WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

CITE AUTHORITY W. Va. Code §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 ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

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

$ 16.90
Without Comment 17.60

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.

DATE: August 15, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Department of Health and Human Resources

LEGISLATIVE RULE TITLE: Personal Care Home Licensure

1. Authorizing statute(s) citation W. Va. Code §16-5C-5

2. a. Date filed in State Register with Notice of Hearing:

   7-1-94

   b. What other notice, including advertising, did you give of the hearing?

   Notice was mailed to licensed providers, various professional licensing boards, and various professional and advocacy groups.

   c. Date of hearing(s): 7-27-94

   Comment period 7/1/94 to 8/1/94

   d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

   Attached X No comments received _____

   e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

   August 15, 1994

   f. Name and phone number of agency person to contact for additional information:

   Kay Howard 558-3223.

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

   a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

      N/A

   b. Date of hearing: N/A

   c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

      N/A

   d. Attach findings and determinations and reasons:

      Attached N/A

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

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.

8/15/94

[PROPOSED]
TITLE 64

WEST VIRGINIA ADMINISTRATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

PERSONAL CARE HOMES

Series 14

199_

For Filing with the
Legislative Rule-Making Review Committee

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 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, and moving themselves from one location to another, as for example, in moving from a bed to a

chair, from one (1) room to another.

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 eye drops.

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. **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.

3.14. **Home** - A personal care home.

3.15. **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.

3.16. **Immediate and Serious Threat** - A situation which may present a high probability of serious harm or injury to one (1) or more residents. An immediate or serious threat need not result in actual harm to any resident. The threat of probable harm is perceived as being as serious or significant.

3.17. **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.

3.18. **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.

3.19. **Individualized 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.

3.20. **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.

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, limited or intermittent 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** - Nursing care provided to individuals with medical conditions affecting one (1) or more body systems, who require less than two (2) hours of direct, hands-on nursing care per day. Individuals who have a medical condition requiring direct, hands-on nursing care in excess of two (2) hours per day and which unresolved condition 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: Provided, however, That residents receiving hospice services initiated to meet needs resulting from a terminal illness shall be exempt from this requirement. A personal care home providing extensive or ongoing nursing services or other specialized therapeutic or behavioral health services to four (4) or more individuals concurrently shall be regulated by applicable licensure requirements.

3.24. **Major Incident** - An event or occurrence, the outcome of which places one (1) or more residents' health and well-being in jeopardy or imminent danger, as for example: a fall, accident or other event which seriously injures or threatens the life of the resident; a resident death occurring from other than natural causes; a missing resident who is likely to injure him or herself or who needs medication or treatment on a regular basis and who is likely to have difficulty returning to the home on his or her own; 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; and

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

3.33. **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.

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

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

3.36. **Resident** - An individual living in a personal care home for the purpose of receiving personal assistance or limited and intermittent nursing services from the home.

3.37. **Resident Assessment Instrument** - A standardized functional assessment form to assess service needs approved by the secretary.

3.38. **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.

3.39. **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.

3.40. **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.

3.41. **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.

3.42. **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.

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

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

3.45. **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, to the extent identified as a need by the resident assessment; 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.

3.46. **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.

3.47. **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 only for residents who do not need 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 residents who need limited or intermittent nursing services shall comply with all requirements of this rule.

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

4.1.5. A license is valid only for the licensee and 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 the proposed inception of the license submit an application for a license containing all information required for an initial license.

4.1.7. If the name of a personal care home is changed, the licensee shall notify the secretary, and the new name shall appear on the next license issued.

4.1.8. If a person owns more than one (1) 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. The applicant shall submit an application to the secretary through the office of health facility licensure and certification.

4.2.2. The applicant shall submit the application to the secretary on forms provided by the secretary accompanied by a check or money order payable to the office of health facilities licensure and certification in an amount established in accordance with W. Va. Code §16-5C-6. The provider of the home shall provide to the secretary a balance sheet showing all expenses and all income on forms provided by the secretary, including but not limited to, reimbursement of the operators, owners, lease payment, number of residents, number of SSI recipients, number of SSD recipients, monthly rates charged and resident census form.

4.2.3. Application and inspection fees are 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.

4.2.5. The applicant shall submit the application and application fee at least ninety (90) days prior to the date proposed for commencement of operation of the personal care home.

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

4.3. Initial License

4.3.1. The application for an initial license shall contain:

4.3.1.a. Identification information;

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

4.3.1.c. Resident assessment instruments; and

4.3.1.d. Information determined by the secretary to be necessary to determine that the owners and administrators 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 serves as a release permitting the secretary to obtain 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. The applicant or administrator is found to have been arrested for, adjudicated, or convicted of any felony or 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. The secretary determines that there is a reason to believe that abuse, incompetent care, or exploitation of residents may occur based on the applicant's or administrator's past history;

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

4.3.3.e. There is a record of noncompliance with the lawful orders of the secretary 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; or

4.3.3.f. The applicant fails and refuses after notification and request to submit a completed application inclusive of all requested forms and information.

4.3.4. The secretary, after inspection, shall issue an initial license if he or she determines 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. 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 the applicant.

4.4. Renewal License

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 current license.

4.4.2. Applicants for renewal of a license shall submit a report containing:

4.4.2.a. A balance sheet of the home as of the end of its fiscal year, setting forth assets and liabilities at such date, including all capital, surplus, reserve, depreciation and similar accounts;

4.4.2.b. A statement of operations of the home as of the end of its fiscal year, setting forth all revenues, expenses, taxes, extraordinary items and other credits or charges; and

4.4.2.c. A statement of any changes in the name, address, management or ownership information on file with the secretary.

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 and has made adequate provision for compliance with the remaining requirements of this rule within specified time periods.

4.5. Provisional License

4.5.1. The secretary may issue a provisional license when the home:

4.5.1.a. Receives an "F" rating in no more than one (1) or two (2) categories; or

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

4.5.2. The secretary shall not issue a provisional license when the home:

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

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

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

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

4.5.3. A provisional license is not renewable.

4.5.4. The secretary shall determine the period of time for which a provisional license shall be issued, not to exceed one (1) year.

4.5.5. If a home is denied a provisional license or a provisional license expires, the secretary shall treat a subsequent application for a license as an initial license and the applicant shall meet the requirements for an initial license including the cost of an initial application fee and inspections.

4.6. **Inspections**

4.6.1. The secretary shall make inspections needed to implement W. Va. Code §16-5C-1 at seq. and this rule.

4.6.2. The secretary may enter the premises of a personal care home without prior notice to conduct inspections. If the owner or person in charge of the 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 may enter the premises of any building which the secretary has reason to believe 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 shall conduct at least one (1) unannounced inspection in order to assign a rating for all categories of standards prior to issuing an initial license after he or she:

4.6.4.a. Has received a complete application and the application fee;

4.6.4.b. Has verified through documentation that the home is ready for an inspection; and

4.6.4.c. Has received the fee for the cost of the inspection;

4.6.5. The secretary shall conduct periodic unannounced inspections to determine the home's continued compliance with applicable statutes and regulations.

4.6.5.a. The inspection shall be conducted by one or more individuals who are 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 4.5.4 of this rule. The team shall make a detailed inquiry of a number of residents in the personal care home through resident interviews and resident record reviews.

4.6.5.b. The team shall make a detailed inquiry into the number of residents in the facility 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 shall mail a copy to the licensee or administrator as applicable, and the State ombudsman specifically listing any violation of this rule.

4.6.7. The administrator of the personal care home shall post a copy of the secretary's report in a place where residents have access to the report. 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 has the authority to conduct investigations needed to determine the validity of the complaint and shall notify the personal care home or 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 or the facility alleged to be operating unlawfully as a personal care home of the results of the investigation, in writing within ten (10) days of the completion of investigation.

4.7.4. The secretary shall send a description of any corrective action that a home is required to take, the specified time frame for completion of the action, and any disciplinary action to be taken by the secretary to the complainant and to the licensee.

4.7.5. If a complaint is substantiated, the secretary shall advise any injured party of the possibility of civil remedy as required by W. Va. Code §16-5C-8.

4.7.6. The secretary shall keep the names of a complainant and of any resident named in the complaint confidential and shall not disclose the names to the public without written permission of the complainant and the resident or the resident's legal representative. The secretary shall delete the name of a complainant or resident named in a complaint or information contained in the report of an investigation which could reasonably identify the complainant or any resident, unless the resident or his or her 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 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 proceedings.

4.7.8. 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 (120) 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.

4.7.9. 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 may enter a personal care home at a time appropriate to the investigation of the complaint.

4.7.10. The secretary shall report to the division of social services of the department of health and human resources any instances of neglect or abuse or other situations required to be reported under W. Va. Code §9-6-9 which are discovered or observed as a result of any inspection, complaint investigation, or other 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, require immediate correction of an identified 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 may be different for the various violations cited. The time of correction for any violation shall not exceed sixty (60) days from the date of inspection: Provided, however, That the secretary may allow more time for a specific deficiency for uncontrollable circumstances.

4.8.4. The secretary shall approve, modify or reject the plan of correction in whole or in part in writing.

4.8.5. The secretary may require the personal care home to employ a consultant who is registered, licensed or certified in his or her field of specialty as a means of corrective action for specific cited deficiencies.

4.8.6. The secretary shall state the reason for the modification or rejection of a proposed plan of correction in writing within fifteen (15) working days of the receipt of the proposed plan.

4.8.7. When the secretary rejects a plan of correction, he or she shall allow a reasonable amount of time, not to exceed fifteen (15) working days, for submission of a revised plan of correction.

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

4.9. **Reports and Records**

4.9.1. The secretary shall make available for public

inspection and shall, upon request, provide copies of the following at a reasonable cost:

4.9.1.a. Information concerning and actual applications and exhibits;

4.9.1.b. Inspection reports;

4.9.1.c. Reports of investigations conducted in response to complaints;

4.9.1.d. A current list of the names and addresses of personal care homes found to be in violation of this rule, including the details of each violation; and

4.9.1.e. Any other reports filed with or issued by the secretary pertaining to the compliance of a personal care home with applicable laws and rules.

4.9.2. If a personal care home which is found to have violated one (1) or more requirements of this rule during a routine inspection, or a complaint or other investigation fails to correct the violations within one hundred twenty (120) days of the completion of the inspection or investigation, the secretary shall give written notice of the uncorrected violations and of the amount of time until the secretary will report[1] the personal care home's lack of compliance with the rule to the Social Security Administration to all residents, their families and any legal representatives.. The secretary shall also provide all residents with a list[2] of approved facilities.

4.9.3. If a personal care home which is found to have

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[1] Under the provisions of 42 U.S.C. 1616(e) and 45 CFR, Part 1397--**Standard Setting Requirements for Medical and Nonmedical Facilities Where SSI Recipients Reside**, all states are required to "establish, maintain, and ensure the enforcement of standards for any **category** [emphasis added] of institutions, foster homes, or group living arrangements, in which, as determined by the State, a significant number of recipients of Supplemental Social Security Income (SSI) benefits resides or is likely to reside. SSI residents who live in relevant facilities which violate any of the standards will be subject to a reduction in their SSI payments ... in an amount equal to any State supplementary benefit or other payment made by the State for any medical or remedial care provided them by the facility. As part of its responsibilities under the federal regulations, States are required to make certain reports to the residents of deficient facilities and to the appropriate regional office of the United States Social Security Administration.

[2] See also footnote #1. The purpose of the notification is to inform residents that they do not have the protection of the violated requirement; the list is intended to provide assistance to the residents in moving if the lack of compliance by the personal care home endangers them or causes a reduction in their SSI benefits.

violated one (1) or more requirements of this rule during a routine inspection or a complaint or other investigation fails to correct the violations within two hundred ten (210) days of the completion of the inspection or investigation, the secretary shall report[3] the personal care home's lack of compliance with this rule to the Social Security Administration. The secretary shall also provide all residents with a list[4] of approved facilities.

4.9.4. The secretary shall keep names of residents confidential and shall not disclose a resident's name without the written permission of the resident or his or her legal representative. Nothing contained in this rule shall be construed to require or permit the public disclosure of the confidential medical, social, personal or financial records of any resident. Before releasing a report or record as public information, the secretary shall delete any information regarding a resident which would reasonably permit identification of the resident.

4.10. **Waivers**

4.10.1. The secretary may waive the requirements of this rule 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 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 needed to protect the health, safety, rights, or welfare of the residents. Violation of the conditions under which a waiver is granted constitutes a violation of this rule.

4.10.3. In order to request a waiver, the licensee or resident shall submit a written request for the waiver at least thirty (30) days in advance of the date on which the waiver is requested to begin. The request shall:

4.10.3.a. Specify the specific requirement in this rule for which the waiver is requested;

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[3] See Footnote #1.

[4] See Footnote #2.

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

4.10.3.c. Include specific and detailed reasons for the request;

4.10.3.d. Explain why the specific requirement cannot be complied with; and

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

4.10.4. 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 receiving the notice 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 **W. Va. Administrative Rules, Department of Health and Human Resources, Rules of Procedure for Contested Case Hearings, 64 CSR 1**, shall apply.

4.11. Classification of Standards

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

4.11.1. Class I standards are those standards whose violation 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 standards whose violation would have a direct or immediate relationship to the health, safety or welfare of any resident but which would not create imminent danger.

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

4.12. Point System Scoring

4.12.1. A Class I standard shall be scored as ten (10) points if a personal care home fully complies with the standard. If the home fails to demonstrate full or substantial compliance with the standard, but complies partially, the standard shall be scored as five (5) points. If the home fails to comply at least partially with a Class I standard, or if the violation is a repeat of a

violation cited during the previous licensure inspection, the standard shall be scored as zero (0).

4.12.2. A Class II standard shall be scored as nine (9) points if the personal care home fully complies with the standard. If the home fails to comply fully with the standard, but complies substantially, the standard shall be scored as six (6) points. If the home fails to comply fully or substantially with the standard, but complies partially, the standard shall be scored as four (4) points. If the home fails to comply at least partially with the standard or if the violation is a repeat of a violation cited during the previous licensure inspection, the standard shall be scored as zero (0).

4.12.3. A Class III standard shall be scored as eight (8) points if the personal care home complies fully with the standard. If the home fails to comply fully with the standard, but complies substantially the standard shall be scored as five (5) points. If the home fails to comply fully or substantially with the standard, but complies partially, the standard shall be scored as four (4) points. If the home fails to comply at least partially, or if the violation is a repeat of a violation cited during the previous licensure inspection, the standard shall be scored as 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. **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 are not be permitted to offset deficiencies within another category. Therefore, a total of value points is not computed.

4.13.5. For purposes of assigning an overall rating:

4.13.5.a. A category rating of "A" is assigned a score of

four (4);

4.13.5.b. A category rating of "B" is assigned a score of three (3);

4.13.5.c. A category rating of "C" is assigned a score of two (2); and

4.13.5.d. A category rating of "F" is assigned a score of zero (0). The category rating scores are then totaled and an average category rating score is computed.

4.13.6. The secretary assigns an overall rating to a personal care home as follows:

4.13.6.a. If a home has an "F" rating on as many as one (1) category or has an average category rating score of less than 2.0, the home receives an overall rating of "F";

4.13.6.b. If a home has an average score of 2.0 through 2.59, the home receives an overall rating of "C";

4.13.6.c. If a home has an average score of 2.6 through 3.59, the home receives an overall rating of "B"; and

4.13.6.d. If a home has an average score of 3.6 through 4.0, the home receives an overall rating of "A".

4.13.7. The secretary may issue a provisional license to a home with an overall rating of "F" as described in Section 4.5 of this rule and in W. Va. Code §16-5C-6d. However, the secretary shall not issue a license to any home demonstrating an "F" in three (3) or more licensure categories and shall order the home to close or shall take other action as described in W. Va. Code §16-5C-11 and W. Va. Code §16-5C-15.

4.13.8. The secretary shall not assign a rating and shall not issue a regular or provisional license to any home not in compliance with any Class I standard as specified in Section 4.5.2 of this rule.

4.13.9. The secretary shall not assign a rating higher than a "B" to a personal care home which has been denied a provisional license based on a 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 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; and

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

5.1.3. The secretary may inspect all records and reports at any reasonable time in order to determine compliance with this rule.

5.1.4. A personal care home sponsored by a religious organization, a fraternal organization, a corporation, or a voluntary association shall be controlled by a governing board of directors that fulfills 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 (hours) 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;

5.2.1.f. Complete at least one (1) annual training course offered by the secretary;

5.2.1.g. Effective the first day of June, nineteen hundred ninety five (June 1, 1995), have an associates degree, or its equivalent in a related field: Provided, That this requirement does not apply to individuals who are personal care home administrators or who have been personal care home administrators prior to the first day of June, nineteen hundred ninety-five

(June 1, 1995); and

5.2.1.h. Have a 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 substantially related to dependent populations.

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 (10) 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 (60) 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. If outside services are utilized, 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 identified on the Nurse Aide Abuse Registry maintained by the State licensure and certification agency.

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 fifteen (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. Cardiopulmonary resuscitation (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 skill 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; and

5.4.2.l. Signs and symptoms of alteration in skin integrity.

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).

5.4.6. The initial orientation and training program for a certified nursing assistant who has completed a nursing assistant training program may omit training in the areas of personal grooming, hygiene, assistance in feeding and activities of daily living. This provision does not exclude individuals certified as nursing assistants from participation in annual on-going inservice training. The home shall have documentation of the individual's completion of the course.

5.4.7. 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 individualized 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 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; and

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 (1) staff member on the premises at all times who has a current first aid certificate issued within the past three (3) 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 (1) staff member on the premises at all times who has a current CPR certificate 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 always be at least one (1) responsible adult personal care home family member or employee present in the home who is designated to be the supervisor-in-charge when the administrator is not present. A resident may not be designated as the supervisor-in-charge.

5.9.2. An administrator or supervisor-in-charge shall be on duty at all times. No more that fifty percent (50%) 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 Sections 5.9.7 and 5.9.8 of this rule do not include staffing requirements for licensed nurses 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 one (1) residential care staff between the hours of 6:00 a.m. and 11:00 p.m. 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 sleeping 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 this rule.

5.10. Communication Between Staff (Class II)

5.10.1. The personal care home shall utilize a method of communication that keeps 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 administrator 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. The personal care home shall obtain a medical and family history for each resident.

6.1.6. 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:

6.1.6.a. Diagnosis;

6.1.6.b. Recurring health problems;

6.1.6.c. Impairments;

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

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

6.1.6.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 ten (10) or less; and

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

6.1.7. When an individual is accepted for respite care or on an intermittent basis, the individual's admission and annual health assessment shall be valid for six (6) months.

6.2. **Admission Agreement (Class III)**

6.2.1. There shall be a written admission agreement with each resident or his or her legally designated representative which shall provide written assurance that the personal care home offers the services necessary to meet the identified care needs.

6.2.2. The admission agreement shall contain:

6.2.2.a. A detailed explanation of all costs, annual contract price, and refund policies;

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, which shall be consistent with the provisions of this rule, and shall be disclosed in writing to the prospective resident in advance of the agreement but not made a part thereof;

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

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 how health care will be provided or arranged for; 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. In making a determination of whether to grant permission, the secretary shall consider the ability of the provider to demonstrate the depth of their financial worth which shall include, but not be limited to, producing financial statements for a minimum of three (3) years. The proposed licensee shall also demonstrate successful experience in the management of a life care community and in the ability to manage the potential impact of catastrophic illness or disease.

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 these 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.

6.4. 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 without the resident's informed consent, or that services are being provided contrary to the resident's wishes, the secretary shall instruct the licensee or administrator of the home to bear the cost of and assess the individual 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 licensee or administrator 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 licensee or administrator 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 administrator 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 6.4.1 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 his or her legal representative of behavioral health service options within the community. The resident shall have thirty (30) days to obtain necessary services. If the resident or his or her legal representative fails to 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.

6.5. Discharges and Transfers (Class I)

6.5.1. When a discharge or transfer is initiated by the home, the administrator shall provide the resident, and 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 health care facility when the resident's physical or mental condition has changed such that the personal care home can no longer meet the resident's needs as required and defined by this rule.

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, household members, administrator, 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 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 as needed 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 bed making.

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 individualized 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 Individualized 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 an individualized service plan consistent with the functional needs assessment which shall be developed within forty-five (45) days of admission and reviewed 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 care and services in accordance with the functional needs assessment and individualized 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 the 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. Responsibilities of physicians contained within this rule may be implemented by nurse practitioners or physicians' assistants as assigned by their supervising physician and within the parameters of their professional licensing.

7.3.4. 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.

7.3.5. 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.

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

7.3.7. 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.

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

7.3.9. All personal care homes shall make arrangements for a registered nurse to manage and oversee the provision of 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 shall be no less often than one (1) time per week unless the facility is providing limited and intermittent nursing services. The amount of time and the frequency of visits shall be based upon the needs determined by this rule and as defined by the resident assessment instrument.

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

7.3.11. 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.

7.3.12. 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, the registered professional nurse, or other emergency personnel.

7.3.13. 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.

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

7.3.15. The responsibilities of the supervising nurse shall include:

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

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

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

7.3.15.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 his or her health or welfare;

7.3.15.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;

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

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

7.3.15.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 pharmacy 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, anticonvulsive, 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 (1) 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 (24) 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 concentrators except that a portable source shall be available for resident use for out-of-room activities and in the event of power failure;

7.4.10.b. Equipment shall be maintained electrically safe and service shall be 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

7.4.11. 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. 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.

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

7.4.13. 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:

7.4.13.a. Resident's name;

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

7.4.13.c. Instructions for giving the drug;

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

7.4.13.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.

7.4.14. Self-administration of insulin or other injectables which the individual has been trained to self-administer is permitted. Other injectables shall be administered by a physician or a licensed nurse.

7.4.15. The registered professional nurse immediately available (on call) or licensed designee who is on duty, shall be responsible for immediately reporting medication side effects and adverse reactions to the practitioner.

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

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

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

7.4.17.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;

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

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

7.4.18. Centrally stored medications shall be:

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

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

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

7.4.19. 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.

7.4.20. 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.

7.4.21. 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 Fahrenheit (40° F).

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

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

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

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

7.4.26. 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.

7.4.27. 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.

