

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

Do Not Mark In this Box

FEB 1995

JAN 16 10 40 AM '95

OFFICE OF THE SECRETARY OF STATE
SECRETARIAT

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


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

16-46

[PROPOSED]
TITLE 64

WEST VIRGINIA ADMINISTRATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

PERSONAL CARE HOMES

Series 14

199_

Modified Rule Filed with the
Legislative Rule-Making Review Committee

64 CSR 14

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

TABLE OF CONTENTS

\$64-14-1.	General	1
1.1.	Scope	1
1.2.	Authority	1
1.3.	Filing Date	1
1.4.	Effective Date	1
1.5.	Repeal of Former Rule	1
\$64-14-2.	Application and Enforcement	1
2.1.	Application	1
2.2.	Enforcement	1
\$64-14-3.	Definitions	1
\$64-14-4.	State Administrative Procedures	8
4.1.	General Licensing Provisions	8
4.2.	Licensure Application Procedure	9
4.3.	Initial License	10
4.4.	Renewal License	11
4.5.	Provisional License	12
4.6.	Inspections	12
4.7.	Complaint Investigation	14
4.8.	Plans of Correction	15
4.9.	Reports and Records	16
4.10.	Waivers	17
4.11.	Classification of Standards	18
4.12.	Point System Scoring	19
4.13.	Rating	20
\$64-14-5.	Staffing and Personnel Requirements	21
5.1.	The Licensee	21
5.2.	The Administrator	21
5.3.	Personnel	23
5.4.	Staff Training and Orientation	23
5.5.	Resident Work	25
5.6.	Volunteers	26
5.7.	Personnel Records	26
5.8.	First Aid Qualifications and Supplies	27
5.9.	Minimum Standards for Staffing	27
5.10.	Communication Between Staff	28
\$64-14-6.	Admission and Discharge Policies	29
6.1.	Admission Policies and Procedures	29
6.2.	Admission Agreement	30

64 CSR 14

6.3.	Restricted Admissions to Personal Care Homes	31
6.4.	Retention of Residents Whose Condition and Functional Ability Declines after Admission	32
6.5.	Discharges and Transfers	34
6.6.	Other Uses of the Home	34
\$64-14-7.	Resident Care and Related Services	34
7.1.	Standard Personal Care Services	35
7.2.	Functional Assessment and Individualized Service Plans	35
7.3.	Resident Health	37
7.4.	Administration of Medications and Related Services	39
7.5.	Accidents, Illnesses and Major Incidents	43
7.6.	Resident Death	45
7.7.	Management and Control of Resident Funds	45
7.8.	Resident Activities	47
7.9.	Resident Records	48
\$64-14-8.	Resident Rights	50
8.1.	Posting of Information and General Rights	50
8.2.	Exercise of Rights	51
8.3.	Notice of Rights and Services	51
8.4.	Treatment	52
8.5.	Protection of Resident Funds	52
8.6.	Self Determination	53
8.7.	Privacy and Confidentiality	53
8.8.	Complaints	53
8.9.	Work	54
8.10.	Mail and Communication	54
8.11.	Access and Visitation Rights	54
8.12.	Personal Property	55
8.13.	Civil Rights	55
\$64-14-9.	Dietetic Services	56
9.1.	General	56
9.2.	Nutrition	56
9.3.	Food Service Sanitation	58
9.4.	Reports, Menus, and Diet Manual	59
\$64-14-10.	Fire Safety, Disaster and Emergency Preparedness and Training	60
10.1.	Fire Safety	60
10.2.	Disaster and Emergency Preparedness Plan	61
10.3.	Disaster Training and Rehearsal	62
\$64-14-11.	Physical Facilities Construction and Renovation	63
11.1.	Applicability	63
11.2.	Site Characteristics and Accessibility	65
11.3.	Physical Facilities and Equipment	65
11.4.	Sleeping Facilities	67
11.5.	Toilets, Hand Washing and Bathing Facilities	69
11.6.	Dining Area	70

64 CSR 14

\$64-14-12. Sanitation and Safety	71
12.1. Water Supply	71
12.2. Laundry and Linens	71
12.3. Food Service Facilities	72
12.4. Sewage	72
12.5. Solid Waste	73
12.6. Electrical Requirements	73
12.7. Lighting Requirements	74
12.8. Pets and Other Animals	75
\$64-14-13. Additional Requirements Related to the Provision of Limited and Intermittent Nursing.	75
13.1. General	75
13.2. Personnel and Staffing	78
13.3. Resident Care and Related Services	79
\$64-11-14. Penalties; Administrative Due Process	80
14.1. Secretary's Authority for Penalties and Disciplinary Actions	80
14.2. Administrative Due Process and Procedure for Penal- ties and Disciplinary Action	81
14.3. Hearings and Due Process	83
\$64-11-15. Severability	84

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, regulating, and investigating complaints concerning 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-2 and this rule. A facility which provides extensive or ongoing nursing care, other specialized therapeutic care, or behavioral health services to four (4) or more individuals concurrently is subject to other applicable licensure rules.

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, ani-

mal, 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 plan of correction process found at Section 4.8 of this rule.

3.18. **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.

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

3.20. **Legal Representative** -

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

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

3.20.3. An individual with a medical power of attorney pursu-

ant to the Medical Power of Attorney Act, W. Va. Code §16-30A-1 et seq., within the limits set by law and the appointment;

3.20.4. A surrogate decision-maker appointed pursuant to the West Virginia Health Care Surrogate Act, W. Va. Code §16-30B-1 et seq., within the limits set by the law;

3.20.5. An individual appointed as committee or guardian prior to June 9, 1994, within the limits set by the appointing order and W. Va. Code §44A-1-2(d);

3.20.6. An attorney in fact appointed with power of attorney under Common Law or pursuant to Uniform Durable Power of Attorney, W. Va. Code §39-4-1 et seq., within the limits set by the appointment;

3.20.7. An individual named as a representative payee under the U.S. Social Security Act; or

3.20.8. An individual lawfully appointed in a similar or like relationship of responsibility for a resident under the laws of this State, or another State or legal jurisdiction, within the limits of the applicable statute and appointing authority.

