible to residents and the general public.

7.4.26. All discontinued and outdated medications for deceased residents shall be removed from the medication cart, cabinet, and refrigerator and separated from all other medications.

7.4.27. All controlled drugs shall be returned to the pharmacy for disposal.

7.4.28. Non-controlled unit dose medication and non-controlled medications in sealed original manufacturer's containers which can be credited by the vendor shall be returned to the vendor for credit.

7.4.29. All non-controlled medications not returned for credit to the vendor shall be destroyed within the personal care home by two (2) members of the personal care home's staff, one (1) of whom shall be a licensed nurse.

7.4.30. The personal care home shall maintain a record of the drug destruction for a period of two (2) years. All medication destruction records shall be signed and dated by the individuals destroying the medications. The medication destruction record shall clearly state the following information:

7.4.30.a. The name of the resident for whom the drug was prescribed;

7.4.30.b. The prescription number;

7.4.30.c. The name of the dispensing pharmacy;

7.4.30.d. The name and dosage of the drug;

7.4.30.e. The amount of the drug destroyed; and

7.4.30.f. The date the drug was destroyed.

7.5. Accidents, Illnesses and Emergencies (Class I)

7.5.1. No resident shall be held in a home against his or her will, unless it is necessary for his or her personal protection while awaiting law enforcement or professional help.

7.5.2. Physical restraints shall not be used except in an emergency under physician's order not to exceed twenty-four hours for the safety of the resident and others in the home until a time that professional help arrives on the premises. Restraints utilized during emergencies shall be limited to cloth vest or soft belt restraints only and their application shall be by trained staff only. Restraints shall be released every two (2) hours for at least ten (10) minutes. These procedures shall be documented and available for review by the secretary.

7.5.3. Written policies and procedures shall be established and enforced for contacting a resident's family, legal representative, physician or designated health service provider to communicate any apparent significant deviations from the resident's normal appearance, state of health or well-being.

7.5.4. If an injury or sudden change in the physical or mental condition of a resident occurs, the personal care home shall immediately arrange for needed care. The resident physician and designee for notification of emergencies shall be notified immediately of a major incident or any significant change in the resident's condition and a notation shall be made in the resident's record of all contacts. If, in the opinion of the licensed nurse, the incident is not serious enough to call a physician or transfer the resident for treatment, notation shall still be made in the resident's record. This entry shall indicate discussion with relevant persons and future preventive action, if any.

7.5.5. Major incidents shall be reported to the secretary by the licensee.

7.5.6. Alleged abuse of a resident shall be reported immediately to the licensee, who is responsible for reports to

the state agencies.

7.5.7. There shall be evidence that:

7.5.7.a. All alleged violations involving abuse are thoroughly investigated and documented by the licensee or his or her designee within twenty-four (24) hours of the incident; and

7.5.7.b. Appropriate sanctions are invoked when the allegation is substantiated and shall be reported to the licensing agency.

7.5.8. Any medical, dental or mental health professional, ordained minister, christian science practitioner, religious healer, social service worker, peace officer, or law enforcement officer is required under the adult protective services law to report (W. Va. Code §9-6-9) any incident in which an incapacitated adult is neglected, abused, or in an emergency situation, subject to conditions likely to result in neglect, abuse or emergency, or has died as a result of abuse or neglect. Reports of neglect, abuse or emergency situations shall be made immediately to the local adult protective services office of the department of health and human resources or by calling the adult protective services hotline number, 1-800-352-6513, as required by law and to the office of health facility licensure and certification, 1-304-558-0050. The secretary 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.

7.6. Resident Death (Class II)

7.6.1. The death of a resident shall be reported immediately to the attending physician and to the resident's family or legal representative as applicable.

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

7.6.2.a. A record of the notification of the resident's physician, the designated individual for emergencies, and legal representative, if any;

7.6.2.b. 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;

7.6.2.c. A record of the disposition of the resident's personal belongings that were released, including funds. The resident's legal representative or next of kin shall sign a detailed receipt for these items.

7.6.3. In the event of the death of a resident, a licensee



shall return all funds, and property held in trust to the resident's legal representative. In the event the resident has no spouse or adult next of kin or other legal representative or the spouse or adult next of kin or other legal representative can not be located, funds due the resident shall be placed in a separate interest bearing account, and all property held in trust by the licensee shall be safeguarded until such time as the funds and property are required for distribution under state laws governing the administration of estates and trust (W. Va. Code Chapter 44).

#### 7.7. Management and Control of Resident Funds (Class III)

7.7.1. The licensee is responsible for maintaining fiscal records which accurately identify, summarize, and classify funds received and disbursed for the operation of the home. A recognized system of accounting shall be used to accurately reflect details of the business, including residents' trust funds and other property. The home shall be administered on a sound financial basis consistent with good business practices. Evidence of issuance of bad checks or accumulation of delinquent bills shall constitute prima facie evidence that the ownership lacks satisfactory proof of financial ability to operate the home in accordance with the requirements of W. Va. Code §16-5C-6.

7.7.2. If the licensee agrees to manage a resident's funds there shall be a system utilizing generally acceptable accounting principles to manage the funds in the resident's best interests.

7.7.3. The personal care home shall, if it handles resident monies in excess of twenty-five dollars (\$25.00) per resident and in excess of five-hundred dollars (\$500.00) for all patients in any month, give a bond in an amount and with such surety as the secretary shall approve sufficient to cover all resident accounts at all times. The licensee shall file a bond in the sum to be fixed by the secretary based upon the magnitude of the operations of the applicant but which sum may not be less than two-thousand five-hundred dollars (\$2,500) as shown in Table 64-14.3 found at the end of this rule. Whenever the amount of any bond which is filed pursuant to this subsection is insufficient to adequately protect the money of patients being handled, or whenever the amount of such bond is impaired, the licensee shall file an additional bond in such amount as necessary to adequately protect the money of patients being handled.

7.7.3.a. The system shall not commingle resident funds with the home's funds or with the funds of any person other than another resident.

7.7.3.b. The resident account record shall show in detail with supporting documentation all monies received on behalf of the resident and the disposition of all funds received. Persons shopping for residents shall provide a list showing a description

and price of items purchased, along with payment receipts for these items.

7.7.3.c. The home shall render a true and complete accounting upon request to the depositor and the secretary and at least quarterly to the resident and his or her legal representative.

7.7.3.d. Upon termination of the deposit, the home shall account to the depositor for all funds received, expended and held on hand.

#### 7.8. Resident Activities (Class III)

7.8.1. Residents shall be encouraged to develop and maintain their fullest potential for independent living through participation in activities.

7.8.2. There shall be at least eleven (11) hours of scheduled activities available to the residents each week for no less than one (1) hour each day. Activities shall be of a social, recreational, religious, or diversional nature. Community resources may be used to provide activities.

7.8.3. These activities shall be varied and shall be planned in consideration of the abilities, physical conditions, needs and interests of the residents.

7.8.4. The week's schedule of activities shall be written and posted one (1) week in advance in a conspicuous place. Residents shall be informed of the activities program.

7.8.5. A record shall be kept of the activity schedules for the past three (3) months. They shall be available for inspection by the department.

7.8.6. Facilities which have thirty (30) or more beds shall employ a person designated to function as the activity coordinator. Facilities with twenty-nine (29) or less beds may meet this requirement with a designated staff person functioning as the activity coordinator. The activity coordinator shall spend at least thirty (15) minutes per week per resident in observance of the duties related to activity coordination.

7.8.7. Activities shall include:

7.8.7.a. Socialization through activities such as group projects, card and game playing, care of pets, arts, crafts, music and correspondence with family and friends;

7.8.7.b. Activities which foster independent functioning daily living skills such as dressing, grooming, simple homemaking tasks, and use of public transportation, if available;

7.8.7.c. Leisure time skills achieved through cultivation of personal interests and pursuits;

7.8.7.d. Physical skills achieved through activities such as games, sports, walking, gardening and other outdoor and indoor exercises which develop and maintain strength, coordination and range of motion; and

7.8.7.e. Activities designed to help increase the resident's knowledge and awareness of his or her environment and to enhance language and conceptual skills such as current event discussions, resident council groups, and reading materials.

7.8.8. Residents shall be encouraged but not forced to participate in the program of activities.

7.8.9. Frequent visitation by friends and relatives of residents shall be encouraged. Residents shall not be prohibited from making reasonable visits away from the home except where there are written instructions by a physician or a psychologist to the contrary. These instructions shall be time-limited and shall be renewed no less often than every three (3) months.

#### 7.9. Resident Records (Class III)

7.9.1. Records shall be written in ink or typed and shall be legible.

7.9.2. The personal care home shall begin at admission, maintain, and keep current, a record for each resident. The contents shall be filed in chronological order and allow easy retrieval of information. The record shall contain at a minimum:

7.9.2.a. Name;

7.9.2.b. Social security number;

7.9.2.c. Birth date;

7.9.2.d. Sex;

7.9.2.e. Marital status; and

7.9.2.f. Religious preference and affiliation, if any.

7.9.3. The resident's record shall contain names, addresses and telephone numbers for the following relevant persons:

7.9.3.a. Physician;

7.9.3.b. Dentist;

7.9.3.c. Legal representative, if applicable;

7.9.3.d. Person, organization or agency responsible for payments for support of the resident, if applicable;

7.9.3.e. Next of kin or other interested relatives;

7.9.3.f. Persons to be notified in case of an emergency or death;

7.9.3.g. Any case management agency or organization; and

7.9.3.h. Any day care or other programs in which the resident regularly participates.

7.9.4. The record shall contain the following information relevant to the personal supervision and assistance to be provided to the resident by the home:

7.9.4.a. Initial health assessment and social history; and

7.9.4.b. The dates of physician, dentist and other health and behavioral health care providers and other professional appointments and visits, including those for accidents and illness requiring medical attention, coordinated by the home;

7.9.4.c. All contact with the resident's physician by the personal care home staff; and

7.9.4.d. Other information required by this rule.

7.9.5. The personal care home shall note incidents and accidents involving the resident in his or her record, including, at a minimum, the time, place, the action taken in response to the incident and the notification of the resident's physician (if applicable), family or legal representative.

7.9.6. All records which contain the information required by this rule for both residents and personnel shall be retained at the personal care home in a secure area.

