



**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #7

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DEC 15 2 17 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY: W. Va. Code §16-5C-5

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 14

TITLE OF RULE BEING AMENDED: Personal Care Home Licensure

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____


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

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See attached.

Kenneth Hechler

Signature

DATE: December 15, 1995
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: Kay Howard 
Director, Regulatory Development
Department of Health and Human Resources

EMERGENCY RULE TITLE: **Personal Care Home Licensure Rule, 64 CSR 14**

1. Date of filing: December 15, 1995
2. Statutory authority for promulgating the emergency rule: W. Va. Code § 16-5C-5

-
3. Date of filing of proposed legislative rule: November 22, 1995
 4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

Amends and repeals a current rule (Complete rewrite)

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

No.

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

Not Applicable

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

Not Applicable

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

See Emergency Filing Notice

**Statement of Facts and Circumstances Relating to the Emergency Filing
of Amendments to Personal Care Home Licensure Rule, 64 CSR 14
December 15, 1995**

The Division of Health of the Department of Health and Human Resources hereby submits the amended **Personal Care Home Licensure Rule, 64 CSR 14**, for emergency filing as authorized under W. Va. Code § 29A-3-15a(f)(3). The present proposed amended rule has been filed for a public comment period ending December 22, 1995. The Division plans to file the rule with the Legislative Rule-Making Review Committee by the end of December, 1995.

An earlier version of this rule was submitted by the Legislative Rule-Making Review Committee for review by the 1995 Legislature. The 1995 Legislature did not approve the rule, and the lack of Legislative action was the subject of litigation. The West Virginia State Supreme Court, in Meadows and Martin v. Hechler, No. 22875, (July 19, 1995), found certain portions of the State Administrative Procedures Act to be unconstitutional, but did not order the rule into immediate effect. The Division subsequently decided to make further revisions to the rule before resubmitting it to the Legislature for reconsideration. The present rule is thus the end result of a second round of public comment. Although the Division intends to allow present homes additional time past the effective date of the rule to come into full compliance and intends to conduct training to assist homes, the Division contends that the earlier the rule becomes effective, the earlier the new improved standards will be available for the protection of residents. Additionally, the Division agreed in the West Virginia Comprehensive Long-Term Care Plan filed in response to a Memorandum Order filed under Wolford v. Lewis, 860 F. Supp. 1123 (S.D. W. Va. 1994), to implement amended personal care home licensure standards by June, 1995.

Thus, the rule is the subject of a court order, and the court and the Department believe that implementation of the provisions of the revised rule are long overdue, from the point of view of improved and clarified protection of residents, for compliance with State and federal law, and to provide providers with a regulatory situation that is more stable and as responsive to their concerns as possible under current law. The Department believes that implementation of this rule is needed to prevent substantial harm to the public interest, and therefore requests approval to put the rule into effect on an emergency basis.

PROPOSED - TITLE 64
WEST VIRGINIA DIVISION OF HEALTH
ADMINISTRATIVE RULES
SERIES 14
PERSONAL CARE HOME LICENSURE RULE

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PROPOSED RULE - TITLE 64
WEST VIRGINIA DIVISION OF HEALTH
ADMINISTRATIVE RULES
SERIES 14
PERSONAL CARE HOME LICENSURE RULE

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§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. Division of Health Administrative Rules, Personal Care Home Licensure, 64 CSR 14, 1971.

§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: Provided, That this rule does not apply to homes or asylums operated by fraternal orders pursuant to W. Va. Code § 35-3-1 *et seq.* 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. **Certified Long Term Care Nursing Assistant** - Any individual who has met the requirements for entry in the long term care nursing assistant registry.

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

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

3.14. **Developmental Disorder** - A group of disorders in which the predominant disturbance is in the acquisition of cognitive, language, motor, or social skills. The disturbance may involve a general delay, as in mental retardation, or a delay or failure to progress in a specific area of skill acquisition or multiple areas in which there are qualitative distortions of normal development. The course of developmental disorders tends to be chronic, with some of the signs of the disorder persisting in a stable form (without periods of remission or exacerbation) into adult life.

3.15. **Existing Personal Care Home** - 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.

3.16. **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.

3.17. **Functional Needs Assessment** - Any assessment tool that identifies for the resident and the home those services that the home will need to obtain or provide for the resident in order to promote the resident's health, wellness, comfort, dignity and independence.

An assessment may include but need not be limited to questions such as the following:

Does the proposed resident have an alternative decision-maker or living will?; Does the proposed resident have the ability to self-manage funds or property?; Does the proposed resident require assistance in bathing, dressing, eating, toileting, or ambulating?;

Does the proposed resident take any prescribed medication?; Does the proposed resident have a regular physician, if so who?; Does the proposed resident require a special diet or monitoring of a special diet?;

Does the proposed resident regularly attend activities in the community, if so, what and where?;

Does the proposed resident require special assistive devices to maintain his or her independence?.

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

3.19. **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.

3.20. **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.

3.21. **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 §4.8 of this rule.

3.22. **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.

3.23. **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.

3.24. **Legal Representative¹** -

3.24.1. 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;

3.24.2. 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;

3.24.3. An individual with a medical power of attorney pursuant to the Medical Power of Attorney Act, W. Va. Code §16-30A-1 *et seq.*, within the limits set by law and the appointment;

3.24.4. A surrogate decision-maker appointed pursuant to the West Virginia Health Care Surrogate Act, W. Va. Code §16-30B-1 *et seq.*, or the West Virginia Do Not Resuscitate Act, §§16-30C-1 *et seq.*, within the limits set by the appointment;

3.24.5. 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);

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

3.24.6. 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;

3.24.7. An individual named as a representative payee under the U.S. Social Security Act, within the payee's legal authority; or

3.24.8. 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.

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

3.26. **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.

3.27. **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.

3.28. **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.

3.29. **Mobility** - The ability to move from place to place.

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

3.31. **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.

3.32. **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.

3.33. **Nursing Support Staff** - Registered professional nurses, practical nurses, and nursing assistants employed by the personal care home to provide direct hands-on nursing services to residents.

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

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

3.36. **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.

3.37. **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.

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

3.39. **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.

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

3.41. **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.

3.42. **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.

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

3.44. **Restorative Care** - 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.

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

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

3.47. **Supervision** - The assumption of varying degrees of responsibility for the safety and well-being of residents including, but not limited to: being aware of the resident's whereabouts, to the extent identified as a need by the resident assessment; monitoring through observation the activities of the resident while on the premises of the home to ensure his or her health, safety and well-being; reminding the resident of any important activities of daily living and prescribed medication; purchasing of food and other supplies, and meeting nutritional and food needs; arranging for or providing transportation as necessary; and other similar activities.

3.48. **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.

3.49. **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 upon written demand or immediately when the personal care home ceases provision of services.

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

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

4.1.8. If a person owns more than one (1) personal care home, each home shall have a different name.

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

4.1.10. If any residents of a personal care home are to be moved to a new location, the

licensee shall apply for a license for the new location at least ninety (90) days in advance of the move.

4.2. Licensure Application Procedure

4.2.1. The applicant shall submit an application to the secretary through the office of health facility licensure and certification.

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

4.2.3. Application and inspection fees are deposited in a separate account designated as "the health facility licensing account" as provided in W. Va. Code §16-1-13.

4.2.4. The application fee is non-refundable.

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

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

4.3. Initial License

4.3.1. The application for an initial license shall contain:

4.3.1.a. Identification information;

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

4.3.1.c. Resident assessment instruments; and

4.3.1.d. Documentation that the home has made provisions to ensure the continuing care of all residents for the thirty (30) day period after notification of pending closure. The provisions may be in the form of a bond, a property lien, or other form of guaranty acceptable to the secretary. The guaranty shall be in the amount of three hundred dollars (\$300) per resident or ten thousand dollars (\$10,000), whichever is greater.

4.3.2. The signature on the application and accompanying forms serves as a release permitting the secretary to obtain references, credit, and other background information.

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

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

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

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

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

4.3.3.e. There is a record of noncompliance with the lawful orders of the secretary or other licensing or certification agency for any jurisdiction in which the applicant has operated, directed or participated in the operation of a health care facility; or

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

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

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

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

4.3.4.c. All class I standards have been met and there is at least an overall rating of "C"; and

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

4.4. Renewal License

4.4.1. Applications for renewal of a license shall be postmarked or hand-delivered to the

secretary a minimum of ninety (90) days prior to the expiration date appearing on the current license.

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

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

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

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

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

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

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

4.4.4. The secretary may issue a renewal license or a provisional license when the home has met all class I standards and has attained at least a "C" rating under the rating system found at §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 §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 secretary may apply to the circuit court in which the home is located or the circuit court of Kanawha County for a warrant authorizing an inspection.

4.6.3. The secretary may enter the premises of any building which the secretary has reason to believe is being operated or maintained as a personal care home without a license. If the owner or person in charge of the home refuses entry, the secretary may apply to the circuit court in which the building is located or the circuit court of Kanawha County for a warrant authorizing an inspection.

4.6.4. The secretary shall conduct at least one (1) 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 report² the personal care home's lack of

² 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

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 list³ 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 report⁴ 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 list⁵ 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

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.

facilities which violate any of the standards will be subject to a reduction in their SSI payments ... in an amount equal to any State supplementary benefit or other payment made by the State for any medical or remedial care provided them by the facility. As part of its responsibilities under the federal regulations, States are required to make certain reports to the residents of deficient facilities and to the appropriate regional office of the United States Social Security Administration.

³ See also footnote #2. 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.

⁴ See Footnote #2.

⁵ See Footnote #3.

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. The person requesting the waiver shall send a copy of the request for the waiver 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, and shall send a list of the names and addresses of these persons to the secretary within fifteen (15) days of making the request. Any person may oppose the request by stating the reasons therefor within twenty (20) days of the receipt of the request. If there is opposition to the request, a hearing shall be afforded all parties. All of the provisions of W. Va. Division of Health Administrative Rules, Rules of Procedure for Contested Case Hearings, 64 CSR 1, apply.

4.11. Classification of Standards

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

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

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

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

4.12. Point System Scoring

4.12.1. A Class I standard shall be scored as ten (10) points if a personal care home fully complies with the standard. If the home fails to comply fully with the standard and the secretary determines that the lack of compliance presents either imminent danger to any resident or a substantial probability the death or serious harm to any resident would result, the

standard shall be scored as zero (0). If the home fails to demonstrate full or substantial compliance with the standard, but complies partially, the standard shall be scored as five (5) points. If the home fails to comply at least partially with a Class I standard, or if the violation is a repeat of a violation cited during the previous licensure inspection, the standard shall be scored as zero (0).

4.12.2. A Class II standard shall be scored as nine (9) points if the personal care home fully complies with the standard. If the home fails to comply fully with the standard, but complies substantially, the standard shall be scored as six (6) points. If the home fails to comply fully with the Class II standard and the secretary determines that serious harm to the health, safety, or welfare of any resident would result, the score assigned to the Class II standard shall be zero (0). If the home fails to comply fully or substantially with the standard, but complies partially, the standard shall be scored as four (4) points. If the home fails to comply at least partially with the standard or if the violation is a repeat of a violation cited during the previous licensure inspection, the standard shall be scored as zero (0).

4.12.3. A Class III standard shall be scored as eight (8) points if the personal care home complies fully with the standard. If the home fails to comply fully with the standard, but complies substantially the standard shall be scored as five (5) points. If the home fails to comply fully or substantially with the standard, but complies partially, the standard shall be scored as four (4) points. If the home fails to comply at least partially, or if the violation is a repeat of a violation cited during the previous licensure inspection, the standard shall be scored as zero (0).

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

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

4.13. Rating

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

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

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

4.13.4. Points scored in any individual category are not 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 §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 and local laws, rules, and regulations; and the home's policies.

5.1.2. The licensee shall:

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- 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.

5.2.6. The administrator shall ensure that resident care is carried out by appropriately licensed health care professionals when required by State law and rules, and that medications and treatments given to residents are prescribed and administered as required by State and federal law, rules and regulations.

5.3. Personnel Standards. (Class III)

5.3.1. The personal care home shall have written personnel policies and procedures which appropriately meet the needs of the home.