7.4.28. 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:

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

7.4.28.b. The prescription number;

7.4.28.c. The name of the dispensing pharmacy;

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

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

7.4.28.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 (24) 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 in accordance with the wishes of the resident or his/her legal representative. 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, as required by law and to the office of health facility licensure and certification. 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. The licensee shall maintain a liability insurance policy in an amount that will cover all injuries to any residents up to two hundred thousand ($200,000) dollars per resident.

7.7.3. 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.

7.7.4. The personal care home shall, if it handles resident monies in excess of twenty-five dollars ($25) per resident and in excess of five-hundred dollars ($500) for all residents 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 residents being handled, or whenever the amount of the bond is impaired, the licensee shall file an additional bond in an amount necessary to adequately protect the money of patients being handled.

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

7.7.4.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.

7.7.4.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.

7.7.4.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. 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. All homes shall designate an individual residential care staff member to function as an activity coordinator. The activity coordinator shall spend at least fifteen (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, a television having at least a nineteen inch (19") diagonal screen, a daily newspaper 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 six (6) 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 administrator 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, Department of Health and Human Resources, Vital Statistics, 64 CSR 32.**

§64-14-8. Resident Rights.

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

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

8.1.1.a. Residents' rights;

8.1.1.b. Phone numbers of the abuse hotline, the office of health facility licensure and certification; the state ombudsman; and the regional ombudsman.

8.1.1.c. 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.

8.1.2. If a legal representative has been appointed for or designated by any resident, as having the authority to exercise on behalf of the resident one (1) or more of the resident's rights under this rule, the home shall afford the legal representative full opportunity to exercise the 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.

8.1.3. 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.

8.1.4. 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.

8.1.5. 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 (30) 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 him 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. If the personal care home manages funds for a residents, it shall be by written request and in accordance with Section 7.7 of this rule.

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. 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. 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 Section 5 of 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, unless the residents of the home have requested otherwise.

8.11.2.a. The residents shall have the right to privacy in their residence and shall have the option to collaborate with the administrator upon reaching a mutually agreed upon schedule of visiting hours.

8.11.2.b. A supervisor-in-charge shall be permitted to refuse entry to a visitor who is disruptive to the facility.

8.11.2.c. 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.

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, unless ordered by the licensed health care professional.

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.

9.1.6.Condiments shall be available for use by residents in the dining areas.

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 the 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 two (2) times a week;

9.2.7.b. Dairy: two (2) or more eight (8) 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 (8) 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 residential kitchen equipment.

9.3.2. The kitchen shall provide sufficient space to carry out proper food preparation and dish washing 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. Dish washing 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. Food preferences of residents shall be considered in planning the menus as well as the food and nutrient requirements as specified in this rule.

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.

9.4.7. Therapeutic diets shall be provided only upon a licensed health care professional's order and with the home's capacity to provide the diet accurately. Therapeutic orders shall be renewed every three months.

9.4.8. Texture of food shall be given special attention when served to residents with chewing or swallowing difficulties to ensure that the resident is able to ingest his or her food. Modifications in consistency shall be prepared according to the written instructions provided by the health care professional.

§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 quarterly by in-house staff and quarterly by a certified fire equipment handling company.

10.1.7. Fire drills shall be conducted at least one (1) 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 transfer-

ring 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.

10.2.11. A three (3) day supply of emergency food and liquid nourishment shall be maintained in the facility at all times and shall correspond to the emergency menu. Such supplies shall be rotated to ensure adherence to the expiration dates and safety of the stored products.

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 from 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: Provided, That the 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 rule.

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 (1) 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 shall be kept by the general contractor on which all changes (from all trades) to the project are noted. Each change shall be noted in red and dated. The architect shall 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 the 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 shall be followed as applicable to free-standing personal care homes;

11.1.6.b. The State building code promulgated in **W. Va. Administrative Rules, Fire Commission, Building Code 87 CSR 4**[5].

11.1.6.c. Where local codes or regulations permit standards lower than those required by this rule, local building codes and zoning restrictions shall be observed; and

11.1.6.d. Evidence of compliance signed by local fire,

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[5]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.

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

11.2.4. 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.

11.2.5. Any questionable soil conditions shall be reviewed by a qualified soils engineer and if conditions require, earth core borings shall be conducted. If engineered soil is installed or other soil tests conducted, the secretary shall be supplied with copies of the reports.

11.2.6. 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.

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

11.2.8. 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.

11.2.9. 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 shall 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 for new construction 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. Existing construction shall conform as applicable to the provisions established within the Americans with Disabilities Act.

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 Fahrenheit (72°F) 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 Fahrenheit (80°F). Acceptable cooling devices include, but are not limited to, air conditioners, electric fans and heat pumps.

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 a system which is 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. Portable battery operated or beeper-type systems may be considered. Electronic call systems may be required based on the size of the personal care home, the staffing patterns and configuration of building. Cross reference Section § 5.9.6.

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.

11.3.19. The personal care home shall implement measures to ensure resident safety if the facility admits residents that exhibit behaviors which may cause harm to self or others or may place themselves or others in imminent danger or jeopardy. Such safety measures may include but not be limited to, door alarms.

11.4. Sleeping Facilities (Class II)

11.4.1. 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, exclusive of closet space. All multiple occupancy bedrooms shall have at least eighty (80) square feet of space per occupant exclusive of closet space by July 1, 1997.

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 (9) 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 (2) 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 bedroom-type (not hospital) furniture:

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

11.4.13.b. Closet, locker, or wardrobe space with a minimum dimension of twenty inches (20") by twenty-two inches (22") by seventy-two inches (72") excluding shelf and storage space. In addition, a chest of drawers with at least three (3) drawers to meet the 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, Hand Washing 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 (5) 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 hand washing 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, hand washing lavatories, and bathing fixtures shall be in good repair and maintained in a sanitary condition. There shall be at least one (1) bathing facility and one (1) flush toilet with hand washing 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. 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.

11.5.5. 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.

11.5.6. Bathing and hand washing facilities shall not be used for storage of linens and clothing to be laundered or for laundering of soiled linens and clothing.

11.5.7. 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 inch (2") by six inch (6") wood plate backing behind the wall. Grab bar brackets shall be provided at spacings which would support two hundred and fifty (250) pounds of concentrated load at any point on the grab bar.

11.5.8. Bathing and toilet facilities shall ensure privacy and safety of residents. In new construction, doors shall swing outward one hundred eighty degrees Fahrenheit (180°F) 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.

11.5.9. 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.

11.6.2. The type and quantity of artificial lighting shall be adequate in the 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 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 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 **W. Va. Administrative Rules, Department of Health and Human Resources, Public Water Systems, 64 CSR 3** or a water well which complies with **W. Va. Administrative Rules, Department of Health and Human Resources, Water Well Regulations, 64 CSR 19**, and **W. Va. Administrative Rules, Department of Health and Human Resources, 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 dish washing 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 **W. Va. Administrative Rules, Department of Health and Human Resources, 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, **W. Va. Administrative Rules, Department of Health and Human Resources, Food Service Sanitation, 64 CSR 17.**

12.4. **Sewage (Class I)**

12.4.1. Sewage disposal shall be in accordance with **W. Va. Administrative Rules, Department of Health and Human Resources, Sewage System Rules, 64 CSR 9,** and **W. Va. Administrative Rules, Department of Health and Human Resources, 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 (1) receptacle per four (4) lineal feet or a fraction thereof of the counter top preparation area with a minimum of two (2) receptacles per counter. In addition all counters wider than twelve inches (12") 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 feet (12'). 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.[6]

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[6] 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. **Limited and Intermittent Nursing Services (Class I)**

13.1.1. A personal care home which wishes to provide limited and intermittent nursing care 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 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 over-sight 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.c. 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 individualized service plan are met;

13.1.1.d. 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.e. 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;

13.1.2. 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 an individualized

service plan to meet the nursing/medical needs of the resident (which shall serve as a written plan of care) with the resident and the attending physician or other licensed health care professional authorized to develop such plans by applicable State laws and rules, which shall be signed and dated by the attending physician or other licensed health care provider. This plan 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 service plan 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. Review training needs of personal care home staff members;

13.1.2.n. Provide needed training or recommend to the personal care home appropriate training for staff;

13.1.2.o. 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.p. Recommend, in writing, the addition of care givers necessary to meet the needs of residents; and

13.1.2.q. 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 thirty-five (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 monthly 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 changes in condition into each resident's individual case record.

13.2. Personnel and Staffing (Class I)

13.2.1. The administrator shall have at least one (1) 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 or rehabilitation;

13.2.5.n. Use of assistive or prosthetic devices;

13.2.5.o. Range of motion, transfer and positioning; and

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 an individualized service plan. The resident's individualized 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 individualized service plans on an ongoing basis.

13.3.3. The personal care home shall review all individualized 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 individualized service plan are met.

13.3.5. The personal care home shall obtain progress reports from outside professional 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 or 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 (1) 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 accessed 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 correction was not submitted, the date on which the 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 W. Va. Administrative Rules, Department of Health and Human Resources, **Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 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 (2%) on the last day of each month in which occurs the thirtieth day after receipt of notice of the assessment or after the month in which occurs the thirtieth day after receipt of the secretary's final order following a hearing, whichever is later. All 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 the 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 **W. Va. Administrative Rules, Department of Health and Human Resources, 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 **W. Va. Administrative Rules, Department of Health and Human Resources, 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 deficiency citations:

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 or her 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 or her 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 the suspension, to be corrected by the licensee during the period of suspension in order to entitle the licensee to reinstatement of his or her license.

14.3.7. 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 the 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.

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[7]	RATING			
					F[8]	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 _____

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[7] Rating score values are:

A = 4
B = 3
C = 2
F = 0

[8] ≤ = Less than or equal to

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

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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$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
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$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 Prior Year's Average Monthly Balance of Client's Funds

Discussion of Public Comments Received
Concerning the Proposed,
Personal Care Home Licensure Rule, 64 CSR 14

The proposed rule was filed July 1, 1994, for a public comment period to end August 1, 1994. A public hearing was held July 27, 1994 and written comments were received through 4:30 p.m. August 1, 1994. The Department's responses to comments received are presented below.

In addition to the changes documented below, the Department has made stylistic changes. Some changes have caused numbering changes within the rule. Comments are keyed to the version of the rule offered for public comment.

The Keys Amendment (42 U.S.C. §1382e(e)) requires the State to establish, maintain, and insure the enforcement of standards for any category of institutions, foster homes, or group living arrangements in which a significant number of recipients of SSI are residing or likely to reside. These standards must be appropriate to the needs of the residents and the character of the facilities and must address admission policies, safety, sanitation, and protection of civil rights. Federal regulations at 45 C.F.R. §§1397.1 through 1397.20 more specifically define the required standards. The Keys Amendment was passed in 1977.

Personal care and residential board and care homes in W. Va. have a significant number of SSI recipients residing in them.

W. Va. Code §16-5C-5 requires Dept. of Health to promulgate rules and regulations establishing minimum standards for these facilities. These must include administrative policies, staff requirements, safety requirements, sanitation requirements, services to be provided, dietary services, maintenance of records, and social and recreational activities. The regulations must also establish a system of ratings for these facilities and enforcement mechanisms.

Wolford v. Lewis, Civil Action No. 2:92-1151, a class action lawsuit, was filed in federal court in 1992 alleging that the Department was not complying with the Keys Amendment or State law.

At the time of the filing of Wolford, the Dept. had in place a set of personal care home regulations that had not been revised in over 20 years and that did not meet the requirements of the Keys Amendment or State law. The Department had no regulations regarding residential board and care homes in place.

During the pendency of Wolford, the Department developed a set of draft regulations dealing with residential board and care homes.

On March 21, 1994, Judge Copenhaver issued an Order granting in part plaintiffs' motion for summary judgement. The Court found that the existing personal care regulations and the draft residential board and care regulations did not comply with the Keys Amendment or State law. The Court further Ordered the parties to confer and agree on a plan to change the regulations so that they would comply with federal and State law.

The current proposed regulations dealing with personal care homes and residential board and care homes are a product of this process and have been submitted to and filed with the Court.

General

1. **Comment:** Individual providers, provider associations and resident advocates expressed serious concerns about the cost of compliance with the proposed rules, both with regard to physical and staffing requirements. Fears were expressed that facilities providing good care might be forced to close. One commented noted that federal requirements related to the [Keys amendments] require a fiscal impact study, which the Department has not done. As part of the concern about the cost of complying with the regulations, a number of commenters stated that the State should increase its reimbursement for personal care to assist providers to comply with the rule.

Most comments were general. Some items mentioned specifically were:

a. The requirement to hire an activity director for homes with more than 30 residents;

b. RN requirements;

c. The prohibition on selling facility for value of buildings and grounds rather than estimated income, not being able to sell the home as a business (which has been deleted);

d. The mandate to designate a staff person to monitor individualized service plans; and

e. The failure to include grand-fathering with respect to physical facility standards.

Response: The Department acknowledges the concerns expressed regarding reimbursement for personal care. The regulatory agency is unable to respond to the reimbursement issues. The federal court has, however, required many specific requirements in the rule which cannot be altered at will.

2. **Comment:** A few commenters stated that there should have been greater involvement of providers and residents of personal care homes in the development of the proposed rule and in the public hearing.

Response: The Department convened a Personal Care Home Licensure Revision Task Force which worked as a group through the end of March, 1994. Faced with restrictive timelines, the Department resorted to handling the "fine tuning" of the proposed

rule in order to meet the June 17, 1994 filing date set by the federal court regarding the Wolford class action suit. Changes occurring between the end of March and June 17 were handled by telephonic and mail communications with a significant number of providers and other constituents.

It should also be noted that participation in the public hearing and comment period was by no means restricted to providers. Indeed, providers could, and some did take the responsibility for sharing at least some information about the proposed rule with their residents.

3. **Comment:** A number of commenters complained that the proposed rule is too heavily biased toward a medical or nursing home model. It was suggested that the rule would be more appropriate for intermediate nursing than personal care. They believe that the rule is too institutional, and that it stifles the independence and dignity of senior citizens. Perhaps as an indication of the wide range of types of personal care homes, one commenter stated that the proposed rule focuses too much on restorative or curative care and does not adequately address "maintenance" or "supportive care" while someone is dying which is what is most common in personal care homes.

Response: "Intermediate nursing" care was a Medicaid certification term which was abandoned with the implementation of the OBRA'87 changes resulting from nursing home reform. The statute does not recognize this as a category for this level of care or service.

The statutory definition of "extensive" and "ongoing" care utilized in the 1988 definition of personal care home services was never defined. The lack of such a definition resulted in a shift in residential placement of residents requiring heavier care in personal care home settings. While some provider settings did an acceptable job in meeting the needs of their residents, others clearly did not. The Legislature passed S.B. 308 during the Spring 1994 session and thus modified the definition to allow instead a uniform definition for the provision of "limited and intermittent nursing care". Through S. B. 308, the statute was modified to allow the development of regulations to address this level of service which does include hospice care. The availability of these standards does <u>not</u> preclude the requirement to provide these services. It does, however, assume that if such services are required by residents in licensed personal care homes that the requirements would be delivered in accordance with the regulation.

4. **Comment:** Allowing legally unlicensed facilities is unfair to providers.

Response: §16-5E of the W. Va. Code provides statutory authority for Registration of Services Providers in Legally Unlicensed Health Care Facilities. While some of these providers act

independently, others operate under programs administered by the Department, such as Adult Family Care Homes and Title 19 Waiver Programs for the Aged and Disabled. Providers serving less than four (4) individuals are not subject to federal or State fire protection standards. S. B. 308, passed by the Legislature in 1994, did impose previously non-existent standards by which to evaluate complaints regarding care.

5. **Comment:** The Department should not be using regulations not in effect to fine or close facilities.

Response: Actions taken recently against facilities have been based on rules currently in effect and pursuant to statutory provisions regarding civil penalties.

SECTION 3

6. **Comment:** §3.1. Adding the word "continued" in front of "disregard for the necessities of daily living ..." would be more realistic of life.

Response: Adding the term "continued" to the definition of abuse with regard to the necessities of daily life would leave the definition open to subjective interpretation of the definition of "continued" behavior. The Department acknowledges the request but believes that the definition should remain unchanged to prevent subjective interpretation.

7. The definition of §3.3, "activities of daily living" has been clarified.

8. **Comment:** §3.10. Boarding home is defined in the rule but it is not defined in the West Virginia Code.

Response: The Department may define a term which is not expressly defined in the Code. However, the Department intends to further research this issue and prepare a definition for legislative consideration.

9. **Comment:** §3.13. A comprehensive service plan should only be required for residents who need nursing or therapy services; this is too much like a nursing home. Inconsistent use of "Individualized Service Plan", "Service Plan", etc.

Response: The Department has agreed to this language under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994).

10. **Comment:** The note in §3.21, the definition of "licensed "health care professional," has been relocated to §7.3.3 (new #).

11. **Comment:** §3.22. Coordinate nursing definitions with life care contract for personal care homes.

Response: Agreed. The definition of life care contract has been modified.

12. **Comment:** §3.23. Hospice care is for six (6) months [State and federal]; a ninety day limit would eliminate the possibility for care in many instances.

Response: Agreed. The definition has been amended to conform to State and federal hospice care rules.

13. **Comment:** §3.24, the definition of "major incident" has been clarified.

14. **Comment:** §§3.25.4 and 3.25.5. The level of assistance which requires helping a resident transfer seems indistinguishable from a resident who is bedfast.

Response: Agreed. However, the rule prohibiting bedfast residents has been deleted from the rule in order to conform to the Federal Fair Housing Act.

15. **Comment:** §3.32, the statutory definition of "personal assistance" has been added for clarification. Subsequent definitions have been renumbered.

16. **Comment:** §3.32 (now §3.33). One commenter questioned the use of the phrase "dependent upon services of others by reason of physical or mental impairment" in the definition of personal care home, noting that there are healthy elderly who are slowed or who may no longer wish to cook or keep up a house who desire the socialization to be found in residential living but are not necessarily dependent upon the services of others.

Response: It should be noted that the definition in question is a statutory definition. The Department recognizes, however, that there are certain facilities within the State currently identified as personal care homes which accommodate individuals who are more independent and require fewer services. In these cases the rule would in fact impose more restrictive oversight than may be necessary to meet their needs. These individuals could be served through a mechanism which promotes a socialized living environment and less restrictive oversight. The Department will evaluate whether or not those establishments need to be licensed as personal care homes.

Counter to that is a situation where a large majority of facilities accommodate individuals who for a variety of reasons have been admitted and continue to receive services who might otherwise have been eligible for nursing home admission. The Department sees a need to provide standards which would establish health and safety requirements to assure that those individuals receive appropriate care and services to meet their needs. The intent of the proposed rule is to implement a system which would evaluate individual needs and promote necessary care by profes-

sionals and support staff to prevent abuse and neglect.

17. **Comment:** §3.35 (now §3.36), the definition of "resident" has been clarified.

18. **Comment:** The definition of §3.36 (now §3.37), "resident assessment instrument" has been clarified and made consistent with usage elsewhere in the rule.

19. **Comment:** §3.44 (now §3.45). Being aware of the resident's whereabouts does not allow the individual to travel independently throughout the community. If the home is to be informed, then the resident is not free of restraint or interference which is a violation of §8.1.8 of this rule.

Response: Agreed. The rule has been amended.

SECTION 4

The Department has made numerous revisions to Section 4 for purposes of style and clarification. Some renumbering has occurred due to deletions of duplicative and/or unnecessary text. Major revisions are described.

20. **Comment:** §4.1.1. It was recommended that a new facility under construction be permitted to advertise one hundred and twenty (120) days prior to opening.

Response: This is a statutory requirement (W. Va. Code §Section 16-5C-6) and cannot be changed by this rule.

21. **Comment:** §§4.1.2. and 4.1.3. The proposed rule does not provide for personal care homes that provide a minimum level of assistance, such as room, board and supervision of medications.

Response: The rule is based on statutory definitions. The statutory definition of "personal assistance" has been added for clarification.

22. **Comment:** §4.1.6.a and 4.1.6.b. The requirements for particular types of appraisal and financial disclosure should be deleted. The Department does not have the statutory authority to promulgate rules which violate the Federal Fair Trade Act and the Federal Fair Housing Amendments Act. The state may not dictate conditions of the sale of private property.

Response: Agreed.

23. **Comment:** §4.1.7. Instead of the rule requiring the director to approve a change in a facility's name, the rule should simply require notification of the Department response agreed.

Response: Agreed.

24. **Comment:** §4.1.11. The requirement that a facility apply for a new license if the leasing terms are changes constitutes State micro-management of private business. What if utility rates were to change? What if minimum wages were to change?

Response: Agreed. Notification is adequate.

25. §4.2.2. Text has been added detailing state and federal requirements.

26. **Comment:** §4.3.1.c. The requirement for completion of resident assessment forms could not possibly apply to a new license. If this requirement applies to renewal, it should only be for purposes of determining eligibility for public assistance. It is an invasion of privacy and an unnecessary expense for private pay residents.

Response: Agreed. The Department has recognized that obtaining this information could infringe upon the rights of those individuals residing in personal care homes who are not subject to the provisions established in the Keys Amendment.

~~4.3.1.c.-Resident-assessment-instruments;-and~~

27. **Comment:** §4.3.3. Will an ombudsman or adult protective services worker or others be contacted before a determination is made to deny license?

Response: See §4.6.6 of the rule which states that the State ombudsman will receive copies of inspection reports.

28. **Comment:** §4.3.3.b. The seriousness of a felony crime should prevent an individual from obtaining a license to operate a personal care home. The secretary should not be given the power to say what crimes can be excused.

Response: The intent of the regulation is to deal with convictions that are not related to the provision of health care services. Those convictions that are related to the health care field result in denial of an application to participate in the health care industry in this State. The "case by case" provision allows for special circumstances to be evaluated providing, the conviction is not related to the health care field.

29. **Comment:** §4.3.3.f. The limitation on reimbursement of the owner should be deleted. The State has no statutory authority to dictate return on investment.

Response: Agreed.

30. **Comment:** §4.4.2. This item has been corrected to

correspond to the statutory requirement.

31. **Comment:** §4.6.5. The secretary should conduct at a minimum, annual unannounced inspections.

Response: The language in the rule is statutory.

32. **Comment:** §4.6.5.a. The language is confusing. "Life-safety issues" should be deleted from this item. The Fire Marshall has the statutory authority for life safety issues.

Response: The Department has changed this item to agree with language agreed to under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994). The term "life safety issues" no longer appears.