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 - Direct hands-on nursing care of individuals who need no more than two (2) hours of nursing care per day for a period of time no longer than ninety (90) consecutive days per episode.

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 (i.e. the individual independently ambulates or moves him or her self from place to place with or without a cane, walker or wheelchair);

3.25.2. Mobile with or without assistive device; requires assistance with transfer (i.e. the individual may be ambulatory, or independently use a cane, walker, or wheelchair, but requires assistance to move from a bed to a chair, a chair to a toilet, etc.);

3.25.3. Mobile with occasional personal assistance; walks with unsteady gait (i.e. the individual ambulates and transfers with or without the use of a cane or walker, but requires occasional hands-on assistance to move from place to place or to navigate over uneven or unfamiliar terrain);

3.25.4. Mobile with continuous personal assistance; (i.e. the individual ambulates and transfers without the use of an assistive device but requires continuous hands-on assistance); or

3.25.5. Mobile with a chair or device and personal assistance, including transfer (i.e. individual is dependent upon continuous hands-on assistance from others to move and transfer from place to place with a wheelchair, cane or walker).

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.

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 func-

tional assessment form to assess service needs approved by the secretary.

3.38. **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.

3.39. **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.

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

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 includ-

ing, 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 for residents who need limited or intermittent nursing services shall comply with all requirements of this rule.

4.1.3. Personal care homes which do not have residents who need limited and intermittent nursing care as permitted by this rule are not required to comply with Section 13 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

plete 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 post-marked 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 under the rating system found at Section 4.12 of this rule 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 under the rating system found at Section 4.12 of this rule 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 et 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 secre-

tary 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. An inspection may be limited to determination of compliance with Class I standards for a home which has had no substantiated allegations concerning lack of safety, quality of care or infractions of resident rights registered against it.

4.6.5.a. The inspection shall be conducted by one (1) 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.

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 within fifteen (15) days of the completion of the inspection 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. In addition, residents, their families or representatives, or ombudsman may also pursue independently in court remedies for violations of this rule.

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. 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 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, the personal care home shall submit a revised plan of correction within fifteen (15) working days.

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, from the time of receipt, 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 the personal

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 supplement-

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 list² of approved facilities and agencies to assist them in moving.

4.9.3. 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 two hundred ten (210) days of the completion of the inspection or investigation, the secretary shall report³ 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 list⁴ of approved facilities and agencies to assist them to move.

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. 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

tary 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.

³ See Footnote #1.

⁴ See Footnote #2.

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;

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.

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 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 is given a rating of "F" 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. On an annual basis participate in at least ten (10) hours of formal training related to the administration and operation of a personal care home. This training shall include all training offered by the secretary: Provided, That if the secretary offers more than ten (10) hours of training in the relevant time period, an individual may be requested to participate in more than ten (10) hours in any twelve-month period. Records of attendance shall be maintained on file at the personal care home;

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. As of the effective date of this rule, have an associates degree, or its equivalent in a related field: Provided, That individuals who are personal care home administrators or who have been personal care home administrators prior to the effective date of this rule shall not be required to have an associates degree, but shall have completed at least a high school education or shall have a general education development certificate (GED) or an equivalent approved by the State department of education: Provided further that an administrator who does not meet the requirement for a high school diploma or the equivalent on the effective date of this rule shall have two (2) years from said effective date to comply with said high school or equivalent educational requirement; and

5.2.1.f. 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 (if applicable), 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 within twenty-four (24) months of the effective date of this rule.

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 known to him or her as indicated by reference checks and a criminal investigative background check as an individual who has abused or neglected individuals for whom he or she has provided care or treatment;

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 employees with resident care responsibilities 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), as applicable, and first aid;

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

5.4.2.d. The rights and responsibilities of residents;

5.4.2.e. Confidential treatment of personal information;

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

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

5.4.2.h. Documentation requirements;

5.4.2.i. Communication skills and procedures;

5.4.2.j. Transportation procedures;

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 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 (CPR, as applicable, and first aid);

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.

5.4.8. Residential support staff shall be trained in accordance with this rule except for those requirements that are specific to hands-on personal assistance of residents. Residential support staff shall also be trained to provide the service for which they have been employed. The training shall be documented in their personnel file.

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 de-

sire 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 the criminal investigative background check required by Section 5.3.1.g. of this rule;

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

5.9. Minimum Standards for Staffing (Class I)

5.9.1. The personal care home shall rate each resident to determine his or her personal assistance needs utilizing the resident assessment instrument provided by the secretary. The home shall compute an average case mix weight by totaling the ratings of all residents and dividing this total by the number of residents.

5.9.2. Table 64-14.2 found at the end of this rule shows the daily minimum number of residential care staff hours according to the average case mix weight, not including staffing requirements for licensed nurses or additional staff required to meet the needs of residents who require limited and intermittent nursing services. The personal care home shall provide staff in adequate numbers to provide the daily minimum number of care hours shown in Table 64-14.2 and additional staff to meet the remainder of the requirements set forth in this Section.

5.9.3. Each personal care home shall maintain a minimum of one (1) residential care staff twenty-four (24) hours per day.

5.9.4. Awake staff shall be present in the personal care home during normal resident sleeping hours in accordance with the minimum hours of staffing for the home established by §5.9.2 of this rule when residents require supervision during sleeping hours or are in need of limited and intermittent nursing services. Awake staff are optional in homes licensed for ten (10) beds or less if all residents are certified by a licensed health care professional as not being in need of sleep time supervision and they are not in need of limited and intermittent nursing services.