5.3.2. The administrator shall assure that all staff are at least eighteen (18) years of age; licensed (as applicable) in accordance with State law; caring for residents with needs that are within the scope of his or her practice and training; and free from communicable disease in an infectious stage.

5.4. Staff Training and Orientation (Class III)

5.4.1. All employees and household members shall be made aware of the purpose of the facility; the services provided; the daily routines and the requirements established by the

State rules for licensure of a personal care home.

5.4.2. Training shall be provided to new employees and new admissions within the first twenty-four (24) hours of association with the home in emergency procedures and disaster plans, including; evacuation of the home, procedures to report a missing resident, medical emergencies, accidents, fire, natural disasters or other emergencies.

5.4.3. The home shall maintain a written plan of orientation and training for employees. Such training will be provided within the first fifteen (15) days of employment inclusive of the following:

5.4.3.a. Policies and procedures of the home;

5.4.3.b. The rights and responsibilities of residents including protection of resident privacy and confidentiality;

5.4.3.c. Complaint procedures of the home;

5.4.3.d. Procedures and agencies available in instances of abuse, neglect, and mistreatment: the State adult protective services agency, including its toll-free hot line number; the State licensure and certification agency, including its telephone number; the State commission on aging, including its telephone number; and various other concerned advocacy and protection organizations;

5.4.3.e. The care of aged, infirm or disabled adults with consideration for individual capabilities and needs;

5.4.3.f. Personal assistance procedures as needed for resident care, including at a minimum, personal grooming care, personal hygiene care, nutritional services, and signs and symptoms of alteration in skin integrity;

5.4.3.g. Specific duties and responsibilities of the residential staff for assisting current residents of the home (i.e. a review of individualized service plans, the activities program and/or professionally-designed intervention strategies to help a resident with behavioral health needs to manage his or her behavior);

5.4.3.h. Cardiopulmonary resuscitation (CPR), as applicable, and first aid; and

5.4.3.i. Infection control.

5.4.4. The home may modify the initial orientation and training for individual employees if the individual is certified as a nursing assistant and maintained as such on the nursing assistant registry maintained by the secretary. Completion of such a course satisfies the requirement for training in the areas of personal grooming, hygiene, assistance in feeding and activities of daily living. All other topics required by this rule shall be addressed in the employee's initial orientation and training program. This provision does not exclude

individuals certified as nursing assistants from participation in annual on-going in-service training.

5.4.5. The personal care home shall provide ongoing in-service training annually in the areas of:

5.4.5.a. Resident rights and confidentiality;

5.4.5.b. Abuse, neglect, mistreatment, and procedures to prevent the occurrence of such incidents;

5.4.5.c. Emergency care of residents (first aid and as applicable, CPR); emergency plans for the home, including fire safety and evacuation plans;

5.4.5.d. The responsibilities of the residential staff for assisting residents (i.e., individualized service plans, activity programs, etc.) and;

5.4.5.e. Infection control.

5.5. Volunteers (Class III)

Volunteers rendering services in the home shall adhere to the laws and regulations governing confidential treatment of residents' personal information and provide evidence of freedom from communicable disease in an infectious stage.

5.6. Personnel Records (Class III)

5.6.1. 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:

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

5.6.1.b. Documentation of the results of a criminal record investigation regarding previous convictions involving abuse, mistreatment or neglect of dependent populations or theft of the property of such populations and the documented verification of past employment or personal references, or upon employment, a check of any abuse registry established by the State.

5.6.1.c. A record of orientation, annual and/or additional training, education and credentials;

5.6.1.d. The date of employment and a position title and description;

5.6.1.e. A health record containing the results of a pre-employment physical examination, annual screenings for tuberculosis (tine test not acceptable) and other communicable diseases as indicated by exposure, prevalence or currently accepted medical practice in congregate living situations as indicated by the commissioner of the bureau of public health of the State department of health and human resources. The employment physical and tuberculosis screening shall be obtained in the first week of employment.

5.6.2. Personnel records shall be maintained on file at the personal care home for at least three (3) years following termination of employment. The record shall have documentation of the date and reason for termination of employment.

5.7. First Aid Qualifications and Supplies (Class III)

5.7.1. 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.

5.7.2. There shall be at least one (1) staff member on the premises at all times who has a current first aid certificate issued within the past three (3) years by the American Red Cross, a community college, a hospital, a volunteer rescue squad, a fire department, or a similarly approved program, unless the personal care home has a registered professional or practical nurse on duty.

5.8. Minimum Standards for Staffing (Class I)

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

5.8.2. At a minimum, an additional nursing assistant will be staffed on the day and evening shifts for each (8) eight residents identified on their functional needs assessment to have one (1) of the following care or behavior needs: dependence in or needs assistance with eating, toileting, ambulating, dressing, bathing, or repositioning; inappropriate or aggressive behaviors; wandering; self-injurious behavior; and special skin care. An additional employee shall be staffed on the night shift for each (12) twelve residents identified with one (1) of the above care needs.

5.8.3. If residents experience poor outcomes related to a lack of supervision or unmet care needs, the secretary may require the home to add staff.

5.8.4. 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 §5.8.2 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.

5.8.5. 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:

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

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

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

5.8.6. 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.

5.8.7. 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 §5.8.2 of this rule if needed to provide all services identified in the residents' individualized service plans.

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

5.8.9. 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.

5.9. Management and Control of Resident Funds. (Class III)

5.9.1. If the licensee agrees to manage a resident's funds, it shall be by written request, in the manner directed by the depositor and in accordance with this rule, utilizing generally acceptable accounting principles to manage the funds in the resident's best interests.

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

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

5.9.4. The 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 64-14.2 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 such amount as necessary to adequately protect the money of residents being handled.

5.9.5. The resident account record shall show in detail with supporting documentation all monies received on behalf of the resident and the disposition of all funds received. Persons shopping for residents shall provide a list showing a description and price of items purchased if the purchase exceeds ten (\$10) dollars, along with payment receipts for these items.

5.9.6. 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. Information shall be given to the resident upon request.

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

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

6.1. Admission Policies and Procedures (Class III)

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 §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 professional 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;

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

6.2.2.l. What services the home chooses to provide and what services the home chooses not to provide (e.g., transportation).

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 II)

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 §§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, as stated in its mission statement and the admission agreement, 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 §6.4.6 of this rule.)

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

6.4.1. Paragraph 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 §8.3.6 of this rule or to participate in the planning of his or her care and supervision as specified in §8.3.1 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 §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.

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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 §6.4.1 of this rule if:

6.4.3.a. The home is 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 II)

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

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

6.5.3. The home shall make provisions for transfer of the resident to another health care facility when the resident's physical or mental condition has changed such that the personal care home can no longer meet the resident's needs as required and defined by this rule or pending closure of the home.

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.

6.5.6. Prior to discharge the home shall prepare a discharge summary for the resident and his or her legal representative, including the functional assessment, individualized service plan, all physician orders, and dietary information.

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. Services (Class D)

7.1.1. The home shall provide treatment and care in accordance with the functional needs assessment and service plan to assist each resident to maintain the highest level of functioning possible.

7.1.2. The home shall assist the resident in making appointments for appropriate medical, dental, nursing or mental health services as needed by the resident.

7.1.3. The home shall provide or arrange for appropriate transportation of the resident to receive medical and social services.

7.1.4. The home shall provide assistance to the resident and the resident's family in the adjustment to the personal care home setting and in the adjustment to transfer when other levels of care become necessary.

7.1.5. The home shall provide the resident with personal assistance to meet the needs identified on his or her functional needs assessment. Resident needs may include, but are not limited to, assistance from staff: to self-administer medically prescribed drugs and treatment; to follow any planned diet, rest or activity regimen; to utilize functional equipment (i.e. hearing aides, glasses, canes, etc.); and to perform activities of daily living.

7.1.6. 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.

7.1.7. The home shall provide dietary and general household services essential for the health and comfort of residents such as daily meals and snacks, laundry, floor cleaning, dusting, and bed-making.

7.1.8. The home shall provide a planned and meaningful activity program to meet the needs of the residents. Volunteers may assist but not replace home employees in carrying out the activities program. The home's program shall:

7.1.8.a. Encourage, guide, or assist residents with arrangements to participate in social, recreational, diversional, vocational, religious, or other activities within the home in accordance with individual interests, tolerance and abilities;

7.1.8.b. Provide information and referral services and opportunities for utilization of social, recreational, vocational activities within the community;

7.1.8.c. Provide a monthly calendar of varied events which lists all social and recreational activities for the residents;

7.1.8.d. Provide at least eleven (11) hours of scheduled activities available to the residents each week for no less than one (1) hour each day; and

7.1.8.e. Encourage but not require residents to participate in activities or restrict a resident's participation in an activity except upon a physician's order.

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 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, whether the resident is receiving Supplemental Social Security Income (SSI), 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 change in condition, but at least once every six (6) months. The secretary considers a change in condition as "significant" when the change is major, not self-limiting, impacts on more than one (1) area of the resident's health status; and requires intervention by a health care professional. A self-limiting condition is a condition which will not normally resolve itself without the intervention of a health care professional or the application of treatment and care not routinely available in the home. The service plan shall include but not be limited to the following areas of needs:

7.2.2.a. Activities of daily living, generally;

7.2.2.b. Instrumental activities of daily living, generally;

7.2.2.c. Social and recreational;

7.2.2.d. Therapy;

7.2.2.e. Medical and nursing;

7.2.2.f. Medication administration; and

7.2.2.g. Transportation.

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.

7.3. 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 professional within ten (10) working days.

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

7.3.7. The personal care home shall weigh and record each resident's weight in his or her record upon admission, 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, and other emergency personnel.

7.3.13. The responsibilities of the supervising nurse shall include:

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

7.3.13.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;

7.3.13.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;

7.3.13.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;

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

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

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

7.3.14. 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. Medications. (Class I)

7.4.1. The personal care home shall make provision for the administration or self-administration of medicines and drugs according to physician orders in compliance with applicable State and federal laws, rules and regulations. The home shall, in consultation with an appropriately licensed health care professional, establish written policies and procedures, which are consistent with this rule, for assisting residents in obtaining individually prescribed medication and for disposing of outdated prescription medications in accordance with applicable State and federal laws, rules and regulations. The home shall permit residents to use the pharmacy of their choice..

7.4.2. Prescription drugs shall be obtained, administered or self-administered only as permitted by State and federal laws, rules and regulations. 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 health care professional shall determine whether or not the resident can self-administer the medications in a safe manner.

7.4.2.a. Copies of the prescriptions or written orders for drugs shall be retained in the resident's record. Verbal orders shall be reviewed and signed a health care professional with legal authority to prescribe medications within ten (10) working days from the original

order date.

7.4.2.b. The ability of a resident to self-administer medication shall be documented in the resident's record.

7.4.3. The attending physician, a consulting pharmacist, or other appropriately licensed health care professional with appropriate legal authority shall review the medication regimen of each resident as needed, but at least annually. Documentation of this review must be entered into the resident's record.

7.4.4. The home shall keep a record of all drugs given to each resident indicating each dose given. The record shall include the: resident's name; name, strength, and quantity of the drug; instructions for giving the drug; date and time drug is administered; and name or initials of persons giving the drug. If initials are used, a signature equivalent to those initials shall be entered on the record.

7.4.5. Self-administration of insulin or injectables for which the individual has been trained to self-administer is permitted.

7.4.6. The use of PRN (as needed) controlled or prescription drugs such as narcotics, tranquilizers or psychotropic medications requiring judgment capabilities beyond the expertise of unlicensed staff or a fluctuating medication regimen is prohibited unless the self-administering resident is capable of determining when the medication is needed or the medication administration and management is otherwise in accordance with State and federal laws, rules and regulations.

7.4.7. When oxygen therapy is provided, it 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; the equipment shall be maintained electrically safe and service shall be available as needed; the oxygen tubing shall be stored in a sanitary manner when not in use and replaced as indicated by accepted infection control measures; and smoking shall be prohibited in any location when oxygen is in use and no smoking signs shall be posted conspicuously and enforced.

7.4.8. The personal care home shall store all medications in a way as to be inaccessible to all residents unless residents are determined to be capable of self-medication. In such cases, the home shall provide the self-medicating resident with resources to have the medications stored in a safe manner.