33. **Comment:** §4.6.5.b. Reference to appropriateness of placement should be deleted. Under the Federal Fair Housing Amendments Act, as applied by federal Judge Harvey in "Potomac House vs. Montgomery County, Maryland, the State has no authority to dictate where individuals may live based on their handicaps or disabilities or their needs arising from those handicaps and disabilities. Federal law always supersedes State law. The only test of "appropriateness" the State may apply is for public assistance criteria. Since West Virginia has neglected reimbursement for frail elderly who do not need skilled nursing home placement for twenty (20) years, this should not be an issue.

Response: The Department has agreed to this language under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994).

34. **Comment:** §4.6.7. If deficiencies are minor and have been corrected, it does not seem appropriate to post an inspection report an incorrect view of a home. A notice of the availability of such a report should suffice.

Response: The Department has agreed to this language under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994).

35. **Comment:** §4.7.5. If the word "serious" were inserted before complaint, then the secretary probably would not receive minor complaints.

Response: The proposal is not consistent with W. Va. Code §16-5C-8.

36. **Comment:** §4.7.6. Concerns were expressed about the reference to disclosure of resident's name if "there is clear and convincing evidence in a particular instance which requires disclosure of names". I am unclear where this standard would apply other than in a potential judicial proceeding. The guarantee of

confidentiality to anyone who wishes to file a complaint appears to violate Article III of the Bill of Rights, which is the right to face an accuser, of the United States Constitution.

Response: W. Va. Code §16-5C-8 mandates this confidentiality.

37. **Comment:** §4.7.7. What if there is an immediate health or safety risk which the provider fails to correct, notwithstanding §4.8.2? Also, is §4.8.10 which does not specify a time period, suggesting a different requirement regarding timing from §4.7.7. It is also unclear as to how the language in §4.9.4 relates to this item. The language is either confusing or contradictory.

Response: §§4.7.7 and 4.8.10 have been incorporated into new §§4.9.2 and 9.9.3.

38. **Comment:** §§4.7.7, 4.7.7.a, 4.8.10, and 4.8.11 have been consolidated into §§4.9.2, 4.9.3 and 4.9.4.

39. **Comment:** §4.7.9. The home should still be able to make the appropriate placement of the resident, if a medical condition arises and the home does not provide the appropriate level of care within the one hundred and twenty (120) days.

Response: The home does have the authority to make an appropriate placement of the resident, if necessary, with one hundred and twenty (120) days of the filing of the complaint. However, this statutory provision places the burden of proof on the home that the placement of the resident in another facility was due to a medical condition and not retaliatory because of the complaint.

40. **Comment:** §§4.9.2 and 4.9.3 consolidate and clarify §§4.7.7, 4.7.7a, 4.8.10, and 4.8.11.

41. **Comment:** §4.7.10. One commenter expressed appreciation for the recognition of the interests and responsibilities of the State Commission on Aging and its affiliates. The commenter requested that the rule state that an ombudsman have the right to enter a home presently unlicensed but subject to personal care licensure at a time appropriate to the complaint.

Response: This would exceed the Department's statutory authority.

42. **Comment:** §4.8.7. The Department has added a deadline for its modification or rejection of a proposed plan of correction.

43. **Comment:** §4.9.2.c (now §4.9.1.c). Add the phrase "including the final outcome of any investigation".

Response: Not necessary.

44. **Comment:** §§4.12 and 4.13. The classification system seems overly confusing. Would it be possible to develop a system based on the score of one hundred (100) and if a provider falls below a certain score, they would automatically fail? In addition, the system should require immediate correction of a Class I violation.

Response: The system is based on statutory requirements. Regarding Class I violations, see §§4.3.4.c, 4.4.4 and 4.8.2 of the rule.

45. **Comment:** §4.13. The rating system is not used for nursing homes and should not be used for personal care homes. A grading system does not necessarily reflect the care given in the home and at best indicates a subjective review by the licensing survey team.

Response: The rating system is required by statute.

SECTION 5

46. §5.1.3. The Department has moved the last sentence of 5.1.2.d into a new item for clarification.

47. §5.1.4. The Department has added fraternal organizations to the organizations listed in this item in order to ensure the protection of the interests of individuals in facilities operated under the auspices of this type of organization.

48. **Comment:** §5.2.1. Administrators of personal care homes should be required to have some type of formal training as established by the State relevant for their position. The residential board and care licensure rule requires an operator to have a high school education or G.E.D. equivalent. Should there be a similar requirement for a personal care home? Administrators should be required to obtain ten (10) hours of continuing education per year once they have been certified. The word "hours" should be substituted for the word "units. Units connotates increments of ten hours.

Response: Requiring administrators of personal care homes to be certified or licensed by the Nursing Homes Administrators Licensing Board requires statutory authorization by the Legislature. A requirement for completion of an annual training course sponsored by the Department has been added. An associate degree or equivalent requirement for new administrators, effective June 1, 1995 has been added. CEU's versus hours has been clarified as has the last subpart.

49. **Comment:** §5.2.5. For clarity add the words "if outside services are utilized," at the beginning of the second sentence.

Response: Agreed.

50. **Comment:** §5.3. Several commenters stated that personnel should only be Class II, because personnel issues do not cause immediate danger to the residents.

Response: The Department disagrees. Lack of appropriate numbers or qualifications of staff may place the resident in immediate danger.

51. **Comment:** §5.3.1.g. There may be a conflict between the required reference checks and an employee's right to privacy. It was recommended that the requirement for a criminal background check be deleted because of the costs in terms of time and money. It was suggested also that a background check with appropriate licensing boards would be useful. It was also suggested perhaps that a background check with local State and federal law enforcement agencies might be a reasonable alternative.

Response: Reference checks are common. The specific requirement for a criminal background check would require statutory authorization, and has been deleted.

52. **Comment:** §§5.4.2.b, 5.4.5.c and 5.8.3. Some facilities have elected not to administer CPR to residents. They believe that it is better for everyone's well-being to call 911 and have trained emergency personnel respond. One facility stated that the response time for emergency medical personnel to the home is thirty (30) seconds.

Response: The Department has agreed to this language under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994).

53. **Comment:** §5.4.2.g. Some homes do not provide personal assistance or may not provide personal assistance for all residents. It was suggested that this section be deleted because the rule does not specify the standards by which staff proficiency would be demonstrated and documented.

Response: It would involve too much detail for the Department to attempt within the rule to provide specific standards for staff proficiency as each facility provides specialized services to meet the identified needs of its residents. Departmental evaluation of the program is outcome based and will occur during the established evaluation process. The item has been clarified by substituting "skill" for "staff."

54. §5.4.6. The Department has added a modification related to training of individuals who have completed a nursing assistant training program.

55. **Comment:** §5.5.2. A statement should be added to prohibit a resident from being named supervisor-in-charge.

Response: §5.5.2 is not an appropriate location for this change. See §5.9.1.

56. **Comment:** §5.7.1.b. Should be deleted because it repeats Section 5.3.1.g.

57. **Comment:** 5.7.1.b. Delete; it repeats section 5.3.1.g.

Response: The provision of requiring reference checks in section 5.3.1.g. does not specify the requirement for documentation of such action as does section 5.7.1.b.

58. **Comment:** §5.9. Should be changed from Class I to Class II because personnel issues do not cause immediate danger to the residents.

Response: The Department disagrees. Lack of appropriate numbers or qualifications of staff may place the resident in immediate danger.

59. **Comment:** §5.9.1. Commenters noted that the first sentence in this item is unnecessary. One commenter suggested that the word "unsupervised" in the first sentence should be changed to "unattended". Residents should be able to be in their rooms without staff present.

Response: The first sentence has been deleted. §5.9.1 states that the supervisor-in-charge shall either be an adult family member or an employee of the personal care home. Clarifying language has been added, however, regarding not using a resident as the "supervisor-in-charge."

60. **Comment:** §§5.9.2 and 5.9.4. The relationship between these two provisions is unclear. If only fifty percent (50%) of a supervisor-in-charge's time can be counted toward minimum staff requirements, how can one (1) staff be appointed as supervisor in charge during night hours?

Response: The Department has agreed to this language under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994).

61. **Comment:** Various clarifications were offered for §5.9.3.

Response: It has been clarified.

62. **Comment:** §5.9.5. Commenters suggested that there should be no exception to the requirement for awake staff to be present in the home during resident sleeping hours.

Response: The department has determined that small (10 beds or less) one-story facilities serving individuals with minimum supervisory needs (as documented in the resident's needs

assessment and certified by their physician) may continue to maintain the safety of the residents without the requirement of additional staffing.

63. **Comment:** §5.9.6. A number of commenters objected to this item. They stated that the broad requirement for awake staff is not appropriate to all facilities; that the capability of residents and their ability to act for self preservation are better determinants of the number of staff needed, and that staffing patterns should not be determined solely by the number of stories in a personal care home. This was noted as a costly provision. Alternatives were suggested. Also, a commenter suggested the Department insert a period after sleeping hours and delete the remainder of the sentence. In order to service and protect residents, staff must be awake.

Response: The Department has agreed to this language under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994).

64. **Comment:** §5.9.8. Commenters objected to determining staffing patterns by the number of stories in a personal care home. They stated that: the capability of residents and their ability to act for self preservation are better determinants of the number of staff needed; assisted living facilities are incredibly diverse in operation as well as the residents they serve; it is fundamentally impossible to establish numerical values for staff that will span the range of diversity in personal care homes; the requirement is onerous, expensive, unenforceable and serves no real purpose; any facility can over-staff in pure numbers and still provide sub-standard care; outcome based measures are the only workable approach to determine whether or not a facility is properly staffed.

Response: W. Va. Code §16-5C-5(b)(2) requires that standards be established for "minimum numbers and qualifications of personnel...". The Department agrees with the commenter that outcome monitoring is the best judge of adequate service provision. However, a system must be established in accordance with the statute to establish a baseline for the industry and the licensee. The licensee remains responsible to fulfill the provisions of the contract between the home and the resident. Should the resident's needs exceed the baseline provided by the Department, the licensee must provide the resident with the staffing required to meet his or her needs. The table for establishing minimum staffing hours is directly related to the assessment of resident needs.

SECTION 6

65. Sections 6.2.2.a, 6.2.2.e, 6.2.2.f and 6.2.2.n have been modified to conform to language agreed to under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994).

66. **Comment:** §6.1.3. Can a provider have an "all female or all male home? There are good reasons why this might be beneficial at times.

Response: The Department can not advise providers to deny admission based upon sex.

67. **Comment:** §§6.1.3 and 6.3.2.a. What is the relationship between the prohibition of discrimination regarding prospective or current residents because of disability expressed in §6.1.3 and the prohibition of §6.3.2.a of accepting individuals for whom the home cannot provide services?

Response: If the home provides a particular service, it must provide the service regardless of the disability.

68. **Comment:** §6.1.5. Allowing the completion of a physician examination seventy-two (72) hours after admission would be in accordance with the standard at other levels of care. One commenter stated that §6.1.5 and §7.3.2 are contradictory. There should be provision for physical examination after admission in certain instances, for example, emergency admissions.

Response: Agreed. §6.1.5 has been deleted.

69. **Comment:** §6.1.6. It should be possible for a personal care home to obtain medical and family history for a resident after admission. Families often make arrangements to admit in crises situations and there may not be time to gather all the medical and personal information prior to admission.

Response: Agreed. The rule has been amended for clarification.

70. **Comment:** §6.1.7.f. This requirement would not be necessary if the exception for awake staff is deleted from §5.9.5.

Response: Please refer to the response to the comment on §5.9.5.

71. Section 6.1.8 has been clarified.

72. **Comment:** §6.2. The term "admission packet" would better describe all of this information.

Response: The information can be prepared at the licensee's discretion and provided to the prospective resident in the manner which they prefer within the context of the rule.

73. **Comment:** Several comments were made about subparts of §6.2.2. More details should be spelled out on a refund policy. For example, if a resident has made a deposit which is normally refundable when they leave, but the home has a thirty (30) day

notice requirement policy, that deposit should not be forfeited if the resident leaves through no fault of his or her own. For example, a deterioration in condition in which the home can no longer provide appropriate care. It should not be necessary to provide all information concerning preparedness for emergency situations to residents unless they request it. It should be sufficient to inform the resident that procedures are in place.

Response: The Department supports the premise of providing the potential resident with an opportunity to review the services he or she will be purchasing prior to entering into a formal agreement with the facility. Additionally, the Department has agreed to specific language under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994), and has inserted additional text to both Sections 6.1.1 and 6.2.2 to conform.

74. **Comment:** §6.2.5. It seems to me that the regulations are not designed to deal with that part when that person moves into the personal care area or the assisted living area, whatever word you want to use. When they move into that area the regulations here are rather restrictive. And an illustration of that is in 6.2.5., where life care is prohibited without the permission of the Secretary. When a person enters our facility, they will be entering into a life care contract. They will only be coming into independent living. Those who come straight into personal care will not have a life care contract. If a resident already has a life care contract and moves into the personal care area, do we have to get the permission from the Secretary in order to continue the life care agreement? These regulations need looked at in the light of the concept of continuing care retirement community.

Response: The intent of the regulation prohibiting life care contracts is to protect the investment made by the individual. The Department would agree that the concept of continuing care is not undesirable but would seek the establishment of mechanisms to protect the financial reserves of the individual entering into such a contract. The department has added safeguarding provisions.

75. **Comment:** §§6.3 and 6.4. Some commenters expressed concerns that most of the language regarding limitations on admission and retention of residents in personal care homes is illegal. The statement that individuals with certain disabilities or handicaps, i.e., requiring nursing services, being bedfast, having a diagnosis of a mental health problem, may not be admitted is a violation of the federal nondiscrimination statement referred to in Section 6.1.3. Most of this section is a clear violation of the Federal Fair Housing Amendments Act and the Americans with Disabilities Act. This also violates new Medicaid Waiver regulations to be published soon, which specifically state that a resident has the right to assume risk.

Response: The Department recognizes the provisions established within the Federal Fair Housing Amendments Act and has amended the rule to reflect the necessary changes.

76. **Comment:** §6.3.3. The term "mental disorder" needs to be defined, it's too vague.

Response: The Department does not agree.

77. **Comment:** §6.4.1. It is unclear where and when the ombudsperson's duties and the resident's rights expressed in §6.5.4 come into play in the determination of residency in the home.

Response: The Department has modified this item to conform with language agreed to under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994).

78. **Comment:** §6.4.2. This requirement forces the home to provide a service that it may not want to provide. Currently, if the home is unable to provide these services, then a more appropriate facility is used. This item should include making referrals to appropriate agencies if the individual has financial means.

Response: The Department has agreed to this language under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994). Cross reference corrected.

79. **Comment:** §6.4.4. A resident has the right to refuse treatment. A resident should not be "required" to "obtain necessary services". Note also that Section 7.1.8 states this right.

Response: This provision does not prohibit the resident from refusing treatment or to follow up on the referral. It is intended as a mechanism to attempt to provide for needed services for an individual and places some responsibility on the home to assist the individual.

80. Section 6.4.5 has been deleted to correspond to changes elsewhere in the rule.

81. The Department has added the term "household members" to §6.4.5 to clarify residency requirements applicable to a personal care home which may be part of a private dwelling.

82. Section 6.5.3 has been clarified regarding the multiple types of facilities to which an individual might need to be transferred for care.

SECTION 7

83. **Comment:** §7.1.1. The requirement for on-going evaluation of the appropriateness of the resident is illegal and should be deleted.

Response: The Keys Amendment to the Social Security Act (See 45 CFR, Part 1397.20(a)(1)(i)) requires each standard-setting authority to govern matters such as admission policies that include a continuous needs assessment.

84. **Comment:** §§7.1.1 and 7.1.2. Does the home have a right to limit the services it provides, and can it require a resident to transfer to a more appropriate setting if he or she needs additional services? The wording "as determined by the resident needs assessment" should be added to the end of this item. The proposed wording forces a home to provide assistance with activities of daily living and instrumental activities of daily living even if the facility chooses not to provide such assistance. Language should be added to clarify that supervision and assistance are to be provided as identified as needed by the resident assessment instrument provided by the secretary. If licensed as a personal care home in this State, a facility is responsible for providing the services identified in the statutory definition. The provision of assistance with activities of daily living is a statutory requirement. Clarifying language has been added.

85. **Comment:** §7.1.7. The home should only be required to provide access to transportation for medical and social services. The requirement for the home to provide transportation for social and medical services should be deleted. This is a serious expense item that will increase cost for private pay residents who may not need the service. It will force indigent residents into nursing homes because the facility cannot afford to care for them. This is an absurd requirement in a State that pays less than half of the cost to provide care for these individuals. Provision of transportation should be covered in the individual admission contract.

Response: The Department has agreed to this language under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994).

86. **Comment:** §7.2. The requirement for functional assessments and comprehensive service plans should only be a Class II standard. Paperwork compliance should not be Class I. These regulations will find a facility to be deficient on patient care issues as a result of improper documentation. The requirement for functional assessment and individualized comprehensive service plans are extremely cost prohibitive and only serve to create an institutional environment similar to a nursing home. Someone must pay for this quadrupling of paperwork. Checking off paperwork is much easier than resident interviews and outcome based analysis, but falls far short of the goal of excellence in care for residents.

Response: The Department has agreed to this class under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994).

87. **Comment:** §7.2.2. Time requirements for a registered nurse should be based on the resident needs as identified on the resident assessment forms rather than the size of the facility. The needs assessment should only be updated annually; this would be consistent with other sections of this rule.

Response: The Department agrees that the time spent by the registered professional nurse would be based upon the extent of time needed to perform all of the duties as required; it is agreed that a full assessment be performed at least annually but that it should be reviewed and updated at least every six months to assure that the plan is still appropriate to meet the residents needs. The rule has been clarified.

88. **Comment:** §7.2.3. The word "treatment" implies the ability to provide medical services which personal care homes do not generally provide.

Response: The Department has agreed to this language under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994). The phrase "care and services" has been substituted for "treatment and care."

89. **Comment:** §7.3.2. The requirement for the home to provide a medical physical upon admission and annually thereafter should be deleted. Many homes do not have a staff physician. This is a serious expense item that must be passed on to residents, many of whom may not need or want this physical. The State cannot dictate when an individual will have a physical assessment or who will pay for it. This means the home could be forced to pay for a physical for an individual who may or may not be admitted. If residents are under the care of personal physicians, shouldn't it be the responsibility and obligation of the physician to provide the physical examination and assessment rather than the home?

Response: This "medical" physical can be performed by a licensed health care professional authorized by State law. The Department recognizes that certain populations are more vulnerable and more susceptible to adverse health conditions because of age, infirmity, or opportunity created in congregate living conditions. Periodic evaluation of these circumstances is considered to be a public health concern. Nothing in this rule precludes the ability of a private physician to participate in the physical examination and a resident assessment. The individualized service plan, however, extends beyond the traditional involvement of the licensed physician and falls to a greater extent to the level of the facility staff.

90. **Comment:** §§7.3.5, 7.3.6 and 7.3.7. The requirements for measuring and weighing residents and reporting results to the resident's physician is an invasion of personal dignity and choice unless it is medically indicated and even then it should be subject to the wishes of the resident. The criteria requiring weight loss should be changed from five (5) pounds to five percent (5%). This would be more reflective of inappropriate weight loss. Residents who have a personal physician do not necessarily need these medical services.

Response: The Department has agreed to this language under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994). The measurement of height and weight are readily recognized as components of physical assessment and serve as a baseline for evaluation which would be beneficial in determining the onset of a change in condition. The word "undesirable" has been added to §7.3.8.

91. **Comment:** §7.3.8. The item regarding the services of a registered professional nurse attracted many comments and suggestions.

Response: The Department has modified this requirement to relate registered nurse responsibilities more clearly to residents' needs.

92. **Comment:** §7.3.12. The words "or other emergency personnel" should be added to the end of this item. If a home has a doctor on call 24 hours now, why would it need an R.N. on call as well?

Response: Agreed. The rule has been amended. The Department acknowledges that various settings have well established systems that alert different levels of professional assistance. The call system should be designed to elicit assistance which is most appropriate to the need.

93. **Comment:** §7.3.14. The list of responsibilities of the supervising nurse reflect a medical care atmosphere. Medically alert residents should not have to give over the responsibility for their health care to the personal care home's nurse.

Response: The rule indicates the level of involvement in the resident care activities on an "as needed" basis. Residents are to be encouraged to maintain the highest practical level of independence in their care as is possible. The involvement of the registered nurse may be quite minimal for individuals who are indeed capable of independence in care. As resident needs and dependencies change and increase, the involvement of the professional nurse would increase. The language in 7.3.14. provides for this.

94. **Comment:** §7.4.1. The word "pharmacist" should be

changed to "pharmacy".

Response: Agreed.

95. **Comment:** §7.4.2. This item should enable multiple pharmacists to review drug regimens. The requirement for a consultant pharmacist is an unnecessary additional expense for residents. This responsibility is best left in the hands of the individual's physician and pharmacist. If a physician reviews, dates, and signs a list of all medications drawn up by a home which is not medically oriented, why does the home need to retain the services of a consultant pharmacists?

Response: The reviews required by §7.4.2. may be accomplished by one or more consultants if necessary. The primary concern is the evaluation of prescriptive practices to assure against drug incompatibility and monitoring of controlled substances. In many cases, more than one physician may be prescribing medications for the resident. Reviews performed by other qualified professionals improve the objectivity of the review.

96. **Comment:** §7.4.5. Residents should be allowed to get non-prescription drugs without a written order. They should not be treated differently from the general population. The requirement for a physician's order for both prescription and non-prescription drugs should be deleted. The State has no statutory authority to deny residents the right to buy non-prescription medication.

Response: Over-the-counter medications may interact with prescription medications and additionally may affect an individual's well-being adversely. The physician needs to be aware of any medications being used in order to improve the overall medical management of the resident. This requirement does not deny the resident the right to purchase non-prescription drugs. However, the rule is intended to provide a measure of safety. The resident may obtain a list of over-the-counter medications suggested for their use by their physician.

97. **Comment:** §7.4.6. The requirement for a resident to be certified to be capable of self-administering medication should be reversed. Every citizen of this country has a right to self-medicate unless adjudicated incompetent. The certification should state that the individual is not capable of self-medicating.

Response: A number of factors influence the ability of an individual to self-administer medication. In some cases, particularly in multiple occupancy settings the ability to properly self-administer and store medications could affect other residents living in the environment. The degree of independence and judgement in this activity may vary due to functional status. This requires assessment in order to make this determination.