7.9.7. The licensee shall ensure that all records are treated confidentially and that information shall be made available only when needed for care of the resident. All records shall be made available for inspection by the secretary's duly authorized representative.

7.9.8. The resident or his or her legal representative has the right to release information from the resident's record to persons or agencies outside of the personal care home. The licensee is responsible for making available to residents a form which residents may use to grant their written permission to release information to a person or agency outside the personal care home. A written release shall be valid for no longer than three (3) months.

7.9.9. The personal care home shall keep resident records in safe storage for at least five (5) years from the date of the discharge or transfer of the resident. If the personal care home ceases to operate, the home 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. The operator shall submit a plan for storage of the records to the secretary and obtain approval in writing from the secretary.

7.9.10. Each home shall maintain a permanent resident register in a bound notebook in chronological order according to the date of the resident's admission. The register shall include the date of the resident's admission, his or her name, and the date of his or her last day in the personal care home and the name and address of the residence, health care facility or other place to which the resident (if living) has been discharged.

7.9.11. The personal care home shall comply with the applicable requirements of W. Va. Administrative Rules, Vital Statistics, 64 CSR 32.

**§64-14-8. Resident Rights.**

**8.1. Posting of Information and General Rights (Class III)**

The personal care home shall post in a conspicuous place the following:

8.1.1. Residents' rights;

8.1.2. Phone numbers of the abuse hotline (1-800-352-6513); the office of health facility licensure and certification (558-0050); the state ombudsman (558-3317); and the regional ombudsman.

8.1.3. Information about the ombudsman program including: (1) the name, address and telephone number of the designated long-term care ombudsman program serving the region in which the personal care home is located; (2) a brief description of the services provided by the long-term care ombudsman program; and (3) a statement as to the penalties for willful interference and retaliation.

8.1.4. The personal care home shall promptly notify the resident's legal representative or interested family member whenever there is a change in resident's rights; a change in room or roommate assignment; when discharge is considered; and when there is a significant change in the resident's condition.

8.1.5. If a legal representative has been appointed for or designated by any resident, as having the authority to exercise on behalf of the resident one or more of the resident's rights under this rule, the home shall afford the legal representative

full opportunity to exercise the resident's rights. A legal representative so appointed or designated shall exercise his or her authority in a manner consistent with all applicable state and federal laws and regulations.

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

8.1.7. The personal care home shall encourage and assist a resident throughout the duration of his or her stay to exercise his or her rights as a resident and as a citizen, such as voting in governmental elections.

8.1.8. The resident has the right to be free from restraint, interference, coercion, discrimination, or reprisal from the personal care home in exercising his or her rights.

### 8.2. Exercise of Rights (Class II)

The personal care home shall not discriminate against residents on the grounds of race, religion, national origin, gender, or disability.

### 8.3. Notice of Rights and Services (Class II)

8.3.1. The personal care home shall inform a resident and any legal representative both orally and in writing in a language that the resident understands of the resident's rights and responsibilities; the home's policies; available services; and emergency procedures, upon admission. Current residents shall be informed within fourteen (14) days of the implementation of this rule.

8.3.2. The personal care home shall provide a copy of the residents' rights to the resident with duplicates on request. The date the rights are distributed shall be recorded.

8.3.3. The personal care home shall post resident's rights and its current license in a conspicuous location at eye level in the home. The statement shall be easily readable with at least ten (10) point type.

8.3.4. The resident has the right to inspect and purchase photocopies at a reasonable cost of all records pertaining to him or her.

8.3.5. The personal care home shall inform each resident of the names, specialties, and means of contact with the physician responsible for his or her care.

8.3.6. The personal care home shall notify the resident and

the resident's legal representative or interested family member within seventy-two (72) hours unless agreed to by all involved parties when there is:

8.3.6.a. A change in room or roommate assignment;

8.3.6.b. A change in resident's rights under federal or State law or regulation.

8.3.7. The personal care home shall give a thirty-day notice of discharge unless an emergency situation which requires transfer to a hospital or other higher level of care exists or if the resident is a danger to his or herself or others. A copy of the written discharge notice shall be filed in the resident's record.

8.3.8. Residents shall have the right, if they so choose, to view the results of inspections and complaint investigations conducted by the office of health facility licensure and certification. The deficiencies cited during the most recent survey or complaint investigation and the personal care home's plan of correction shall be posted.

#### 8.4. Treatment (Class I)

8.4.1. The personal care home shall give a resident the opportunity to participate in planning his or her overall care. The resident has the right to be fully informed in advance about care and treatment that may affect him or herself.

8.4.2. No resident shall be abused, neglected, mistreated, or restrained by physical or chemical means. Suspected abuse and neglect shall be immediately investigated by the administrator or a designated staff member with written notification and documentation within twenty-four (24) hours. The investigation shall be documented and appropriate action to alleviate a recurrence of any neglect or abuse shall be taken.

8.4.3. The resident has the right to refuse to participate in experimental research. A resident shall participate in experimental research only on the basis of prior written informed consent. Any informed consent procedures shall be in conformance with applicable state and federal laws, rules and regulations.

8.4.4. Necessary treatments such as medical services, mental health services, dental services, physical therapy and other rehabilitation services shall be obtained by the home. Transportation to necessary services shall either be provided by the personal care home, arranged through the service provider, or provided by an interested third party.

8.4.5. The personal care home shall allow residents to choose their own physician and pharmacist in lieu of the homes's

physician and pharmacist. The home shall promptly notify the resident's physician when there is a major incident or any significant change in the resident's condition.

8.4.6. A resident who has not been adjudicated incompetent shall have the right to refuse treatment.

#### 8.5. Protection of Resident Funds (Class II)

8.5.1. The resident has the right to manage his or her financial affairs, and the home may not require residents to deposit their personal funds with the home.

8.5.2. The personal care home shall maintain a true and accurate documented account of all transactions if the home manages the personal funds of the resident at the request of the resident or his or her legal representative. The home shall render a true and complete accounting upon request to the depositor and at least quarterly to the resident and his or her legal representative. Information shall be given to the resident upon request. Residents' personal funds exceeding two hundred dollars (\$200) shall be deposited in an interest bearing account at a local bank.

8.5.3. The personal care home shall administer the funds deposited on behalf of the resident in the manner directed by the depositor.

8.5.4. Upon termination of the deposit, the home shall account to the depositor for all funds received, expended and held on hand.

#### 8.6. Self Determination (Class III)

8.6.1. A resident may meet with and participate in the activities of social, religious, and community groups, at his or her discretion.

8.6.2. Residents have the right to assemble and organize themselves as a group to solicit and recommend improvements in the home's services and to resolve problems that may arise between the residents and the home.

8.6.3. A resident shall not be compelled to retire at night or arise in the morning at the same set time.

8.6.4. Residents shall be free to leave the personal care home.

#### 8.7. Privacy and Confidentiality (Class III)

8.7.1. The resident has the right to personal privacy and confidentiality of his or her personal and permanent resident



record. Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits and meetings of family and resident groups, but does not require the home to provide a private room.

8.7.2. The resident has the right to associate and communicate privately with persons of his or her choice.

8.7.3. No person shall enter a resident's room without identifying him or herself to the resident and receiving the resident's permission to enter.

8.7.4. Privacy shall be maintained when personal assistance is being provided. Resident bedrooms shall not be used as passageways.

8.7.5. Spouses shall be allowed to share the same bedroom.

#### 8.8. Complaints (Class II)

8.8.1. The resident has the right to voice grievances with respect to treatment or care that is, or fails to be, furnished without discrimination or reprisal for voicing the grievance.

8.8.2. The resident has the right to prompt action by the home to resolve grievances the residents might have, including those with respect to the behavior of other residents.

8.8.3. The personal care home shall permit a resident to express grievances and to communicate to the personal care home staff and outside representatives of the resident's choice the need for changes in the personal care home policies or practices.

8.8.4. The personal care home shall assess the validity of all complaints and shall respond to the complainant in writing as to actions to be taken or not taken with reasons therefor, within twenty-four (24) hours of receipt of the complaint.

8.8.5. The personal care home shall be prohibited from discharging or discriminating in any way against any resident by whom or on whose behalf a complaint has been made or who has assisted in the submission of a complaint.

8.8.6. Nothing in this rule shall be construed to limit in any way the lawful authority of the State department of health and human resources to administer and implement W. Va. Code §9-6-1 et seq. relating to adult protective services.

#### 8.9. Work (Class III)

8.9.1. The resident has the right to be employed outside of the home.

8.9.2. The resident has the right to refuse to perform services for the home.

8.9.3. The resident may perform services for the home if the requirements established in this rule are met.

8.10. Mail and Communication (Class III)

8.10.1. The resident has the right to send and promptly receive unopened mail. A resident may request a staff member to open and read correspondence.

8.10.2. The resident has the right to have access to stationary, postage and writing implements at the resident's own expense.

8.10.3. Regular telephones shall be available to residents for local calls at no cost to the resident. Coin operated telephones may be provided for long distance calls, but no collect calls shall be allowed. Appropriate privacy shall be afforded to the resident during telephone use.

8.11. Access and Visitation Rights (Class II)

8.11.1. The resident has the right to receive visitors and the home shall allow access to the resident for the visitors during established visiting hours.

8.11.2. A personal care home shall establish visiting hours, consisting of at least twelve (12) hours per day, seven (7) days per week. Visiting hours shall be posted conspicuously in a public place in the home.

8.11.3. Relatives and members of the clergy shall be permitted to visit at any time.

8.11.4. All of the following shall have immediate access to any resident and the premises of the home:

8.11.4.a. Any representative of the State acting in an official capacity related to personal care homes;

8.11.4.b. The resident's individual physician;

8.11.4.c. The State and local long term care ombudsmen; and

8.11.4.d. Agencies responsible for the protection and advocacy system for mentally retarded or developmentally disabled individuals and the mentally ill.

8.11.5. The 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 be afforded the opportunity

to contact these agencies.

8.11.6. The personal care home shall provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

#### 8.12. Personal Property (Class III)

8.12.1. The resident has the right to retain and use personal possessions including furnishings, and appropriate clothing as space permits, unless to do so would infringe upon the rights, health or safety of other residents.