7.4.9. 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 home.

7.4.10. Medication shall be centrally stored if the preservation of medicine requires refrigeration; when medication is determined, and documented by the home to be hazardous if kept in the personal possession of the person for whom it was prescribed; if the resident is not capable of self-administering medications as prescribed; or when, because of physical arrangements and conditions or habits of other persons in the home, the medications are determined to be a safety hazard to others.

7.4.11. Centrally stored medications shall be kept in a locked cabinet or other storage receptacle and accessible only to the staff responsible for medications.

7.4.12. 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. 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. 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).

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

7.4.14. All controlled drugs shall be disposed of in accordance with state and federally approved practices.

7.4.15. 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 or disposed of in the manner directed by the resident.

7.4.16. All medications not returned for credit to the vendor shall be destroyed within the home by two (2) members of the home's staff 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.

7.4.17. The home shall maintain a record of the destruction of controlled drugs 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: the name of the resident for whom the drug was prescribed; the prescription number; the name of the dispensing pharmacy; the name and dosage of the drug; the amount of the drug destroyed; and 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 emergency, or has died as a result of abuse or neglect. Reports of neglect, abuse or emergency situations shall be made immediately to the local adult protective services office of the department of health and human resources or by calling the adult protective services hotline number, as required by law

and to the office of health facility licensure and certification. The secretary may report alleged failures by a licensed health care professional to report alleged incidents of neglect or abuse or emergency situations to the individual's licensing board.

7.6. Resident Death (Class II)

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

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

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

7.6.2.b. The date, time and circumstance of death, including the name of person to whom the body was released and any other details specific to the death;

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

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

7.7. Resident Records (Class III)

7.7.1. All records which contain the information required by this rule for residents shall be retained at the home in a secure area and shall be made available for inspection by the secretary's duly authorized representative.

7.7.2. The licensee shall ensure that all records are treated confidentially by staff and shall establish a policy and procedure for release of information from resident records.

7.7.3. The personal care home shall begin at admission, maintain, and keep current, a record for each resident. The record shall include:

7.7.3.a. Resident's name; social security number; birth date; sex; marital status; religious preference and affiliation, if any;

7.7.3.b. Names, addresses and telephone numbers for the following relevant

persons: physician; dentist; legal representative, if applicable; person, organization or agency responsible for payments for support of the resident, if applicable; next of kin or other interested relatives; persons to be notified in case of an emergency or death; any case management agency or organization; and any day care or other programs in which the resident regularly participates;

7.7.3.c. All agreements or contracts entered into between the resident and the home; initial health assessment and social history; admission, transfer and discharge data;

7.7.3.d. Physician's orders, a list of medications, and/or medication administration records (if appropriate); resident admission weight; 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); all contact with the resident's physician by the home staff; observations by personnel, licensed nurses, physician, or others authorized to care for the resident;

7.7.3.e. Documentation of incidents and accidents involving the resident, including, at a minimum, the time, place, the action taken in response to the incident and the notification of the resident's physician (if applicable), family or legal representative;

7.7.3.f. The resident's functional needs assessment, service plan, and updates as appropriate;

7.7.3.g. A list of clothing and personal possessions of the resident;

7.7.3.h. Documentation of resident account activities if the home is managing funds at the resident's request;

7.7.3.i. Documentation of death, including cause and disposition of the resident's personal effects and money or valuables deposited with the home;

7.7.3.j. Other information required by this rule.

7.7.4. The 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 home ceases to operate, the licensee shall procure a holding area for the resident records that will ensure the confidentiality and safety of the records from loss, destruction or unauthorized use.

7.7.5. 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.

§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. Notice of Rights and Services (Class III)

8.2.1. A 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.

8.2.2. 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.

8.2.3. 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.

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

8.2.5. 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.

8.2.6. Except in emergencies, the personal care home shall notify the resident, any interested family member, and any legal representative, no less than seventy-two (72) hours prior to the change unless agreed to in writing by all involved parties when there is:

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

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

8.2.7. 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.

8.2.8. 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.

8.3. Treatment (Class I)

8.3.1. 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.

8.3.2. 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.

8.3.3. 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.

8.3.4. 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.

8.3.5. The personal care home shall allow residents to choose their own physician and pharmacist in lieu of the homes's physician and pharmacist. The home shall promptly notify the resident's physician when there is a major incident or any significant change in the resident's condition.

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

8.4. Protection of Resident Funds (Class III)

8.4.1. 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.

8.4.2. If the personal care home manages funds for a residents, it shall be by written request, in the manner directed by the depositor and in accordance with this rule.

8.5. Self Determination (Class III)

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

8.5.2. 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.

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

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

8.6. Privacy and Confidentiality (Class III)

8.6.1. 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.

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

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

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

8.7. Complaints (Class II)

8.7.1. The resident has the right to voice grievances with respect to treatment or care furnished without discrimination or reprisal for voicing the grievance.

8.7.2. 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.

8.7.3. 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.

8.7.4. 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.

8.7.5. 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.

8.8. Work. (Class III)

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

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

8.8.3. The resident has the right to perform services for the home when:

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

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

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

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

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

8.8.5. A personal care home shall not permit a resident to perform work which creates conditions or in a manner potentially hazardous for themselves or others.

8.9. Mail and Communication (Class III)

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

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

8.9.3. 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.

8.10. Access and Visitation Rights (Class II)

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

8.10.2. 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.

8.10.2.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.

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

8.10.2.c. Visiting hours shall be posted conspicuously in a public place in the home.

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

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

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

8.10.4.b. The resident's individual physician;

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

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

8.10.5. 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.

8.10.6. 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.

8.11. Personal Property (Class III)

8.11.1. 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.

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

8.12. Civil Rights (Class II)

8.12.1. 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.

8.12.2. 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, or disability.

8.12.3. 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. The personal care home shall ensure that each resident is offered at least three (3) meals daily, seven (7) days a week and special diets and snacks which meet resident needs and choices, as identified in his or her needs assessment, which are freshly prepared each day. Meals shall provide nutrients and calories for each resident based upon substantial compliance with current recommended dietary allowances of the Food and Nutrition Board of National Academy of Sciences, National Research Council, or as specified in this rule, except as ordered by a physician.

9.1.2. When therapeutic or modified 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 or modified diets, as recommended by the physician, shall be prepared according to written instructions obtained from the resident's physician or dietitian. At no time shall a resident be offered less than one thousand four hundred (1,400) calories daily, unless specifically ordered by a physician.

9.1.3. The home shall offer residents a variety of foods at meals as follows:

9.1.3.a. Breakfast: fruit or juice; cereal, whole grain or enriched bread product; and Grade A vitamin D milk.

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

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

9.1.5. The home shall assure that residents are receiving meals that are planned and developed with regard to individual preferences.

9.1.6. The home shall encourage resident participation in menu planning and shall serve meals at times mutually agreed upon by residents in the home with consideration of resident past practice prior to admission to the home.

9.1.7. The home shall accommodate residents who are unable to eat at the planned mealtime and provide for a meal substitution if the resident does not tolerate the foods planned for the meal.

9.2. Administrative Requirements. (Class III)

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

9.2.2. The home shall maintain a daily record of actual foods served for each meal. Menu content shall be varied. Grocery receipts and records of actual food served shall be kept on file for at least thirty (30) days.

9.2.3. Current inspection reports shall be on file in the home.

9.2.4. 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 prepared by a health care professional.

9.3. Food Service Sanitation (Class I)

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.

§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.

10.2. 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 any of the following events: missing resident; high winds; tornados; floods; bomb threats; utility failure; and severe winter weather.

10.2.3. The disaster and emergency preparedness plan shall include at least an emergency water agreement; an alternate shelter agreement; an emergency transportation policy; and an emergency food supply and menu which will provide nutrition for all persons residing in the home for a minimum of seventy-two (72) hours.

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.

11.1. Applicability (Class I)

11.1.1. The provisions of Section 11 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. 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.

11.1.3. 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.

11.1.4. 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.

11.1.5. 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.

11.1.6. 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.

11.1.7. 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.

11.1.8. 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.

11.1.9. 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.

11.1.10. 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.

11.1.11. 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;

11.1.12. The State building code promulgated in W. Va. Fire Commission Administrative Rules, Building Code, 87 CSR 4⁶ is hereby adopted as a standard for on-site inspections .

⁶ 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

11.1.13. Where local codes or regulations require standards higher than those required by this rule, local building codes and zoning restrictions shall be observed; and

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

11.2. Site Characteristics and Accessibility (Class D)

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 D)

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

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.

physical disability.

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 an applicator certified by the United States Department of Agriculture.

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.

11.3.9. Outer openings that are left open for extended periods of time shall be screened to prevent the 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 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 call 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.

11.3.16. Homes shall have space adequate for the storage of linens, maintenance and housekeeping supplies, equipment, and food supplies.

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 which is substantially constructed and in good repair. Beds shall be provided with substantial

springs and a clean comfortable mattress which fits the bed. Folding beds, cots, roll away beds, bunk beds, and youth beds are prohibited. Double beds are permitted for married couples, provided that:

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

11.4.4.b. There are no medical contraindications.

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

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

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

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

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

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

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

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

11.4.12.a. Each bed shall have a clean comfortable pillow with a protective cover and pillow case. A protective cover and two (2) sheets, a bed spread or other type of covering shall be provided for the bed.

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

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

11.4.13. Each resident of each bedroom shall be provided with at least the following bedroom-type (not hospital) furniture:

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

11.4.13.b. Closet, locker, or wardrobe space with a minimum dimension of twenty inches (20") by twenty-two inches (22") by seventy-two inches (72") excluding shelf and storage space. In addition, a chest of drawers with at least three (3) drawers to meet the resident's needs for the storage of clothing and personal items shall be provided for each resident.

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

11.5. Toilets, Hand Washing and Bathing Facilities (Class II)

11.5.1. Household members and live-in staff shall not share toilet and bathing facilities with residents unless the total number of occupants of the home is five (5) or less. Otherwise, household members and live-in staff shall not be counted in determining the required fixtures for residents.

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

11.5.3. There shall be bath tubs or showers at a ratio of one (1) per five (5) residents. If the facility can show a process that functions well for residents, upon application, a waiver of this requirement will be granted. 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 when each bar is used only by one (1) resident. Toilet facilities shall be supplied with toilet tissue and disposable towels.

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 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.

11.8. Water Supply (Class I)

11.8.1. The home shall maintain a water supply which:

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

11.8.1.b. Has as its source of water a public water system which complies with W. Va. Division of Health Administrative Rules, Public Water Systems, 64 CSR 3, or a water well which complies with W. Va. Division of Health Administrative Rules, Water Well Regulations, 64 CSR 19, and W. Va. Division of Health Administrative Rules, Water Well Design Standards, 64 CSR 46.

11.8.2. 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.

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

11.8.4. 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.

11.9. Laundry and Linens (Class II)

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

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

11.9.3. 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.

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

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

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

11.9.7. 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.

11.9.8. 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.

11.9.9. 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.

11.9.10. All linens shall be of good quality. They shall not have holes, tears, permanent

stains, be transparent or threadbare.

11.10. Food Service Facilities (Class I)

11.10.1. If the home does not operate its own food service, it shall have a written contract for food services with a contractor who is in compliance with applicable State standards for food contract services.

11.10.2. A personal care home providing services to eleven (11) or more residents shall comply with W. Va. Division of Health Administrative Rules, Food Service Sanitation Regulations, 64 CSR 17. A certificate of compliance shall be posted.

11.10.3. 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. Division of Health Administrative Rules, Food Service Sanitation, 64 CSR 17. A certificate of compliance shall be posted.

11.11. Sewage (Class I)

11.11.1. Sewage disposal shall be in accordance with W. Va. Division of Health Administrative Rules, Sewage System Rules, 64 CSR 9, and W. Va. Division of Health Administrative Rules, Sewage Treatment and Collection System Design Standards, 64 CSR 47.

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

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

11.12. Solid Waste (Class II)

11.12.1. 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.

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

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

11.12.4. 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.

11.12.5. 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.

11.13. Electrical Requirements (Class I)

11.13.1. 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.