98. **Comment:** §7.4.10.a. If oxygen tanks are approved for private home use, why does the regulation limit oxygen therapy to concentrators, thereby requiring a back-up generator?

Response: The Department agrees that in the case of the oxygen concentrators the availability of a portable oxygen tank would suffice in the event of a power failure.

99. **Comment:** §7.4.10.e. The length of tether should be changed from "twelve feet (12')" to "twenty-five feet (25')". The limit of twelve feet (12') for a plastic tether line limits freedom of movement. The risk of a possible fall over the line should be secondary to the freedom of movement of the resident.

Response: The Department has deleted the requirement.

100. **Comment:** §7.4.11. This section should be deleted; it is repetitive.

Response: Agreed.

101. **Comment:** §7.4.15. The rule should consider the self administration of allergy and bee sting injections in addition to insulin injections.

Response: The rule has been amended to include other injections the individual has been trained to self-administer.

102. **Comment:** §7.4.16. In addition to the RN, the administrator or supervisor-in-charge should have the authority to be able to report medication side effects to the practitioner. Reporting through an RN on call opens up a possibility of misinformation or misinterpretation. Additionally the RN who is not on-site may not have all information needed to answer questions. Phone call orders should be followed by signed orders.

Response: The rule has been amended.

103. **Comment:** §7.4.18. It was suggested that this Section be combined with §7.4.12.

Response: Agreed.

104. **Comment:** §7.5.2. The rule should permit the use of a "Geri-chair." Sometimes a Geri-chair with a tray provides a dignified alternative to vests. The prohibition of restraints seems to be overly broad. Often "support" type restraints are genuinely needed for the safety of a resident.

Response: The Department does not recognize "support-type" restraints. Any device which restricts mobility meets the definition of a physical restraint and is subject to review in accordance with this rule.

Comment: 7.5.4 talks in the light of a sudden change they need to be provided needed care, but needed care is not defined. It seems to me that it needs to be defined, and may be defined in light of the medical power-of-attorney which says do nothing.

Response: The rule has been amended.

105. **Comment:** §7.7.3. The requirement for purchase of a surety bond for handling residents' funds should be deleted. The net effect will be that owners will decline to assist residents in the handling of their funds.

Response: This is a statutory requirement (W. Va. Code Section 16-5C-7).

106. **Comment:** §7.8.6. The requirement for hiring an activities coordinator should be deleted. It is virtually impossible to hire a qualified individual for the amount of time required by this rule. Volunteers could easily fulfill this requirement. This is an unnecessary cost. Thirty [minutes] is a more appropriate number.

Response: The rule has been amended.

107. **Comment:** §7.9.8. A written release shall be renewed yearly or when incompetency has been declared.

Response: The department has extended the time period, although not for an entire year.

SECTION 8

111. Section 8.1.4 repeats §§8.3.6, 8.3.7 and 7.5.4, and has been deleted.

112. **Comment:** §8.3.1 is excessive.

Response: The Department is acting on behalf of current personal care home residents by requiring that the licensee present them with information pertaining to their care as required within the proposed rule. The admission requirements are synonymous with the requirements established within §6.2. of this rule.

113. **Comment:** §8.4.2 should be deleted; it is redundant.

Response: The Department proposal is intended to protect the residents from harm and prevent the recurrence of harm by holding the licensee responsible for a thorough investigation of the probable cause. The licensee is responsible for initiating action as a result of the investigation which would potentially serve to protect the residents from future occurrences.

114. **Comment:** §8.4.4. It was suggested that homes be re-

quired to "arrange" rather than "obtain" services.

Response: The Department has agreed to this language under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994).

115. **Comment:** §8.4.5. Facilities should have the right to choose a pharmacy and a pharmacist, and the resident not.

Response: The Department supports the resident's right to choose his or her own pharmacist and pharmacy. This provision does not prohibit the resident or his or her designee from choosing to use the facility's pharmacy and/or pharmacist.

116. **Comment:** §8.4.6 needs to be broadened to talk about the potential for refusing food and hydration. For the responsible person being able to refuse whatever for the incompetent. We may need to put in some information on the medical power-of-attorney and the living will; these need to be recognized and used.

Response: The Department acknowledges the request and intends to further consider these issues. A proposal prepared by interested individuals would be considered for a rule revision in 1995.

117. Section 8.7.4 duplicates §11.4.6 and has been deleted.

118. Section 8.8.5 duplicates §4.7.9 and has been deleted.

119. **Comment:** §8.10.3. A home should be permitted to have its own policy as to whether or not collect calls shall be allowed.

Response: Agreed. The rule has been clarified.

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 only" telephones ~~calls shall be allowed~~ are not permitted unless installed by the resident or his/her legal representative for the express use of the resident. Appropriate privacy shall be afforded to the resident during telephone use.

120. **Comment:** §§8.11.2 and 8.11.3. Visiting hours should reflect the rights of privacy of residents who may not want visitors at any hour. The regulation should also give discretion to the supervisor in charge to refuse entry to any visitor who is disruptive to the facility.

Response: Agreed. The rule has been modified.

121. **Comment:** §8.13.2. If an applicant cannot afford the services of the personal care home, they should not be admitted to the home.

Response: The item has been modified.

SECTION 9

122. **Comment:** §9.1.1. It was suggested that the words "unless ordered by the physician" be added to the last sentence. The comment was made that dietary decisions are the ultimate responsibility of the physician.

Response: Agreed: See also §§7.3.5, 7.3.6 and 7.3.7.

123. **Comment:** §9.2.7.g. Providing fluids to residents who are on liquid restrictive diets for medical reasons could be problematic. The rule should clarify circumstances under which staff are not expected to offer residents fluids or other food substances which might be medically contraindicated.

Response: Agreed. See also §§7.3.5, 7.3.6 and 7.3.7.

124. The Department has added §9.1.6 to require that condiments be available in the dining room for residents.

125. **Comment:** §9.2.7.a. All that I'm reading now doesn't allow three eggs a week as far as being a good diet is concerned.

Response: Agreed. The Department has amended the rule.

126. **Comment:** §9.2.7.g. Providing fluids to residents who for medical reasons are on liquid restrictive diets could be problematic. Need to clarify circumstance under which staff are not expected to offer residents fluids or other food substances which might be medically contraindicated.

Response: The Department recognizes the concern, however, therapeutic diets have been addressed in §9.1.1 and in section 9.2.3 where physician's orders are permitted to supercede minimum food and nutrient requirements established by this rule.

127. **Comment:** §9.3.1. It was suggested that the rule refer to the use of "residential kitchen appliances" rather than "a family type" kitchen. This language would be more clear.

Response: Agreed.

128. The Department has modified §9.4.4 and has added two new sections, 9.4.7 and 9.4.8, in order to clarify the use of certain customary dietary services practice and to protect residents receiving therapeutic diets who are inherently "at risk" if the home does not have the capacity to provide the nourishment as specified by the licensed health care professional in a safe and effective manner.

SECTION 10

129. **Comment:** §10.1.4. This Section is redundant and should be deleted.

Response: This requirement is reasonable and customary practice in the health care industry.

130. **Comment:** §10.1.6. Annual inspection of alarms and sprinkler systems would be adequate. Reduce the requirement for maintenance of sprinkler and extinguishers from quarterly to twice a year. Experts agree that quarterly expectations are not required with today's technology. This is another item that will increase cost to the resident.

Response: The Department has amended the rule to reflect the permitted changes. Section 13A of the NFPA requires quarterly inspections of sprinkler systems by a certified agent.

131. **Comment:** Fire drills shall be conducted at least one per shift a quarter. Residents would get so used to a fire drill being held every 30 days, that if a real fire happened, they would think of it as a drill and become lackadaisical. Also, fire drills are very emotional for residents. Putting them through that monthly is unnecessary.

Response: The intent of the requirement is to ensure that all personnel on all shifts are familiar with the use of the facility's fire protection features and to promote evaluation of the effectiveness of emergency and disaster plans and procedures.

132. **Comment:** §§10.2 and 10.3. The requirements for disaster and emergency preparedness plans are very confusing. Certainly they should not be Class I. Lack of a proper plan has no impact on residents if there is no emergency. §10.3 is redundant and should be deleted.

Response: Any reorganization of the regulation by concerned individuals would be considered for review by the Department. Residents could be inherently at risk of immediate danger due to the lack of appropriate procedures for emergencies and disasters.

133. The Department believes it is important to add §10.2.11 regarding emergency supplies. The topography in the state of West Virginia is such that emergency assistance could be difficult to obtain in the event of a major weather occurrence or environmental disaster. The Department has a responsibility to ensure that the health and safety of individuals residing in licensed facilities is protected.

134. **Comment:** §10.3.2. This Section would be more appropriate for an inclusion in Section 10.2.

Response: This item relates to training, not the contents of the plans.

SECTION 11

135. **Comment:** §11.1. This item should not be Class I. Not getting approval to renovate a kitchen does not present imminent danger to residents.

Response: The department disagrees with the commenter.

136. **Comment:** §11.2.1. The requirement for site approval by the director should be deleted. The State does not have statutory authority to dictate where personal care homes will be built. If the location presents a hazard to residents, the Department can refuse to issue a license.

Response: This provision serves to also protect the investment of the owner/licensee. It is better to find out before purchasing or building that there would be a problem with a particular site.

137. **Comment:** §11.2.2. The requirement for the home to be located conveniently accessible to physicians, medical facilities, emergency vehicles, etc. is potentially unreasonable. People should have the option to live in a community where they feel most comfortable. This may not always be immediately accessible to all services listed in this section.

Response: The Department has agreed to this language under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994).

138. **Comment:** §11.2.3. The requirement for remote location of homes should be deleted. Net effect is segregation and this would be a clear violation of the Federal Fair Housing Amendments Act. Most residents do not want to be isolated away from traffic areas.

Response: The department agrees that this provision is unnecessary. Please refer to §11.2.1.

139. The Department has clarified Section 11.2.6.

140. **Comment:** §11.2.9. Homes already in existence which are in a residential area may not be able to comply with the requirements regarding a parking area. Some homes are located where staff parking is available on the street. Many parking lots are located on the side or rear of a building and access an entrance other than the main entrance. Is this going to be grandfathered?

Response: The Department has agreed to this language under a Memorandum Order entered in Wolford, et al v. Lewis, et

al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994). The department recognizes that some existing facilities may not have adequate space to provide required parking. The department shall evaluate these facilities on a case by case basis.

141. **Comment:** §11.3.4. The requirement for U.S.D.A. certified applicators of pesticides should be deleted. This is an additional cost to the resident. This means that I can't put a roach hotel under the kitchen sink.

Response: The intent of this regulation is to protect the safety of the residents. Untrained individuals may inadvertently cause severe harm to the residents while attempting to apply pesticidal agents.

142. **Comment:** §11.3.8. Many existing homes may not be able to comply with the requirements for door widths. This should be grand-fathered for existing homes.

Response: The item has been clarified.

143. **Comment:** §11.3.12. The requirement for air conditioning is not reasonable. Many seniors are sensitive to cold due to poor circulation. This is a great expense for residents with little value to them.

Response: The Department has modified the rule.

144. **Comment:** §11.3.15. The requirement for call system capabilities particularly electronic call system capability may be unnecessarily costly. If residents are in need of limited services it is possible that these call systems may not be needed.

Response: The rule has been modified to add some less costly alternatives.

145. The Department has added §11.3.19 to ensure the safety of residents.

146. The Department has modified the requirements for room size in §11.4.1.

147. **Comment:** §11.4.3. One commenter questioned the policy of limiting the number of residents in a room to two (2) persons and encouraged the limit of four (4) for future construction. The commenter also encouraged allowing existing providers waivers if it can be determined that the residents are not adversely affected by this arrangement. The commenter expressed concerns that present residents may be forced to leave homes where they have lived for a long time and where they very much want to stay. The commenter stated that homes in West Virginia where there are more than four (4) to a room are almostly exclusively for the mentally ill with residents who have often adjusted to present

living situations where all other previous residential options have failed.

Response: The Department has agreed to this language under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994).

148. **Comment:** §11.4.12. This Section should be deleted; it is redundant.

Response: The Department's past experiences indicate that this item is necessary.

149. Section §11.4.13. The Department has modified this item to conform with language agreed to under a Memorandum Order entered in Wolford, et al v. Lewis, et al, No. 2:92-1151, mem. or. (S. D. W. Va. March 21, 1994).

150. **Comment:** §11.5.4. Do the requirements under new construction include or exclude the situation where a new provider purchases an already constructed home which has not been previously used for personal care or another similar type usage? The requirement for new personal care homes to have a toilet and a laboratory located between semi-private rooms should be deleted. Personal care homes should not be forced to adopt outdated nursing home architecture. There are many models different from the one required in this rule.

Response: Agreed. The requirement has been deleted.

151. The Department believes it necessary to allow for the use of private dwellings that do not have doors that swing outward for personal care homes, and has modified §11.5.9.

152. **Comment:** §11.6.1. The requirement for sufficient dining space to seat all residents at once should be deleted. Many of the more progressive assisted living facilities have gone to two or more sittings for each meal. This caters more to the individual residents. Large uninterrupted dining space adds to the institutional feeling of a building. Few people eat in large wide open cafeteria-style settings if anything else is available. This is another example of the State's bias against seniors.

Response: The Department has modified the rule.

153. **Comment:** §11.6.2. The statement permitting residents to take meals in their rooms during an illness should be deleted. Residents should have the right to eat anywhere they choose at any time. While there is socialization value in encouraging residents to eat with groups, it cannot be required.

Response: Agreed.

154. **Comment:** §11.6.3. This provision should state an

operable sash or exit door. Exit doors also provide natural light.

Response: The item has been deleted.

155. **Comment:** §11.6.4. It would be more appropriate to simply require that the type and quantity of artificial lighting be adequate for the dining area and to delete the requirement regarding providing "a cheerful" dining area.

Response: Agreed.

156. **Comment:** §11.7.1. It was suggested that a television is not a recognized activity and should not be required.

Response: The Department is in partial agreement with the commenter. The requirement for a functional television set will remain in the rule. It has been relocated to a more appropriate place, however. Refer to resident activities, § 7.8.7.e.

157. **Comment:** §12.1.4. The five (5°) degree variation allowed in hot water temperature is functionally impossible to maintain. There should be realistic anti-scald precautions.

Response: The Department does not agree.

158. **Comment:** §11.7.2. The requirement for the leisure area to be ventilated with windows is unreasonable and should be deleted. If the home has air conditioning, why would it need window ventilation?

Response: Agreed.

159. **Comment:** §12.2.9. Two (2) changes of linen per bed seems excessive.

Response: Disagree. The requirement is both reasonable and necessary.

SECTION 12

160. **Comment:** §12.8.1. The sentence requiring that residents be advised prior to admission if pets are kept on the premises should be deleted. The last sentence requiring the agreement of all residents if pets are added after the residents have been admitted is neither practical nor necessary.

Response: In view of the possibility that some individuals might have allergies or other problems with various types of potential pets, it is important that residents be informed and given the opportunity to consent or move if they so choose.

SECTION 13

161. **Comment:** §13.1. The required duties for the registered nurse should be revised. Many of these requirements should be condition specific, not general requirements for all residents. Aging is not a disease and does not require a medical model of care.

Response: The Department made some clarifications of §13.1 in addition to those described below, however, the majority of the requirements remain as written. The Department is willing to revisit issues raised by concerned individuals for possible revision during 1995.

162. **Comment:** §13.1.2.m. This Section should be deleted. Other parts of the rule state that chemical or physical restraints shall not be used.

Response: Agreed.

163. **Comment:** §13.1.2.q. This Section is unnecessary and should be deleted.

Response: Agreed. However, the checking of the nurse aide abuse registry has been substituted for the text in §5.3.1.g.

164. The Department has modified §13.1.3.d to make it less restrictive and has also amended §5.4.2 to include training of residential care staff to report alterations in skin integrity.

165. **Comment:** §13.1.4. Change this item to "The registered nurse shall enter changes in condition into each resident's record". With this wording, Sections 13.1.4.a through 13.1.4.c. can be deleted.

Response: Agreed.

166. **Comment:** §13.3.5. Add the word "professional" to modify outside service providers. This will clarify the intent of this section.

Response: Agreed.

BEFORE THE LICENSURE AND CERTIFICATION BOARD

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES

IN RE: PUBLIC HEARING REGARDING
PERSONAL CARE HOMES.

The following is a transcript of the comments made at a **PUBLIC HEARING** had on the 27th day of July, 1994, regarding Personal Care Homes relative to licensure and certification and rules and regulations to be promulgated by the Legislature of the State of West Virginia, before Kay Howard, Director of the Office of Regulatory Develoment for the Department of Health and Human Resources.

APPEARANCES:

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1 10:00 a.m., July 27, 1994
2 BE IT REMEMBERED, that the
3 following proceedings were had in Room B
4 of the Days Inn Conference Center, Kay
5 Howard, Director of Office of Regulatory
6 Development for the Department of Health
7 and Human Resources for the State of
8 West Virginia presiding.
9 MS. HOWARD: Good morning. My
10 name is Kay Howard. I'm with the office
11 of Regulatory Development of the
12 Department of Health and Human
13 Resources. We're here this morning to
14 conduct a public hearing on a personal
15 care home licensure rule which
16 represents a completely new rule. We
17 have a personal care home licensure rule
18 now, but this is basically a major,
19 major revision and is essentially a new
20 rule.
21 I'd like to first go through with
22 you the guidelines that we will use to
23 conduct this public hearing. We're here
24 basically to listen to your comments,

1 and not to discuss, and not to make on
2 the spot decisions about possible
3 revisions here at this public hearing.
4 We do go through an extensive write up,
5 review of the comments made, a write up,
6 and then we submit a proposal to the
7 legislature and the legislature has a
8 two-stage review process for rules.
9 There is something called the
10 Legislative Review Making Committee,
11 which first receives this report and
12 will review the rule, presumably some
13 time at one of the meetings this fall.
14 And then the rule goes through the full
15 legislative process and is assigned out
16 to committees and worked through the
17 general legislative process in January,
18 February and March.
19 We do ask as you speak to
20 make your comments only to the rule
21 itself, since that is the purpose of
22 this public hearing. I would let you
23 know that all of your comments, whether
24 written or oral are part of the public

1 record. If you have your comments in
2 writing, you do not need to stand up
3 here and read them. We will be
4 preparing a transcript of the hearing by
5 the court reporter here.
6 We also have a couple of other
7 people who I would like to introduce to
8 you. We have Miss Sandra Daubman, who -
9 - and Barbara Sisarcick, both of whom
10 are with the office of Health Facility
11 Licensure and Certification, which is he
12 program that actually administers the
13 rule. Also, Miss Judy Smith was out
14 there taking names, I guess, as you came
15 in. And then she'll probably be in here
16 for part of the hearing.
17 Are you all able to hear me, by the
18 way?
19 We will give everyone who wants to
20 speak an opportunity to speak. We seem
21 to have a fair number of people who want
22 to speak to us, so what I'm going to do
23 is do the comments in rounds. On the
24 first round everyone will have five

1 minutes to speak, and I will enforce the
2 five minutes. If, following that, there
3 are individuals who have additional
4 comments that they would like to make,
5 then we will do another round of
6 comments until everyone has had their
7 say. If your comments are the same as
8 another individual's, you can simply get
9 up and say that you support so-and-so's
10 comments.
11 We would ask you -- I will use
12 these sign in sheets to call people
13 forward by name. You do have to come up
14 here and make your comments. I would
15 ask that you please would identify
16 yourself. And if you are representing a
17 group, identify the group that you are
18 representing. Of course you don't have
19 to be representing anyone but yourself.
20 And I think that, yes, I did say
21 that this is personal care. There will
22 be another public hearing this afternoon
23 on proposed revisions to the residential
24 board and care home licensure rules.

1 So, if by some chance you're here
2 because you want to comment on the
3 residential board and care home rule,
4 I'll ask you, please, to reserve those
5 comments until this afternoon. That
6 hearing is scheduled to start at 1:30,
7 unless we have some problem with a run
8 over time, in which case I may have to
9 delay the beginning a little bit. I
10 doubt that will be necessary.
11 Before we get started, does anyone
12 have any questions they would like to
13 ask.
14 Yes, sir?
15 MR. HARLESS: Kay, I came in late.
16 I don't think the list was there. Can
17 you add my name to the list?
18 MS. HOWARD: Right. Put Sandy
19 Harless. Did anyone else not get signed
20 in? You can also, if we get to the end
21 and you didn't sign in and you decide
22 you want to say something, just raise
23 your hand, I'll call on people. We're
24 not trying to make any limitations on

1 speakers. We're just trying to maintain
2 an orderly process so that everyone gets
3 their chance to speak. And if you
4 signed up that you wanted to speak and
5 then you change your mind and decide you
6 don't want to, then that's okay too.
7 Just say no, I've changed my mind and
8 we'll go on to the next person. Okay,
9 any other questions, comments?
10 All right, I'm going to start with
11 the sign up sheet. One other thing, if
12 you can remember to do it while you're
13 up here go ahead and sign your name
14 again, so that this gives us a double
15 record for the court reporter to use.
16 And we'll do our best to get your name
17 spelled right and pronounced right. But
18 sometimes there are unfamiliar names or
19 the handwriting is not very good, so we
20 may make some mistakes.
21 All right, the first speak, I
22 believe, is Dorothy Grove. Is that
23 correct? If you will, just come
24 forward.