5.9.5. A multi-story personal care home shall maintain at least one (1) awake staff per story while residents are sleeping, except that the secretary shall permit one (1) awake staff in a multi-story home if:

5.9.5.a. The residents of the home are certified by a licensed health care professional as not being in need of supervision during sleeping hours;

5.9.5.b. The home has no residents who need limited and intermittent nursing services; and

5.9.5.c. The home has an immediate emergency call system from the residents to the awake staff person.

5.9.6. An administrator or supervisor-in-charge shall be on duty at all times. A resident care staff person may be designated as the supervisor-in-charge. Residents shall not be designated as supervisors. When regular staff and supervisory staff are absent due to illness and vacations, there shall be coverage by substitute personnel with comparable qualifications.

5.9.7. The home shall have a sufficient number of resident care employees who are responsible for providing personal assistance services and who work according to a specific established schedule in addition to the minimum established in Table 64-14.2 of this rule if needed to provide all services identified in the residents' individualized service plans.

5.9.8. The personal care home shall have residential support staff needed to meet the laundry, food service, housekeeping, and maintenance requirements of this rule.

5.9.9. 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.

5.10. 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 signifi-

cant 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, and the resident except as specified in Section 6.3.3 of this rule.

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; 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 which contains a detailed explanation of all costs, annual contract price, and refunds, how personal finances will be managed, how health care will be provided or arranged for, the process of lodging complaints, the agreement to provide a copy of all reports of inspections in response to complaints, and the details of all access to activities which contains written assurance that the personal care home offers the services necessary to meet the identified care needs.

6.2.2. The following shall be provided separately at the time of the agreement:

6.2.2.a. An explanation of how to access all policies of the home;

6.2.2.b. House rules governing resident behavior and responsibilities including the home's policies on smoking, alcohol consumption, visitation, recreational activities (including television), personal laundry, and the 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 and incorporated by reference in the agreement but not made a part thereof;

6.2.2.c. A resident's bill of rights which shall be consistent with the provisions set forth in Section 8 of this rule and attached and incorporated by reference;

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

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

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

6.2.2.g. 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.h. 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.i. How the home will arrange access for transportation to and from services;

6.2.2.j. 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.k. 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.

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 except as specified in Section 6.3.3 or 6.4.6 of this rule;

6.3.2.b. The resident requires a level of service for which the home is not licensed or does not provide, however this provision does not permit the home to refuse to provide services required by this rule; 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 for more than four (4) weeks unless the personal care home can provide evidence of continued professional follow-up to address the individual's 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. (See also Section 6.4.6 of this rule.)

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

6.4.1. Section 6.4.2 of this rule applies if the secretary determines by observation, interview and record review that:

6.4.1.a. A resident has not been afforded the opportunity to refuse services and care as specified in Section 7.1.8 of this rule or to participate in the planning of his or her care and supervision as specified in Section 7.2.7 of this rule; or

6.4.1.b. A resident is not receiving services and care which are needed or necessary and informed consent from the resident permitting the withholding of the treatment is absent; or

6.4.1.c. A resident is being administered services and care which he or she does not want to receive.

6.4.2. If the secretary makes a determination under Section 6.4.1 of this rule, the home shall bear the cost of a reassessment of the resident's functional needs which reassessment shall be completed and submitted to the secretary within thirty (30) days of a notice of the determination.

6.4.3. The secretary shall approve or disapprove of the continued stay in the home of a resident for whom a determination is made under the provisions of Section 6.4.1 of this rule if:

6.4.3.a. The home in compliance with its policies and procedures;

6.4.3.b. The resident has provided written informed consent

for the administration or withholding of the treatment or care, as applicable; and

6.4.3.c. A licensed health care professional has provided a written order based on medical criteria for the provision or withholding of the treatment.

6.4.4. 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 or financial means 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.

6.4.5. 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.

6.4.6. 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 of behavioral health service options within the community. The resident shall have thirty (30) days to obtain necessary services. If the resident fails to meet the his or her needs in this area in a timely manner then the personal care home shall refer the individual to a licensed behavioral health agency: Provided, however, That the home shall seek immediate treatment or refuse to admit the individual if the home has reason to believe that the individual may suffer serious harm or is likely to cause serious harm to himself or herself or to others if appropriate interventions are not provided in a timely manner.

6.4.7. Homes with individuals in residence who need more than limited and intermittent nursing care shall inform the resident of the need to move the resident to a health care facility with the capability of providing the needed level of nursing care, except that residents receiving services from a licensed hospice program may remain in the home.

6.4.7.a. The home shall assist the resident to attempt on a

monthly basis to secure an alternative care facility.

6.4.7.b. The home shall thoroughly document in the resident's record efforts made by the home and the resident to obtain placement in an alternative care facility and refusals from the facilities in the event that the resident is unable to secure alternative placement and remains in the home.

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, 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 purpose 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 I)

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, in accordance with its admission policy, provide personal supervision and assistance needed by the resident in performing activities of daily living or instrumental activities of daily living as agreed upon in the written admission agreement.

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 permit 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 II)

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 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 updated annually 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 written nursing assessment, if nursing services are identified as a need on the resident's individualized functional needs assessment, which shall be reviewed at least once annually, or in accordance with the requirements established in Section 13 of this rule. The nursing assessment 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. If upon completion of the review, a determination has been made that changes in the resident's needs or condition are evident, full reassessment and a new individualized service plan shall be completed.

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.

7.2.8. The home may use the resident assessment instrument as part of the functional needs assessment used to develop individualized service plans, but shall supplement the resident assessment instrument as needed to accurately identify the resident's service needs.