8.12.2. The personal care home shall establish and enforce policies and procedures to protect the resident's personal property from loss and theft.

#### 8.13. Civil Rights (Class II)

8.13.1. No personal care home shall deny admission or service to a prospective resident on the grounds of race, religion, national origin, age, gender, or disability except as authorized by this rule.

8.13.2. The personal care home shall not segregate any resident, give separate treatment, restrict in the enjoyment of any advantage or privilege enjoyed by others in the personal care home, or provide with any aid, care services, or other benefits which are different or are provided in a different manner from those provided to others in the personal care home on the grounds of race, religion, national origin, age, gender, disability, or financial status.

8.13.3. Personal care homes shall have non-smoking areas and may adopt no-smoking policies. Current residents who smoke shall not have smoking privileges terminated through a no-smoking policy.

#### §64-14-9. Dietetic Services.

##### 9.1. General (Class II)

9.1.1. When therapeutic diet services are provided by the home, a physician's order for each diet and the meal pattern, including types and amounts of food to be served, shall be on file. Therapeutic diets shall be prepared and served as ordered by the physician. At no time shall a resident be offered less than one thousand two hundred (1,200) calories daily.

9.1.2. Foods shall be prepared and seasoned by methods that conserve nutritional value, flavor and appearance, and shall be attractively served at safe and palatable temperatures in a form

to meet the needs of individual residents.

9.1.3. Not more than fourteen (14) hours shall elapse between the evening meal and breakfast the next morning, which shall not be served before 7:00 a.m.

9.1.4. Every resident shall be encouraged to eat in designated dining areas. The home shall not routinely designate private living areas and hallways as dining areas.

9.1.5. A supply of appropriate and customary tableware in good condition shall be available for each resident.

## 9.2. Nutrition (Class I)

9.2.1. The personal care home shall ensure that each resident is offered at least three (3) meals daily which shall be freshly prepared each day.

9.2.2. A continental breakfast, consisting of at least cereal, milk, juice, toast and beverage, shall be readily available for residents who choose to sleep beyond the regular breakfast meal time. The total nutrients of meals and snacks provided to residents participating in a continental breakfast shall meet the requirements of Section 9.2.7 of this rule and three (3) meals shall be available as required by Section 9.2.1 of this rule.

9.2.3. Meals shall provide nutrients and calories for each resident based upon 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.

9.2.4. Each resident shall be provided with the amount of food and fluid on a daily basis necessary to maintain his or her appropriate minimum average weight.

9.2.5. Breakfast shall consist of at least one (1) item from each of the following categories:

9.2.5.a. Fruit or juice;

9.2.5.b. Cereal, whole grain or enriched bread product; and

9.2.5.c. Grade A vitamin D milk.

9.2.6. Noon and evening meals shall consist of at least one (1) item from each of the following categories:

9.2.6.a. Protein sources, such as meat, poultry, fish, eggs, cooked dried legumes, cheese or peanut butter;

9.2.6.b. Vegetable or fruit;

9.2.6.c. Whole grain or enriched grain food products; and

9.2.6.d. Grade A vitamin D milk.

9.2.7. Minimum quantities and types of food necessary to meet minimum daily requirements for nutrients and fluid are as follows:

9.2.7.a. Meat group: six (6) ounces of lean meat, fish, poultry, or cheese daily. Cooked dried beans, or other legumes such as peanut butter may be substituted. Eggs shall be served at least three (3) times a week;

9.2.7.b. Dairy: two (2) or more eight-ounce cups of milk or its equivalent such as equivalent amounts of cheese, cottage cheese, or yogurt each day.

9.2.7.c. Vegetables: two (2) or more servings each day. Orange or dark green colored vegetables or other good sources of vitamin A shall be served at least four (4) times per week;

9.2.7.d. Fruit: two (2) or more servings each day, at least one (1) of which shall be a citrus fruit or other good source of vitamin C;

9.2.7.e. Whole grain or enriched bread and cereal products: one (1) or more servings each meal with at least four (4) servings each day;

9.2.7.f. Fiber: at least one (1) fiber-rich food (fruit, vegetable, legume or whole grain product) at each meal;

9.2.7.g. Water and other fluids: at least six (6) eight-ounce cups of fluid shall be offered to residents on a daily basis; and

9.2.7.h. Other: other foods to round out meals and snacks to provide additional calories.

### 9.3. Food Service Sanitation (Class II)

9.3.1. A personal care home may utilize a family-type kitchen.

9.3.2. The kitchen shall provide sufficient space to carry out proper food preparation and dishwashing operations.

9.3.3. Food shall be protected from contamination during storage, preparation and service.

9.3.4. Food contact utensils and equipment shall be of

approved material and easily cleanable construction and shall be kept in good repair.

9.3.5. Refrigeration equipment shall be provided to assure the maintenance of potentially hazardous food at or below forty-five degrees Fahrenheit (45° F).

9.3.6. Dishwashing facilities and methods shall be employed to effectively remove food soil and soaps or detergents from dishes, utensils and equipment used in food storage, preparation and service.

9.3.7. If a dishwasher is not used, dishes, equipment and utensils shall first be washed, next rinsed, and then sanitized according to Section 9.3.8 of this rule. Towel drying of dishes, equipment and utensils is not permitted.

9.3.8. The food contact surfaces of all dishes, equipment and utensils not washed in a dishwasher shall be sanitized by one (1) of the following methods:

9.3.8.a. Immersion for at least one-half (1/2) minute in clean, hot water of a temperature of at least one hundred seventy degrees Fahrenheit (170° F);

9.3.8.b. Immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite (household bleach or the equivalent) and having a temperature of at least seventy-five degrees Fahrenheit (75° F);

9.3.8.c. Any other method that will provide the equivalent bactericidal effect.

9.3.9. Cleaned dishes, utensils and equipment shall be stored in a clean dry area protected from contamination.

9.3.10. Foods shall be from approved sources. The use of home-canned foods is prohibited.

9.3.11. Dishes for clients affected with communicable diseases shall be disposable or cleaned and stored separately.

#### 9.4. Reports, Menus, and Diet Manual (Class III)

9.4.1. Current inspection reports shall be on file in the personal care home.

9.4.2. The personal care home shall prepare written menus in compliance with the requirements of Section 9.2 of this rule.

9.4.3. The current week's menu shall be available for review upon request.

9.4.4. Menu content shall be varied.

9.4.5. All menus, menu changes, and grocery receipts shall be kept on file for at least thirty (30) days.

9.4.6. Modified diets, as recommended by the physician, shall be prepared according to written instructions obtained from the resident's physician or hospital dietitian.

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

**10.1. Fire Safety (Class I)**

10.1.1. The personal care home shall comply with the applicable rules of the State fire commission.

10.1.2. Residents and staff of the personal care home shall be trained in fire safety procedures at least annually. The training shall include at a minimum: evacuation routes; emergency assistance phone numbers; and safe areas. New residents and new employees shall be given this training within the first twenty-four (24) hour period of their admission to or beginning of employment in the home.

10.1.3. The personal care home shall have a written fire safety plan.

10.1.4. The fire safety plan shall be rehearsed by all personnel on all shifts at least once annually.

10.1.5. The fire safety plan shall contain at least the following:

10.1.5.a. Moving all occupants directly involved with the fire;

10.1.5.b. Transmitting an emergency fire alarm signal to warn other building occupants;

10.1.5.c. Closing doors to isolate the fire area;

10.1.5.d. Executing evacuation duties as detailed in the fire safety plan;

10.1.5.e. Using alarms;

10.1.5.f. Transmitting an alarm to the fire department;

10.1.5.g. Responding to alarms;

10.1.5.h. Isolating and containing the fire;

10.1.5.i. Evacuating the area; and

10.1.5.j. Preparing the building for evacuation.

10.1.6. All alarms, extinguisher and sprinkler system shall be operational with a tag for documenting maintenance, which includes dates and signatures to verify the provision of maintenance. The sprinkler system shall be inspected by a certified sprinkler installation company on a quarterly basis. The fire extinguishers shall be inspected monthly by in-house staff and quarterly by a certified fire equipment handling company.

10.1.7. Fire drills shall be conducted at least one per shift per quarter not exceeding thirty (30) days between drills.

10.1.8. Documentation of fire drills shall be maintained for two (2) years and shall include the names of the participants, the date and time of the drill, and a written evaluation of each drill.

## 10.2. Disaster and Emergency Preparedness Plan (Class I)

10.2.1. The home shall have a written disaster and emergency preparedness plan which states procedures to be followed in the event of an internal or external disaster or emergency which could severely affect the operation of the home.

10.2.2. The disaster and emergency preparedness plan shall have procedures for at least the following situations and shall identify specific tasks and responsibilities for all employees in the event of each situation:

10.2.2.a. A missing resident;

10.2.2.b. High wind;

10.2.2.c. Tornados;

10.2.2.d. A flood;

10.2.2.e. A bomb threat; and

10.2.2.f. Utility failure.

10.2.3. The disaster and emergency preparedness plan shall include at least the following:

10.2.3.a. An emergency water agreement;

10.2.3.b. An alternate shelter agreement;

10.2.3.c. An emergency transportation policy; and



10.2.3.d. An emergency menu.

10.2.4. The home shall obtain the assistance of qualified fire safety, emergency response teams and other appropriate experts in developing and maintaining the disaster and emergency preparedness plan.

10.2.5. The local fire department shall be provided with a simple floor plan and be given opportunities to become familiar with the home.

10.2.6. The home shall have written procedures for transferring casualties and uninjured residents. These procedures shall include the transfer of pertinent resident records, including medication and other critical treatment schedules, which could affect the treatment of residents.

10.2.7. There shall be copies of the disaster and emergency preparedness plan at all nurse stations or emergency control stations. The disaster and emergency preparedness plan shall be located in an area that allows visual contact at all times. Staff shall know the location at all times.

10.2.8. The disaster and emergency preparedness plan shall be reviewed and updated on an annual basis and signed and dated to verify review.

10.2.9. Simple floor plans showing the location of exits, fire alarm pull stations, fire extinguishers and fire fighting equipment shall be posted on all floors and in each separate wing.