1 DOROTHY GROVE: I get to be first
2 because I was the first one to sign the
3 sheet, I guess. I'm Dorothy Grove, and
4 I'm from Chateau Grove Personal Care in
5 Barboursville. We have a 79 (bed)
6 facility, state licensed facility. We
7 have, right now, 48 people. We have
8 just built a new retirement wing to
9 that. What I'm concerned about is the
10 rule that concerns 35 hours of R.N.
11 Right now we have 64 hours of L.P.N. a
12 week, with four hours of R.N.
13 supervision. Now, if I have to change
14 that to 35 hours of R.N., I will have
15 to, money-wise, let my L.P.N's. go. And
16 instead of having 68 hours of nursing
17 care I will have to drop back to 35
18 hours. And I feel that this will not
19 help my residents. I will not be giving
20 them as good a care as I'm giving them
21 now. So I need that rule clarified, if
22 it does mean 35 hours of R.N., or does
23 it mean L.P.N. with R.N. supervision?
24 And this is what I'm doing now. And I

1 think that what I'm doing now would be
2 much better than having to let the
3 L.P.N's. go and have less hours of
4 nursing care.
5 MS. HOWARD: Thank you very
6 much. I think I will call two people in
7 a row. I have Opal Cottrill and then
8 following that Lea Ann Talkington, I
9 think. Ms. Cottrill?
10 OPAL COTTRILL: Hi. I'm Opal
11 Cottrill and I'm from Lida Clark
12 Personal Care Home in Clarksburg,
13 representing 28 beds. This is my
14 daughter that works with me. We just
15 have several questions about some of the
16 regulations. We feel that they -- some
17 are very good and possibly we could meet
18 them with a little work, with some
19 adjustment.
20 But my primary concern is the
21 reimbursement issue. There is no way I
22 can meet the regulations on the
23 reimbursement that I have now. And I do
24 have six Medicaid clients. I could not

1 take one more.
2 LEA ANN TALKINGTON: I agree.
3 MS. HOWARD: Okay. That was the
4 two people I called, right? All right.
5 Well, we'll try again. Sandra Miller
6 and then following that, Jane Myberg.
7 JANE NYBERG: Nyberg.
8 MS. HOWARD: Nyberg. Okay you
9 can maybe just sit here on the front row
10 and be ready to come up.
11 SANDRA MILLER: Hi. I'm
12 Sandra Miller and I'm representing
13 Sandy's Windy Hill Manor. And I have a
14 33-bed facility in Preston County. And
15 we agree that the rules and regulations
16 are needed, but we need more
17 reimbursement from the state before they
18 go into effect.
19 Also, along with these new regs.
20 we've got Hillary's new health care plan
21 that's coming out. Where's the money
22 going to come from? We need more
23 reimbursement. And I think the state
24 should jump in and start helping us out,

1 the personal care homes. Thank you.
2 MS. HOWARD: Thank you. Ms.
3 Nyberg?
4 JANE NYBERG: I'm Jane; Country
5 Living of Grafton. I have personally
6 strived to comply with all the
7 regulations under which I've been cited.
8 I have found this extremely difficult,
9 because the inconsistencies of both the
10 regulations and the surveyors. I
11 welcome these new regulations as they
12 will specifically be for personal care
13 homes, both the regulations and the
14 surveyors. Having reviewed the
15 regulations, I feel it is absolutely
16 necessary that the State of West
17 Virginia come into compliance and
18 adequately reimburse us. I personally
19 find if repugnant that the State of West
20 Virginia would embarrass me and the
21 other personal care homes, by publishing
22 our violations and fines under
23 regulations that have not yet been in
24 effect.

1 MS. HOWARD: I next have Peggy
2 Haddix and then following - I'm sorry -
3 and then following that I have Betty
4 Farley.
5 PEGGY HADDIX: I second the
6 motion that Jane Nyberg had, except
7 that what was released to the media
8 about me referred to dirty linens that
9 even the state didn't put on the
10 deficiency, so I don't know how the
11 word "dirty" got in there.
12 My question to the state, since
13 most of the problems we have with these
14 new regs. affect us financially, very
15 much so: I would like to know, and I'm
16 sure many of the other personal care
17 home owners would like to know,
18 especially the people that have 30 beds
19 and over or have built a brand new
20 building from the ground up and have
21 great expense; what your definition is
22 between personal care and intermediate
23 care. We know the answer. We wonder if
24 the state people know the answer,

1 because as I've checked around into the
2 skilled nursing homes, I see personal
3 care home residents walking around these
4 nursing homes, being paid $1500 to
5 $2,000 a month and they are actually
6 personal care home residents. That they
7 refuse to pay us maybe 13, 14 or $1500 a
8 month for. But they'll quote to us,
9 "It's a money problem." The only
10 problem I see, it would be saving the
11 state money and giving us the finances
12 to take care of the type of people that
13 we should be taking care of.
14 BETTY FARLEY: I am Betty Farley
15 representing Glen Wood Park Retirement
16 Village. We have a number of issues
17 that we are concerned about, but they
18 will be addressed in written form
19 through information coming from West
20 Virginia Health Care Association and
21 meetings there.
22 There are two issues this morning,
23 though, that I would like to raise; one
24 dealing with pharmacy and the other one

1 with the R.N. coverage.
2 The one on pharmacy: With the
3 increased regulations, I do believe that
4 facilities should have the right to
5 choose a pharmacy and a pharmacist, and
6 the resident not, in order to be able to
7 control what is needed to meet the
8 regulatory aspect.
9 Also, on the R.N. coverage; We
10 continue to discuss our health care
11 cost, and in doing this the increased
12 cost with improving the quality of care
13 will not be covered with he R.N's. As
14 you've already heard from other
15 speakers, the R. N. coverage will be
16 less hours than what we are now using in
17 L.P.N's. Thank you.
18 MS. HOWARD: Thank you. The next
19 speaker I have is Patricia Hitchcock, I
20 believe. And then following that,
21 Jackie Kiple.
22 JACKIE KIPLE: I am Jackie Kiple
23 and I'm going first because I wrote mine
24 down. I am an owner-operator of a

1 29-bed Class One licensed personal care
2 facility in West Virginia. We started
3 this venture because we had a dream and
4 a talent for giving care to the elderly.
5 And we are now in our sixth year of
6 operation. We have put everything we
7 have into our facility; our money, our
8 time, our health, and our lives. During
9 the past five and a half years we have
10 cared for over 100 elderly residents who
11 have been safe, happy and well cared
12 for, and whose families have been very
13 pleased with the excellent care their
14 loved ones have received in our
15 facility. We care deeply about our
16 residents and our facility and we do
17 everything possible to meet and exceed
18 the personal care rules and regulations.
19 We employ 24 people and we put well over
20 a quarter of a million dollars into our
21 area economy annually. This business is
22 certainly not making us rich. To the
23 contrary, it is a costly and labor
24 intensive operation. And whatever small

1 profits we make are channeled right back
2 into the business. These proposed rules
3 and regulations are unrealistic and not
4 conducive to good care for personal care
5 residents. Under these new rules we
6 will be required to run a nursing home
7 on personal care funding. We all know
8 that this is not possible. The only
9 conclusion that can be drawn is that
10 these rules and regulations are designed
11 to eliminate personal care. Certainly,
12 our facility can not meet these strident
13 regulations and would be forced to close
14 our doors, and we are not alone. I
15 would like to know why we are being
16 sabotaged by government departments that
17 could and should be working with us to
18 care for our elderly citizens. To be
19 blunt, when you put us out of business,
20 what are you going to do with our 24
21 jobless employees and our 29 homeless
22 residents?
23 PATRICIA HITCHCOCK: I agree with
24 Jackie. We're in business together;

1 we're co-administrators. And there's
2 one issue I would like to say something
3 about, and that is the R.N. 24 hours on
4 call. We have a doctor on call 24 hours
5 now, and will have, so why do we need an
6 R.N. on call as well.
7 And also the issue on he P.R.N.
8 medications. I mean, do we have to get
9 a doctor's order to give somebody
10 Tylenol? You know, maybe somebody that
11 doesn't verbally tell us, you know, my
12 leg is hurting, but by a limp we know
13 that they need their Tylenol. And just
14 some of them are totally ridiculous.
15 MS. HOWARD: Next I have Dennis
16 Kernan. Denice, it must be.
17 DEWIE KERNAN: Dewie.
18 MS. HOWARD: Dewie. I apologized
19 at the beginning. Then I have Karen
20 Butler following her.
21 DEWIE KERNAN: As everybody knows
22 now, my name is Dewie Kernan. I am a
23 representative of Appalachian Community
24 Services, and I am also the

1 administrator of Lewis Wetzel Personal
2 Care Home in New Martinsville.
3 The one thing I wanted to speak on:
4 We have a very -- it's an older
5 building. It's very well structured.
6 It's been there for years and years.
7 And in the past it's even served as a
8 nursing home.
9 A lot of the new rules and proposed
10 regulations are cost prohibitive for --
11 in order to come into compliance with
12 these things our building would have to
13 have a lot of different things. And I
14 could find no grandfathering clause for
15 people who have older buildings. And
16 I'm sure a lot of other people do too.
17 And that's what I want to say.
18 KAREN BUTLER: I am Karen Butler.
19 I'm from Lewis Wetzel Personal Care
20 Home. And even the one about the
21 activities director: We take our
22 residents - we have 50 residents in our
23 home. We take them to the pools twice a
24 week, the ones that want to go. We take

1 them to movie theaters. We take them to
2 fairs. We take them to concerts. And
3 they want us to furnish an activities
4 director, which we do our self. We
5 don't have the money to do this. We
6 don't have the money to have someone
7 come in. We have 50 residents. We have
8 18 staff members. And we don't have the
9 money, for what the state pays us, we
10 don't have the money to go out and hire
11 and activities director to come in and
12 do something that we can do ourselves.
13 That's all I have to say.
14 MS. HOWARD: All right, the next
15 two people on the list, Carman Stoneking
16 and Wesley Harris.
17 WESLEY HARRIS: With your
18 permission, could we switch order?
19 MS. HOWARD: Sure.
20 WESLEY HARRIS: Thank you very
21 much. My name is Wesley Harris. I am
22 the executive director of Appalachian
23 Community Services Incorporated. Our
24 corporation is a 1994 certified green

1 business with Co-Op America. And we've
2 been featured in Co-Op American National
3 Magazine. I've served as president of
4 the West Virginia Department of Health's
5 Behavioral Health Advisory Council. And
6 last year was invited by the Russian
7 government to visit Kaliningrad, where I
8 was honored at the Kaliningrad General
9 Hospital's celebration of the 75th
10 anniversary of the Russian Medical
11 System, a system from which,
12 incidentally, we could learn much.
13 I could speak for hours regarding
14 these regulations and the essence of the
15 Assisted Living Concept, but three
16 points cry out for attention.
17 1. It is revealing and not
18 acceptable that no clients were on the
19 "task force" asked to contribute to
20 drafting these regulations. Why not?
21 2. No attempt to aggressively
22 notify and encourage participation in
23 this hearing by the very people who live
24 in our facilities. No attempt was made

1 to have clients, customers, consumers
2 here today. Why not?
3 And 3. As an invited member of the
4 task force requested to assist with the
5 drafting of these regulations, I can
6 strongly say that the participation of
7 personal care home operators and
8 administrators was virtually
9 meaningless; we were tokens. Thus,
10 these regulations have been designed
11 without the assistance of the very
12 people they are designed to "help". At
13 best, maternalistic; at worst, fascist.
14 As a sociologist, I suggest that
15 this constitutes a fatal flaw. Rules
16 designed by individuals without personal
17 care expertise, and often with nursing
18 home backgrounds and bias, time and
19 again force medical model flaws onto our
20 homes and residents. Why? Why must we
21 be subjected to a system that has been
22 proven not to work? Why must our
23 wonderful state consistently lag 20
24 years, even 50 years behind the rest of

1 the country, and trample the rights of
2 our citizens in the process, not to
3 mention bankrupting our children.
4 Let's use the wonderful resources
5 available to our state to create
6 regulations that foster a healthy
7 lifestyle for our personal car home
8 residents rather than saddle them with
9 rules designed to make them sick and
10 helpless by defining them as such.
11 Thank you very much.
12 CARMAN STONEKING: Hi. My name
13 is Carman Stoneking. I'm an employee at
14 the Lewis Wetzel Personal Care Home, and
15 I do agree with Wes Harris.
16 MS. HOWARD: The next two
17 speakers I have Mr. George Polen and
18 Mary Jane Dope.
19 GEORGE POLEN: I'm George Polen,
20 Arlington Personal Care Home. I also
21 believe we need a good set of rules and
22 regs. And I agree with everything
23 that's been said up here in advance.
24 I've got it written, so there's no point

1 in my reading this. Who get's this?
2 MS. HOWARD: I take it. Thank
3 you.
4 GEORGE POLEN'S COMMENTS: "I am
5 George Polen, Arlington Personal Care
6 Home, Parkersburg, WV.
7 I believe we need a good set of
8 rules and regulations. I helped draft a
9 set of regulations three times. They
10 were set on the shelf. This draft is
11 not counted because of the way the
12 group was loaded with orientation
13 toward nursing homes, ombudsmen, and
14 not balanced with consumers & P C Homes.
15 There are many conflicts still within.
16 These are too costly. It costs us
17 just as much for wages, food, workers
18 comp, utilities, etc., as it does a
19 nursing home.
20 My main objections are:
21 1. Mandate to hire an Activity
22 Director if >30 beds. 7.8.6
23 2. Requirement to hire n R.N. for
24 35 hours/week.

1 3. 7.2.2/7.2.6 Mandate to
2 designate a staff person to monitor
3 individualized service plans.
4 4. Cannot sell our facility at
5 market value based on income, but rather
6 based on value of building and grounds.
7 5. The continuation of the legally
8 unlicensed facilities. To allow them to
9 exist is grossly unfair."
10 MS. HOWARD: I made a mistake. I
11 called on someone who had a no over
12 here. I apologize. I have Dottie
13 Markley? And following that, the last
14 name looks like it might be Mulligan?
15 DEBBIE MULLIGAN: Mulligan.
16 MS. HOWARD: Mulligan. From New
17 Martinsville?
18 DEBBIE MULLIGAN: Yes.
19 MS. HOWARD: Okay.
20 DOTTIE MARKLEY-EDWARDS: My name
21 is Dottie Markley-Edwards. I'm the
22 owner of Golden Age Paradise in
23 Martinsburg, West Virginia. I agree
24 that we do need rules and regulations.

1 I believe, teaching health care
2 management at our university, that I do
3 believe that personal care providers
4 certainly need an input. I support
5 everything that Wes Harris just said.
6 And in addition to that, I think in the
7 selling of our businesses it's up to the
8 owners of the business to sell the
9 business, not the State of West
10 Virginia. We are in a free enterprise
11 system. And everyone else that has been
12 up here, I support the comments that you
13 have made as well.
14 DEBBIE MULLIGAN: Hi. I'm Debbie
15 Mulligan. I represent Lewis Wetzel
16 Personal Care Home. And I would like to
17 say that my concerns focus on the fact
18 that there are good rules and
19 regulations here, but if we are forced
20 by these stringent regulations to become
21 intermediate care facility with the
22 reimbursement of personal care our doors
23 will close and we will be out of a job.
24 We will be on the unemployment list,

1 which is much too high now. And our
2 people will have no place to go, because
3 there are no facilities for them. Thank
4 you.
5 MS. HOWARD: The next definite
6 yes is Regina Shaw, and then I have a
7 maybe Donald---
8 DONALD: Pass me.
9 MS. HOWARD: Okay. Following
10 that I have Mark Grove. If you'd like
11 to come up and get started.
12 REGINA SHAW: Hi. I'm Regina Shaw
13 from Lewis Wetzel Personal Care. And I
14 agree with what Debbie said, because if
15 these new regs. pass I'm going to be
16 unemployed and there's going to be 50
17 people on the street.
18 MARK GROVE: My name is Mark
19 Grove. I'm with Chateau Grove
20 Personal Care Home in Barboursville,
21 West Virginia. I've been elected by the
22 West Virginia Care Providers Association
23 to be their speaker today. We had a
24 meeting last night. In actual

1 attendance were representation of 650
2 beds, which works out to a total of 27%,
3 state total, at our meeting last night.
4 And in that meeting we unanimously
5 agreed to these following points: New
6 personal care regulations are sorely
7 needed. I don't think there's one
8 individual - I hope there's not one
9 individual - in a personal care home
10 association or owning a personal care
11 home that believes we don't need
12 regulations. We do need regulations.
13 We need regulations that work. An
14 increase in reimbursement to personal
15 care homes for state clients is a must.
16 $16 a day is a joke.
17 We want and will work toward a
18 cooperative relationship with the
19 Department of Human Resources, but
20 currently perceive an adversarial,
21 particularly with the Offices of
22 Facility Licensure.
23 We had virtually no meaningful
24 input into the proposed regulation. We

1 will only support new regulations after
2 an increase in reimbursement as we hear
3 over, and over, and over again today.
4 As an association, we will take
5 these proposed regulations, clean them
6 up, tune them to personal care clients
7 rather than nursing home clients, and
8 present them to the Department of Human
9 Resources within six months of the
10 reimbursement. In other words, if we're
11 funded, six months from now we'll come
12 back with a set of regulations that is
13 conducive to guest care in our
14 facilities. We'll come back with a
15 plan. We're not asking somebody
16 to make a plan for us. We're not
17 asking somebody to do the work for the
18 Personal Care Home Association or the
19 personal care home owners. We would
20 like to be able to do this as a group;
21 to have some kind of substantial input
22 into the process. Thank you.
23 MS. HOWARD: Thank you. All
24 right, the next two people I have will

1 be Sheila Rooney and Cheryl Jones.
2 SISTER SHEILA ROONEY: I'm Sister
3 Sheila Rooney, administrator for the
4 Welty Home For The Aged in Wheeling,
5 West Virginia. Welty Home is a licensed
6 personal care home for the active
7 independent person, who is in reasonably
8 good physical and mental health; who's
9 ambulatory; able to dress oneself and
10 come to the central dining area for
11 meals. They're free to come and go on
12 their own, and to enjoy the privacy of
13 their rooms. They have no need for
14 personal observations 24 hours a day.
15 They do have a need for a safe and
16 caring environment. I acknowledge and
17 appreciate the attempt made to
18 distinguish the care at the different
19 homes by Level I and II. However, the
20 most basic level described in these
21 regulations gives the distinctive
22 medical care atmosphere that Welty Home
23 has always tried to avoid. We emphasize
24 independencies, physical and social

1 activity, healthful nutrition, while
2 being observant of and caring for
3 routine health needs. To follow through
4 on all these regulations, particularly
5 Chapter 7, would ultimately be
6 detrimental to those we serve. Their
7 independency would be stifled. Their
8 right to privacy would be limited. And
9 at the very least, their right to self
10 determination in health matters would be
11 hindered. By the definition given in
12 3.39, we cannot be a residential board
13 and care home. But we do not wish to
14 emphasize the medical care that seems to
15 come with these regulations when 7.1.2
16 state that the home shall provide
17 assistance in the activities of daily
18 living. There is a need for a personal
19 care home that provides mainly
20 instrumental activities of daily living.
21 That's evident by our full occupancy and
22 our waiting list.
23 In particular, I'd like to comment
24 upon 3.23 and question the use of the

1 word "dependent" upon the services of
2 others as a definition of a person who
3 is in a personal care home. Are there
4 not healthy elderly who are slowed by
5 age, but not to being the point to being
6 dependent on others? Are there not the
7 elderly who choose a safe environment,
8 who no longer wish to cook or to keep up
9 a house, who desire a socialization
10 found in residential living?
11 Under 4.13, for the personal care
12 home rating systems: Grading systems of
13 personal care homes does not necessarily
14 reflect the care given in the home. And
15 at best is only a subjective review by a
16 licensing survey team. It is my
17 understanding that this system of
18 grading has been deleted from the
19 licensing of nursing homes. Perhaps it
20 would be wise to review their reasonings
21 and to reject a grading system which has
22 already proven to fail to reflect the
23 adequacy of care given to the elderly in
24 nursing homes.