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 assure that each resident has 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 or the appropriate licensed health care provider unless there is a medical condition requiring a more frequent review as determined 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 annual-

ly thereafter.

7.3.7. The personal care home shall weigh and record each resident's weight in his or her record upon admission, 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 body weight of five percent (5%) or more to the resident's physician within seventy-two (72) hours of the identification of the weight change.

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 in need of nursing services as specified in this rule. Those personal care homes that provide limited and intermittent nursing care shall comply with the requirements established in Section 13 this rule. Arrangements for nursing services may be made by contract with an individual, or a nursing service with a management entity, or the personal care home may employ a registered nurse, or the administrator of the personal care home may act in this capacity, if licensed as a professional registered nurse. The frequency with which a registered professional nurse shall provide services to the personal care home not providing limited and intermittent nursing services shall be based upon the needs of the residents.

7.3.10. Arrangements with a home care agency providing only individualized direct care does not satisfy requirements for nursing management oversight of all residents as specified in this rule.

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. 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.d. 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.e. Supervision of supervised or assisted self-administration of medication procedures;

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

7.3.15.g. Admission and discharge planning as it relates to the medical component of resident care.

7.3.16. The home shall provide adequate nursing support staff to ensure appropriate nursing care outcomes. Nursing support staff shall be under the supervision of the registered professional nurse who has assumed the overall responsibility for the oversight and care provided to the residents.

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 receiving limited or intermittent nursing services, except that the reviews shall be conducted quarterly if any resident of the home is receiving multiple medications or combinations of medications which include one or more of the following classes of drugs: psychoactive, cardiogenic, steroidal, anticonvulsive, or scheduled according to the State Uniform Controlled Substances Act, Chapter 60A, W. Va. Code.

7.4.3. The licensee or administrator is responsible for ob-

taining a drug regimen review for unnecessary drugs of all prescribed medication of each resident.

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. Prescription drugs 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. The home shall ensure notification of the licensed health care professional managing the resident's health care regarding the resident's use of over-the-counter medications and the home shall determine whether or not the resident can self-administer such medications in a safe manner.

7.4.6. The inability 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 licensed 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 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 and that documentation of such training is maintained on file in the home.

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 disposed of in accordance with state and federally approved practices.

7.4.26. Unit dose medication and 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 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 or the home shall release the medication to the resident's legal representative and maintain a signed receipt in the home as documentation of the release of the medication.

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 Major Incidents (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, his or her family, 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. 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 emer-

gency, 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 trusts.

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 dollars (\$200,000) 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 such bond is impaired, the licensee shall file an additional bond in an amount necessary to adequately protect the money of the residents 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 a resident shall provide a list showing a description and price of items purchased, if the purchase exceeds one dollar (\$1) along with payment of receipts for these items.

7.7.4.c. The home shall render a true and complete accounting of the management and disposition of resident funds upon request to the depositor and the secretary and at least quarterly to the resident and his or her legal representative, if any. Information shall be given to the resident upon request.

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.

7.7.4.e. A resident's personal funds exceeding two-hundred dollars (\$200) shall be deposited in an interest bearing account at a local bank.

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 secretary.

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 materi-

als.

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, if any.

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 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 release may be revoked at any time. Releases and revocations of releases shall be signed by the resident and shall be documented in the resident's record.

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 the following in an accessible place:

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 authority. If a legal representative so appointed or designated exercises this authority he or she shall exercise his or her authority in a manner consistent with all applicable State and federal laws 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 any interested family member no less than seventy-two (72) hours prior to the change unless agreed to in writing 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 of any complaint investigation within the preceding twelve (12) months and the personal care home's plan of correction shall be posted in a place accessible to residents.

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 research. A resident shall participate in 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: Provided, That an ambulance shall be used only in emergencies.

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

dents, it shall be by written request, in the manner directed by the depositor 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 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 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. The use of "collect only" telephones as the primary telephones for resident use is prohibited. 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 four hundred (1,400) 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: three (3) 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 six (6) 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, however, this provision does not supersede the requirements established in the West Virginia Food Service Sanitation Regulation.

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. Removing all occupants directly involved with the fire;

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

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

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

10.1.5.e. Using alarms;

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

10.1.5.g. Responding to alarms;

10.1.5.h. Isolating and containing the fire;

10.1.5.i. Evacuating the area; and

10.1.5.j. Preparing the building for evacuation.

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

extinguishers shall be inspected monthly by in-house staff and annually 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;
- 10.2.2.f. Utility failure; and
- 10.2.2.g. Severe winter weather.

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

- 10.2.3.a. An emergency water agreement;
- 10.2.3.b. An alternate shelter agreement;
- 10.2.3.c. An emergency transportation policy; and
- 10.2.3.d. An emergency menu.

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

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

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

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

10.2.8. The disaster and emergency preparedness plan shall be reviewed and updated by the administrator or his or her designee 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 Section 11 shall apply to physical facilities, operations, maintenance and equipment for all personal care homes or additions. Requirements that require extensive renovation shall be in place by January 1, 1997.

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. The following documents are adopted as standards for on-site inspections:

11.1.6.a. The Americans with Disabilities 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 4⁵.

11.1.6.c. Where local codes or regulations require standards higher 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, building and zoning officials shall be available on site for review.

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.

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. Homes shall be located in a residential setting as convenient as possible for necessary services and access, if local zoning laws allow.

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

11.2.7. 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. There shall be parking spaces for all staff on duty, and a minimum of one (1) parking space for each five (5) beds. a minimum of (2) two handicapped parking spaces shall be located at the main entrance. All parking areas shall be free of broken, gaped or uneven paving.