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

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

11.13.3.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;

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

11.13.3.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.

11.13.3.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;

11.13.3.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

11.13.3.f. A minimum of one (1) exterior receptacle duplex outlet with ground fault circuit interrupter protection shall be provided.

11.14. Lighting Requirements (Class II)

11.14.1. General outdoor lighting shall be provided to illuminate walks, steps and drive areas for the purposes of the resident's safety.

11.14.2. 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.

11.14.3. Minimum interior lighting levels shall be as follows:

11.14.3.a. Ten (10) foot candles in entrances, hallways, stairways, stair landings;

11.14.3.b. Twenty (20) foot candles in general areas of living room, leisure rooms, dining rooms, and bedrooms;

11.14.3.c. Thirty (30) foot candles in reading, writing and game playing areas in living room, leisure rooms, dining rooms, bedrooms;

11.14.3.d. Fifty (50) foot candles in the cleaning and food preparation, cooking, and laundry areas;

11.14.3.e. Thirty (30) foot candles in bath, lavatory, and toilet areas; and

11.14.3.f. Fifty (50) foot candles in facial shaving and grooming, at mirrors and hair stylist area.

11.15. Pets and Other Animals (Class II)

11.15.1. 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.

11.15.2. Wild, dangerous or obviously ill animals are prohibited.

11.15.3. Animals and their quarters shall be kept in a clean condition at all times.

11.15.4. 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.

11.15.5. Pets are not permitted in food preparation areas.

11.15.6. Pets are not permitted in a resident's bedroom without the resident's consent.

11.15.7. 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.

§64-14-12. Additional Requirements Related to the Provision of Limited and Intermittent Nursing.⁷

⁷ The provisions of this section apply to personal care homes providing limited and intermittent nursing as stated in §4.1.3 of this rule.

12.1. Standard Requirements. (Class I)

12.1.1. A personal care home which provides limited and intermittent nursing care shall arrange for a registered professional nurse to assume responsibility for the oversight of nursing care and services. The home shall enter into a written agreement with the registered professional nurse which specifies the responsibilities of the registered professional nurse and the home. 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 home may act in this capacity, if he or she is a licensed registered professional nurse. Arrangements with a home care agency providing only direct care does not satisfy the requirements for nursing management oversight of all residents.

12.1.2. 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.

12.1.3. 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.

12.1.4. The home shall implement, within reasonable expectation, the recommendations of the registered nurse regarding care, services and staff training intended to protect the residents.

12.1.5. The home shall 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.

12.1.6. The home shall assure that treatment involving medical management of a resident is carried out only in accordance with an order from a physician or other lawfully authorized health care professional and that the order is signed by the authorizing health care professional and placed in the resident's care record.

12.1.6.a. No medication, diet, medical procedure or treatment shall be started, changed or discontinued by the home without an order by an appropriately licensed health care professional.

12.1.6.b. All physician orders shall be reviewed every thirty (30) days 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.

12.1.7. The home shall assure that:

12.1.7.a. All verbal orders are recorded in the resident's care record, signed by a licensed nurse, and countersigned by the individual who issued the order within ten (10) working days from the original order date;

12.1.7.b. All physician's orders specify the type, frequency, duration, and dosage for each medication, treatment or special feeding;

12.1.7.c. Treatment measures are performed only by qualified staff; and

12.1.7.d. Nursing procedures and treatments are performed only by a licensed registered or practical nurse, in accordance with applicable State law and rules.

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

12.1.8.a. The home shall weigh and record each resident's weight in his or her record upon admission and at least monthly or as ordered by the physician.

12.1.8.b. The 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.

12.1.9. The home shall retain a physician or a consultant pharmacist who shall conduct quarterly pharmacy reviews on all residents receiving limited or intermittent nursing services.

12.1.10. The use of PRN (as needed) medications is prohibited, unless one (1) or more of the following conditions exist:

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

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

12.1.10.c. The resident's physician has provided detailed instructions or 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.

12.1.11. The home shall assure that the registered professional nurse maintains a general record with a complete signature for each entry which shall include at least:

64 CSR 14

12.1.11.a. The date, time in and time out for each visit (unless the registered professional nurse is employed by the personal care home at least thirty-five (35) hours per week);

12.1.11.b. A list of duties performed by the registered nurse during each visit;
and

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

12.1.12. The home shall develop a system that provides for twenty-four (24) hour accessibility between the home, the registered professional nurse, and other emergency personnel.

12.1.13. The home secure an emergency transfer agreement with a local hospital and establish agreements with outside service providers as applicable (i.e. laboratories, physical therapy, occupational therapy, speech therapy, disposal of medical waste, ambulance services, etc.). Copies of all agreements shall be maintained on file in the home and available for review by the secretary.

12.2. Nursing Services. (Class I)

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

12.2.2. A monthly 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;

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

12.2.4. Any verbal or written orders.

12.2.5. The registered professional nurse shall:

12.2.5.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;

12.2.5.b. Provide overall supervision of the provision of nursing services to residents by ensuring that the services established within the resident's service plan are met and that the resident's physical, mental and social well-being are not compromised;

12.2.5.c. Complete a written nursing assessment for each resident with nursing

P.O. Box 132
Narrows, VA
24124

Mr. Ken Heckler
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd. East
Charleston, WV 25305-0770

Dear Mr. Heckler:

I am writing in regards to recent regulations for Personal Care Facilities.

The proposed bond on residents and the requirement of a registered nurse, 24 hours per day would increase considerably the fees being paid. Many families are already struggling to keep their loved ones in these facilities when they get very good attention and a "personal touch" it has been seen lacking in some nursing homes. The above mentioned proposals would not enhance their care at all.

It also feel that many of the Personal Care Facilities might be forced to close. Where do we place our loved ones then when we can no longer care for them at home?

my 86 year old mother has been a resident at Phillips Personal Care in Lerona, WV for over two years, where she has received excellent care.

Please allow these facilities to continue to do the job they were intended to.

Thank you for any consideration and help in this manner.

Very sincerely yours,
Jenny B. Shwartz

Mr. Heckler,

Dec 13, 1975

I am very much interested in the issue involving nursing homes and personal care homes.

I am from Grafton, W. Va. born and reared there until the railroad decided we would reside near Cumberland, Md.

I read the article in Dec. 11 Mountain Statesman.

I am asking you, please don't sign the new regulations.

Sincerely,

Helen S. Carr

Rt. 1, Box 177

Ridgeley, W. Va.

26753

Ms. Hechler

My Mother has been in
a personal care home for
9 years she is 93 years old.

She has been paying here
bills with the help of Medicare
+ AARP. No help from the
State.

To the best of my knowledge
people who qualify for state or
Federal Funding receive \$24.00 a
month.

We need Rules + Regulations for
the few people who take advantage
of the patience and their care.

There are good personal care homes
and I would put Alliance Personal
Care up against any in the state.

(POA) SON.)

WILLIS C. NESTOR.

ROUTE 1 BOX 475

GRAPTON WYO. 26354

needs within twenty-four (24) hours following admission, and which shall be rewritten quarterly 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 thirty (30) days.

12.2.5.d. On an ongoing basis, the nurse shall evaluate each resident's functional capabilities to assure that each joint is maintained with an optimal range of motion; and 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;

12.2.5.e. Coordinate the development of a component of the service plan to meet any identified nursing and medical needs of the resident with the resident and the attending physician or other appropriately licensed health care professional, who shall date and sign the plan component. This component shall be completed within seven (7) days after admission and shall be reviewed by the registered nurse at least every thirty (30) days or at the time of a significant temporary or permanent change in the resident's condition.

12.2.5.f. Review training needs of personal care home staff members;

12.2.5.g. Provide needed training or recommend to the personal care home appropriate training for staff; and

12.2.5.h. Provide to the personal care home a written record of training provided by the registered nurse to individuals or groups with an outline of the items discussed, the date and time of the session, and signatures of individuals involved in the training.

12.2.5.i. Provide overall supervision of medication storage, dispensing systems and disposition;

12.2.5.j. Coordinate admission and discharge planning as it relates to the medical component of resident care; and

12.2.5.k. Serve as the liaison between the resident, the resident's physician, and the administrator (if applicable) on an as needed basis.

12.3. Personnel and Staffing (Class III)

12.3.1. The administrator shall have at least one (1) year of experience in caring for adults with mental or physical impairments.

12.3.2. Any individual designated as the assistant administrator shall meet the requirements established in this rule for administrators.

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

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

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

12.3.4. 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.

12.3.5. 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.

12.4. Resident Care and Related Services (Class III)

12.4.1. 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.

12.4.2. The administrator shall designate an employee to be responsible for monitoring and maintaining individualized service plans on an ongoing basis.

12.4.3. 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.

12.4.4. The personal care home shall assure that all of the individuals' time-limited needs identified on the individualized service plan are met.

12.4.5. 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.

12.4.6. The progress reports shall contain at a minimum:

- 12.4.6.a. A statement that continued services are or are not needed;
- 12.4.6.b. Recommendations, if any, for continued services;
- 12.4.6.c. The individual's response to the service being provided.
- 12.4.7. Copies of the progress reports shall be retained in the resident's record.

§64-11-13. Penalties; Administrative Due Process

13.1. Secretary's Authority for Penalties and Disciplinary Actions

13.1.1. 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.

13.1.2. 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:

13.1.2.a. That the licensee has not provided adequate care as indicated by:

13.1.2.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;

13.1.2.a.B. An immediate and serious threat to the health or safety of one (1) or more residents of the home;

13.1.2.b. Poor care outcomes resulting in an avoidable decline in condition or functional abilities resulting from neglect or abuse; and

13.1.2.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.

13.1.3. 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:

13.1.3.a. Failure to provide adequate care for residents;

13.1.3.b. Failure to submit a plan of correction;

13.1.3.c. Failure to submit a plan of correction which is approved by the secretary;

13.1.3.d. Failure to correct deficiencies within the time frame specified in an approved plan of correction;

13.1.3.e. Failure to comply with this rule;

13.1.3.f. A violation of any provision of this rule which produces imminent danger to residents;

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

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

13.1.3.i. Abuse of residents.

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

13.2.1. 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.

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

13.2.2.a. The penalty;

13.2.2.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 or a specific reference to the previously issued statement of deficiencies; and

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

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

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

13.2.5. 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.

13.2.6. 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:

13.2.6.a. The degree of substantial probability that death or serious physical harm will result and, if applicable, did result from the violation;

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

13.2.6.c. The extent to which the provisions of the applicable statutes or regulations were violated.

13.2.7. 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.

13.2.8. 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 ten (10) 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. Department of Health and Human Resources Administrative Rules, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

13.2.9. 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.

13.2.10. 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.

13.3. Hearings and Due Process

13.3.1. 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 W. Va. Department of Health and Human Resources Administrative Rules, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

13.3.2. 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 W. Va. Department of Health and Human Resources Administrative Rules, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

13.3.3. 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:

13.3.3.a. The home shall submit a plan of correction for cited deficiencies for approval by the secretary within the designated time frame;

13.3.3.b. Disagreement and the reasons for this disagreement shall be submitted by the home in writing to the secretary;

13.3.3.c. The secretary shall adopt policies and procedures for conflict resolution consistent with those utilized for certified facilities; and

13.3.3.d. The secretary shall provide a written decision to the home regarding the disagreement.

13.3.4. When the secretary takes a case under advisement, the secretary shall:

13.3.4.a. Enter an order stating the decision to hold the case under advisement;

13.3.4.b. Notify the licensee and his attorney of record, if any, of the action, by certified mail, return receipt requested;

13.3.4.c. Enter order showing satisfactory compliance dismissing the complaint if the licensee meets the requirements of the order; and

13.3.4.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.

13.3.5. 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.

13.3.6. 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.

13.3.7. 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.

§64-14-14. Severability.