1 And in 6.4.1, with the removal of a
2 residency is determined by the
3 secretary; it is unclear in this ruling
4 where and when the ombudsperson's duties
5 and resident's rights come into play in
6 the determination of a person's
7 residency in a home.
8 And 7.4.2, asking for the
9 consultant pharmacist; if it is a list
10 of medication drawn up by the home,
11 reviewed and dated by the personal
12 physicians of the residents, why do we
13 need to retain the services of a
14 consultant pharmacist?
15 The others I would like to just
16 present in written form to you.
17 MS. HOWARD: Thank you
18 very much, sister.
19 COURT REPORTER'S NOTE: SISTER
20 ROONEY'S ENTIRE OPINION PAPER IS
21 ATTACHED AND MADE A PART HEREOF.
22 SISTER SHEILA ROONEY: Thank you.
23 CHERYL JONES: I'm Cheryl Jones.
24 I'm the Executive Director of Elmhurst,

1 which is also in Wheeling. Our home is
2 very much like sister's. We are also
3 filled, with a long waiting list. And
4 we feel that we do a very good job up
5 there. What it seems to me is that we
6 are trying to combine both the healthy
7 adult, elderly adult, with their
8 problems, with the medically dependant
9 adult. That is going to be very
10 difficult to mix - apples and oranges.
11 I certainly can understand why some of
12 theses rules and regulations are in
13 there, but it doesn't apply to all of
14 the homes, I don't believe.
15 I did give my -- I wrote a letter
16 and sent it down to Kay Howard. But one
17 of my most concerns is the staffing. We
18 have a four-story structure. Our fourth
19 floor only has four rooms and we are
20 very much against having four people
21 there all night long while our residents
22 sleep completely through the night. We
23 have a very good alarm system. We have
24 a R.N. on call at all times, and we feel

1 that we have adequate staffing to not
2 have three people there sleeping while
3 one is walking around listening to the
4 alarm going off. Thank you.
5 MS. HOWARD: I next have a Gray
6 Hampton and following that, Phyllis
7 Myers.
8 GRAY HAMPTON: I'm Gray Hampton.
9 I'm the administrator of a small
10 retirement home in Huntington called
11 Foster Memorial. We are also in the
12 process of planning and close to
13 breaking ground on a continuing care
14 retirement community, which has this
15 continuum of care from independent
16 living to personal care to skilled care
17 and to death.
18 I have three basic problems with
19 the rule as submitted. It seems to me
20 that the regulations, as I read them,
21 lead to restorative or curative care,
22 and don't adequately deal with what most
23 of us are dealing with, which is
24 maintenance care or supportive care

1 while someone is dying. I think we need
2 to more adequately address that issue.
3 Most of our seniors, once they move
4 beyond the independent living stage are
5 in a dying kind of process and to
6 restore them to what? There is not much
7 left after that.
8 The 6.4.5 talks about becoming
9 bedfast after you have entered, and this
10 is an illustration of this point. You
11 can be retained if it is temporary or if
12 you are recovering from surgery. But if
13 you become bedfast and in a month, or
14 year, or year and a half from that point
15 you're going to die, it does not seem to
16 me that the kind of care that that
17 person needs that it would be necessary
18 for them to be moved to a nursing home
19 to provide that care.
20 The second point involves some of
21 the definitions. It seems to me we need
22 to coordinate better the definitions of
23 nursing care, limited and intermittent
24 nursing care, ongoing nursing care,

1 extensive nursing care; and relating
2 that to the definition of personal care
3 homes and life care contract. It seems
4 to me we need to start with the nursing
5 care definition, because that's the key
6 one. As to whether this is nursing care
7 or whether it is nursing services. As I
8 look at the definition it appears to be
9 services; irrigation, cauterization,
10 special administration of medicine. It
11 seems to me these are more services.
12 Maybe the care that I'm thinking of is
13 not that which is provided by a nurse
14 anyhow. This relates back to my first
15 point of people who are becoming
16 bedfast, who are needing TLC and a lot
17 more, but whether they need the services
18 of a nurse in a nursing home, it seems
19 to me is questionable.
20 The third point deals with the
21 continuing care retirement community,
22 which is, aside from a home in
23 Princeton, a Methodist Home, this is a
24 kind of new animal in the State of West

1 Virginia. Though, from hearing from the
2 sister and some others in Wheeling, you
3 all are on the border of this. But it
4 has the continuum of going through
5 skilled care, so that you have
6 everything in the same building. It
7 seems to me that the regulations are not
8 designed to deal with that part when
9 that person moves into the personal care
10 area or the assisted living area,
11 whatever word you want to use. When
12 they move into that area the regulations
13 here are rather restrictive. And an
14 illustration of that is in 6.2.5, where
15 life care is prohibited without the
16 permission of the secretary. When a
17 person enters Woodlands, which will be
18 the name of our facility, they will be
19 entering into a life care contract.
20 They will only be coming into
21 independent living. Those who come
22 straight into personal care will not
23 have a life contract. If you already
24 have a life care contract and you move

1 into the personal care area, do we have
2 to get the permission from the secretary
3 in order to continue the life care
4 agreement? It seems to me that these
5 regulations need to be looked at in the
6 light of the concept of continuing care
7 retirement community. Or we, like other
8 states who have a number of continuing
9 care communities, may need to formulate
10 some new regulations for this, in a
11 sense, new industry for West Virginia.
12 Thank you.
13 MS. HOWARD: Thank you, sir.
14 PHYLLIS MYERS: My name is Phyllis
15 Myers. I'm a registered nurse, licensed
16 in West Virginia and in Ohio. And I
17 would like to go on record as publicly
18 stating that I oppose the regulations as
19 written.
20 I would like to specifically
21 address two of them; 6.2 and 6.4;
22 admission and retention of restrictions.
23 I feel that most of the language in this
24 area is illegal. It clearly asks us to

1 violate a federal act, a Federal Fair
2 Housing Amendments Act and the Americans
3 With Disabilities Act.
4 The second I would like to address
5 is 5.9.6; a multi-story home shall
6 maintain at least one awake staff during
7 residents sleep time hours and shall
8 maintain one staff per story, if the
9 personal care home has a bed capacity of
10 11 or more. I am responsible for
11 admissions to a 23-bed licensed,
12 personal care home that is a
13 two-story facility. I feel that out of
14 23 beds available at all times 18 of our
15 beds are filled with human service
16 clients. At approximately $511 a month
17 it would be virtually impossible for us
18 to keep human service clients when an
19 additional staff member on midnight
20 shift would cost us approximately $1400
21 a month, not counting benefits. Even
22 the federal government cannot balance
23 that kind of checkbook.
24 On behalf of all of the residents

1 that I care for, and the ones that I
2 have come in contact with over a 20-year
3 period in gerontology, I would also like
4 to go on record for them as stating:
5 Being elderly is not a disease and being
6 disabled is not a disease. It does not
7 make one mindless, unable to make their
8 own decisions. And I feel that their
9 rights are being violated with many of
10 the regulations that we see today.
11 MS. HOWARD: I next would like to
12 call upon Aileen Mills and following
13 that, Precious Years Personal Care Home
14 - Sara Thomas? Is that correct? It
15 took me a couple of minutes to figure
16 that out.
17 AILEEN MILLS: I'm Aileen Mills.
18 I'm from Precious Years, and I am
19 representing not the building, I am
20 representing 41 residents. And I oppose
21 the rules as wrote.
22 Number One: They are not defined.
23 Number Two: The residents do not
24 get reimbursed enough money to exist. I

1 have 37 that goes out to the Department
2 of Human Resources. The state
3 reimburses approximately $165 plus, per
4 day, per six hours to do crafts, and
5 then they expect them to live on $500 a
6 month. We provide all the services.
7 And I would just like to go on the
8 record to say that my residents needs to
9 be reimbursed for their care.
10 SARA THOMAS: I'm Ms. Mills
11 secretary. And I'm just here to be her
12 supporter. Thank you.
13 MS. HOWARD: I have Randy and
14 Jean Prince and them following that I
15 have Roy Herzbech.
16 ROY HERZBECH: No, pass me.
17 MS. HOWARD: All right. Then
18 I'll go ahead and call Pat Kelly.
19 PAT KELLY: Pass.
20 MS. HOWARD: All right. Let me
21 then try one more here. Christine and
22 Russell Williams. Is that it? Okay.
23 JEAN PRINCE: I'm Jean Prince. My
24 husband and I - Randy - are owners and

1 operators of Sheltering Arms Personal
2 Care Home. We're a 33-bed facility.
3 First of all, I support everything that
4 was said up here. We do need new regs.
5 because each personal care home is
6 surveyed different. They come in one
7 home; they say you can't do this here.
8 You talk to another owner,
9 administrator; they let them slide on
10 that. So we do need set regs. so
11 everyone's surveyed the same.
12 I'm opposed to the R.N. 35 hours a
13 week. I'm an L.P.N. There's nothing
14 that I can't do at our facility that an
15 R.N. can do. An R.N. cannot give a IV
16 push. We are personal care homes; we're
17 not nursing homes. We're custodial
18 care. And I feel that we should just
19 have an R.N. consultant.
20 And we do need more reimbursement
21 to take care of these residents.
22 RUSSELL WILLIAMS: My name is
23 Russell Williams. I'm the assistant
24 administrator for a small, 13-bed

1 facility called Whispering Pines, in
2 Weston.
3 Like was mentioned earlier by Mark,
4 we really need a better set of
5 regulations. We're in bad need of good
6 regulations. This is something that we
7 as an organization could provide, a
8 workable plan, with better
9 reimbursements for our clients. Ten of
10 twelve of our clients are state pays; on
11 the $511 a month. These residents
12 individually, would our facility be
13 closed by these new regulations, could
14 not support themselves. And I feel that
15 a lot of us are in agreement with that.
16 Thank you.
17 MS. HOWARD: I have only two more
18 people who have identified themselves as
19 wanting to speak this morning; Rich
20 Sheppard.
21 RICH SHEPPARD: I'll pass.
22 MS. HOWARD: And Sandy Harless.
23 SANDY HARLESS: Thank you, Kay.
24 Good morning. I think it's interesting

1 to note that about two weeks ago I took
2 my family on a little three-day weekend
3 trip and I had to board my dog at a
4 kennel. Including tax it cost me $15.90
5 a day. Then I had to pay $8 to have him
6 dipped.
7 To whom it may concern: As
8 Founding Vice-Chairman and Legislative
9 Committee Chairman of the Assisted
10 Living Facilities Association of
11 America, I am writing in response to the
12 proposed regulation for the licensure of
13 personal care homes in West Virginia. I
14 also represent my family's two licensed
15 homes in Ravenswood, West Virginia.
16 First, I want to recognize and
17 state my appreciation for the good work
18 that Barbara Sisarcick has done in the
19 last few months. She has taken a set of
20 totally unacceptable regulations and
21 brought them to a place where we can now
22 begin to negotiate their further
23 development.
24 In general, the regulations are

1 still far too draconian and heavy-
2 handed. At a time when the rest of the
3 country is desperately trying to find
4 ways to stimulate the growth of the
5 assisted living industry as a cost
6 effective alternative to nursing home
7 placement, West Virginia is stifling
8 this exciting industry. This regulation
9 will have a profoundly chilling effect
10 on the Personal Care Home/Assisted
11 Living Industry.
12 I am currently involved in revision
13 or development of assisted living
14 regulations in six sates. In my
15 capacity of Director of Regulatory
16 Affairs for Sunrise Retirement Homes,
17 which is the largest assisted living
18 organization in the nation, I travel all
19 over the country to assist in regulatory
20 procedures. West Virginia is the only
21 state I am aware of that has not
22 initiated an effort to address
23 reasonable reimbursement either before
24 or during the development of new

1 regulations. These regulations are also
2 the most institutional and are clearly
3 an effort to protect nursing home turf.
4 I am greatly concerned that no
5 residents/clients were included in this
6 process. Those whose homes are
7 threatened and whose lives are most
8 impacted should certainly have a voice
9 in this process, especially in light of
10 the fact that most of the residents
11 basic rights of choice are denied as a
12 result of these regulations.
13 I also believe that it is very
14 strange that no fiscal impact analysis
15 has been done on this regulation. The
16 Keyes Amendment, which is cited in the
17 Wolford decision, requires fiscal impact
18 studies to be done on any regulations
19 which could negatively impact SSI
20 recipients.
21 Attached you will find several
22 pages of specific recommendations.
23 These were written in haste, as OFLAC
24 time frame left little time for review

1 and discussion. And they are intended
2 to be representative, not all inclusive,
3 of my concerns for these regulations.
4 I think I've got a couple of
5 minutes to hit a couple of these.
6 4.1.7 requires director's approval
7 to change facility name. My
8 recommendation: Facility shall notify
9 director of name change prior to
10 adoption of new name. This requirement
11 exceeds statutory authority. Statute
12 prohibits certain words from being used
13 in name - hospital and nursing home, for
14 example. It does not give the state the
15 authority to dictate what names a
16 private business may use.
17 4.3.3.f. requires limitations on
18 the reimbursement of the owner.
19 Recommend: delete. The state has no
20 statutory authority to dictate return on
21 investment. Russia did not work; it
22 failed.
23 4.6.5.b. states criteria for
24 inspecting the number and

1 appropriateness of residents has already
2 been addressed. I recommend deletion of
3 the reference to appropriateness of
4 placement. Under the Federal Fair
5 Housing Amendments Ace, as applied by
6 Federal Judge Harvey in Potomac House
7 vs. Montgomery County, Maryland, the
8 state has no authority to dictate where
9 individuals may live based on their
10 handicaps or disabilities or their needs
11 arising from those handicaps or
12 disabilities. Federal law always
13 supersedes state law. The only test of
14 appropriateness the state may apply is
15 for public assistance criteria. Since
16 West Virginia has neglected
17 reimbursement for frail or elderly who
18 do not need skilled nursing home
19 placement for 20 years, this should not
20 be an issue.
21 ALFAA adamantly opposes any
22 formula which limits and forces us into
23 a box on staffing requirements, because
24 of the diversity of this industry, both

1 in operation and facility type - and
2 residents served - there is not staffing
3 formula that would work for this
4 industry. We've looked at every
5 conceivable possibility, and there
6 simply is none. It has to be outcome
7 based -- the state's going to have to do
8 their job and come and talk to our
9 residents, not come in with a checklist.
10 I'll give up the time now. If we
11 have more time at the end I've got about
12 five more pages.
13 COURT REPORTER'S NOTE: MR.
14 HARLESS' RECOMMENDATIONS ARE
15 ENCLOSED AND MADE A PART HEREOF.
16 MS. HOWARD: Is there anyone else
17 who was not signed up who wishes to
18 speak? All right, then I have no one
19 else who wishes to speak any more, then
20 I will simply declare the public hearing
21 closed. We will take written comments
22 until August the 1st, which is Monday.
23 And I thank you all very much for
24 coming, for having put your time and

1 efforts---
2 FEMALE VOICE: Well, if Sandy has
3 anything.
4 MS. HOWARD: Sandy, do you have
5 some more?
6 SANDY HARLESS: Sure.
7 MS. HOWARD: I'll let you have
8 another five minutes, then I will ask
9 again if additional individuals wish to
10 speak.
11 SANDY HARLESS: I appreciate it.
12 6.1.6: Admission and Discharge
13 Policies. Our recommendation is to
14 modify this section. Allow the
15 information requirements to be fulfilled
16 after admission. Families often make
17 arrangements to admit in crises
18 situations. You all know that as well
19 as I do. There may not be time to
20 gather all the medical and personal
21 information prior to admission.
22 6.2: The admission agreement:
23 Recommend extensive revision. Many of
24 these documents can be made available

1 upon request. The facility will
2 literally be handing each resident a
3 book if all policies must be in the
4 admission agreement. This is another
5 example of out-of-control draconian
6 government. These are private contracts
7 entered into by West Virginia citizens
8 and West Virginia businesses. The
9 state's only responsibility is to
10 enforce the fulfillment of legal
11 contracts, not to dictate the terms of
12 the contracts.
13 7.3.2 requires the home to provide
14 a medical physical upon admission and
15 annually thereafter. Recommendation:
16 Delete. Many homes do not even have a
17 staff physician. The home is the legal
18 domicile of these residents. This is a
19 serious expense item that must be passed
20 on to residents, many of whom may not
21 need or want this physical. The state
22 cannot dictate when an individual will
23 have a physical assessment or when -- or
24 who will pay for it. This means the

1 home - I don't know if you've even
2 thought of this - the home could be
3 forced to pay for a physical prior to
4 admission and the individual may not
5 even move in.
6 7.3.5 through 7.3.7 requires
7 measuring and weighing of residents.
8 Recommend deletion. It is an invasion
9 of personal dignity and choice unless it
10 is medically indicated. And then it is
11 subject to the wishes of the resident.
12 Another attempt to make the licensurer's
13 job easier at the expense of the
14 humanity of the resident.
15 7.4.2 requires a consultant
16 pharmacist. Recommendation: Delete.
17 Additional expense for the residents.
18 This is a responsibility best left in
19 the hands of the individual's physician
20 and the individual's pharmacist.
21 And this one blows me away: 7.4.5
22 requires physician's order for
23 prescription and non-prescription drugs.
24 And that's in our current regulations,

1 and it's just never been challenged.
2 Recommendation: Delete. The state has
3 no statutory authority whatsoever to
4 deny residents the right to buy non-
5 prescription medicines. OFLAC seems to
6 think seniors become less human when
7 they move into a personal care home.
8 7.4.6 requires resident to be
9 certified capable of self-administering
10 medication. This is another one that
11 just boggles my mind. I recommend
12 reversing this, because I believe it's
13 backwards. Every citizen of this
14 country has a right to self-medicate
15 unless adjudicated incompetent. The
16 certification should state - the
17 required certification - should state
18 that the individual is not capable of
19 self-medicating. You don't have to
20 prove that you're capable of self-
21 medicating.
22 7.7.3 requires purchase of a surety
23 bond for handling of residents funds.
24 Recommendation: Delete. The net effect

1 will be that owners will decline to
2 assist residents in the handling of
3 their funds. I don't think that is
4 necessary.
5 10.1.6 requires quarterly
6 maintenance of sprinklers and
7 extinguishers. On my way here yesterday
8 I called a friend of mine at NFPA -
9 National Fire Protection Association -
10 and the experts recommend twice a year,
11 not four times a year. So it just, for
12 no gain in value, increases costs to
13 residents, who ultimately pay all these
14 bills.
15 10.2 and 10.3 Disaster and
16 Emergency Preparedness Plan. Recommend
17 rewrite. It is very confusing and
18 certainly should not be a Class I
19 offense. Lack of a proper plan has no
20 impact on residents if there is no
21 emergency. Does not constitute imminent
22 danger. And if you remember in the
23 definitions, a Class I offense is
24 imminent danger, serious harm or death

1 will result.
2 Applicability, 11.1; same thing.
3 Recommend change the class. Not getting
4 approval to renovate a kitchen does not
5 present imminent danger to residents.
6 Having them in a construction area
7 without a hard hat may present imminent
8 danger. But not getting approval on the
9 plan does present imminent danger.
10 11.2.1 requires site approval from
11 the director. Recommendation: Delete.
12 The state does not have statutory
13 authority to dictate where homes will
14 be built. If the location presents a
15 hazard to residents the director can
16 refuse to issue a license.
17 11.2.3 requires remote location of
18 homes. Recommendation: Delete. The
19 net effect is segregation. Clear
20 violation of the Federal Fair Housing
21 Amendments Act. Most residents do not
22 want to be isolated away from traffic
23 areas. We have residents who fight over
24 rooms next to parking lots so they can

1 see life. They don't want to be tucked
2 away in a corner somewhere.
3 11.3.4 requires use of USDA
4 certified person to apply all
5 pesticides. In the task force we fought
6 against this very hard, and it's still
7 here. Recommendation: Delete. It's an
8 additional to resident. And this means I
9 can't put a Roach Motel under the
10 kitchen sink. It's absurd.
11 There are several things that
12 require grandfathering; several
13 provisions of this that grandfathering
14 provisions have to be put in place -
15 door widths, air conditioning, or we're
16 just going to put a lot of people out of
17 business.
18 Finally; 11.6.2 states: Residents
19 may take meals in their rooms during an
20 illness. Now, some folks may not like
21 to hear this. Our recommendation is
22 delete - to delete it. Residents have
23 the right to eat anywhere they choose at
24 any time. While I agree there is

1 socialization value in encouraging
2 residents to eat with groups, it cannot
3 be required.
4 That's my five minutes. Thank you.
5 MS. HOWARD: Anyone else? Yes,
6 sir. This is Mr. Hampton.
7 GRAY HAMPTON: I just have four
8 small items. 7.5.4 talks in the light
9 of a sudden change they need to be
10 provided needy care, but needy care is
11 not defined. It seems to me that it
12 needs to be defined, and maybe defined
13 in light of the medical power-of-
14 attorney which says do nothing.
15 In number 8, 8.4.6, it seems to me
16 it needs to be broadened. This is
17 dealing with residents' rights in
18 section 8. And 8.4.6 needs to be
19 expanded to talk about the potential for
20 refusing food and hydration. For the
21 responsible person being able to refuse
22 whatever for the incompetent. We may
23 need to put in some information in there
24 on the medical power-of-attorney and the

1 living Will -- need to be recognized and
2 used.
3 9.2.7.a: A real small thing. They
4 talk about three eggs a week. All that
5 I'm reading now doesn't allow three eggs
6 a week as far as being a good diet is
7 concerned. It seems to me we need to --
8 and there was a recent article in U.S.
9 News and World Report talking about the
10 Mediterranean Diet, whether that's
11 better than the current one we espouse
12 in our country probably is up for
13 debate. But certainly it is very much
14 against three eggs a week. I think we
15 just need to look at that again.
16 6.4.2 makes reference to number
17 7.4.1, and I think that's an inadequate
18 reference. I think you need to check
19 and see which reference you're wanting.
20 MS. HOWARD: Mr. Grove.
21 MARK GROVE: I just want to make a
22 comment. From today's meeting and
23 from being in the personal care home
24 profession for the last three years. We

1 have started something today that has to
2 be carried on from today; to make your
3 time that you've given us today
4 worthwhile; to make the risk of getting
5 up here and speaking worthwhile, we
6 cannot stop and tell these folks, "Hey,
7 go do a better job." We've got to get
8 behind them, work with the offices that
9 we need to work with, have input, and go
10 from there. Let's make a decision
11 today, a firm decision, to not be part
12 of the problem, but be part of the
13 solution.
14 MS. HOWARD: Thank you. Anyone
15 else? Then, again, I'd like to thank
16 you all for taking the time and effort
17 to come and make us aware of your
18 concerns. And we will go back and put
19 our thinking caps on. Thank you.
20 WHEREUPON, the meeting was closed
21 to oral comments.
22

STATE OF WEST VIRGINIA,

COUNTY OF BRAXTON, TO-WIT:

I, Merleen B. Campbell, a Certified Court Reporter and Notary Public in and for the county and state aforesaid, do hereby certify that the foregoing is a transcript of the proceedings reported by me and herein translated into the English language.

I certify further that neither I nor any person under my supervision are neither counsel to nor attorney for any of the parties herein and have no pecuniary interest in the outcome of same.

DATED: July 28, 1994.

TIME: 5:17 PM

Merleen B. Campbell

Certified Court Reporter and Notary Public

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RECEIVED
AUG - 1 1994
REGULATORY DEVELOPMENT SECTION

July 29, 1994

To Whom It May Concern:

I have reviewed the proposed Personal Care Home Regulations. My comments to these proposed regulations are presented here.

I. GENERAL COMMENTS

Given the present climate in which these regs were drafted, I think they are well written and well thought-out. (By "climate" I refer to the court order and existing state laws which define personal care, as well as, residential board and care). However, precisely because they were drafted under such existing conditions, I think there are serious problems with the regs which could prove to have serious negative consequences.

Foremost among these consequences is the closing of homes because of prohibitive costs for services which are unnecessary. Providers, in particular who care for residents with limited incomes, in all probability, will be hard pressed to meet these proposed standards. I say services which are "unnecessary" because it seems the proposed regs are based on an assumption that residents who reside in these homes are incapable of self-preservation and therefore will need constant close attention. In large part this is based on what appears to be an arbitrary distinction that homes with eleven or more residents automatically qualify as a facility with residents who have greater care needs (i.e., the cap of 10 to be eligible for the lesser standards of the Residential Board and Care classification.).

I strongly suggest that the size of the home is not a good criteria, in and of itself, in determining the care needs of the residents and therefore what systems need to be installed or levels of nursing skills needed in order for staff to protect residents. I think a more clearly defined "level of care" classification needs to be established. Regardless of the number of residents a home is licensed to take, if that home takes only residents who are in need of minimal watchful oversight and who are clear minded and ambulatory, without needing any assistance, that home need not and should not be required to install some of the costly and protective environmental features required in these proposed regulations. Of course, if residents are admitted or retained who have greater care

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needs, then the home should be required to have greater staff to resident ratios, additional staff skills, and more environmental safety features. This, again, however should not be a feature of the number of residents in the home, but of resident care needs. (As an Ombudsman, both in West Virginia and elsewhere, I have not seen where the number of residents by itself was a major factor in whether or not a home was home-like or institutional or had a direct bearing on quality of care or qualify of life. The number of residents a home is licensed for may require other considerations such as the financial ability of a owner to stay solvent and the resultant consequences to residents if a home cannot fill its larger number of beds, but quality of life and care does not seem inherently better or worse based on the number of residents alone.)