11.2.8. Hard surface concrete walks, a minimum of 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 personal care homes shall provide for accessibility in their entirety to individuals with a physical disability. The Americans with Disabilities 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. Ramps shall not be less than forty-eight inches (48") wide nor steeper than one foot (1') of rise in twelve feet (12') of run, and shall be finished with a non-slip surface.

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 and bathroom space. All multiple occupancy bedrooms shall have at least eighty (80) square feet of space per occupant exclusive of closet and bathroom 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 of the effective date 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 bed-

room.

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. Bar soap is acceptable only in private baths. 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.

64 CSR 14

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.⁶

13.1. General (Class I)

13.1.1. A personal care home which provides limited and intermittent nursing care shall:

13.1.1.a. Arrange for a registered professional nurse who has agreed, in a written agreement which specifies all services to be provided by the nurse, in accordance with this rule to assume responsibility for the oversight of care and services required by this rule for all residents of the personal care home;

13.1.1.b. Implement, within reasonable expectation, the rec-

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.

ommendations of the registered nurse regarding care, services and staff training intended to protect the residents; and

13.1.1.c. Provide written notice to each resident regarding the availability of nursing services at the time of admission, or, for current residents, within thirty (30) days of the effective date of this rule.

13.1.2. The registered professional nurse shall:

13.1.2.a. Provide oversight of the care and services through daily contact with the home and visits to the residents at least eight (8) hours a week. Visits shall be of sufficient duration to perform all required duties;

13.1.2.b. 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;

13.1.2.c. Complete a written nursing assessment for each resident with limited and intermittent nursing needs within twenty-four (24) hours following admission, which shall be rewritten annually thereafter, or at the time of any significant temporary or permanent change in the resident's condition. In the absence of a significant temporary or permanent change in condition, the assessment shall be reviewed every six (6) months.

13.1.2.d. Coordinate the development of a component of the individualized service plan to meet any identified nursing/medical needs of the resident 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 component 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.e. Assure that the service plan is implemented and that the resident's physical, mental and social well-being are not compromised;

13.1.2.f. 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.g. Assure that all verbal orders are recorded in the resident's care record, signed by the registered nurse, and coun-

tersigned by the physician or other licensed health care provider who issued the order within ten (10) working days from the original order date;

13.1.2.h. Assure that all physician's orders specify the type, frequency, duration, and dosage for each medication, treatment or special feeding;

13.1.2.i. Assure that treatment measures are performed only by qualified staff;

13.1.2.j. Assure that sterile procedures and treatments are performed only by a licensed registered or practical nurse;

13.1.2.k. 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.l. Maintain records of each visit;

13.1.2.m. Evaluate each resident's functional capabilities to assure that each joint is maintained with an optimal range of motion;

13.1.2.n. 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.o. Review training needs of personal care home staff members;

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

13.1.2.q. 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; and

13.1.2.r. Recommend, in writing, the addition of care givers necessary to meet the needs of residents.

13.1.3. The registered nurse shall keep a general record with a complete signature for each entry which shall include at least:

13.1.3.a. The date, time in and time out for each visit (un-

less 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; and

13.1.3.c. A brief statement regarding identified concerns and recommended actions taken to resolve them.

13.1.4. A licensed nurse shall document the following in each resident's individual case record using a complete signature or initials accompanied by a complete signature on each page of the resident's record:

13.1.4.a. A monthly evaluation of each resident for any signs of alteration in skin integrity;

13.1.4.b. Any significant temporary or permanent changes in condition including changes resulting from incidents or accidents; and

13.1.4.c. Any verbal or written orders received from a licensed health care professional.

13.2. Personnel and Staffing (Class III)

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 shall demonstrate knowledge, skills and abilities in the administration and management of a personal care home including:

13.2.3.a. Knowledge and understanding of mentally impaired or physically impaired individuals; and

13.2.3.b. The ability to plan and implement the overall services needed by residents.

13.2.4. The administrator and assistant administrator shall annually attend at least ten (10) 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: medications and side effects; signs and symptoms of substance abuse; mental illness and developmental disability; crisis intervention; aging processes; behavior management; resident care techniques; interpersonal skills; promoting socialization and independence; death and dying; nutrition and therapeutic diets; restorative care; habilitation or rehabilitation; use of assistive or prosthetic devices; range of motion, transfer and positioning; and emergency interventions when the residents are out of the personal care home.

13.3. Resident Care and Related Services (Class III)

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 sixty (60) days 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;

14.1.3.g. Violation of the prohibitions of this rule against discharge of residents or employees for reason of complaints regarding the home;

14.1.3.h. The use of subterfuge or other dishonest action in applying for an original or renewal license; or

14.1.3.i. Abuse of residents.

14.2. Administrative Due Process and Procedure for Penalties and Disciplinary Action

14.2.1. Upon completion of a report of inspection, the secretary shall determine what, if any civil penalties are to be imposed pursuant to the West Virginia Code and this rule, and issue citations. Supplemental penalties shall be assessed for a personal care home's failure to correct continuing violations, Provided: That where supplemental penalties have been assessed for continued failure to correct a deficiency of a non-life threatening nature, the secretary shall, prior to issuing a written citation, notify the licensee or non-licensed operator by registered or certified mail, return receipt requested, that civil penalties will be imposed on a date to be specified by the secretary unless the corrective actions specified by the secretary are implemented in an acceptable manner.

14.2.2. All citations shall be in writing and shall include at least the following:

14.2.2.a. The penalty;

14.2.2.b. A description of the nature of the violation fully stating the manner in which the licensee or non-licensed operator violated a specific statutory provision or provision of the rule; and

14.2.2.c. The basis upon which the secretary assessed the penalty and selected the amount of civil penalty.