14.1. 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 64.65-2. Surety Bond Schedule

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$ 1 to \$2,000	\$2,500
\$2,001 to \$2,100	\$2,625
\$2,101 to \$2,200	\$2,750
\$2,201 to \$2,300	\$2,875
\$2,301 to \$2,400	\$3,000
\$2,401 to \$2,500	\$3,125
\$2,501 to \$2,600	\$3,250
\$2,601 to \$2,700	\$3,375
\$2,701 to \$2,800	\$3,500
\$2,801 to \$2,900	\$3,625
\$2,901 to \$3,000	\$3,750
\$3,001 to \$3,100	\$3,875
\$3,101 to \$3,200	\$4,000
\$3,201 to \$3,300	\$4,125
\$3,301 to \$3,400	\$4,250
\$3,401 to \$3,500	\$4,375
\$3,501 to \$3,600	\$4,500
\$3,601 to \$3,700	\$4,625
\$3,701 to \$3,800	\$4,750
\$3,801 to \$3,900	\$4,875
\$3,901 to \$4,000	\$5,000
\$4,001 to \$4,100	\$5,125
\$4,101 to \$4,200	\$5,250
\$4,201 to \$4,300	\$5,375
\$4,301 to \$4,400	\$5,500
\$4,401 to \$4,500	\$5,625
\$4,501 to \$4,600	\$5,750
\$4,601 to \$4,700	\$5,875
\$4,701 to \$4,800	\$6,000

64 CSR 14

Table 64.65-2. Surety Bond Schedule (Cont'd)

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$4,801 to \$4,900	\$6,125
\$4,901 to \$5,000	\$6,250
\$5,001 to \$5,100	\$6,375
\$5,101 to \$5,200	\$6,500
\$5,201 to \$5,300	\$6,625
\$5,301 to \$5,400	\$6,750
\$5,401 to \$5,500	\$6,875
\$5,501 to \$5,600	\$7,000
\$5,601 to \$5,700	\$7,125
\$5,701 to \$5,800	\$7,250
\$5,801 to \$5,900	\$7,375
\$5,901 to \$6,000	\$7,500
\$6,001 to \$6,100	\$7,625
\$6,101 to \$6,200	\$7,750
\$6,201 to \$6,300	\$7,875
\$6,301 to \$6,400	\$8,000
\$6,401 to \$6,500	\$8,125
\$6,501 to \$6,600	\$8,250
\$6,601 to \$6,700	\$8,375
\$6,701 to \$6,800	\$8,500
\$6,801 to \$6,900	\$8,625
\$6,901 to \$7,000	\$8,750
\$7,001 to \$7,100	\$8,875
\$7,101 to \$7,200	\$9,000
\$7,201 to \$7,300	\$9,125
\$7,301 to \$7,400	\$9,250
\$7,401 to \$7,500	\$9,375
\$7,501 to \$7,600	\$9,500
\$7,601 to \$7,700	\$9,625

64 CSR 14

Table 64.65-2. Surety Bond Schedule (Cont'd)

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$7,701 to \$7,800	\$9,750
\$7,801 to \$7,900	\$9,875
\$7,901 to \$8,000	\$10,000
\$8,001 to \$8,100	\$10,125
\$8,101 to \$8,200	\$10,250
\$8,201 to \$8,300	\$10,375
\$8,301 to \$8,400	\$10,500
\$8,401 to \$8,500	\$10,625
\$8,501 to \$8,600	\$10,750
\$8,601 to \$8,700	\$10,875
\$8,701 to \$8,800	\$11,000
\$8,801 to \$8,900	\$11,125
\$8,901 to \$9,000	\$11,250
\$9,001 to \$9,100	\$11,375
\$9,101 to \$9,200	\$11,500
\$9,201 to \$9,300	\$11,625
\$9,301 to \$9,400	\$11,750
\$9,401 to \$9,500	\$11,875
\$9,501 to \$9,600	\$12,000
\$9,601 to \$9,700	\$12,125
\$9,701 to \$9,800	\$12,250
\$9,801 to \$9,900	\$12,375
\$9,901 to \$10,000	\$12,500
\$10,001 or more	Calculate ¹⁰

¹⁰ 1.25 times the prior year's average monthly balance of client's funds



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

January 26, 1996

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Health

RULE: Amendments, Series 14, Personal Care Home Licensure

DATE FILED AS AN EMERGENCY RULE: December 15, 1996

DECISION NO. 1-96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JAN 26 11 09 AM '96

FILED

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be **disapproved**. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

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(Plus all the volunteer
help we can get)

EMERGENCY RULE DECISION (ERD 1-96)

AGENCY: Division of Health
RULE: Amendments, Series 14, Personal Care Home Licensure
FILED AS AN EMERGENCY RULE: December 15, 1995

- par. 1 The Division of Health (Division) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-15a(b))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Division filed this emergency rule with supporting documents with the Secretary of State December 15, 1996 and with the LRMRC December 15, 1996.

par. 7 It is the determination of the Secretary of State that the Division has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §16-5C-5 reads in part:

(a) All rules and regulations shall be approved by the board of health and promulgated in the manner provided by the provisions of §29A-3-1 et seq. of this code. The board of health shall adopt amend or repeal such rules and regulations as may be necessary or proper to carry out the purposes and intent of this article and to enable the director to exercise the powers and perform the duties conferred upon the director by this article.

par. 9 It is the determination of the Secretary of State that the Division has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Division are as follows:

The Division of Health of the Department of Health and Human Resources hereby submits the amended Person Care Home Licensure Rule, 64 CSR 14, for emergency filing as authorized under W. Va. Code §29A-3-15a(f)(3). The present proposed amended rule has been filed for a public comment period ending December 22, 1995. The Division plans to file the rule with the Legislative Rule-Making Review committee by the end of December, 1995. An earlier version of this rule was submitted by the Legislative Rule Making Review Committee for review by the 1995 Legislature. The 1995 Legislature did not approve the rule, and the lack of Legislative action was the subject of litigation. The West Virginia State Supreme Court, in Meadows and Martin v. Hechler, No 22875, (July 19, 1995), found certain portions of the State Administrative Procedures Act to be unconstitutional, but did not order the rule into immediate effect. The Division subsequently decided to make further

revisions to the rule before resubmitting it the Legislature for reconsideration. The present rule is thus the end result of a second round of public comment. Although the Division intends to allow present homes additional time past the effective date of the rule to come into full compliance and intends to conduct training to assist homes, the Division contends that the earlier the rule becomes effective, the earlier the new improved standards will be available for the protection of residents. Additionally, the Division agreed in the West Virginia Comprehensive Long-Term Care Plan filed in response to a Memorandum Order filed under Wolford v. Lewis 860 F. Supp. 1123 (S.D. W. Va. 1994), to implement amended personal care home licensure standards by June, 1995.

Thus, the rule is the subject of a court order, and the court and the Department believe that implementation of the provisions of the revised rule are long overdue, from the point of view of improved and clarified protection of residents, for compliance with State and federal law, and to provide providers with a regulatory situation that is more stable and as responsive to their concerns as possible under the current law. The Department believes that implementation of this rule is needed to prevent substantial harm to the public interest, and therefore requests approval to put the rule into effect on an emergency basis.

par. 13 The W. Va. Code states in §29A-3-12(b):

If the Legislative fails during its regular session to act upon all or part of any legislative rule which was submitted to it by the legislative rule making review committee during such session, no agency may thereafter issue any rule or directive or take other action to implement such rule or part thereof unless and until otherwise authorized to do so.

par. 14 In Meadows and Martin v. Hechler, No 22875, (July 19, 1995) the West Virginia Supreme Court states "We hesitate to order the filing of the regulations in the instant case without having had legislative review, although we could do so. As a matter of comity to the Legislature, we decline to do so at this time in order to give the Legislature the opportunity in its next regular session to consider the regulations."

par. 15 The Wolford v. Lewis, 860 F. Supp. 1123 (S.D. W. Va. 1994) states that "the parties are accordingly ordered to confer and develop a remedial plan for correcting and implementing proposed changes to existing residential board and care and personal care regulations and enforcement procedures which will incorporate the court's findings herein and submit the plan to the court within ninety days, together with a proposed timetable for implementing the changes.

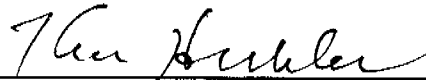
par. 16 The West Virginia Comprehensive Long-term care plan, Section 2.07.09 states:

Standards required by this subsection 2.07 ((2.07.01-2.07.08) for Adult Family Care Homes shall be developed and implemented by December 1, 1994. The

standards required by this subsection 2.07 for residential board and care homes and personal care homes shall be implemented before June 1, 1995.

par. 17 It is the determination of the Secretary of State that this proposal **does not qualify** under the definition of an emergency as defined in §29A-3-15(f) because it exceeds its authority as stated in W. Va. Code §29A-3-12(b) and even the Supreme Court says that the West Virginia Legislature should examine the rule before it is implemented.

par. 18 This decision shall be cited as Emergency Rule Decision 1-96 or ERD 1-96 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Health, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

FILED
JUN 26 11 09 AM '96
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Lewis Wetzel
Personal Care Home

RECEIVED

DEC 22 1995

REGULATORY DEVELOPMENT

Appalachian Community Services, Inc.

12/18/95

Dear Ken,

Pardon my informal approach -- formality at this point is a joke. I respond only because of your personal record of integrity & caring for our state. I currently spend most of my time in Tennessee (where employment is available) but hope to return home soon.

I've made brief notes on the enclosed "Notice."

Suffice it to say: Check it OUT! Ms. Lewis has lied to one and all. Costs to our state from these proposed rules will be large both in human (seldom important I've learned) and financial. These rules will feed the greed of medical systems while bleeding our state coffers -- while reducing quality of life for many.

Please insist on open hearings at the very least -- where those who do not write can respond.

Sincerely,

Wesley W. Harwin MA, LCSW

Former President; W. V. Dept. of Health
Behavioral Health
Advisory Council



Mr. Hechler

My Mother has been in
a personal care home for
9 years she is 93 years old.

She has been paying here
bills with the help of Medicare
& HARP. No help from the
State.

To the best of my knowledge
people who qualify for state or
Federal Funding receive \$24.00 a
month.

We need Rules & Regulations for
the few people who take advantage
of the patience and their care.

There are good personal care homes
and I would put Alliance Personal
Care up against any in the state.

(POA) SON.)

WILLIS C. NESTOR,

ROUTE 1 BOX 475

GRAPTON WYO. 26354

Golden Age Paradise, Inc.

"An Assisted Living Home For Adults"

December 18, 1995

Dottie B. Markley
President

Mr. Ken Heckler
Secretary of State Office
Building 1
Suite 157K
Charleston, West Virginia 25305

Reference: **Personal Care Regulations**
Title #64
Cit Authority 16-5C-5

Dear Mr. Heckler:

I am the owner and operator of an "Assisted Living" - Personal Care Home in Martinsburg, West Virginia and have operated this facility since September 1989.

A review of the **Proposed** Personal Care Regulations raises many questions.

The imposition of the **costs** imposed by the regulations whether small or large has to be absorbed by the facilities because the **Senior Citizens** don't have the ability to pay anymore than what they already are paying.

It is time that State of West Virginia recognizes that good **health care** should be available as needed to Senior Citizens in different levels of care and not restricted to one level only.

Multiple types of Health Care is the name of the game in the United States - **why not West Virginia.**

Regulations should be written to take care of small, medium and large facilities as other states do.

Regulations for the Assisted Living Personal Care Homes in West Virginia should be written and proposed by individuals knowledgeable in **what Assisted Living is all about in 1995** and the future based on what a resident can afford and what the **state** can afford.

I recommend you do not pass these regulations on an emergency basis as proposed.

Page 2
Mr. Ken Heckler
December 18, 1995

(continued)

They should be referred to the Legislative Committee for their analysis.

Sincerely,

A handwritten signature in cursive script that reads "Dottie Markley-Edwards". The signature is written in dark ink and is positioned above the typed name.

(Mrs.) Dottie B. Markley-Edwards
President, Golden Age Paradise, Inc.

cc: Delegate Vicki Douglas
Mark Grove, President, West Virginia Personal Care Association
George Polen, Treasurer, West Virginia Personal Care
Association

December 11, 1995

Autumn Way, Inc. Personal Care Home
P. O. Box S
Rupert, WV. 25984

The following is my response to the proposed Title 64 WV. Division of Health
Administrative Rules.