In summary, under proposed regs I am extremely concerned that good homes, particularly those serving individuals with limited incomes will be forced to either close or down-size. In either case it could result in a loss of beds, when the need for such beds in many parts of the state is great. If at all feasible a clear level-of-care distinction should be incorporated into the regulations. (To some extent the additional requirements in the proposed regulations relating to providing of intermittent nursing services is a good start, but the overall model still does not take into account homes with eleven or more residents who only admit or retain residents with extremely limited care needs or who need minimal "watchful oversight.")

Accepting that it may not be possible at this time to incorporate previously stated "framework" in which to work, I now have some specific suggestions to proposed personal care home regulations. (These are generally limited to resident rights issues, as I expect providers will alert you to their concerns regarding economic considerations.)

II. SPECIFIC CHANGES

Sections 3.25.4 and 3.25.5 –The level of assistance needed to be mobile which requires helping a resident transfer does seem basically indistinguishable from a resident who is bedfast.

Section 4.13 – Should read in last sentence "are required to comply with all requirements of this rule." The word with was left out.

Section 4.3.3 – What procedures will be used to determine denial of a license (i.e., will Ombudsman, APS, etc., be contacted before determination is made.)

Section 4.6.5 – Would request that "as a minimum, annual unannounced inspections be conducted."

Section 4.6.5(a) – Language confusing. Not clear how the language "except where proceeding under Section 4.6.5" applies.

Section 4.7.6 – I am concerned about the reference to disclosure of resident or their legal representative's name if "there is clear and convincing evidence in a particular instance which requires disclosure of names." I am unclear other than in a potential judicial proceeding where this standard should apply.

Section 4.7.7 – What if there is an immediate health or safety risk which provider fails to correct, notwithstanding Section 4.8.2? Also, is Section 4.8.10 which does not specify a time period suggesting a different requirement regarding time period from 4.7.7. Seems either confusing or contradictory. Also unclear as to language in 4.9.4 as related to 4.7.7.

Section 4.7.10 – I like and thanks. I would add, however, Ombudsman program shall enter a personal care home or a home presently unlicensed but subject to personal care licensure at a time appropriate to the complaint.

Section 4.12 and 4.13 – Classification system seems overly confusing. Would it not be better to possibly develop a survey sheet (classification system) based on a score of 100 and if provider falls below a certain score they automatically fail? In addition, similar to a Class I violation, if no matter what their score, if a Class I type violation is found, the home must make immediate corrections.

Section 5.2 – Residential Board and Care requires a high school degree or G.E.D. equivalent. Is there need for similar requirement in Personal Care?

Section 5.5.2 – (As well as under definition of supervisor-in-charge) add a resident cannot be a supervisor-in-charge.

Section 9.7 – Confusing – Makes it very difficult to determine for provider their labor costs.

Section 6.1.3 – Can a provider have an all female or all male home? There are good reasons why, at times, this might be beneficial.

Section 6.1.5 – Physical exam seven (7) days prior to admission is impractical in many cases. Emergency placements by APS for example. I would suggest there needs to be language allowing for some exceptions where physical exams would need to be conducted within 7 days after admission.

Section 6.2.2.a – More details on refund policy should be spelled out. For example, if a resident has made a deposit which is normally refundable when they leave but the home has a 30-day notice requirement policy from the resident, that deposit should not be forfeited if the resident leaves through no fault of their own (e.g., their condition deteriorates and the home can no longer provide appropriate care).

Section 6.4.4 – Resident has right to refuse treatment. They should not be required to "obtain necessary services." (See Section 7.1.8 stating such right.)

Section 7.4.5 – Resident should be allowed to get non-prescription drugs without a written order. They should not be treated differently from the general population.

Section 8.10.3 – Home should have its own policy as to whether or not collect calls "shall be allowed."

Section 8.11.2 (8.11.3) – Visiting hours need to better reflect rights of privacy of present residents who may not want visitors (relatives, clergy, etc.) at any hour. Regulations should also give discretion to supervisor in charge the right to refuse entry to any visitor who is disruptive to the facility (e.g., a visitor who is noisy or who disrupts residents other than the person they are visiting).

Section 9.2.7 (g) – Providing fluids to residents who for medical reasons are on liquid restrictive diets could be problematic. Need to clarify circumstances under which staff are not expected to offer residents fluids or other food substances which might be medically contraindicated.

Section 11.2.2 – This is potentially unreasonable. People should have option to live in a community where they feel most comfortable. This may not always be immediately accessible to all services listed in this section.

Section 11.3.15 – This is one of the areas of cost which I alluded to in my general statements. If residents are in need of limited services, it is possible this may not be needed. (I worry not because I want to protect providers' investment, but because I don't want regulations to have the chilling effect of putting good homes out of business. This is especially true regarding home for people with limited incomes.)

Section 11.4.3 – Number of persons per room is not necessarily reflective of residents' wishes. I recently handled a situation where a resident wanted to move into a room with more than two residents. He liked the socialization factor. I question the only two to the room policy and would encourage a limit of four to the room for future construction. I would also encourage present providers to be allowed waivers if there are more than four to a room if it can be determined residents are not adversely affected by this arrangement. (As a resident advocate I am concerned present residents would be forced to leave facilities they have lived in for a long time and where they very much want to stay. Homes I have visited in this state where there are more than four to a room are almost exclusively for the mentally ill, with residents who often have adjusted to the present living situation where all other previous residential options have failed.

Section 11.5.4 – Does requirements under new construction include or exclude where a new provider purchases an already constructed home which has not previously been used as a personal care or similar type usage home?

III. FINAL COMMENTS

No matter what the outcome of these regulations, those for residential board and care or further development of regulations for registered unlicensed homes, I strongly feel we need to develop a cleaner system based on level of care needs. Providers, regardless of the number of residents in the home, should not be required to make modifications in anticipation of residents who need greater care, or supervision, if that provider is not going to take residents who have such needs.

I also think it important for the Department to do an impact analysis of these regulations to determine if some of the proposed changes are, in fact, needed. (I give the assumptions behind the requirement of number of residents per room as one example where the new requirement is not necessarily a solution to a perceived problem, and in many cases may not even be a problem.)

Cy Heybach

The Home For Men
Founded 1929

The Home For Men

1700 Warwood Avenue • Wheeling, WV 26003 • (304) 277-1911

RECEIVED
JUL 28 1994
REGULATORY DEVELOPMENT SECTION

July 25, 1994

Ms. Kay Howard
Regulatory Development
Department of Health and Human Resources
Building 3, Room 265
Capitol Complex
Charleston, WV 25305

SUBJECT: Comments on Proposed Personal Care Home Regulations

Dear Ms. Howard:

The Home for Men would offer the following comments on the proposed Personal Care Home Regulations:

3.10 Boarding Home is defined within the regulations for personal care homes and residential board and care homes, however such type of facility is not defined within the West Virginia State Code.

3.44 Being aware of the Resident's whereabouts does not necessarily allow the individual to travel independently throughout the community. If the home is to be informed, then the Resident is not free of restraint or interference, which is a violation of 8.1.8 of these regulations.

4.1.2 and 3 Proposed regulations do not provide for a category of facilities that provide a minimum level of assistance, such as room, board and supervision of medications.

4.3.3.b The seriousness of a felony crime should prevent an individual from obtaining a license to operate a personal care home. Also, the Secretary should not be given the power to say what crimes can be excused.

4.6.7 The Residents should be permitted access to the inspection report. If the deficiencies are minor and have been corrected, it does not seem appropriate to post an inspection report for an entire year.

4.7.5 If the word "serious" is inserted before complaint, then the Secretary probably would not receive the complaints that might be minor in nature.

4.7.9 The Home should still be able to make the appropriate placement of the Resident if a medical condition arises and the Home does not provide the appropriate level of care within the 120 days.

4.13 The rating system should not be implemented since it has been discontinued for nursing homes within the state. Personal care homes should have less regulations than nursing homes, hence, if a rating system is used, a majority would be from a subjective viewpoint.

5.2 All administrators should be required to have some type of formal training as established by the state for their position, and obtain 10 hours of continuing education per year once certified.

5.3.1.g There may be a conflict between the required reference checks and an employee's right to privacy.

5.4.2.b Some facilities, such as the Home, have elected not to administer CPR to the Residents. We feel that for everyone's well-being, it is better to contact 911 and have medical emergency personnel to the Home in 30 seconds.

5.4.2.g Personal assistance procedures assumes that assistance is provided, which may not always be the case.

5.4.5.c See 5.4.2.b above

5.8.3 See 5.4.2.b above

5.9.1 The first sentence of this section should be removed, since the second sentence states that at least one responsible adult shall be designated as supervisor in charge with this duty of supervision.

5.9.3 Remove "by" in the second line of section.

5.9.5 Insert a period after sleeping hours since the staff should be awake to protect the Residents.

5.9.6 This will generate additional staffing that may not be needed if the Residents do not have sleeping disorders. This regulation would make sense if it applies to homes offering Level II care.

6.1.5 Allow 72 hours after admission in accordance with the standard at other levels of care.

6.1 An admission packet would better describe all of this information.

6.2.2.h The Resident shall be informed that these procedures are in place. It would not be necessary to provide all of this

information unless requested by the Resident.

6.4.2 This forces the operator to provide a service that it may not want to provide in this level of care. Currently, if the operator is unable to provide these services, then a more appropriate facility is used.

7.1.2 This wording should be added at the end.....as determined by the Resident needs assessment. The wording in this section does force a current operator to provide assistance with ADL's and IADL's, even if the facility chooses not to provide such assistance.

7.1.7 Insert "access" following arrange in the first line.

7.2 Should be a Class II Standard.

7.2.2 Updated annually instead of every 6 months.

7.3.8.b The Registered Nurse time should be based on the Resident needs as identified on the Resident Assessment Forms.

7.3.12 Add "or other emergency personal" at the end of the section.

7.5.8 Phone numbers are subject to change, therefore should not be listed.

8.13.2 If an applicant cannot afford the services, they should not be admitted.

11.2.9 Staff parking is available on the street.

12.2.9 Two changes of linen per bed seems excessive.

12.8.1 Remove second sentence.

Thank you for the opportunity to comment on these proposed regulations.

Very truly yours,

Andrew Cross

Andrew Cross
Administrator

AC/sc

ALFAA
ASSISTED LIVING FACILITIES
ASSOCIATION OF AMERICA

July 27, 1994

To Whom It May Concern,

As Founding Vice-Chairman and Legislative Committee Chairman of the Assisted Living Facilities Association of America, I am writing in response to the proposed regulation for the licensure of personal care homes in West Virginia. I also represent my families two licensed homes in Ravenswood, West Virginia.

First, I want to recognize and state my appreciation for the good work that Barbara Cisarsick has done in the last few months. She has taken a set of totally unacceptable regulations and brought them to a place where we can now begin to negotiate their further development.

In general, the regulations are still far too draconian and heavy-handed. At a time when the rest of the country is desperately trying to find ways to stimulate the growth of Assisted Living as a cost effective alternative to nursing home placement, West Virginia is stifling this exciting industry. This regulation will have a profoundly chilling effect on the Personal Care Home/Assisted Living industry.

I am currently involved in revision or development of Assisted Living regulations in six states. In my capacity as Director of Regulatory Affairs for Sunrise Retirement Homes, the largest Assisted Living organization in the nation, I travel all over the country to assist in regulatory procedures. West Virginia is the only state I am aware of that has not initiated an effort to address reasonable reimbursement either before or during the development of new regulations. These regulations are also the most institutional and are clearly an effort to protect nursing home turf.

I am greatly concerned that no residents/clients were included in this process. Those whose homes are threatened and whose lives are most impacted should certainly have a voice in this process, especially in light of the fact that most of the residents basic rights of choice are denied as a result of these regulations.

I also believe it is very strange that no fiscal impact analysis has been done on this regulation. The Keyes Amendment which is cited in the Wolford decision requires fiscal impact studies to be done on any regulation which could negatively impact S.S.I. recipients.

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Rec'd
7/27/94

Attached you will find several pages of specific recommendations. These were written in haste, as O.H.F.L.A.C.'s time frame left very little time for review and discussion and are intended to be representative, not all inclusive of my concerns with these regulations.

Sincerely,

Sandy Harless

Sandy Harless,
Legislative Committee Chairman

Sandy Harless
ALFAA
July 27, 1994

3.13. Comprehensive Service Plan.

Recommend–should be required only for residents needing nursing or therapy services. It is an invasion of privacy and an unnecessary expense for many PCH residents. This feels like a nursing home.

4.1.1. Requires license before advertising.

Recommend–adding ;except that a facility under construction may advertise 120 days prior to opening.

4.1.6.a. and 4.1.6.b. Requires certain type of appraisal and financial analysis and disclosure.

Recommend–deleting both requirements. OHFLAC does not have statutory authority to promulgate rules which violate the Federal Fair Trade Act and the Federal Fair Housing Amendments Act. The state may not dictate conditions of sale of legal private property.

4.1.7. Requires Director's approval to change facility name.

Recommend–facility shall notify Director of name change prior to adoption of new name. This requirement exceeds statutory authority. Statute prohibits certain words from being used in name– hospital, and nursing home. It does not give the state the authority to dictate what names a private business may use.

4.1.11. Requirement that facility apply for a new license if leasing terms are changed.

Recommend–delete. This is ridiculous. What if utility rates change? What if minimum wage changes? State has no place micro-managing private business.

4.3.1.c. Requires resident assessment forms for application for license.

Recommend–delete. Could not possibly apply to new license. If for renewal, it should only be to determine eligibility for public assistance. It is an invasion of privacy for private pay residents and an unnecessary expense for them, as the added expense will ultimately fall back upon the private pay residents.

4.3.3.f. Requires limits on the reimbursement of the owner.

Recommend–delete. State has no statutory authority to dictate return on investment. Russia did not work. It failed!

4.6.5.a. States how inspections shall be conducted and by whom.

Recommend–delete "life-safety issues". The Fire Marshall has statutory responsibility for life safety issues and OHFLAC inspectors are often severely undertrained in these areas.

4.6.5.b. States criteria for inspecting the number and appropriateness of residents.

Recommend–delete reference to appropriateness of placement. Under the Federal Fair Housing Amendments Act, as applied by Federal Judge Harvey in "Potomac House vs. Montgomery County, Maryland, the state has no authority to dictate where individuals may live based on their handicaps or disabilities or their needs arising from those handicaps and disabilities. Federal Law always supersedes state law. The only test of "appropriateness" the state may apply is for public assistance criteria. Since West Virginia has neglected reimbursement for frail elderly who do not need skilled nursing home placement for twenty years this should not be an issue.

4.7.6. Guarantees confidentiality to anyone who wishes to file a complaint.

Recommend–delete. Appears to violate Article III of the Bill of Rights. The right to face an accuser. Violates the very foundational principal of our justice system–innocent until proven guilty.

4.9.2.c. Makes reports of inspections available to the public.

Recommend–add "including the final outcome of any investigation."

5.9.7.and 5.9.8. Establishes minimum staffing standards.

Recommend–delete. This entire concept of resident to staff ratios and formulas is strongly opposed by ALFAA. Assisted living facilities are incredibly diverse in operation as well as the residents they serve. It is fundamentally impossible to establish numerical values for staff that will span the range of diversity in personal care homes. Resident care needs often change daily, no mathematical formula can compensate for these changes. This requirement is onerous, expensive, unenforceable and serves no real purpose. Any facility can overstaff in pure numbers and still provide sub-standard care. Outcome based measures are the only workable approach to determine whether or not a facility is properly staffed.

6.1.5. Requires physical prior to admission.

Recommend–allow some after admission provision. What about emergency admissions?

6.1.6. Admission and Discharge Policies

Recommend–modify. Allow the information requirements to be fulfilled after admission. Families often make arrangements to admit in crises situations, there may not be time to gather all the medical and personal information prior to admission.

6.2. Admission Agreement

Recommend–extensive revision. Many of these documents can be made available upon request. The facility will literally be handing each resident a book, if all policies must be in the admission agreement. This is another example of out-of-control draconian government. These are private contracts entered into by West Virginia citizens and West Virginia businesses. The states only responsibility is to enforce the fulfillment of legal contracts entered into by the parties–not to dictate the terms of the contract.

6.3. and 6.4. Admission and Retention Restrictions.

Recommend–delete. Most of the language is illegal. I find it interesting that under 6.1.3. you cite the Federal non-discrimination statement and then proceed to blatantly violate it. You state that individuals with certain disabilities or handicaps i.e.–requiring nursing services, bedfast, mental health diagnosis, may not be admitted or retained. You even state that if a resident has a suspected condition he/she must submit to an examination at their own expense and turn over the findings to the Director, who will then determine where they will live–come on! This is the twentieth century. It amazes me that you people actually believe you have the right or the wisdom to totally rule another persons life.

Most of this section is a clear violation of the Federal Fair Housing Amendments Act and the Americans with Disabilities Act. This also violates new Medicaid Waiver regulations, to be published soon, which specifically state that a resident has the right to assume risk. And, I will be the first in line to bring suit against the state.

7.1.1. Requires on-going evaluation of the appropriateness of the resident.

Recommend–delete. Illegal!

7.1.7. Requires the home to provide social and medical transportation.

Recommend–delete. Serious expense item that will increase cost for private pay residents who may not need the service. It will force indigent residents into nursing homes because the facility cannot afford to care for them. This is an absurd requirement in a state that pays less than half of the cost to provide care for these individuals. Provision of transportation should be covered in the individual admission contract.

7.2. Assessment and Individualized Service Plans.

Recommend–serious modification. These requirements are extremely cost prohibitive and only serve to create an institutional environment such as nursing homes. Someone must pay for this quadrupling of paperwork. Ultimately it will be the resident just to make licensure's job easier. Checking off paperwork is much easier than resident interviews and outcome based analysis, but falls far short of the goal of excellence in care for residents.

7.3.2. Requires the home to provide a medical physical upon admission and annually thereafter.

Recommend–delete. Many homes do not even have a staff physician. The home is the legal domicile of these residents. This is a serious expense item that must be passed on to residents, many of whom may not need or want this physical. The state cannot dictate when an individual will have a physical assessment or who will pay for it. This means the home could be forced to pay for a physical for an individual who may or may not be admitted.

7.3.5., 7.3.6.and 7.3.7. Requires measuring and weighing of resident.

Recommend–delete. It is an invasion of personal dignity and choice unless it is medically indicated–and then it is subject to the wishes of the resident. Another attempt to make licensure's job easier at the expense of the humanity of the resident.

7.4.2. Requires a consultant pharmacist.

Recommend–delete. Additional expense for the residents. This is a responsibility best left in the hands of the individual's physician and the individual's pharmacist.

7.4.5. Requires physician's order for prescription and non-prescription drugs.

Recommend–delete. The state has no statutory authority to deny residents the right to buy non-prescription medicine. OHFLAC seems to think seniors become less than human when they move into a personal care home.

7.4.6. Requires resident to be certified capable of self-administering medication.

Recommend–reverse. I believe this is backward. Every citizen of this country has a right to self-medicate, unless adjudicated incompetent. The certification should state that the individual is not capable of self-medicating.

7.5.2. Prohibits restraints.

Recommend–revisit this issue. Often "support" type restraints are genuinely needed for the safety of a resident. Certainly, OBRA guidelines should apply to prevent abuse. But, this statement seems to be overly broad.

7.7.3. Requires purchase of a surety bond for handling of residents funds.

Recommend–delete. The net effect will be that owners will decline to assist residents in the handling of their funds.

7.8.6. Requires hiring of activities coordinator.

Recommend–delete. It is virtually impossible to hire a qualified individual for the amount of time required by this standard. Volunteers could easily fulfill this requirement.

8.3.1. Regarding resident rights.

Recommend–same as 6.2.

10.1.6. Requires quarterly maintenance of sprinklers and extinguishers.

Recommend–revise to twice a year. Experts agree that quarterly inspections are not required with today's technology. Increases cost to the resident.

10.2. and 10.3. Disaster and Emergency Preparedness Plan.

Recommend–rewrite. Very confusing. Certainly should not be ClassI. Lack of proper plan has no impact on residents if there is no emergency. Does not constitute imminent danger.

11.1. Applicability.

Recommend–change class. Not getting approval to renovate a kitchen does not present imminent danger to residents.

11.2.1. Requires site approval from the Director.

Recommend–delete. The state does not have statutory authority to dictate where homes will be built. If the location presents a hazard to residents the Director can refuse to issue a license.

11.2.3. Requires remote location of homes.

Recommend–delete. The net effect is segregation. Clear violation of the Federal Fair Housing Amendments Act. Most residents do not want to be isolated away from traffic areas.

11.3.4. Requires use of U.S.D.A. certified person to apply all pesticides.

Recommend–delete. Additional cost to resident. This means I can't put a roach hotel under the kitchen sink. Absurd.

11.3.8 Requirements for door widths.

Recommend–grandfather existing homes. May be impossible for existing homes to comply.

11.3.12. Requires air conditioning.

Recommend–delete. Substantial added expense for residents. At the Ravenswood Care Center, every room has a private air conditioner. They are never used. Residents do not like them. Due to poor circulation, many seniors are sensitive to cold. This is a great expense with little value.

11.5.4. Requires new construction to have certain placement of bathrooms.

Recommend–delete. Personal Care Homes should not be forced to adopt out-dated nursing home architecture. I have seen many wonderful models different from that required in this standard.

11.6.1. Requires sufficient dining space to seat all residents at once.

Recommend–delete. Many of the more progressive Assisted Living Facilities have gone to two or more sittings for each meal. Catering more to the individual residents. Requiring large uninterrupted dining space simply adds to the institutional feeling of a building. Few people eat in large wide open cafeteria-style settings if anything else is available. This is another example of the state's prevalent bias against seniors.

11.6.2. States residents may take meals in their rooms during an illness.

Recommend–delete. Residents have the right to eat anywhere they choose at any time. While I agree there is socialization value in encouraging residents to eat with groups, it cannot be required.

12.1.4. Requires certain water temperature for hot water.

Recommend–revise. The 5 degree variation allowed is functionally impossible to maintain. I agree that there must be anti-scald precautions but they must be realistic.

11.7.2. Requires leisure area to be ventilated with windows.

Recommend–delete. There is no reason to dictate architectural design. It serves no purpose other than stifling innovation. You have already required air conditioning. Why do you need window ventilation?