14.2.3. The name of any resident jeopardized by the violation shall not be specified in the citation.

14.2.4. For each violation of a Class I standard, a civil penalty of not less than one hundred (\$100) dollars or more than ten thousand (\$10,000) dollars shall be imposed. For each violation of a Class II standard, a civil penalty of not less than fifty (\$50) dollars and not more than one thousand (\$1000) dollars shall be imposed. For each violation of a Class III stan-

dard, a civil penalty of not less than twenty-five (\$25) dollars and not more than two hundred fifty (\$250) dollars shall be imposed.

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 such plan was due, shall constitute a separate violation.

14.2.6. In both determining to assess a civil penalty and in fixing the amount of the civil penalty to be imposed for violations, the secretary shall consider the gravity of the violation, which shall include:

14.2.6.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.b. The severity of serious physical harm most likely to result, and if applicable, that did result from the violation; and

14.2.6.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 ten (10) 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-10 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 interest 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 residents 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 §29A-5-1 et seq. and §29A-4-1 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:

64 CSR 14

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-1 et seq. 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.

64 CSR 14

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				≤54	55-63	64-76	77-88
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				≤38	39-46	47-55	56-64
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 _____

⁷ Rating score values are:

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

⁸ ≤ = Less than or equal to

64 CSR 14

Table 64-14.2. Minimum Staffing Levels⁹

AVERAGE CASE MIX WEIGHT	MINIMUM 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

⁹ See Subsection 5.9 of this rule.

64 CSR 14

Table 64.14.3. Surety Bond Schedule.

SURETY BOND RATE SCHEDULE			
AVERAGE MONTHLY BALANCE OF RESIDENT FUNDS			AMOUNT REQUIRED FOR SURETY BOND
\$25.00	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
\$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
\$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

64 CSR 14

SURETY BOND RATE SCHEDULE			
AVERAGE MONTHLY BALANCE OF RESIDENT FUNDS			AMOUNT REQUIRED FOR SURETY BOND
\$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
\$10,001.00	or	More	Calculate Amount At 1.25 Times the Pri- or Year's Average Monthly Balance of Client's Funds



FILED

JAN 11 12 47 PM '95

West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286
January 9, 1995

Senator Joe Manchin, III, Co-Chair
Delegate Brian A. Gallagher, Co-Chair

Debra A. Graham, Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Gretchen O. Lewis, Secretary
Dept. Health & Human Resources
State Capitol
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Personal Care Home Licensure

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Kay Howard
Regulatory Development Section
William T. Wallace, Jr., M.D., Commr.
Bureau of Public Health

Bill-Health, Personal

7218

64-14

H. B. 2172

(By Delegates Gallagher, Douglas, Compton,
Linch, Faircloth and Riggs)

(Introduced January 23, 1995 ; referred to the
Committee on Health and Human Resources then the
Judiciary)

A BILL to amend and reenact section one, article five, chapter
sixty-four of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to authorizing the
department of health and human resources to promulgate
legislative rules relating to personal care home licensure.

Be it enacted by the Legislature of West Virginia:

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

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

§64-5-1. Department of health and human resources.

(a) The legislative rules filed in the state register on the
twenty-second day of January, one thousand nine hundred ninety,
modified by the secretary of the department of health and human

1 resources to meet the objections of the legislative rule-making
2 review committee and refiled in the state register on the twenty-
3 fifth day of January, one thousand nine hundred ninety, relating to
4 the secretary of the department of health and human resources
5 (implementation of omnibus health care act), are authorized.

6 (b) The legislative rules filed in the state register on the
7 twenty-second day of January, one thousand nine hundred ninety,
8 modified by the secretary of the department of health and human
9 resources to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the twenty-
11 fifth day of January, one thousand nine hundred ninety, relating to
12 the secretary of the department of health and human resources
13 (implementation of omnibus health care act payment provisions), are
14 authorized.

15 (c) The legislative rules filed in the state register on the
16 twentieth day of March, one thousand nine hundred ninety-two,
17 modified by the department of health and human resources to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the seventeenth day of November, one
20 thousand nine hundred ninety-two, relating to the department of
21 health and human resources (infectious medical waste), are authorized
22 with the amendments set forth below:

23 "On page seventeen, subsection 8.2, after the words '(45) days.'
24 by inserting the following language: 'Facilities that treat
25 infectious medical waste on-site shall not store the infectious

1 medical waste more than thirty (30) days.';

2 On page twenty-one, subdivision 10.1.2., after the words
3 'disposed of' striking out the words 'as solid waste' and inserting
4 in lieu thereof the words 'in the same manner as ash from solid waste
5 incineration and as provided in subdivision 10.2.5. of this rule.';

6 On page twenty-six, subsection 11.7., after the words 'permit
7 to' inserting the words 'own, operate and';

8 On page twenty-six, subsection 11.7., by striking out the word
9 'publish' and inserting in lieu thereof the words 'announce the
10 public hearing required by subsection 11.9. of this rule by
11 publishing';

12 On page twenty-six, by further amending subsection 11.7. by
13 adding thereto a new subdivision, designated subdivision 11.7.1.4. to
14 read as follows: 'The announcement of the date, time and place where
15 the hearing is to be conducted, shall be made at least fourteen (14)
16 but not more than forty-five (45) days prior to the hearing';

17 And,

18 On page twenty-six, subsection 11.9, by after the words
19 'proposing to' inserting the words 'own, construct and'."

20 (d) The legislative rules filed in the state register on the
21 third day of September, one thousand nine hundred ninety-two,
22 modified by the department of health and human resources to meet the
23 objections of the legislative rule-making review committee and
24 refiled in the state register on the twenty-seventh day of January,
25 one thousand nine hundred ninety-three, relating to the department of

1 health and human resources (residential board and care homes), are
2 authorized.