- Page 9 Section 4.3.1.d -- Security Bonds. We are expected to finance our closure so the state can take over; if we could finance our closure, we probably would not be closing.
- Page 13 Section 4.7.6 -- If anyone has a legitimate complaint, then they should have to face the accused.
- Page 18 Section 4.13.6 -- This is a very unfair rating system. Residents may be getting excellent care, but if all paper work is not in compliance, a home could be shut down.
- Page 24 Section 5.8.2 -- Staffing requirements are ridiculous. Should need at least 3 needs before additional staff is needed. If residents needed less than 3 of these needs, they should still be at their own home or with relatives.
- Page 25 Section 5.8.5 -- This should depend on the resident's condition.
- Page 28 Section 6.2.2 h. & I. -- Should not be homes responsibility unless resident has no family.
- Page 32 Section 7.1.8d -- This means another employee to be hired.
- Page 33 Section 7.2 -- This whole section means hiring more staff also.
- Page 43 Section 8.3.4 -- This should not be the homes responsibility. This is repetitious.
- Page 44 Section 8.5.3 & 4 -- These need reworded. The home needs some degree of scheduling to run efficiently and to provide the care needed for residents. If we let residents leave at will and the patient goes in street and gets hurt or killed, who is responsible?

- Page 47 Section 8.12.1 -- Disability according to your regulations is discriminatory.
- Page 64 Section 12.1.9 -- No Personal Care Home can afford a Doctor or Pharmacist to come in for reviews.
- Page 65 Section -- 12.2.5 a-e -- Registered Nurse requires more pay per hour, once again increasing costs to the PCH.

Woodridge Personal Care Home
3810 Grand Central Ave.
Vienna, WV 26105

December 12, 1995

Ken Heckler

Thank you for taking the time to listen to the concerns of the Personal Care Homes owners concerning the new regulations that are going to be passed.

There are a few problems with the new regulations that could force closure of some of our businesses. I hope as you look over some of our concerns you will be able to see that some of the new regulations will put a great financial strain on running the homes.

1. Staffing and the amount of hours a registered Nurse must be employed in the homes. Why can't each home be considered on an individual basis, instead of a rule set in concrete for all homes. What may be working in one home will not work in another. As far as the nurses are concerned, all homes do not need a nurse for as many hours as another home may. Also why can't an LPN be hired as the homes nurse, instead of hiring an RN? An LPN is trained in all the aspects a Personal Care Home needs, and is much more cost effective. Also why does the state want the homes to be required to have a RN give insulin injections? We have a staff trained to do the injections and there are staff working 24 hours a day. We are only a telephone call away from contacting a residents personal physician or contacting our nurse if a reaction would occur.
2. When hiring a new employee the new regulations want to have a criminal background check and TB test done withing a week. Why can't the state licensure office set up a hotline so the Administrators can make a criminal check immediately through their office. The homes could do the fingerprinting and fax the information and have a direct answer almost immediately. Also the TB testing does need to be done just as quickly as possible, but some people may have to have a chest X-Ray instead of the prick on the arm, because they have an allergic reaction.
3. Assessments, Periodic health psychological, social, individual service plan every 45 days, and a review plan annually. Each resident has their own physician and each personal care home has its own nurse, which meets all the needs of the residents. Our residents all have to be ambulatory and not in the need of any more than 2 hours a day nursing care for a period of time no longer than 90 days consecutive days per episode. We are meeting the requirements needed for the residents, why do we need to change something that is working well. Also this is very expensive for the homes to do. We are not Nursing Homes and should not be regulated as such. If Personal Care Homes should have to meet these guideline we should be State and Federally funded to do so.
4. Obtain a drug regimen review for unnecessary drugs for each resident. Each resident has his own family doctor and choice of Pharmacist.

Please read over the whole set of new regulations, they are very long. We went from approx. 28 pages of regulations to 76. We don't need lengthy pages of regulations, but we do need clear and precise regulations. As you read over these regulations, try to put yourself in the homeowners place and see if you feel these guidelines need to be so stringent. After all our goal is to care for our residents and to always keep their best interest as our number 1 goal. Thank you for listening to the concerns of all of the Personal Care Homes in West Virginia.

One other concern I wanted to mention was about the Administrators for Personal Care Homes. The new regulations state a new Administrator must have an Associates Degree in the related field, but existing Administrators are not required. I don't believe it is necessary for an Administrator to have an Associates Degree for a personal care home. I don't think there have been any problems with Administrators running personal care homes who do not have a degree. Also you must look at the additional expenses involved if a person has a personal care home and wants to sell it. Whoever may purchase a home may not have a degree and it would make a great financial burden on them to hire someone else to be their administrator.

Sincerely



Administrator

COUNTRYSIDE MANOR
6472 Farmdale Road
Barboursville, WV., 25504

RECEIVED

DEC 13 1995

REGULATORY DEVELOPMENT

Secretary Ken Heckler,
Secretary of States Office
Building 1, Suite 157K
Charleston, WV., 25305

Dear Secretary Heckler,

On November 28, 1995 at approximately 1:00 p.m., we had the opportunity to have a phone conference with Senator Manchin, Legislator Ed Kerns and other members of the WVPCH association. This conversation was to see what direction we should take as an industry on these proposed regulations. I've had many conversations from concerned operators on the impact of these proposed rules and the direct impact to the facilities themselves. It's been said in many different meetings that smaller homes are not going to be able to comply and still be profitable to stay in business. These are just a few concerns that have been discussed:

SECTION 4.3- Surety Bonds. 1. The reason as we understand these rules is to be able to run a facility for 30 days that are going to have compliance problems. In short we will be financing the closure of our homes, and allowing the state 30 days to find replacement and comply with notification process of 30 day notice. Great idea, HA!

2.5.8 - Minimum standards for staffing class 1 facilities.

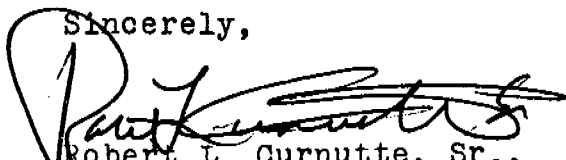
SECTION 5.8.2 - Our understanding is that assistance in eating, toileting, and ambulating, dressing, bathing are common aging processes that all daily living residents require. We could agree that behavior problems and special skin care would require more staffing hours. To say that for normal assistance we need such stringent staffing quotas are unrealistic. Staffing ratios in nursing homes is 12 to 1. How can we be expected to live at a higher standard than nursing homes or hospitals? Again, we are not being funded at a higher level to live in this perfect world. These numbers are not to include cleaning, kitchen, laundry and administrator hours, unless the administrator provides hands-on care.

The next major issue is 7.2.2, Care Plans to be completed by R.N staff. Again, this is the Perfect World Syndrome. As an example, homes who employ LPNs would now have to have RNs to complete the paperwork. No only does this take away from hands-on in some cases, it means LPN hours would be done away with and RNs hours to do paperwork only.

Secretary Heckler these regulations are going to create a problem where a problem does not exist. Our next effort will be a meeting with Senator Manchin and other Legislators who are willing to stand beside us. We need your help! We feel this to be a major priority.

Thank you very much for your time and all good wishes for a joyful holiday season.

Sincerely,



Robert L. Curnutte, Sr.,
Administrator, Countryside Manor,
Vintage Health Services, Inc.
6478 Farmdale Rd.
Barboursville, WV., 25504
Phone: 1-304-736-1382
Fax: 1-304-736-8512

RLC/pc

**Lida Clark Licensed
Personal Care Home**



960 West Pike Street • Clarksburg, West Virginia 26301 • (304) 622-2621

November 30, 1995

RECEIVED

DEC 11 1995

REGULATORY DEVELOPMENT

Ken Heckler, Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard
Charleston, West Virginia 25305

Dear Mr. Heckler:

We are a twenty eight bed facility, servicing private pay and medicaid residents.

Some of the proposed regulations without a grandfather clause for facilities in existence for years, will force closure of this facility.

Special attention to medication, staffing, assessments, and medicaid reimbursement.

We cannot provide nursing home services on medicaid reimbursement.

Sincerely,

A handwritten signature in cursive script that reads "Opal L. Cottrill".

Opal L. Cottrill, Administrator
Lida Clark Personal Care Home

OLC:jc



RECEIVED
DEC - 1 1995
REGULATORY DEVELOPMENT

November 29, 1995

Secretary of State
Ken Hechler
Building 1
Suite 157 K
Charleston, WV 25305

Dear Mr. Hechler:

We are writing to you regarding the new Personal Care Home regulations. The regulations as written would require us to add 7 more personnel to our staff. We have never been cited as being under staffed. This requirement would increase health costs with absolutely no benefit whatsoever to our residents.

Requiring RN's to write care plans on people who need assistance with bathing, eating and walking would take many hours away from "Hands On" resident care and would only be giving attention to paper, not people. The surety bond that the State is requesting so that they will have enough money to come in and close us down is a slap in the face to the industry. Penalizing elderly people by increasing their cost for health care is just another example of the State trying to fix something that isn't broken.

Our private pay residents typically pay between \$35 - \$45 per day for their care. We keep people on welfare for approximately \$18 per day. The private pay would again have to pick up the cost at approximately \$5 more per day to meet these new regulations which figures to be approximately \$150 per month. Please understand that these people have asked nothing from the State and are paying their own way but could go into a nursing home for financial reasons if we have to raise their daily rate therefore increasing the cost to the State of matching funds for a nursing home resident.

We are asking for your support with these issue's, Mr. Hechler, as it is vital for the welfare of our residents as well as for the people of West Virginia. Thank you for your assistance with this matter.

Sincerely,


Phyllis J. Myers
Administrator

/jas

Kay
Howard



DEC -5 1995
REGULATORY DEVELOPMENT

November 30, 1995

Ken Heckler, Secretary of State
Building #1
1900 Kanawha Blvd.
Charleston, WV 25305

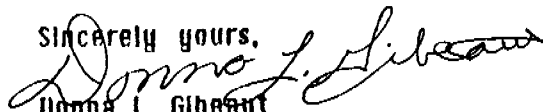
Re: Proposed Personal Care Home Licensure Regulations

Dear Ken,

We are all very much aware that Health Care as we know it in the State of West Virginia is in the process of undergoing radical changes, most of which will not be an improvement; but will cause long term problems for the elderly, their families and the facilities who care for them.

Personal Care Homes are not Nursing Homes and should not be treated as such. I am the Administrator of a 73 bed private pay Personal Care Home located in Dunbar and the proposed regulations would make it mandatory for us to treat our residents as if we are an Intermediate Care Facility. The highest percentage of my residents require very little assistance. If we are forced to increase our staffing up to 1 to 8 for days and evening shifts, and 1 to 12 for midnights, this increase in cost will have to be passed on to the residents for us to survive. On top of that, with the type of residents we have, it would be very difficult to have enough work to keep this over-load of staffing busy. Our elderly population are on fixed incomes, and such an increase will probably force them out of our home into a nursing home and make them another drain on the Medicaid System. Our facility has the reputation as being one of the finest homes in the state, so why fix it if it isn't broke? Our residents receive excellent care from our staff of trained and loving Resident Aides. The requirement for Care Plans for ADL's will require us to also increase our Professional staff. This staff would be required for paper work, not resident care, I find this redundant. Does this make sense in this day and age, when we are all trying to provide the best care at the lowest possible price? All forms of Health Care are now facing major reductions. It is therefore, not logical to force the providers to provide more intense and expensive care that is not required or necessary for our residents to receive excellent care. We are already providing them with the best available. Don't let them over regulate us! It will be a huge disservice to our elderly and the tax payers. I would also appreciate you making a visit to our home and observe for yourself the type of care we provide our residents. I am sure that you will then agree with me. SEE FOR YOURSELF!

Sincerely yours,


Donna L. Gibeaut
Administrator

Member: WVRCA
WV Personal Care Association

Senior Living at its Best

505 Caldwell Lane • Dunbar, West Virginia 25064 • (304) 744-7400

December 5, 1995

RECEIVED

DEC -7 1995

REGULATORY DEVELOPMENT

Mr. Ken Heckler

We in the Personal Care Home Association would love to have new regulations passed for our industry, but not ones that will close most of us down. If I remain silent now, I will forfeit the right to complain when the doors of my business are closed in the future.