10.2.10. Emergency call information shall be conspicuously posted near each telephone in the home, exclusive of patient telephones. This information shall include at least the following:

10.2.10.a. Telephone numbers of the fire department, the police, an ambulance service and other appropriate emergency services;

10.2.10.b. Key personnel telephone numbers, including at least the following: the administrator; physician; the director of nursing or the nurse on call; and

10.2.10.c. Names and telephone numbers of all other personnel to be called in case of fire or emergency.

### 10.3. Disaster Training and Rehearsal (Class I)

10.3.1. Within seventy-two (72) hours of admission, the disaster and emergency preparedness plan procedures shall be clearly communicated by the staff to the resident.

10.3.2. The disaster and emergency preparedness plan shall be rehearsed by all personnel on all shifts once yearly.

§64-14-11. Physical Facilities Construction and Renovation.

11.1. Applicability (Class I)

11.1.1. The provisions of this section apply to physical facilities, operations, maintenance and equipment for all new personal care homes or additions. These requirements may be modified for existing personal care homes only if their application clearly would be impractical in the judgement of the secretary, and provided that such alternate arrangements are not, in the judgement of the secretary, considered to be detrimental to the health or safety of the occupants and employees of the personal care home. This modification shall conform as nearly as is practicable to the current regulations.

11.1.2. An existing personal care home shall be defined as a personal care home having a valid personal care home license within a period of one (1) year prior to the effective date of this rule.

11.1.2.a. A complete set of drawings and specifications for the architectural, structural, and mechanical work shall be submitted to and approved by the secretary before construction begins. This applies to new construction, additions, renovations, or alterations to existing personal care homes.

11.1.2.b. The submitted set of construction documents (drawings and specifications) shall be prepared, signed and sealed by an individual registered to practice architecture in the State of West Virginia. One set of these documents shall be submitted to the State Fire Marshal for review. The new personal care home or addition shall be inspected during the construction phase by a registered professional architect, preferably the designing architect.

11.1.2.c. During the construction phase an as built set of drawings are to be kept by the general contractor on which all changes (from all trades) to the project are noted. Each change shall noted in red and dated. The architect will present this as built set of drawings to the owner when the project is completed.

11.1.2.d. All construction, new additions, renovations or alterations shall be inspected and approved by the secretary prior to admitting new or additional residents. When construction is substantially complete, the architect shall submit to the secretary a substantial completion form signed by all the parties involved and a completed inspection request form.

11.1.3. Unless substantial construction is started within one (1) year of the date of approval of final drawings, the owner or

architect shall secure written notification from the secretary that such plan approval for construction is still valid and in compliance with this rule.

11.1.3.a. Plans for addition, removal or modification of equipment which is permanently affixed to the building or which may otherwise involve or necessitate new construction, alterations, or additions to the personal care home shall be submitted to and approved by the secretary.

11.1.3.b. Other changes involving equipment, which may or may not require physical changes in the personal care home, but which may relate to other standards and requirements of this rule may require the secretary's approval. Homes may request approval in advance from the secretary regarding a particular change or rearrangement. Areas in which changes are likely to require approval include, but are not limited to: the kitchen, the laundry, and heating equipment.

11.1.4. All fees for site inspections of new construction or major renovations, architect reviews of drawings and specifications, and inspections of new projects prior to openings are the responsibility of the licensee.

11.1.5. The licensee shall submit the intended bed capacity in the plan of operation, and the final determination shall be made by the secretary upon approval of the plan of operation. An increase in capacity can occur only with permission of the secretary.

11.1.6. Except as provided in Section 11.1 of this rule, the following documents are adopted as standards for on site inspections:

11.1.6.a. The American Disability Act (ADA) and the American National Standards Institute (ANSI) codes are to be followed as applicable to free-standing Personal Care Homes;

11.1.6.b. The State building code promulgated in W. Va. Administrative Rules, 87 CSR 4, Building Code<sup>1</sup>.

11.1.6.c. Where local codes or regulations permit standards

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<sup>1</sup>Available from the State Fire Commission or the Secretary of State. Section 4 of the above referenced Building Code rule incorporates by reference the BOCA National Building Code; BOCA National Plumbing Code; BOCA National Mechanical Code; BOCA National Existing Structures Code; BOCA National Energy Conservation and CABO One- and Two-Family Dwelling Code. You may purchase these books, collectively or separately, from Building Officials and Code Administrators International, 4051 West Flossmoor Road, Contra Club Hills, Illinois 60477-5795, 1-312-700-2300 or BOCA International Regional Offices, 3592 Corporate Drive, Suite 107, Columbus, Ohio 43229, 1-614-890-1064 or view a set at the Secretary of State's Office.

lower than those required by these forth herein, local building codes and zoning restrictions shall be observed; and

11.1.6.d. Evidence of compliance signed by local fire, building and zoning officials shall be available on site for review.

## 11.2. Site Characteristics and Accessibility (Class I)

11.2.1. Sites for all new homes and sites of additions to existing homes shall be inspected by the Office of Health Facility Licensure and Certification (O.H.F.L.A.C.) prior to the architect beginning work on final drawings and specifications.

11.2.2. The home shall be located so as to be conveniently accessible to physicians, medical facilities, emergency vehicles, visitors, staff, and necessary services.

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

11.2.4. There shall be adequate drainage to divert surface water from the home.

11.2.5. The personal care home's hard surface access road shall connect directly to a hard surface highway which provides access to hospitals and allows medical and fire personnel access to the home.

11.2.6. Any questionable soil conditions shall be reviewed by a qualified soils engineer with earth core boring as conditions require. If engineered soil is installed or other tests conducted, the architectural review office shall be supplied with copies of the reports.

11.2.7. Water and sewage shall be connected to municipal systems if possible. If on site systems are required to meet project needs, these systems shall be submitted to the department for review.

11.2.8. The site shall have accessibility to electric power. Water shall be supplied with sufficient pressure to adequately operate the fire sprinkler system.

11.2.9. Parking areas shall be constructed using clean, solid earth bed, a compacted stone base and a hard surface all weather finish coat with a slope which permits good drainage. Parking spaces for all staff, a minimum of one (1) parking space for each five (5) beds and a minimum of (2) two handicapped parking space shall be located at the main entrance. This parking area shall

be free of broken, gaped or uneven paving.

11.2.10. Hard surface concrete walks, at least forty-eight inches (48") wide with light broom top surface texture shall be provided at all exits and connect into the main walk or parking area.

### 11.3. Physical Facilities and Equipment (Class I)

11.3.1. Existing and newly constructed buildings to be offered, maintained, and operated as a personal care home shall provide for accessibility in their entirety to individuals with a physical disability. The American Disability Act (ADA) and the American National Standards Institute (ANSI) Codes shall be followed as applicable to free-standing personal care homes.

11.3.2. The building shall be structurally sound, and kept in good repair, with the exterior and interior painted or stained as required to maintain an attractive home.

11.3.3. All equipment is to be maintained as recommended by the manufacturer and the home shall establish a program of preventive maintenance for all equipment.

11.3.4. The home shall be kept free of insects, rodents and vermin. Pesticides shall be applied only by a U.S.D.A. certified applicator.

11.3.5. Each room occupied or used by residents shall have level floors which are slip resistant. Floor covering shall be maintained in a clean and odor free condition, free from protrusions and lie flat and even.

11.3.6. Ceilings and walls shall be in good repair, be free from unfilled cracks, and be finished to allow for satisfactory cleaning.

11.3.7. All doors and windows shall be operable and shall be constructed and maintained to fit snugly, yet be opened and closed easily without requiring the use of special tools. All doors shall be provided with positive latches suitable for keeping the doors closed.

11.3.8. Minimum door widths shall be thirty-six inches (36") for exterior exit and resident room doors. Minimum door widths shall be thirty-four inches (34") for bathroom doors.

11.3.9. Outer openings shall be screened to prevent entrance of insects. Insect screening shall be maintained free of openings large enough to permit entrance of insects.

11.3.10. The home shall have a central heating system capable of maintaining a temperature in all rooms used by residents of at

least seventy-two degrees (72°) fahrenheit during cold weather. Individual room units known as "through the wall heating and cooling units" shall be acceptable.

11.3.11. Supplemental heating devices, such as portable heaters, are prohibited.

11.3.12. Cooling devices or systems shall be provided for the use of residents when inside temperatures exceed eighty degrees (80°) fahrenheit. Acceptable cooling devices include, but are not limited to air conditioners and heat pumps. Electric fans are not acceptable.

11.3.13. Existing ramps and inclines shall not be less than forty-four inches (44") wide nor steeper than one foot (1') of rise in ten feet (10') of run, and shall be finished with a non-slip surface. New ramps shall not be less than forty-eight inches (48") wide nor steeper than one foot (1') of rise in twelve foot (12') of run, and shall be finished with a non-slip surface. New and existing ramps shall meet requirements of all applicable local, state and national codes.

11.3.14. Handrails shall be the proper height and be provided on all inside and outside stairs, ramps, and elevators. Low windows, open porches, changes in floor level and similar accident hazards shall be protected so that the danger of accident is minimized. Danger areas on the property outside the building shall be safeguarded. Handrails shall be installed between thirty-two inches (32") and thirty-four inches (34") high and support a concentrated load of two hundred and fifty (250) pounds.

11.3.15. Homes shall have call system capabilities which are audible to staff who are on duty and which can be accessed from each bed and other areas as necessary for the safety of residents. Electronic call systems shall be required based on the size of the personal care home and configuration of building.

11.3.16. Space adequate for storage of linens, maintenance and housekeeping supplies, equipment, and food supplies shall be provided.

11.3.17. All homes shall have at least one (1) janitor's closet with a service sink for each story that houses residents.

11.3.18. Corridors, stairways and elevators shall be of a width and design that will easily accommodate the removal of residents by stretcher, and shall be constructed and maintained in compliance with all fire and safety regulations and requirements. Non-slip surfaces shall be required for stairways. Elevators shall comply with all appropriate State and federal laws.

11.4. Sleeping Facilities (Class II)

11.4.1. New construction single occupancy bedrooms shall contain no less than one hundred (100) square feet of floor area and multiple occupancy bedrooms shall contain at least eighty (80) square feet of floor area per resident. Existing homes shall contain single occupancy bedrooms with at least eighty (80) square feet of floor area and multiple occupancy bedrooms shall contain at least sixty (60) square feet of floor area per resident.