3 (e) The legislative rules filed in the state register on the
4 third day of May, one thousand nine hundred ninety-three, modified by
5 the department of health and human resources to meet the objections
6 of the legislative rule-making review committee and refiled in the
7 state register on the eighth day of July, one thousand nine hundred
8 ninety-three, relating to the department of health and human
9 resources (public water systems), are authorized.

10 (f) The legislative rules filed in the state register on the
11 ninth day of September, one thousand nine hundred ninety-three,
12 modified by the department of health and human resources to meet the
13 objections of the legislative rule-making review committee and
14 refiled in the state register on the twenty-fourth day of January,
15 one thousand nine hundred ninety-four, relating to the department of
16 health and human resources (distribution of state aid funds to local
17 boards of health), are authorized.

18 (g) The legislative rules filed in the state register on the
19 seventh day of January, one thousand nine hundred ninety-four,
20 modified by the department of health and human resources to meet the
21 objections of the legislative rule-making review committee and
22 refiled in the state register on the twenty-fourth day of January,
23 one thousand nine hundred ninety-four, relating to the department of
24 health and human resources (hospital licensure), are authorized with
25 the amendments set forth below:

1 "On page 4, section 3.20, by striking out all of section 3.20
2 and inserting in lieu thereof the following: "Section 6a Hospital --
3 A nonprofit hospital, as identified in W. Va. Code §16-5-B-6a,
4 whether governed by an in-state or out-of-state board of directors,
5 or a hospital owned by a county, city or other political subdivision
6 of the State of West Virginia, except for existing nonprofit
7 hospitals which are owned or operated by a corporation which was
8 incorporated in another state prior to March 9, 1983: **Provided,**
9 **however,** this definition does not include the corporation defined in
10 W. Va. Code §18-11C-1(d) and";

11 On page 16, section 8.3.2. by striking the comma after the word
12 "safety" and inserting in lieu thereof the word "or";

13 On page 16, section 8.3.2. after the word "et seq.," by striking
14 out the words "or involves a cost in excess of two hundred thousand
15 dollars (\$200,000)";

16 On page 17, section 8.4.2. by striking the comma after the word
17 "safety" and inserting in lieu thereof the word "or";

18 On page 17, section 8.4.2. after the word "et seq.," by striking
19 out the words "or involves a cost in excess of two hundred thousand
20 dollars (\$200,000)"; and

21 On page 45, section 12, by striking all of subdivision 12.2.1
22 and inserting in lieu thereof a new subdivision 12.2.1 to read as
23 follows:

24 12.2.1. All general acute care hospitals shall provide
25 emergency services: **Provided,** That the Director may grant exceptions

1 to this requirement based upon (a) the need to avoid an unnecessary
2 duplication of services, (b) a recognition of practical economies of
3 scale within the community, or (c) other such appropriate factors
4 relating to the optimum delivery of emergency services within
5 available resources and deemed by the director to be substantial.
6 The requirement of this subdivision for the provision of emergency
7 services shall be waived by the director in the case of a rural
8 primary care hospital if such hospital has entered into an
9 appropriate patient transfer agreement with another referral hospital
10 to provide for emergency services. If the hospital provides
11 emergency services, it shall have an emergency room which is located
12 so as to permit easy access from automobiles and ambulances. The
13 emergency service shall be of a size comparable to the need imposed
14 upon it and shall be adequately equipped to provide whatever
15 life-saving measures may be needed for patients admitted to this
16 service."

17 (h) The legislative rules filed in the state register on the
18 fifteenth day of August, one thousand nine hundred ninety-four,
19 modified by the department of health and human resources to meet the
20 objections of the legislative rule-making review committee and
21 refiled in the state register on the sixteenth day of January, one
22 thousand nine hundred ninety-five, relating to the department of
23 health and human resources (personal care home licensure), are
24 authorized.

25

1
2
3
4
5
6
7
8

NOTE: The purpose of this bill is to authorize the Department of Health and Human Resources to promulgate legislative rules relating to personal care home licensure.

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

SENATE BILL NO. _____ 74

(By Senators Anderson, Boley, Grubb and Macnaughtan)

1 [INTroduced January 20, 1995; referred to the
2 Committee on Health and Human Resources; then
3 to the Committee on Finance and then to the
4 Committee on the Judiciary]

64-14

5
6
7
8
9
10 A BILL to amend and reenact section one, article five, chapter
11 sixty-four of the code of West Virginia, one thousand nine
12 hundred thirty-one, as amended, relating to authorizing the
13 department of health and human resources to promulgate
14 legislative rules relating to personal care home licensure.

15 Be it enacted by the Legislature of West Virginia:

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

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

21 **§64-5-1. Department of health and human resources.**

22 (a) The legislative rules filed in the state register on the
23 twenty-second day of January, one thousand nine hundred ninety,
24 modified by the secretary of the department of health and human

1 resources to meet the objections of the legislative rule-making
2 review committee and refiled in the state register on the twenty-
3 fifth day of January, one thousand nine hundred ninety, relating to
4 the secretary of the department of health and human resources
5 (implementation of omnibus health care act), are authorized.

6 (b) The legislative rules filed in the state register on the
7 twenty-second day of January, one thousand nine hundred ninety,
8 modified by the secretary of the department of health and human
9 resources to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the twenty-
11 fifth day of January, one thousand nine hundred ninety, relating to
12 the secretary of the department of health and human resources
13 (implementation of omnibus health care act payment provisions), are
14 authorized.