My Personal Care Home is located in downtown Elkins. It is an excellent place to live. The building was built to be a Personal Care Home six years ago, my husband and I bought the business 18 months ago. Partly due to a new mortgage, our cost per resident per month is approximately \$1507.00. Our room rates are \$1350.00 semi-private and \$1650.00 private. The two months a year when we have 3 payrolls, we lose money. If the new regulations go into effect with added costs such as increased staffing, Surety Bonds, RN wages, 17 people will lose their home and 16 employees their jobs.

At a time when hospitals are drastically cutting back on nursing hours (Nursing staff in hospitals now do all Housekeeping chores, draw blood, do respiratory care, etc.) these new regulations will over staff Personal Care Homes out of business.

No matter how many Laws you pass in Charleston, you nor I will ever receive better care than the residents receive right now in my Home.

Sincerely,

Maria Valentini
Valentini Personal Care Home
521 Davis Ave.
Elkins, WV 26241

VINTAGE VILLAGE

3100 Staunton Road
Huntington, WV 25701
Phone (304) 525-6121

RECEIVED

DEC -7 1995

REGULATORY DEVELOPMENT

Secretary of State Office
Ken Hechler
Building 1, Suite 157K
Charleston, WV 25305

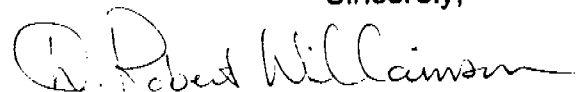
Mr. Hechler,

As an administrator of one of our state's much needed personal care homes, I feel I must write to you in protest of the proposed new regulations. These proposed regulations are, in a word, ridiculous. They are an attempt by the state regulatory agencies to close many of the small homes in this state. I believe we all know how important a part personal care homes play in the need for resident supervision.

Many families are simply unable to afford care in a nursing home or home health services. Without an alternative, families have been forced to make restrictive, even unhealthy, arrangements in order to maintain the health of a loved one. Personal care homes fill this gap. We provide 24 hour supervision in all areas of daily living and give quality care for those in need. Up to this point, we have been able to do this in an affordable manner. If these proposed regulations go through as is, personal care homes will not be able to meet the demand for affordable care. Many will close due to the unnecessarily stringent regulations and those that don't will be forced to raise their rates so much that they will become uncompetitive. Keeping in mind that personal care homes are not funded by the government, the regulations are basically closing the door on a much needed service.

Mr. Hechler, I cannot stress enough the dangers of these proposed regulations. They are aimed at destroying the whole concept of personal care homes. Something must be done. We cannot accept these regulations. These proposals are oppressive, suffocating and will cause the ultimate downfall of the industry and the displacement of 1000's of residents who depend on us for quality, loving care that they can attain.

Sincerely,



D. Robert Williamson
Administrator

RECEIVED

**Caldwell
Cannon-Ryan
& Riffe**
LAWYERS

Office Address:
Suite 101
3818 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304

Mail Address:
Post Office Box 4347
Charleston, West Virginia 25364-4347
Phone (304) 925-2100
Fax (304) 925-2193

DEC 8 1995
Joseph W. Caldwell
Susan Cannon-Ryan
Charles A. Riffe, II
Shari L. Collias
REGULATORY DEVELOPMENT

December 6, 1995

Ken Heckler
Secretary of State
State of West Virginia
Building 1, 1900 Kanawha Boulevard
Charleston, West Virginia 25305

Re: Personal Care Home Licensure Regulations

Dear Mr. Heckler:

This letter is written with regard to the proposed Regulations dealing with personal care homes.

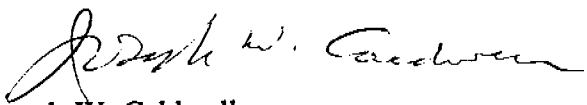
I provide legal services for personal care homes located in the Charleston area. Many people confuse personal care homes with nursing homes. Residents of personal care homes are ambulatory and do not require the same level of skilled assistance as residents of nursing homes.

I understand that the proposed regulations will mandate an increase in staffing. An increase in staffing will inevitably result in an increase in the amount of the cost.

I am not aware that there are any reports criticizing the level of care presently offered at personal care homes. We are not arguing for less Regulations than at present, simply that there not be additional Regulations imposed.

Resources can be better devoted to shortcomings in the care of persons at the nursing home level.

Very truly yours,


Joseph W. Caldwell

JWC:rcs

Nov. 29, 1995

Secretary of State
Ken Heckler

Dear Sir:

I would like to bring to your attention problems that could be devastating to me, 21 employees & the state of W.V., if A.F.L.A.C. is allowed to push regulation on Personal Care Homes that we can not possibly afford. There are things involving 100's of more nursing hours that we don't need & can not possibly afford, there are staffing changes Nursing care plans that are extensive that we can not afford, Security Bonds, Passing of medications etc...

I am one of the very, very few people in this state who built a 30-bed state of the art Personal Care home from the ground up, my overhead

is such that I make it from month to month & pray I don't get any empty beds. I receive no Gov't money of any kind. There are several good Personal Care Homes that can not possibly afford what's in these reqs. The things listed are not emergencies. There is a force stronger than us that is trying to put a whole industry out of business. Five years ago I stated to the press that my dream had become a reality, well my reality has become a nightmare. I have a whole community behind me, I will not lose what it took 4 years to build. We need your help desperately. We need for you to hear our story. You see we need regulations, but not the stiffest reqs of any state in the country as it stands now. Please listen to us.

Thank You
Peggy Haddis
Alliance Personal Care Homes
Draughton W.V. 26354.

RT 3 Box 254

COLONIAL PLACE

Assisted
Living Facility

301 WILSON LANE - ELKINS, WEST VIRGINIA 26241 - (304) 636-8600 - FAX (304) 636-8673

December 13, 1995

Secretary of State Office
Ken Heckler
Bldg. 1
Suite 157K
Charleston, WV 25305

Dear Mr. Heckler:

As an Administrator and R.N. of Colonial Place, a new 66 bed personal care home in Elkins, I agree we need new regulations, but not to the point that it would make it infeasible for homes to remain operational and provide this much needed community service.

All of our residents are private pay, so it makes it difficult for me to explain to a family that our rates may be increased due to new state regulations, although we get no assistance from the state.

My major concern regarding the new regulations is that they will take my nursing staff off the floor as care givers and put them behind a desk to do paperwork. It seems to me that our senior citizens are being taken advantage of at the federal level, such as medicare and social security cuts, but surely they do not have to bear the burden of higher costs if these regulations are passed.

I feel these regulations are more stringent than hospitals or nursing homes as compared to the level of care we are allowed to provide.

No matter how many laws you pass in Charleston, I do not feel we could possibly provide any better care for our residents and the peace of mind we offer our families. I personally would like to invite any public officials to come visit our new facility.

Sincerely,

Sharon Mullenax
Sharon Mullenax

RECEIVED
DEC 15 1995
REGULATORY DEVELOPMENT

Dear Sec. of State:

I am writing to see if you could send me the book of West Virginia Natural Resources Laws, from The Michie Company in Charlottesville Va.

I called District 11 Romney in WV at 822-3551, They gave me the address of the Sec. of State to see if you could send me or tell me how to get the book on WV Natural Resources Laws.

Would you please send me any information on how I can get a copy of the book if I am not able to receive one from you.

Thank you,

Paul A Davis
Po. Box 117
Kearneysville WV
25430

Box 516
Athens, WV 24712
January 2, 1996

Mr. Ken Hechler
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd East
Charleston, WV 25305-0770

Dear Secretary Hechler:

I have recently seen your letter of December 14 to Mrs. Beverly Phillips regarding proposed Personal Care Home Regulations, which the Division of Health has filed as an emergency rule.

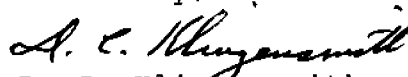
As I understand it, the new regulations would have the effect of requiring increased staffing and bonding.

This will result in many personal care homes having to close, and the ones remaining open will have to increase their fees sharply. It seems to me this is the result of an unholy alliance between the Health people and Nursing Home Association, with the intent of shifting a lot of business to nursing homes.

There is plenty of room in the health care spectrum for the personal care homes. There are many old folks who are cared for perfectly well in the personal care range of the spectrum. I look after the affairs of an 88-year old woman who is in the Phillips Personal Care Home in Lerona. Janice is fed well, clothed well, housed well, is seen monthly by a physician, is looked after by Mrs. Phillips, an LPN, and lives in immaculate surroundings. She has no immediate family, and I have no idea what to do with her if the Phillips' have to close or raise their rates.

It is absurd to try to sneak these new regulations through as an emergency rule. The Legislature should be allowed to examine them in the light of day, and expose the changes for all to see. I have no quarrel with the Division of Health enforcing common-sense regulations for the care of the elderly. However, let's let the good establishments continue that way, free of bureaucratic nonsense.

Sincerely,


D. C. Klingensmith



Assisted
Living Facility

301 WILSON LANE - ELKINS, WEST VIRGINIA 26241 - (304) 636-8600 - FAX (304) 636-8673

December 13, 1995

Secretary of State Office
Ken Heckler
Bldg. 1
Suite 157K
Charleston, WV 25305

Dear Mr. Heckler:

As an Administrator and R.N. of Colonial Place, a new 66 bed personal care home in Elkins, I agree we need new regulations, but not to the point that it would make it infeasible for homes to remain operational and provide this much needed community service.


All of our residents are private pay, so it makes it difficult for me to explain to a family that our rates may be increased due to new state regulations, although we get no assistance from the state.

My major concern regarding the new regulations is that they will take my nursing staff off the floor as care givers and put them behind a desk to do paperwork. It seems to me that our senior citizens are being taken advantage of at the federal level, such as medicare and social security cuts, but surely they do not have to bear the burden of higher costs if these regulations are passed.

I feel these regulations are more stringent than hospitals or nursing homes as compared to the level of care we are allowed to provide.

No matter how many laws you pass in Charleston, I do not feel we could possibly provide any better care for our residents and the peace of mind we offer our families. I personally would like to invite any public officials to come visit our new facility.

Sincerely,


Sharon Mullenax

Secretary of States Office
Ken Heckler
Building 1
Suite 157K
Charleston, W.V. 25305

Dear Mr. Heckler,

Upon reading the newly proposed Personal Care Home regulations, I feel that it would impose a great financial burden to implement certain sections of the codes. I have worked within the state for more than 25 years of which 20 years has been in the medical field.

I feel that to develop a detailed Nursing Assessment and Individualized Service Plan for each resident would qualify as Nursing Home or another type of Skilled facility. It would make a great impact financially for our Personal Care Home and other smaller homes that couldn't afford to have a Registered Nurse on staff full time. I feel that the need for a detailed Nursing Assessment and Individualized Service Plan goes beyond the need for Personal Care. Personal Care Homes fulfill a need within the State, if you tie our hands by adding a financial burden what will become of the residents that rely on us to provide a warm and loving home environment for them. Nursing Assessment and Individualized Service Plan require detailed documentation, frequent updating, and additional full time Registered Nurse. Please remember that not only do we provide personal care services, we strongly support the economic growth within the state. If you choose to impose these codes, you will be adding to the unemployment rate of West Virginia, but most of all it will affect the outcome of residents receiving Personal Care services.

Respectfully,

Guelyn Marsel
P.O. Box 123
Belington, WV
26250



COUNTRY HAVEN REST HOME

P.O. Box 10 • Beech Bottom, WV 26030 • (304) 394-1116

Co-Administrators:
Patricia Hitchcock
Jacquelyn Kiple
Assistant Administrator:
Lynn Dodd

December 12, 1995

Mr. Ken Heckler
Building 1 Suite 157K
1900 Kanawha Blvd.
Charleston, WV 25301

Dear Mr. Heckler,

We are writing to ask you to work to change the proposed rules and regulations for Personal Care Homes. If the new rules and regs go into effect, Country Haven Rest Home will be forced out of business.

Country Haven is a 29 bed facility with 23 employees, and is presently the only licensed Personal Care Home in Brooke County. Because of the poor financial status of most of our residents coupled with the ridiculously low Medicaid reimbursement rate, our 7 years of operation have been a constant financial struggle. We did not go into this business to get rich. But the striving to comply with the present rules and regs, pay the bills, and provide our residents with the best of care has been nearly impossible. And now new rules and regs are proposed which would require even more from us, holding us to nursing home standards, with no increase in funding.