11.4.2. All bedrooms shall have sufficient floor space to accommodate all items required by this rule relating to furnishings and equipment of a resident's bedroom. If a bedroom has a built-in closet, up to nine square feet per closet may be counted in calculating the square footage of the floor space.

11.4.3. Within twenty-four (24) months following passage of this rule, no bedroom shall be occupied by more than four (4) persons in existing homes. Homes newly constructed or renovated shall have no more than two (2) persons per room.

11.4.4. Each resident shall be provided with a bed at least thirty-six inches (36") wide (standard adult single size bed) which is substantially constructed and in good repair. Beds shall be provided with substantial springs and a clean comfortable mattress which fits the bed. Folding beds, cots, roll away beds, bunk beds, and youth beds are prohibited. Double beds are permitted for married couples, provided that:

11.4.4.a. The square footage per occupant requirements are met; and

11.4.4.b. There are no medical contraindications.

11.4.5. There shall be at least three feet (3') of space separating beds (side and at least on end of bed). Beds shall not be placed so that residents will experience discomfort because of proximity to heat sources and exposure to drafts.

11.4.6. Each resident bedroom shall have direct access to a corridor without passing through a bathroom or another resident's bedroom.

11.4.7. Beds shall be placed only in bedrooms and shall not be placed in corridors, living rooms, kitchens, dining rooms, a basement, attic, or any other area not commonly used as a bedroom or in any area accessible only by ladder or folding stairs or through a trap door.

11.4.8. Household members and employees may not share bedrooms with residents and may not use resident bedrooms for any purpose.

11.4.9. Every closet door latch shall be such that it can be readily opened from inside in case of emergency.

11.4.10. The clear area of windows shall be a minimum of ten percent (10%) of room floor area in each resident bedroom. Windows shall be at a height to provide a direct view to the outside. They shall have curtains, shades, or blinds, which may be opened and closed and shall be kept clean and in good repair. The ventilation area provided in each bedroom through the operable sections of the windows shall be equal to a minimum of five percent (5%) of the room floor area.

11.4.11. Each bedroom shall have at least one (1) light controlled by a switch at the door to the room.

11.4.12. Each resident shall be provided with a bed and bedroom.

11.4.12.a. Each bed shall have a clean comfortable pillow with a protective cover and pillow case. A protective cover and two sheets, a bed spread or other type of covering shall be provided for the bed.

11.4.12.b. Clean bed linens shall be provided for each resident at least once a week and more often if needed.

11.4.12.c. Additional bed covering shall be available to keep residents warm during emergencies and cold weather.

11.4.13. Each resident of each bedroom shall be provided with at least the following:

11.4.13.a. A bedside table, chest or its equivalent located by the head of the bed; and

11.4.13.b. Closet, locker, or wardrobe space with a minimum dimension of twenty (20) by twenty-two (22) by seventy-two (72) inches excluding shelf and storage space. In addition, at least three drawers to meet resident's needs for the storage of clothing and personal items shall be provided for each resident.

11.4.14. Bedroom furnishings shall be in good repair and shall be of a nature to suggest a private home setting. Furnishings shall be reasonably attractive and comfortable; individual tastes of the residents shall be taken into consideration including the use of their personal furniture where space permits.

#### 11.5. Toilets, Handwashing and Bathing Facilities (Class II)

11.5.1. Household members and live-in staff shall not share toilet and bathing facilities with residents unless the total number of occupants of the home is five or less. Otherwise,



household members and live-in staff shall not be counted in determining the required fixtures for residents.

11.5.2. There shall be indoor flushing toilets with handwashing lavatories in the same room at a ratio of at least one (1) toilet and lavatory for every four (4) residents. There shall be a mirror over each lavatory. Toilets, handwashing lavatories, and bathing fixtures shall be in good repair and maintained in a sanitary condition. There shall be at least one bathing facility and one flush toilet with handwashing facilities on each floor used by residents.

11.5.3. There shall be bath tubs or showers at a ratio of one (1) per five (5) residents. Tubs and showers shall be equipped with non-slip surfaces.

11.5.4. New construction shall include a toilet and a lavatory located between semi-private rooms.

11.5.5. Toilet and bathing facilities shall be supplied with soap. Toilet facilities shall be supplied with toilet tissue and disposable towels or a blow dryer for hands.

11.5.6. Bath towel bars shall be provided for either in the residents bedroom or the bathroom. Space for towel bars shall accommodate the number of residents utilizing the bathing facility.

11.5.7. Bathing and handwashing facilities shall not be used for storage of linens and clothing to be laundered or for laundering of soiled linens and clothing.

11.5.8. Grab-bars shall be provided at toilets, tubs, and showers. These grab-bars shall be securely mounted to the finished wall with a steel plate or a two by six inch wood plate backing behind the wall. Grab bar brackets are to be provided at spacings which would support two hundred and fifty (250) pounds of concentrated load at any point on the grab bar.

11.5.9. Bathing and toilet facilities shall ensure privacy and safety of residents. Doors shall swing outward one hundred eighty (180°) degrees or until flush with a permanent wall. Door locks shall have the capacity to be opened from outside of the bathroom. Keys to bathrooms shall be readily accessible to the personal care home staff in the event of an emergency.

11.5.10. A toilet facility to meet the needs of individuals with disabilities shall be made available.

#### 11.6. Dining Area (Class III)

11.6.1. The home shall provide a dining area of at least fifteen (15) square feet per resident and which is sufficiently

equipped to allow all residents to dine comfortably as a group.

11.6.2. Residents who are temporarily confined to bed because of illness may have their meals served at bedside. Each resident shall be provided a table with firm support which is easily cleaned and in good repair for service of meal trays when they are not eating in the dining room.

11.6.3. The dining area shall have at least one window with an operable sash.

11.6.4. The type and quantity of artificial lighting shall be adequate to provide a cheerful dining area.

11.7. Recreation and Leisure Area (Class III)

11.7.1. A leisure room shall be provided for reading and recreational purposes. This room shall be equipped at minimum with a television having at least a nineteen inch diagonal screen, reading material, a daily newspaper, and seating furniture which provides good lower back support, arm rests, and which is clean, odor free and in good repair.

11.7.2. The leisure area shall be ventilated with windows and provide a sufficient level of artificial lighting for safety and leisure activities.

11.7.3. An area of at least fifteen (15) square feet per resident shall be provided for the leisure spaces. The dining room may serve as part of the leisure room. The total square footage per resident for the dining and leisure room should be thirty (30) square feet.

§64-14-12. Sanitation and Safety.

12.1. Water Supply (Class I)

12.1.1. The home shall maintain a water supply which:

12.1.1.a. Is safe and sized to meet all residential needs and requirements of the sprinkler system; and

12.1.1.b. Has as its source of water a public water system which complies with the Public Water Systems, 64 CSR 3 or a water well which complies with Water Well Regulations, 64 CSR 19, and Water Well Design Standards, 64 CSR 46.

12.1.2. A personal care home which does not have a public water system as its source of water shall request an annual inspection of its supply by the local health department and shall sample the supply quarterly for bacteriological analysis. A report of the inspection and bacteriological test results shall be maintained on the premises and the home shall submit a copy

with initial and renewal license applications.

12.1.3. The home shall maintain hot and cold running water in sufficient supply to meet the needs of the residents, household members and employees.

12.1.4. Hot water temperatures shall be maintained between one hundred five degrees fahrenheit (105°F) and one hundred ten degrees fahrenheit (110°F) at bathing fixtures used by residents. A thermostatic mixing valve shall be utilized to control the temperature of hot water which is used by residents. Water temperature shall not exceed one hundred ten degrees fahrenheit (110°F) in tubs and showers and one hundred twenty degrees fahrenheit (120°F) at hand washing sinks.

## 12.2. Laundry and Linens (Class II)

12.2.1. The home may contract for laundry service to be done off the premises.

12.2.2. Each home shall have at least one (1) clothes washer and one (1) clothes dryer.

12.2.3. Any laundry done at the home shall be performed in an area distinctly separate from any food preparation and dishwashing area. Any surface areas used for eating or food preparation shall not be utilized for sorting or folding laundry.

12.2.4. Soiled laundry shall be stored in non-absorbent, easily cleanable covered containers or disposable plastic bags.

12.2.5. Soiled and clean laundry shall not be stored or placed in the same container or on a common table or shelf.

12.2.6. Washing machines shall be installed so that no back-siphonage possibilities exist.

12.2.7. All laundry shall be dried mechanically in an electric or gas clothes dryer which is vented to the outside or a chemical sanitizer shall be added to the rinse water, and the laundry air-dried.

12.2.8. The home shall provide locked storage facilities for laundry supplies, housekeeping supplies, insecticides, work supplies and any other toxic or hazardous materials. Food and drugs shall be stored in separate locations.

12.2.9. There shall be 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.

12.2.10. All linens shall be of good quality. They shall not have holes, tears, permanent stains, be transparent or

threadbare.

12.3. Food Service Facilities (Class I)

12.3.1. If the home does not maintain a dietetic service which is organized directly by the home then there shall be a written agreement with a contractor for food services who complies with all applicable standards of personal care home rules.

12.3.2. A personal care home providing services to eleven (11) or more residents shall be in compliance with Food Service Sanitation Regulations, 64 CSR 17, and be inspected by the county sanitarian. A certificate of compliance shall be posted.

12.3.3. Homes which provide services for eleven (11) or more residents and whose kitchen prepares and transports food to another home shall have a permit to operate a food service establishment granted under the provisions of W. Va. Administrative Rules, Food Service Sanitation, 64 CSR 17.

12.4. Sewage (Class I)

12.4.1. Sewage disposal shall be in accordance with Sewage System Rules, 64 CSR 9, and Sewage Treatment and Collection System Design Standards, 64 CSR 47.

12.4.2. The sewage system shall be adequate to meet the home's needs.

12.4.3. Sewage systems shall be kept in good working order and shall be properly operated and maintained.

12.5. Solid Waste (Class II)

12.5.1. All garbage and refuse shall be stored in durable, covered, leak-proof and vermin-proof containers and the containers shall be kept clean and free of all residue accumulation. Dumpsters in good repair are acceptable.

12.5.2. The home shall provide solid waste containers in sufficient numbers and capacity to properly store all solid waste.