15 (c) The legislative rules filed in the state register on the
16 twentieth day of March, one thousand nine hundred ninety-two,
17 modified by the department of health and human resources to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the seventeenth day of November, one
20 thousand nine hundred ninety-two, relating to the department of
21 health and human resources (infectious medical waste), are authorized
22 with the amendments set forth below:

23 "On page seventeen, subsection 8.2, after the words '(45) days.'
24 by inserting the following language: 'Facilities that treat
25 infectious medical waste on-site shall not store the infectious

1 medical waste more than thirty (30) days.';

2 On page twenty-one, subdivision 10.1.2., after the words
3 'disposed of' striking out the words 'as solid waste' and inserting
4 in lieu thereof the words 'in the same manner as ash from solid waste
5 incineration and as provided in subdivision 10.2.5. of this rule.';

6 On page twenty-six, subsection 11.7., after the words 'permit
7 to' inserting the words 'own, operate and';

8 On page twenty-six, subsection 11.7., by striking out the word
9 'publish' and inserting in lieu thereof the words 'announce the
10 public hearing required by subsection 11.9. of this rule by
11 publishing';

12 On page twenty-six, by further amending subsection 11.7. by
13 adding thereto a new subdivision, designated subdivision 11.7.1.4. to
14 read as follows: 'The announcement of the date, time and place where
15 the hearing is to be conducted, shall be made at least fourteen (14)
16 but not more than forty-five (45) days prior to the hearing';

17 And,

18 On page twenty-six, subsection 11.9, by after the words
19 'proposing to' inserting the words 'own, construct and'."

20 (d) The legislative rules filed in the state register on the
21 third day of September, one thousand nine hundred ninety-two,
22 modified by the department of health and human resources to meet the
23 objections of the legislative rule-making review committee and
24 refiled in the state register on the twenty-seventh day of January,
25 one thousand nine hundred ninety-three, relating to the department of

1 health and human resources (residential board and care homes), are
2 authorized.

3 (e) The legislative rules filed in the state register on the
4 third day of May, one thousand nine hundred ninety-three, modified by
5 the department of health and human resources to meet the objections
6 of the legislative rule-making review committee and refiled in the
7 state register on the eighth day of July, one thousand nine hundred
8 ninety-three, relating to the department of health and human
9 resources (public water systems), are authorized.

10 (f) The legislative rules filed in the state register on the
11 ninth day of September, one thousand nine hundred ninety-three,
12 modified by the department of health and human resources to meet the
13 objections of the legislative rule-making review committee and
14 refiled in the state register on the twenty-fourth day of January,
15 one thousand nine hundred ninety-four, relating to the department of
16 health and human resources (distribution of state aid funds to local
17 boards of health), are authorized.

18 (g) The legislative rules filed in the state register on the
19 seventh day of January, one thousand nine hundred ninety-four,
20 modified by the department of health and human resources to meet the
21 objections of the legislative rule-making review committee and
22 refiled in the state register on the twenty-fourth day of January,
23 one thousand nine hundred ninety-four, relating to the department of
24 health and human resources (hospital licensure), are authorized with
25 the amendments set forth below:

1 "On page 4, section 3.20, by striking out all of section 3.20
2 and inserting in lieu thereof the following: "Section 6a Hospital --
3 A nonprofit hospital, as identified in W. Va. Code §16-5-B-6a,
4 whether governed by an in-state or out-of-state board of directors,
5 or a hospital owned by a county, city or other political subdivision
6 of the State of West Virginia, except for existing nonprofit
7 hospitals which are owned or operated by a corporation which was
8 incorporated in another state prior to March 9, 1983: **Provided,**
9 **however,** this definition does not include the corporation defined in
10 W. Va. Code §18-11C-1(d) and";

11 On page 16, section 8.3.2. by striking the comma after the word
12 "safety" and inserting in lieu thereof the word "or";

13 On page 16, section 8.3.2. after the word "et seq.," by striking
14 out the words "or involves a cost in excess of two hundred thousand
15 dollars (\$200,000)";

16 On page 17, section 8.4.2. by striking the comma after the word
17 "safety" and inserting in lieu thereof the word "or";

18 On page 17, section 8.4.2. after the word "et seq.," by striking
19 out the words "or involves a cost in excess of two hundred thousand
20 dollars (\$200,000)"; and

21 On page 45, section 12, by striking all of subdivision 12.2.1
22 and inserting in lieu thereof a new subdivision 12.2.1 to read as
23 follows:

24 12.2.1. All general acute care hospitals shall provide
25 emergency services: **Provided,** That the Director may grant exceptions

1 to this requirement based upon (a) the need to avoid an unnecessary
2 duplication of services, (b) a recognition of practical economies of
3 scale within the community, or (c) other such appropriate factors
4 relating to the optimum delivery of emergency services within
5 available resources and deemed by the director to be substantial.
6 The requirement of this subdivision for the provision of emergency
7 services shall be waived by the director in the case of a rural
8 primary care hospital if such hospital has entered into an
9 appropriate patient transfer agreement with another referral hospital
10 to provide for emergency services. If the hospital provides
11 emergency services, it shall have an emergency room which is located
12 so as to permit easy access from automobiles and ambulances. The
13 emergency service shall be of a size comparable to the need imposed
14 upon it and shall be adequately equipped to provide whatever
15 life-saving measures may be needed for patients admitted to this
16 service."

17 (h) The legislative rules filed in the state register on the
18 fifteenth day of August, one thousand nine hundred ninety-four,
19 modified by the department of health and human resources to meet the
20 objections of the legislative rule-making review committee and
21 refiled in the state register on the sixteenth day of January, one
22 thousand nine hundred ninety-five, relating to the department of
23 health and human resources (personal care home licensure), are
24 authorized.

25

1 NOTE: The purpose of this bill is to authorize the Department
2 of Health and Human Resources to promulgate legislative rules
3 relating to personal care home licensure.
4

5 Strike-throughs indicate language that would be stricken from
6 the present law, and underscoring indicates new language that would
7 be added.
8