13.1. Regarding duties of Registered Nurse.

Recommend–revise. Many of these requirements should be condition specific, not general requirements for all residents. Aging is not a disease and does not require a medical model of care.

Sister Sheila Rooney, Administrator
Welty Home for the Aged
21 Washington Avenue
Wheeling, WV 26003
304-242-5233

Welty Home is a licensed personal care home for the active, independent person who is in reasonably good physical, mental and emotional good health--who is ambulatory, able to dress one'sself, come to the central dining area for meals. They are free to come and go on their own or to enjoy the privacy of their rooms. They have no need for physical observation 24 hours a day, but do have a need for a safe and caring environment.

I acknowledge and appreciate the attempt made to distinguish between the care given at different homes by Level I and II. However, even the most basic level described in these regulation gives a distinctive "medical care" atmosphere that Welty Home has always tried to avoid. We emphasize independence, physical & social activity, healthful nutrition while being observant of and caring for routine health needs. To follow through on on all these regulation (particularly chapter 7) would ultimately be detrimental to those we serve. Their independency would be stifled; their right to privacy would be limited and at the very least their rigth to self-determination in health matters would be hindered.

By definition of 3.39 we cannot be a residential Board and Care Home, but we do not wish to emphsize the medical care that seems to come in these regulations when 7.1.2 states that homes <u>shall</u> provide assistance in the activities of daily living.

That there is a need for a personal care home that provides mainly instrumental activities of daily living is evident by our full occupancy and waiting list.

In particular I would like to comment on the following rules:

3.1--add "continued" disregard for the necessities of daily. This is more realistic of life.

3.23 Hospice care is for six months; to limit hospice care to 90 days eliminates in many cases the utilization of hospice.

3.23 Question the use of <u>dependent</u> upon services of others because of physical/mental impairment.
Are there not helathy elderly who are slowed by age but not to the point of being dependent upon others?
Are there not elderly who choose a safe environment; who no longer wish to cook or keep up a house; or who desire socialization found in residential living?

4.67 Posting of a report which lists deficiencies already corrected provided an incorrect view of a home. The notice of availability should suffice.

4.13 Personal Care Home Rating
Grading systems of personal care homes does not necessarily reflect the care given in the home and at best is only a subjective review by the licensing survey team. It is my understanding that this system of grading has been deleted from licensing of nursing homes. Perhaps it would be wise to review their reasonings and reject a grading system which has already failed to reflect the adequacy of care given to the elderly in nursing homes.

5.2.5 for clarity: The administrator is responsible for providing needed services to the residents. If outside services are utilized, copies of the written arrangements shall be maintained in the home.

5.3 Personnel--If the grading system is maintained, change this to Class 2.

5.9.1 Change the word 'unsupervised' to 'unattended' as the residents should be able to be in their rooms without staff present.

5.9.2 and 5.9.4 The relationship between these two rules is unclear. If only 50% of a supervisor-in-charge time can be counted toward minimum staff requirements, how can one residential care staff be appointed supervisor in-charge during night time hours?

5.9.6 and 5.9.8 Staffing patterns should not be determined solely by the number of stories of a building. The capability of the residents, their need for direct supervision and thir ability to act for self-preservation are better determinations of the number of staff needed.

6.1.3 and 6.3.2a what is the relationship between non-discriminatory clause for disabilities of 6.1.3 and the restricted admission when the home does not have the capability or services to provide care.

6.4.1 It is unclear where and when the ombudsperson's duties and the residents rights (6.5.4) come into play in the determination of the residency in the home.

6.4.2 Addition: the individual has medical coverage <u>and/or the financial means</u> that permits accesing additional services.

7.1.2 and 7.1.2 Does the Home have a right to limit the services they provide or to determine that when a certain amount of services (treatment) is needed that the resident will be transfered to a more appropriate setting?

7.2.3 treatment implies the ability to provide medical services which personal care homes do not generally provide

7.3.2 If the residents are under the care of a personal physician, is it not the physicians right/obligation to provide the physical examination and assessment--not the homes?

7.3.6
7.3.7
7.3.14 Residents capable of engaging the services of a personal physician do not necessaryily need these medical services. This is the medical care atmosphere I spoke of in my opening remarks. Mentally alert residents should NOT have to give over to the home's nurse their responsibility for their health.

7.4.2 If a list of all medications drawn up by the home is reviewed, dated and signed by the physician annually, why does a home, not medically oriented, need to retain the services of a consultant pharmacist?

7.4.10a If oxygen tanks are approved for private home use, why are se limiting oxygen therapy to concentrators; thereby requiring a back-up generator?

7.4.10e A 12 foot limit prohibits the freedom of movement. The risk of a possible fall over the line whould be secondary to the freedom of movement of a resident.

7.4.16 The RN, administrator or supervisor-in-charge shall immediately report side effects....Both the administrator and the supervisor are responsible adults.To require them to call the RD on call who then calls the physician opens up to a greater degree the possibility of misinformation/misinterpretation. Also the on-call RN would not necessarily have the information to answer questions. Phone call orders are followed by signed orders.

8.4.4 Necessary treatment shall be arranged by the home.

I thank you for the opportunity to voice my concerns.

7/27/94

Flatwoods, WV

I am George Poka, Arlington Personal Care Home, Parkersburg. WV

I believe we need a good set of rules & regulations. I helped draft a set of regulations 3 times. They were set on the shelf. This draft is not counted because of the way the group was loaded with orientation toward nursing homes, ombudsmen, and not balanced with consumers & PC Homes. There are many conflicts still within

These are too costly. It costs me just as much for wages, food, workers comp, utilities, etc, as it does a nursing home.

My main objections are:

1. Mandate to hire an Activity Director if > 30 beds. 7.8.6
2. Requirement to hire an R.N. for 35 hours/week.
3. 7.23.p.3,4 Mandate to designate a staff person to monitor individualized service plans.
4. Cannot sell our facility at market value based on income, but rather based on value of building & grounds.
5. The continuation of the legally unlicensed facilities. To allow them to exist is grossly unfair.

Dc 7/27/94

Wes Harris
Executive Director, A.C.S. Inc.
1994 Certified Green Business with Co-op America.
Featured in Co-op America national magazine.

I have served as President of WV Health Department–BHAC, and last year was invited by the Russian government to visit Kalinigrad where I was honored at the Kalingrad General Hospital's celebration of the 75th anniversary of the Russian Medical System–a system from which we could learn much.

I could speak for hours regarding these regulations and the essence of the Assisted Living Concept, but three points cry out for attention.

1. Revealing and not acceptable that no clients were on the "task force" asked to contribute to drafting these regulations–why?

2. No attempt to aggressively notify and encourage participation in this hearing by residents–why?

3. As an invited member of the task force I can strongly say that participation of personal care home operators and administrators was virtually meaningless--we were tokens. Thus, these regulations have been designed without the assistance of the very people they are designed to "help". At best, maternalistic, at worst, fascist.

As a sociologist, I suggest that this constitutes a fatal flaw. Rules designed by individuals without personal care expertise---and often with nursing home backgrounds and bias, time and again force medical model flaws onto our homes and residents. Why? Why must our wonderful state constantly lag 20 years --even 50 years behind the rest of the country--and trample the rights of our citizens in the process?

Let's use the wonderful resources available to our state to create regulations that foster a healthy lifestyle for our personal care home residents rather than saddle them with rules designed to make them sick and helpless by defining them as such.

Rec'd 7/27/94

Cedar Grove Personal Care
P.O. Box 1142
Parkersburg, West Virginia 26102
(304) 424-6023

RECEIVED
JUL 26 1994
REGULATORY DEVELOPMENT SECTION

JUly 25, 1994

Ms. Kay Howard
Dept. Health & Human Resources
Building 3 Rm 265
Charleston, WV. 25305

Ms. Howard;

Please find enclosed changes I find imperative to increase the quality of the proposed regulations. Overall I feel the verbiage could be more professionally stated and is too influenced with behavioral health theories.

As the Chairperson of the West Virginia Personal Health Care Committee, and as the Owner /Administrator of Cedar Grove Personal Care Facility, I am asking for acceptance of these changes as submitted.

Sincerely,

Cheryl-Sue Bunner

Page #	Section	Proposed Change	Justification
Throughout		Capitalize "S" in Secretary.	Proper Noun.
Throughout		ADA = Americans with Disabilities Act.	Not "Americans Disabilities Act" as written.
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Throughout		Inconsistent use of "Individualized Service Plan", "Service Plan", etc.	Should be consistent.
10	4.3.3.d	"...or in operating a health care facility." Delete remainder of section.	Deleted wording weakens this requirement.
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17	4.9.3	Delete Section	Redundant
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35	7.2.2	"...but at least (once every six months) annually and shall include..."	Consistent with other sections of these regulations.
37	7.3.7	"...changes in weight of five (pounds) percent or more..."	More reflective of inappropriate weight loss.
37	7.3.8.a	"...needs of the residents, the nurse shall visit a minimum of one time per week."	Frequency of visits needs to be addressed.
37	7.3.8.b	"...sixteen hours per week based on resident needs as identified on the resident assessment form as provided by the Secretary."	Proposed language makes this section more clear.
38	7.2.12	"...registered professional nurse or other emergency personnel."	Facilities may be able to access ambulance, or other emergency service faster.
39	7.4.1	Change "pharmacist" to "pharmacy"	Grammatical
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41	7.4.15	Insulin, allergy and bee sting injections should be considered.	
41	7.4.18	Combine Sections 7.4.12 and 7.4.18	Suggested language Pg. 43 of last draft copy of personal care regulations.

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51	8.4.4	"...services shall be (obtained) arranged by the home."	More appropriate language.
55	8.13.2	"...gender, disability (or financial status)."	If an applicant cannot afford the service, they should not be admitted.
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JUL 22 1994

REGULATORY DEVELOPMENT SECTION

22 JULY 1994

AUTUMN ACRES PERSONAL CARE CENTER
RT. 3 BOX 277-B
BERKELEY SPRINGS, W. VA. 25411

SUMMARY OF PROPOSAL FOR PERSONAL
CARE LICENSURE RULE # 14

ALL OF THE FOLLOWING FORMS MUST BE MADE AVAILABLE TO EVALUATE THEIR CONTENT.

1. RESIDENT ASSESSMENT INSTRUMENT
2. RESIDENT SERVICE PLAN
3. RESIDENT HEALTH ASSESSMENT
4. RESIDENT PSYCHOLOGICAL ASSESSMENT
5. RESIDENT SOCIAL NEEDS ASSESSMENT
6. RESIDENT NURSING ASSESSMENT

PLEASE CONSIDER: RESIDENT ACTIVITY ASSESSMENT
ACTIVITY COORDINATOR = NEEDS QUALIFICATIONS LISTED

THERE ARE NO SPECIFICATIONS REGARDING SOCIAL SERVICE EMPLOYMENT BUT FIND THE ABOVE FORMS IN NEED OF THIS SERVICE.
AS THE SAME FOR CARE PLANNING WITH THE ENTIRE DISCIPLINES.
(WILL THIS FORM AND OTHERS BE FROM MDS)
HOW DETAILED ARE WE CONSIDERING?

RULE # 7.3.8. DOES NOT SPECIFY HOW MANY HOURS THE INTERMITTENT CONSULTING RN MUST SPEND:
CONSIDER THE FOLLOWING:

1. ELEVEN (11) OR LESS THAN EIGHT (8) TO TWELVE (12) HOURS PER WEEK
   ELEVEN (11) - TWENTY-FIVE (25) SIXTEEN (16) - TWENTY (20) HRS/WK.
   RULE # 7.3.12 = TWENTY-SIX (26) BEDS OR MORE, NO LESS THAN TWENTY-FOUR (24) HRS/WK.

CONSIDER THE FOLLOWING:
AN ON CALL SCHEDULE WILL BE IMPLEMENTED WITH LICENSED NURSING SUPERVISOR. IT IS EXTREMELY DIFFICULT TO ASSESS A RESIDENT WHO'S NURSE IS NOT CONSISTENTLY IN THE FACILITY. THE NURSING SUPERVISOR WILL CONTACT THE CONSULTING RN THE FOLLOWING DAY AND COMMUNICATE ANY PROBLEMS THAT HE/SHE WAS MADE AWARE OF DURING THE ON CALL EVENING.
(THIS IS MORE FEASIBLE WHEN STAFFING SCHEDULES ARE PREPARED BY THE SUPERVISOR. THE CONSULTANT COULD NOT ANSWER THESE QUESTIONS).

RULE # 7.4.16. = PLEASE ADD THE LICENSED NURSE WILL RESUME THIS RESPONSIBILITY IN HER ABSENCES AND HER RESPONSIBILITIES. HOW IS THIS PERSON GOING TO BE ON CALL TWENTY-FOUR (24) HOURS A DAY, SEVEN (7) DAYS PER WEEK, WHEN THEY ARE NOT IN THE BUILDING CONSISTENTLY.

RULE # 7.9.8 = A WRITTEN RELEASE SHALL BE RENEWED YEARLY OR WHEN INCOMPENTCY HAS BEEN DECLARED.

RULE # 6.1.5. AND 7.3.2. = CONTRADICT THEMSELVES.

THIS PROPOSAL IS OFFERING EXCELLENT IMPLEMENTATIONS.
THANK YOU FOR THE OPPORTUNITY TO CONTRIBUTE MY RECOMMENDATIONS TOWARDS THIS AMENDMENT.

RESPECTFULLY,

Sherry Pritchard

SHERRY PRITCHARD, LPN SUPERVISOR

West Virginia Health Care Association, Inc.

"Serving West Virginia's Professional Long-Term Care Facili

#8 Capitol St. - Suite 700, Charleston, WV 25301

Telephone (304) 346-4575 - FAX (304) 342-0519

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JUL 25 1994

REGULATORY DEVELOPMENT SECTION

PRESIDENT
Diane T. Gouhin

VICE-PRESIDENT
Paul L. Nusbaum

SECRETARY
Betty B. Farley

TREASURER
J. Daniel Bucher

IMMEDIATE PAST PRESIDENT
Drema K. Thompson

DIRECTORS
Glenn T. Adrian
Michael L. Anderson
Linda F. Bair
Cheryl-Sue Bunner
R. Kay Cottrill
George G. Couch
James E. Fox
Mark R. Nesselroad
Tammy Jo Painter
Patrick A. Smith
Roger F. Topping
L. Jane Wade

EXECUTIVE VICE PRESIDENT
Steven C. Wade

GOVT. AFFAIRS DIRECTOR
Jesse W. Samples

OFFICE MANAGER
Ruth A. Burgess

July 22, 1994

Ms. Kay Howard
Regulatory Development
Department of Health and Human Resources
Building #3, Room 265
Charleston, West Virginia 25305

Dear Kay:

The enclosed comments are provided by the West Virginia Health Care Association related to WV Department of Health and Human Resources Title #64 Legislative Rule, Cite authority §16-5C-5 amending Series 14.

While recognizing that much time and effort has gone into these regulations we feel these suggestions will benefit the industry and ultimately the residents of the states Personal Care Homes. Many of these Comments correct grammatical or other minor errors but many of our comments address more serious issues. If it is helpful to your process we are very willing to meet and discuss these comments with you and/or other members of the Department.

Again, we appreciate your efforts in writing these regulations and look forward to working with you toward there implementation.

Sincerely,

Steven C. Wade
Executive Vice President
West Virginia Health Care Association

enclosure

cc: Sandra Daubman, OHFL&C
Diane Gouhin, President, WVHCA
Lynda Kramer, OHFL&C
WVHCA Personal Care Committee

WEST VIRGINIA HEALTH CARE ASSOCIATION
#8 Capitol St. - Suite 700, Charleston, WV 25301
Telephone (304) 346-4575 - FAX (304) 342-0519

MEMORANDUM

July 22, 1994

TO: MEMBERS, WVHCA

FROM: CHERYL-SUE BUNNER, CHAIR, WVHCA PERSONAL CARE COMMITTEE

RE: PERSONAL CARE LICENSURE REGULATIONS

On July 1st of this year the West Virginia Department of Health and Human Resources (DHHR) filed regulation related to Personal Care Home licensure with the Secretary of State. Now that the regulations are on file they are open for public comment until August 1, 1994.

The WVHCA Personal Care Committee has met and reviewed the proposed regulations. Our comments (attached) were submitted to the DHHR on July 22.

Any interested party may comment on the regulations in writing or during the public hearing set for 10:00 a.m. Wednesday, July 27th at the Days Inn in Flatwoods. If you submit comments to the Department please provide a copy of those comments to the Association, this will enable us to present a unified position to the Department on these regulations. Members of the WVHCA Personal Care Committee will be at the hearing to represent the Association.

All Personal Care providers should have received a copy of the proposed regulations. If you have not received these regulations or would like a copy to review contact Ruth Burgess at the Health Care Association (346-4575).

If you have any questions about these regulations or the comment process contact Steve Wade (346-4575) in the Association office.

enclosure

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PUBLIC HEARING

Personal Care Home Licensure

July 27, 1994

(6)

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
pass Pat Kelly	P.O. Box 1588	WVHCA	Yes
(27) Christen & Russell Williams	221 Wright ST Weston	Personal Care Homes Whispering Pines PCH	Yes
Rich Sheppard	Bld 6 RM 850 Capitol	OSS	Y
Barbara Vyard	P.O Box 109 S+Alb 25177	VINEYARDS	NO
(28) Sandy Harlan			Y

PUBLIC HEARING

Personal Care Home Licensure

July 27, 1994

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
(24) Aileen Mills	Mullens WV 25882 12384 Guyandotte Ave	Precious Years Personal Care	yes
(25) Sarah Thomas	Mullens WV 25882 12384 Guyandotte Ave	Precious Years Personal Care	Yes
(26) Cheryl Elect Prince	Box 37 Sophistcatville	Sheltering Arms	Yes
Roy Herzbach	1033 Quarrier St. Charleston	Ombudsman	pass Yes

PUBLIC HEARING

PERSONAL CARE HOME LICENSURE

JULY 27, 1994

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
(1) Dorothy J Gore	Barbourville WV	Chateau Gore P.C.H.	yes
Gene T Gore	3410 Rt 60 E - B-ville, WV 25504	" " "	NO
(2) Opal Cottrill	960 W. Pike St. Clarksburg	Lida Clark PCH	yes
(3) LeaAnn Talkington	960 W Pike St. Clarksburg	Lida Clark PCH	yes
(4) Sandra Miller	Rt 1 Box 167 Kingwood	Sandys Windy Hill Manor	yes
Otis Miller	Rt 1 Kingwood	Sandys Windy Hill Manor	no
Janey Robinson	PO Box 5 Rupert	Autumn Way	no
(5) Jane Byberg	205 McGrow ave Grafton	Country Living	yes
(6) Peggy Hadsley	31, W. St. Charles St. Grafton	Alliance Personal Care	yes.
Jean Munza	Rt 3 Box 115 Fairmont WVa	- Friendly Homes/Union Manor,	no
Robert Thompson	107 Jefferson St. Fairmont	" " " "	no
(7) Barry B. Farley	Rte 1, Box 464, Princeton, WV	GlenWood Park Retirement Village	yes

PUBLIC HEARING

Personal Care Home Licensure

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(2)

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
TAL R. SUTTON	504 BARBOROSA LN. PRINCETON, WV	Glenwood Park Retirement Village	No
Joan Polen	2301 Kennedy Ave. Parkersburg, W.V.	Arlington Personal Care Home	No
(9) Patricia Hitchcock	108 Adams Ave Woodsfield Ohio	County Haven Personal Care Home	Yes
(8) Jackie Kiple	P.O. Box 386, Beech Bottom, WV	Country Haven P.C. Home	yes
(10) Denise Kernan	HC 60 Box 228 B New Martinsville,	Lewis Wetzel Personal CH	yes.
(11) Karen Butler	40742 Butler Rd Clarington OH	Lewis Wetzel Personal Care Home	Yes
(12) Kayla Kernan	HC 60 Box 228B New Martinsville, WV	Lewis Wetzel Personal Care Home	yes ~~NO~~
(14) Carman Stoneking	P.O. Box 323 Hundred WVa 26575	Lewis Wetzel Personal Care Home	yes ~~NO~~
(13) Wesley W. Harris	Box 428 New Martinsville, WV. 26155	Appalachian Community Services	yes
(15) George A. Polen	2301 Kennedy Ave Parkersburg WV 26104	Arlington Personal Care Home	Yes

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(3)

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
Mary Jane Dye	Rt 1 Box 464 Princeton, WV 24740	Glenwood Park Retirement Village	No
(16) Dottie Mulley-Edwards	609 N Tennessee Ave Martinsburg WV 25401	Golden Age Paradise Inc	Yes
Laura Rude	59 W. Va. Ave. Salem, WV 26426	Salem College Personal Care Ctr. Inc	No
Ezra L. Hall	2910 3rd Ave Hunt.	Halls Personal Care	No
Vicki Jackson	" " " "	" " "	No
(17) Debbie Murrayin	273 Long St - New Martinsville, WV	Lewis Wetzel P.C.H.	Yes
(18) Regina Shaw	187 N St. Rt 2 A102 New Martinsville WV.	Lewis Wetzel P.C.H.	Yes
Donald [illegible]	159 Edgington Lane Wheeling	[illegible]	Maybe?
(19) Mark A. Grove	#1 Robin Ln B'ville WV 25504	Chateau Grove PCH	Yes
Sandra J Lee	Rt 1 Box 57 Jane Lew W.Va 26378	Jane Lew Board & Care	No.

PUBLIC HEARING

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NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
(20) Sr Sheila Rooney	21 Washington Ave, Whg	Welty Home	Yes
(21) Cheryl K. Jones	1228 National Rd Whg.	Elmhurst	yes
Andrew Cross	1700 Warwood Avenue, Whg, WV	The Home for men	No.
(22) Gray Hampton	700 Madison Av, Huntg, WV	Foster Mem Home	Yes
Jo Ellen Rumpler	500 West Main, Clarksburg	Harrison County Senior Citizens	No
Geo Dakovic	1387 National Rd Wheeling, WV	Altaheim	
Jon B. Hunter	PO Box 1096, Fairmont, WV	Council of Home Health A.	No
Marilyn Eckert	WVU Gerontology Cntr	Morgantown, WV 26505	
(23) Phyllis Myers	405 Hillcrest Dr. Ravenswood, W.V		Yes
June Harless	820 Va St Ravenswood WV.		
John Hoover	5165 Elk River Rd N Elkview WV. 25071		