12.5.3. Solid waste, including garbage and refuse, shall be removed from the building daily and the premises weekly, or more often if necessary.

12.5.4. A concrete platform or metal rack shall be required for outside storage of solid waste containers. The method of storage shall prevent animals from getting into the contents of the waste containers.

12.5.5. When municipal or private garbage and refuse disposal service is not available, the home shall dispose of all garbage and refuse in accordance with the applicable provisions of State and local law and regulations governing the management of garbage and refuse.

12.6. Electrical Requirements (Class I)

12.6.1. Each home shall be supplied with electrical service, wiring, outlets, and fixtures which shall be installed to meet the national electric code and shall be maintained in good and safe working conditions.

12.6.2. The electrical service shall be of the proper size to handle the load connected to it.

12.6.3. Electrical duplex outlet receptacles shall be provided as follows:

12.6.3.a. Outlets shall be located in the living room, recreation room, dining room and bedrooms. There shall be at least one (1) receptacle on each wall. Walls longer than twelve (12) feet in the leisure room shall have two (2) receptacles on the walls;

12.6.3.b. Other habitable rooms shall have a minimum of two (2) receptacles;

12.6.3.c. A minimum of one (1) receptacle outlet shall be installed near the lavatory in bath or toilet rooms and shall be provided with ground fault circuit interrupter protection.

12.6.3.d. Kitchens shall be provided with one receptacle per four (4) lineal feet or a fraction thereof of the countertop preparation area with a minimum of two (2) receptacles per counter. In addition all counters wider than twelve (12) inches of any length shall provide a minimum of one (1) receptacle. On walls without counters there shall be receptacles with a maximum spacing of twelve (12) feet. Separate outlets shall be required for refrigerators and cooking equipment which require specialty outlets;

12.6.3.e. The laundry room shall have a specialty outlet for the clothes dryer and a dedicated outlet for the washer. A minimum of one (1) outlet on a circuit separate from the washer and dryer shall be provided; and

12.6.3.f. A minimum of one (1) exterior receptacle duplex outlet with ground fault circuit interrupter protection shall be provided.

12.7. Lighting Requirements (Class II)

12.7.1. General outdoor lighting shall be provided to illuminate walks, steps and drive areas for the purposes of the resident's safety.

12.7.2. Emergency lights shall be mounted on walls in sufficient number to illuminate all exits on all levels. Emergency lights shall also be provided in the kitchen and as needed in areas where residents congregate.

12.7.3. Minimum interior lighting levels shall be as follows:

12.7.3.a. Ten (10) foot candles in entrances, hallways, stairways, stair landings;

12.7.3.b. Twenty (20) foot candles in general areas of living room, leisure rooms, dining rooms, and bedrooms;

12.7.3.c. Thirty (30) foot candles in reading, writing and game playing areas in living room, leisure rooms, dining rooms, bedrooms;

12.7.3.d. Fifty (50) foot candles in the cleaning and food preparation, cooking, and laundry areas;

12.7.3.e. Thirty (30) foot candles in bath, lavatory, and toilet areas; and

12.7.3.f. Fifty (50) foot candles in facial shaving and grooming, at mirrors and hair stylist area.

#### 12.8. Pets and Other Animals (Class II)

12.8.1. Pets are permitted. All residents shall be advised prior to admission that pets are kept on the premises. If pets are added after the admission of residents, all residents shall be in agreement to this.

12.8.2. Wild, dangerous or obviously ill animals are prohibited.

12.8.3. Animals and their quarters shall be kept in a clean condition at all times.

12.8.4. Dogs and cats kept in the home or on the grounds of the home shall be properly vaccinated (for dogs this includes rabies, leptospirosis, distemper, and parvo and for cats this includes rabies). Documentation of the vaccination and prevention measures shall be available on the premises.

12.8.5. Pets are not permitted in food preparation areas.

12.8.6. Pets are not permitted in a resident's bedroom without the resident's consent.

12.8.7. Dogs shall be licensed in accordance with State and local laws. The license or other proof shall be available for review on the premise of the home.

**§64-14-13. Additional Requirements Related to the Provision of Limited and Intermittent Nursing or Maximum Personal Assistance.<sup>2</sup>**

**13.1. Limited and Intermittent Nursing Services (Class I)**

13.1.1. A personal care home which wishes to provide limited and intermittent nursing care and services which exceed moderate personal assistance shall arrange for a registered nurse who has agreed, in writing, to assume responsibility for the oversight of care and services required by this rule to all residents of the personal care home inclusive of the following;

13.1.1.a. The registered professional nurse shall provide oversight of the care and services through visits to the residents at least five (5) times a week unless the personal care home has a licensed bed capacity of eleven (11) or more. Facilities with eleven (11) or more beds shall conform to the minimum nursing hours established in Section 7 of this rule. Visits shall be of sufficient duration to perform all required duties;

13.1.1.b. The registered professional nurse shall be on call at all times or the personal care home shall arrange for like relief coverage by another registered nurse to assure that the care and needs of the residents are satisfactorily met.

13.1.1.c. The personal care home shall make arrangements for a registered nurse to manage and provide nursing services for all residents of the personal care home as specified in this rule. Arrangements for nursing services for individual residents may be made by contract with an individual, a nursing service, or a home health agency, or the registered nurse may be an employee or the administrator of the personal care home. Arrangements with a home health agency do not satisfy requirements for nursing management oversight of all residents but may be used to satisfy the requirements for services to individual residents. The registered nurse shall sign a written agreement specifying all services the registered nurse agrees to provide;

13.1.1.d. The registered professional nurse shall provide direct supervision of the limited and intermittent nursing services provided by ensuring that the services established within the resident's plan of care are met;

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<sup>2</sup> The provisions of this section apply to personal care homes providing limited and intermittent nursing or maximum personal assistance as stated in Section 4.1.3 of this rule.

13.1.1.e. The personal care home shall implement, within reasonable expectation, the recommendations of the registered nurse regarding care, services and staff training intended to protect the residents;

13.1.1.f. The personal care home shall provide written notice to each resident regarding the availability of nursing services at the time of admission, or, for current residents, within seven (7) days of the implementation of the nursing service;

13.1.1.g. Residents who are unable to recognize danger or walk independently shall reside only on the first floor of a multi-level personal care home.

13.1.2. The registered nurse shall:

13.1.2.a. Complete a written nursing assessment for each resident within twenty-four (24) hours following admission, and annually thereafter, or at the time of any significant temporary or permanent change in the resident's condition.

13.1.2.b. Coordinate the development of a written plan of care with the resident and the attending physician or other licensed health care professional authorized to develop such plans of care by applicable State laws and rules, which shall be signed and dated by the attending physician or other licensed health care provider. This plan of care shall be completed within seven (7) days after admission and shall be reviewed by the registered nurse at least every six (6) months or at the time of a significant temporary or permanent change in condition;

13.1.2.c. Assure that the plan of care is implemented and that the resident's physical, mental and social well-being are not compromised;

13.1.2.d. Assure that treatment involving medical management of a resident is carried out only in accordance with an order from a physician or other licensed health care provider authorized by State law and rules to issue the order, and that the order with the physician's or other licensed health care provider's signature is placed in the resident's care record;

13.1.2.e. Assure that all verbal orders are recorded in the resident's care record, signed by the registered nurse, and countersigned by the physician or other licensed health care provider who issued the order;

13.1.2.f. Assure that all physician's orders specify the type, frequency, duration, and dosage for each medication, treatment or special feeding;

13.1.2.g. Assure that treatment measures are performed only by qualified staff;



13.1.2.h. Assure that sterile procedures and treatments are performed only by a licensed registered or practical nurse;

13.1.2.i. Report suspected abuse, neglect, or misappropriation of personal funds or property to the State licensure and certification agency, the State commission on aging, and the State adult protective services agency. This requirement does not relieve the personal care home administrator, owner, staff or any other individual of any responsibilities for reporting abuse or neglect of a resident or misappropriation of a resident's funds or property;

13.1.2.j. Maintain records of each visit;

13.1.2.k. Evaluate each resident's functional capabilities to assure that each joint is maintained with an optimal range of motion;

13.1.2.l. Evaluate each resident's medication administration in accordance with the physician's orders, and report adverse signs or symptoms related to medications to the physician immediately;

13.1.2.m. If physical or chemical restraints are used, evaluate and recommend to the resident's physician alternatives to maintain the resident at an optimum level of functioning;

13.1.2.n. Review training needs of personal care home staff members;

13.1.2.o. Provide needed training or recommend to the personal care home appropriate training for staff;

13.1.2.p. Provide to the personal care home a written record of training provided by the registered nurse to individuals or groups with an outline of items discussed, date, time of the session, and signature of individual(s) involved in the training;

13.1.2.q. Participate with the administrator in the hiring of care givers, including verification that the care giver is not on the Nurse Aide Abuse Registry maintained by the State licensure and certification agency;

13.1.2.r. Recommend, in writing, the addition of care givers necessary to meet the needs of residents; and

13.1.2.s. Evaluate alterations in the physical, mental and social well-being of residents as potential cases of abuse or neglect.

13.1.3. The registered nurse shall keep a general record which shall include at least:

13.1.3.a. The date, time in and time out for each visit (unless the registered professional nurse is employed by the personal care home at least 35 hours per week);

13.1.3.b. A list of duties performed by the registered nurse during each visit;

13.1.3.c. A brief statement regarding identified concerns and recommended actions taken to resolve them;

13.1.3.d. A weekly evaluation of each resident for any signs of alteration in skin integrity; and

13.1.3.e. Initials for each entry and a complete signature of the registered nurse at the bottom of each page of the record.

13.1.4. The registered nurse shall enter statements regarding the following into each resident's individual case record;

13.1.4.a. The presence or absence of bruises, discoloration, redness, skin turgor;

13.1.4.b. The specific location of any change in skin color, turgor or integrity and a detailed description for each area noted, including the size of the area in centimeters, its appearance, the presence or absence of drainage, its color and a plan of treatment; and

13.1.4.c. An evaluation of weekly food and fluid intake, any changes in eating patterns, and any actions needed and taken as a result.

## 13.2. Personnel and Staffing (Class I)

13.2.1. The administrator shall have at least one year of experience in caring for adults with mental or physical impairments.

13.2.2. Any individual designated as the assistant administrator shall meet the requirements established in this rule for administrators.

13.2.3. The administrator or assistant administrator shall demonstrate knowledge, skills and abilities in the administration and management of a personal care home serving individuals with mental or physical disabilities as appropriate to the population in care, including:

13.2.3.a. Knowledge and understanding of mentally impaired or physically impaired individuals;

13.2.3.b. Ability to plan and implement the program; and

13.2.3.c. Knowledge of financial management sufficient to ensure program development and continuity.

13.2.4. The administrator and assistant administrator shall annually attend at least twenty (20) hours of training related to management or operation of a personal care home specific to the population in care. Documentation of training attendance and content shall be maintained in their personnel files.

13.2.5. Residential care and residential support staff shall attend at least eight (8) hours of training annually specific to the population in care at the personal care home. Documentation of the training shall be maintained in the employee's personnel file. Examples of content areas of training which focus on the resident who is mentally or physically impaired may include but not be limited to:

- 13.2.5.a. Medications and side effects;
- 13.2.5.b. Signs and symptoms of substance abuse;
- 13.2.5.c. Mental illness and mental retardation;
- 13.2.5.d. Crisis intervention;
- 13.2.5.e. Aging processes;
- 13.2.5.f. Behavior management;
- 13.2.5.g. Resident care techniques;
- 13.2.5.h. Interpersonal skills;
- 13.2.5.i. Promoting socialization and independence;
- 13.2.5.j. Death and dying;
- 13.2.5.k. Nutrition and therapeutic diets;
- 13.2.5.l. Restorative care;
- 13.2.5.m. Habilitation and/or rehabilitation;
- 13.2.5.n. Use of assistive or prosthetic devices;
- 13.2.5.o. range of motion, transfer and positioning;
- 13.2.5.p. Emergency interventions when the residents are out of the personal care home.

### 13.3. Resident Care and Related Services (Class I)

13.3.1. The personal care home shall assure that all of the

resident's identified needs are met utilizing a multi-disciplinary approach within a comprehensive service plan. The resident's comprehensive service plan shall be maintained in one (1) document that clearly identifies the interventions to be provided, the frequency and duration of each intervention, and the level of staff necessary to carry out the intervention.

13.3.2. The administrator shall designate an employee to be responsible for monitoring and maintaining the comprehensive service plan on an ongoing basis.

13.3.3. The personal care home shall review all comprehensive service plans at least annually or as changes in the resident's needs warrant review and updating. In the review of the plan, the personal care home shall document the results of the established interventions and care.

13.3.4. The personal care home shall assure that all of the individuals' time limited needs identified on the comprehensive individualized service plan are met.

13.3.5. The personal care home shall obtain progress reports from outside service providers at least every six (6) months until it is stated in a report that services are no longer needed.

13.3.6. The progress reports shall contain at a minimum:

13.3.6.a. A statement that continued services are/are not needed;

13.3.6.b. Recommendations, if any, for continued services;

13.3.6.c. The individual's response to the service being provided.

13.3.7. Copies of the progress reports shall be retained in the resident's record.

#### §64-11-14. Penalties; Administrative Due Process

##### 14.1. Secretary's Authority for Penalties and Disciplinary Actions

14.1.1. Penalties for violations of this rule shall be assessed and applied according to the provisions of W. Va. Code §16-5C-1 et seq and this rule.

14.1.2. The secretary shall by order reclassify a licensed personal care home or reduce the bed capacity of the personal care home or both, when on the basis of inspection he or she makes the findings:

14.1.2.a. That the licensee has not provided adequate care as indicated by:

14.1.2.a.A. An F rating in one (1) or more of Sections 7 through Section 13, as applicable of this rule under the home's existing classification or bed capacity or both;

14.1.2.a.B. An immediate and serious threat to the health or safety of one (1) or more residents of the home;

14.1.2.b. Poor care outcomes resulting in an avoidable decline in condition or functional abilities resulting from neglect or abuse; and

14.1.2.c. That reclassification or a reduction in bed capacity would place the personal care home in a position to render adequate care. The secretary shall notify a licensee of reclassification, reduction in bed capacity or both, stating the terms of the order, the reasons thereof and the date set for compliance.

14.1.3. The secretary may assess civil penalties, suspend, revoke, or deny renewal of the license of a personal care home for cause after notice as required by this rule and the provisions of W. Va. Code §16-5C-1 et seq. Cause may include, but not be limited to one or more of the following:

14.1.3.a. Failure to provide adequate care for residents;

14.1.3.b. Failure to submit a Plan of Correction;

14.1.3.c. Failure to submit a Plan of Correction which is approved by the secretary;

14.1.3.d. Failure to correct deficiencies within the time frame specified in an approved Plan of Correction;

14.1.3.e. Failure to comply with this rule;

14.1.3.f. A violation of any provision of this rule which produces imminent danger to residents such as nasogastric tubes;

14.1.3.g. Violation of the prohibitions of this rule against discharge of residents or employees for reason of complaints regarding the home;

14.1.3.h. The use of subterfuge or other dishonest action in applying for an original or renewal license; or

14.1.3.i. Abuse of residents.

14.2. Administrative Due Process and Procedure for Penalties and Disciplinary Action

14.2.1. Upon completion of a report of inspection, the secretary shall determine what, if any civil penalties are to be imposed pursuant to the West Virginia Code and this rule, and issue citations. Supplemental penalties shall be assessed for a Personal Care Home's failure to correct continuing violations, Provided: that where supplemental penalties have been assessed for continued failure to correct a deficiency of a non-life threatening nature, the secretary shall, prior to issuing a written citation, notify the licensee or non-licensed operator by registered or certified mail, return receipt requested, that civil penalties will be imposed on a date to be specified by the secretary unless the corrective actions specified by the secretary are implemented in an acceptable manner.

14.2.2. All citations shall be in writing and shall include at least the following:

14.2.2.a. The penalty;

14.2.2.b. A description of the nature of the violation fully stating the manner in which the licensee or non-licensed operator violated a specific statutory provision or provision of the rule; and

14.2.2.c. The basis upon which the secretary assessed the penalty and selected the amount of civil penalty.

14.2.3. The name of any resident jeopardized by the violation shall not be specified in the citation.

14.2.4. For each violation of a Class I standard, a civil penalty shall amount to not less than one hundred dollars (\$100) or more than ten thousand dollars (\$10,000). For each violation of a Class II standard, a civil penalty shall amount to not less than fifty dollars (\$50) and not more than one thousand dollars (\$1000). For each violation of a Class III standard, a civil penalty shall amount to not less than twenty-five dollars (\$25) and not more than two hundred fifty dollars (\$250).

14.2.5. Each day a violation continues after the date by which correction was required by an approved plan of correction, or if an approved plan of corrections was not submitted, the date on which such plan was due, shall constitute a separate violation.

14.2.6. In both determining to assess a civil penalty and in fixing the amount of the civil penalty to be imposed for violations, the secretary shall consider:

14.2.6.a. The gravity of the violation, which shall include:

14.2.6.a.A. The degree of substantial probability that death or serious physical harm will result and, if applicable, did

result from the violation;

14.2.6.a.B. The severity of serious physical harm most likely to result, and if applicable, that did result from the violation; and

14.2.6.a.C. The extent to which the provisions of the applicable statutes or regulations were violated.

14.2.7. If a licensee does not plan to contest a citation which imposes a penalty, he or she shall submit to the secretary, within four (4) business days after the issuance of the citation, the total sum of the penalty assessed.

14.2.8. If a licensee desires to contest a citation which imposes a penalty or the date specified for correction of a violation, he or she shall, within four (4) business days after service of the citation or specification of time in which a violation is to be corrected, serve upon the secretary, either personally or by registered or certified mail, the licensee's written notice pursuant to Rules of Procedure for Contested Case Hearings and Declaratory Rulings, West Virginia Board of Health Procedural Rules, 64 CSR 1.

14.2.9. The assessments for penalties and for costs of legal action taken under W. Va. Code §16-5C shall have interest assessed at two percent on the last day of each month in which occurs the thirtieth day after receipt of notice of such assessment or after the month in which occurs the thirtieth day after receipt of the secretary's final order following a hearing, whichever is later. All such assessments against a personal care home that are unpaid shall be added to the personal care home's licensure fee and may be filed as a lien against the property of the licensee or operator of the personal care home.

14.2.10. The secretary shall, in a civil judicial proceeding, recover any unpaid assessment which has not been contested under W. Va. Code §16-5C-12 within thirty (30) days of receipt of notice of such assessment, or which has been affirmed under the provisions of that section and not appealed within thirty (30) days of receipt of the secretary's final order, or which has been affirmed on judicial review, as provided in W. Va. Code §16-5C-13. All money collected by assessments of civil penalties or interests shall be paid into a special resident benefit account and shall be applied by the secretary only for the protection of the health or property of residents of facilities operated within the State of West Virginia, including payment for the costs of relocation of patients to other facilities, operation of a home pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

### 14.3. Hearings and Due Process

14.3.1. An applicant for a license or a licensee or any other person aggrieved by an order or other action by the secretary pursuant to this rule or to W. Va. Code §16-5C-1 et seq shall have the opportunity for a hearing by the secretary, upon written request to the secretary in a manner prescribed in an by the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

14.3.2. A hearing pursuant to this section shall be conducted in accordance with the pertinent provisions of W. Va. Code §29A5-1 et seq and §29A4-1 et seq of the West Virginia Code and the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

14.3.3. A home which objects to the correctness of deficiency statements shall exhaust informal remedies prior to a request for a hearing to contest citings of deficiencies:

14.3.3.a. The home shall submit a plan of correction for cited deficiencies for approval by the secretary within the designated time form;

14.3.3.b. Disagreement and the reasons for this disagreement shall be submitted by the home in writing to the secretary;

14.3.3.c. The secretary shall adopt policies and procedures for conflict resolution consistent with those utilized for certified facilities; and

14.3.3.d. The secretary shall provide a written decision to the home regarding the disagreement.

14.3.4. When the secretary takes a case under advisement, the secretary shall:

14.3.4.a. Enter an order stating the decision to hold the case under advisement;

14.3.4.b. Notify the licensee and his attorney of record, if any, of the action, by certified mail, return receipt requested;

14.3.4.c. Enter order showing satisfactory compliance dismissing the complaint if the licensee meets the requirements of the order; and

14.3.4.d. Upon entering the second order under this section the secretary shall notify the licensee and his attorney of the record if any, by certified mail, return receipt requested.

14.3.5. Following a hearing the secretary shall make and enter a written order either dismissing the complaint or taking such action as is authorized by W. Va. Code §15-5C and this rule. The written order of the secretary shall be accompanied by



findings of fact and conclusions of law as specified in W. Va. Code §29A-5-3 and a copy of the order and accompanying findings and conclusion shall be served upon the licensee and his attorney of record, if any, by personal service or certified mail, return receipt requested.

14.3.6. If the secretary suspends a personal care home's license, it shall also specify the conditions giving rise to such suspension, to be corrected by the licensee during the period of suspension in order to entitle the licensee to reinstatement of his license.

14.3.7. If the secretary revokes a license, he or she may stay the effective date of the revocation by not more than ninety (90) days upon a showing that such stay is necessary to assure appropriate placement of residents.

**§64-11-15. Severability.**

15.1. The provisions of this rule are severable. If any portion of this rule is held invalid, the remaining provisions remain in effect.

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Table 64-14.1. Scores for A, B, C, And F Ratings in Each Category, Average Rating and Overall Rating

Sec. No.	CATEGORY	POINT VALUE SCORE	RATING	RATING SCORE <sup>3</sup>	RATING			
					F <sup>4</sup>	C	B	A
5	Staffing and Personnel Requirements				≤49	50-57	58-68	69-79
6	Admission and Discharge Policies				≤29	30-35	36-45	46-55
7	Resident Care and Related Services				≤52	53-62	63-72	73-82
8	Resident Rights				≤79	80-88	89-99	100-112
9	Dietetic Services				≤19	20-23	24-29	30-36
10	Fire Safety, Disaster ...				≤17	18-21	22-25	26-30
11	Physical Facilities Construction				≤27	28-33	34-38	40-46
12	Sanitation and Safety				≤46	47-54	55-65	66-76
13	Additional Requirements ...				≤12	13-16	17-21	22-26

Average Rating Score	Rating
3.6 - 4.0	A
2.6 - 3.59	B
2.0 - 2.59	C
1.99 or less or zero in any category	F

Total Rating Score \_\_\_\_\_

Average Rating Score \_\_\_\_\_

Final Rating \_\_\_\_\_

<sup>3</sup> Rating score values are:

- A = 4
- B = 3
- C = 2
- F = 0

<sup>4</sup> ≤ = Less than or equal to

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Table 64-14.2. Minimum Staffing Levels

AVERAGE CASE MIX WEIGHT	REQUIRED STAFF HOURS PER RESIDENT PER DAY
1.0 - 1.5	.25 hours
1.6 - 2.0	.33 hours
2.1 - 2.5	.50 hours
2.6 - 3.0	.66 hours
3.2 - 3.5	.75 hours
3.6 +	1.10 hours

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Table 64.14.3. Surety Bond Schedule.

SURETY BOND RATE SCHEDULE			
AVERAGE MONTHLY BALANCE OF RESIDENT FUNDS			AMOUNT REQUIRED FOR SURETY BOND
\$1.00	to	\$2,000.00	\$2,500.00
\$2,001.00	to	\$2,100.00	\$2,625.00
\$2,101.00	to	\$2,200.00	\$2,750.00
\$2,201.00	to	\$2,300.00	\$2,875.00
\$2,301.00	to	\$2,400.00	\$3,000.00
\$2,401.00	to	\$2,500.00	\$3,125.00
\$2,501.00	to	\$2,600.00	\$3,250.00
\$2,601.00	to	\$2,700.00	\$3,375.00
\$2,701.00	to	\$2,800.00	\$3,500.00
\$2,801.00	to	\$2,900.00	\$3,625.00
\$2,901.00	to	\$3,000.00	\$3,750.00
\$3,001.00	to	\$3,100.00	\$3,875.00
\$3,101.00	to	\$3,200.00	\$4,000.00
\$3,201.00	to	\$3,300.00	\$4,125.00
\$3,301.00	to	\$3,400.00	\$4,250.00
\$3,401.00	to	\$3,500.00	\$4,375.00
\$3,501.00	to	\$3,600.00	\$4,500.00
\$3,601.00	to	\$3,700.00	\$4,625.00
\$3,701.00	to	\$3,800.00	\$4,750.00
\$3,801.00	to	\$3,900.00	\$4,875.00
\$3,901.00	to	\$4,000.00	\$5,000.00
\$4,001.00	to	\$4,100.00	\$5,125.00
\$4,101.00	to	\$4,200.00	\$5,250.00
\$4,201.00	to	\$4,300.00	\$5,375.00
\$4,301.00	to	\$4,400.00	\$5,500.00
\$4,401.00	to	\$4,500.00	\$5,625.00
\$4,501.00	to	\$4,600.00	\$5,750.00
\$4,601.00	to	\$4,700.00	\$5,875.00
\$4,701.00	to	\$4,800.00	\$6,000.00
\$4,801.00	to	\$4,900.00	\$6,125.00
\$4,901.00	to	\$5,000.00	\$6,250.00

SURETY BOND RATE SCHEDULE			
AVERAGE MONTHLY BALANCE OF RESIDENT FUNDS			AMOUNT REQUIRED FOR SURETY BOND
\$1.00	to	\$2,000.00	\$2,500.00
\$2,001.00	to	\$2,100.00	\$2,625.00
\$2,101.00	to	\$2,200.00	\$2,750.00
\$2,201.00	to	\$2,300.00	\$2,875.00
\$2,301.00	to	\$2,400.00	\$3,000.00
\$2,401.00	to	\$2,500.00	\$3,125.00
\$5,001.00	to	\$5,100.00	\$6,375.00
\$5,101.00	to	\$5,200.00	\$6,500.00
\$5,201.00	to	\$5,300.00	\$6,625.00
\$5,301.00	to	\$5,400.00	\$6,750.00
\$5,401.00	to	\$5,500.00	\$6,875.00
\$5,501.00	to	\$5,600.00	\$7,000.00
\$5,601.00	to	\$5,700.00	\$7,125.00
\$5,701.00	to	\$5,800.00	\$7,250.00
\$5,801.00	to	\$5,900.00	\$7,375.00
\$5,901.00	to	\$6,000.00	\$7,500.00
\$6,001.00	to	\$6,100.00	\$7,625.00
\$6,101.00	to	\$6,200.00	\$7,750.00
\$6,201.00	to	\$6,300.00	\$7,875.00
\$6,301.00	to	\$6,400.00	\$8,000.00
\$6,401.00	to	\$6,500.00	\$8,125.00
\$6,501.00	to	\$6,600.00	\$8,250.00
\$6,601.00	to	\$6,700.00	\$8,375.00
\$6,701.00	to	\$6,800.00	\$8,500.00
\$6,801.00	to	\$6,900.00	\$8,625.00
\$6,901.00	to	\$7,000.00	\$8,750.00
\$7,001.00	to	\$7,100.00	\$8,875.00
\$7,101.00	to	\$7,200.00	\$9,000.00
\$7,201.00	to	\$7,300.00	\$9,125.00
\$7,301.00	to	\$7,400.00	\$9,250.00
\$7,401.00	to	\$7,500.00	\$9,375.00
\$7,501.00	to	\$7,600.00	\$9,500.00

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SURETY BOND RATE SCHEDULE			
AVERAGE MONTHLY BALANCE OF RESIDENT FUNDS			AMOUNT REQUIRED FOR SURETY BOND
\$1.00	to	\$2,000.00	\$2,500.00
\$2,001.00	to	\$2,100.00	\$2,625.00
\$2,101.00	to	\$2,200.00	\$2,750.00
\$2,201.00	to	\$2,300.00	\$2,875.00
\$2,301.00	to	\$2,400.00	\$3,000.00
\$2,401.00	to	\$2,500.00	\$3,125.00
\$7,601.00	to	\$7,700.00	\$9,625.00
\$7,701.00	to	\$7,800.00	\$9,750.00
\$7,801.00	to	\$7,900.00	\$9,875.00
\$7,901.00	to	\$8,000.00	\$10,000.00
\$8,001.00	to	\$8,100.00	\$10,125.00
\$8,101.00	to	\$8,200.00	\$10,250.00
\$8,201.00	to	\$8,300.00	\$10,375.00
\$8,301.00	to	\$8,400.00	\$10,500.00
\$8,401.00	to	\$8,500.00	\$10,625.00
\$8,501.00	to	\$8,600.00	\$10,750.00
\$8,601.00	to	\$8,700.00	\$10,875.00
\$8,701.00	to	\$8,800.00	\$11,000.00
\$8,801.00	to	\$8,900.00	\$11,125.00
\$8,901.00	to	\$9,000.00	\$11,250.00
\$9,001.00	to	\$9,100.00	\$11,375.00
\$9,101.00	to	\$9,200.00	\$11,500.00
\$9,201.00	to	\$9,300.00	\$11,625.00
\$9,301.00	to	\$9,400.00	\$11,750.00
\$9,401.00	to	\$9,500.00	\$11,875.00
\$9,501.00	to	\$9,600.00	\$12,000.00
\$9,601.00	to	\$9,700.00	\$12,125.00
\$9,701.00	to	\$9,800.00	\$12,250.00
\$9,801.00	to	\$9,900.00	\$12,375.00
\$9,901.00	to	\$10,000.00	\$12,500.00

SURETY BOND RATE SCHEDULE			
AVERAGE MONTHLY BALANCE OF RESIDENT FUNDS			AMOUNT REQUIRED FOR SURETY BOND
\$1.00	to	\$2,000.00	\$2,500.00
\$2,001.00	to	\$2,100.00	\$2,625.00
\$2,101.00	to	\$2,200.00	\$2,750.00
\$2,201.00	to	\$2,300.00	\$2,875.00
\$2,301.00	to	\$2,400.00	\$3,000.00
\$2,401.00	to	\$2,500.00	\$3,125.00
\$10,001.00	or	More	Calculate Amount At 1.25 Times the Pri- or Year's Average Monthly Balance of Client's Funds