We are about ready to surrender to being regulated out of business. But, if we give up, we will have 29 homeless residents, most of which will be forced into nursing homes where the state will pay \$2500 to \$3000 to keep them. We will have 23 jobless employees to whom the state will pay unemployment compensation. And, because in our dedication to our facility we personally guaranteed the mortgage on our building, we will most likely be forced into personal bankruptcy. What a sad and stupid end to a venture that began as a dream to provide the elderly with excellent care and love.

There is no way we can set aside \$10,000 to finance the closure of our facility. We cannot afford the time and extra work required to continuously update unnecessary care plans. We cannot increase our staffing--as it is we can't compete with the nursing homes pay rates and benefits. We cannot pay an RN to be on call 24 hours a day--our house physician is already on call for us.

These new rules and regs are structured to put Personal Care Homes out of business. Where is the logic in paying

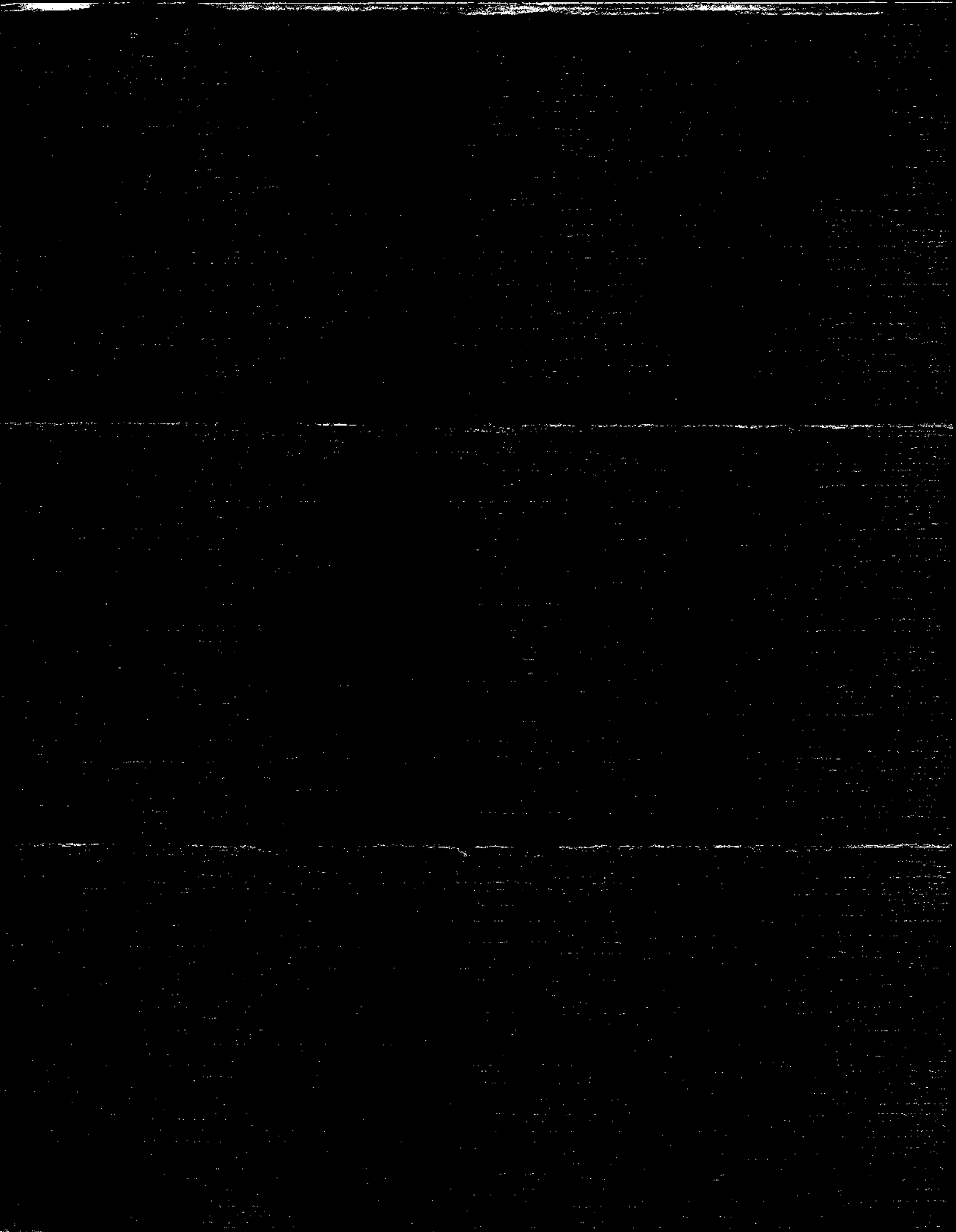
twice the cost to keep personal care residents in nursing homes. We hope and pray that someone with some authority, common sense, and foresight will develop a solution to this insanity.

Sincerely,

Jacquelyn A. Kiple
Jacquelyn A. Kiple

Patricia J. Hitchcock

Patricia J. Hitchcock
Co-Administrators



Secretary of States Office
Ken Heckler
Building 1
Suite 157K
Charleston, W.V. 25305

Dear Mr. Heckler,

Upon reading the newly proposed Personal Care Home regulations, I feel that it would impose a great financial burden to implement certain sections of the codes.

I feel that to develop a detailed **Nursing Assessment and Individualized Service Plan** for each resident would qualify as Nursing Home or another type of Skilled facility. It would make a great impact financially for our Personal Care Home and other smaller homes that couldn't afford to have a Registered Nurse on staff full time. I feel that the need for a detailed Nursing Assessment and Individualized Service Plan goes beyond the need for Personal Care. Personal Care Homes fulfill a need within the State, if you tie our hands by adding a financial burden what will become of the residents that rely on us to provide a warm and loving home environment for them. Nursing Assessment and Individualized Service Plan require detailed documentation, frequent updating, and additional full time Registered Nurse. Please remember that not only do we provide personal care services, we strongly support the economic growth within the state. If you choose to impose these codes, you will be adding to the unemployment rate of West Virginia, but most of all it will affect the outcome of residents receiving Personal Care services.

Respectfully, *Larry J. Marsh*
P.O. Box 173
Belington, WV
26250

12/14/95

Dear, Mr. Ken, Heckler

I'm am writing to you concerning proposed title 64 West Virginia Division of Health Administrative Rules for Personal Care Homes, Series 14.

My Mother has been a resident of the Alliance Personal Care Home for the last 4 yrs. It was her children's decision to place her in this facility for her care. Which has proved to be excellent.

We don't feel, since she is paying for the care, that the State should dictate unnecessary rules which would force Personal Care Homes out of business, and force the residents into Nursing Homes, which my Mother was in, where she received impersonal and much less attention, than she does now.

I urge you not to sign the new regulations.

Thank you for your time and attention to this very important matter to those of us who have loved ones in Personal Care Homes.

Daughter of Onda M. Nestor

Patty E. Nick

Rt. 1, Box 464

Shefton, WV 26354

Ph-304-265-2557

Mr Heckler,

Dec 13, 1995

I am very much interested in the issue involving nursing homes and personal care homes.

I am from Supton, W. Va born and reared there until the railroad decided me would reside near Cumberland, Md.

I read the article in Dec. 11 Mountain Statesman.

I am asking you, please don't sign the new regulations.

Sincerely,
Helen S. Carr
Rt. 1, Box 177
Ridgeley, W. Va.
26753

my 86 year old mother has been a resident at Phillips Personal Care in Lerona, WV for over two years, where she has received excellent care.

Please allow these facilities to continue to do the job they were intended to.

Thank you for any consideration and help in this manner.

Very sincerely yours,
Jenny G. Shwaites

G.O. B4 132

Narrows, VA

24124

Mr. Ken Heckler
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd. East
Charleston, WV 25305-0770

Dear Mr. Heckler:

I am writing in regards to recent regulations for Personal Care Facilities.

The proposed bond on residents and the requirement of a registered nurse, 24 hours per day would increase considerably the fees being paid. Many families are already struggling to keep their loved ones in these facilities where they get very good attention and a "personal touch" I have seen lacking in some nursing homes. The above mentioned proposals would not enhance their care at all.

I also feel that many of the Personal Care Facilities might be forced to close. Where do we place our loved ones then when we can no longer care for them at home?

Woodridge Personal Care Home
3810 Grand Central Ave.
Vienna, WV 26105

December 12, 1995

Ken Heckler

Thank you for taking the time to listen to the concerns of the Personal Care Homes owners concerning the new regulations that are going to be passed.

There are a few problems with the new regulations that could force closure of some of our businesses. I hope as you look over some of our concerns you will be able to see that some of the new regulations will put a great financial strain on running the homes.

1. Staffing and the amount of hours a registered Nurse must be employed in the homes. Why can't each home be considered on an individual basis, instead of a rule set in concrete for all homes. What may be working in one home will not work in another. As far as the nurses are concerned, all homes do not need a nurse for as many hours as another home may. Also why can't an LPN be hired as the homes nurse, instead of hiring an RN? An LPN is trained in all the aspects a Personal Care Home needs, and is much more cost effective. Also why does the state want the homes to be required to have a RN give insulin injections? We have a staff trained to do the injections and there are staff working 24 hours a day. We are only a telephone call away from contacting a residents personal physician or contacting our nurse if a reaction would occur.
2. When hiring a new employee the new regulations want to have a criminal background check and TB test done withing a week. Why can't the state licensure office set up a hotline so the Administrators can make a criminal check immediately through their office. The homes could do the fingerprinting and fax the information and have a direct answer almost immediately. Also the TB testing does need to be done just as quickly as possible, but some people may have to have a chest X-Ray instead of the prick on the arm, because they have an allergic reaction.
3. Assessments, Periodic health psychological, social, individual service plan every 45 days, and a review plan annually. Each resident has their own physician and each personal care home has its own nurse, which meets all the needs of the residents. Our residents all have to be ambulatory and not in the need of any more than 2 hours a day nursing care for a period of time no longer than 90 days consecutive days per episode. We are meeting the requirements needed for the residents, why do we need to change something that is working well. Also this is very expensive for the homes to do. We are not Nursing Homes and should not be regulated as such. If Personal Care Homes should have to meet these guideline we should be State and Federally funded to do so.

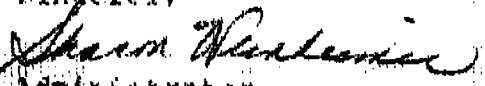
Also require review for unnecessary drugs for each resident.

5. Therapeutic diets-at no time shall a resident be offered less than 1400 calories each day. This is an increase from 1200 calories. This is expensive and as adults become older they do not need the increase in calories. The 1200 calories meet the guidelines.
6. Vegetables/fruits-3 or more servings each day. This is an increase from 2 servings after all these years.
7. Whole grain bread/cereals, at least 6 servings each day. This increases from 4-servings-substantial compliances with the recommended dietary allowance of Food & Nutrition Board of National Academy of Sciences. If we change the requirement to 1400 calories, add 2 more servings of Vegetables/fruits per day and increase 2 more servings of Whole grain bread/cereals, we are giving the resident more than what they require nutritionally. We are meeting the food guidelines now. Also our residents don't get the exercise that a 30 or 40 year old does. This will increase their body weight, thus putting them at risk for more health problems.
8. Sprinkler System Inspection
These are being done by the homes on a quarterly basis now. I feel that it needs to be done annually instead of quarterly. Also it would be good if the specifics of the Fire Marshall's inspections were made clear in the regulations.
9. Door openings, Screens
Should read any doors and windows that would be left open, need to be screened. If they are not going to be left open why do they need to be screened?
10. Bathtub/Showers 1:5
We help our residents bathe and shower. If we have a good bath and shower schedule for our residents and it is clearly working why do we need to change it?
11. Procedures for Penalties
We don't need to be fined when we make a mistake, unless there is proof of definite negligence on our part. We are trying to run our homes efficiently and safely. What we are in dire need of is a much better communication between our homes and the licensing office. It would be nice if each home would receive a list of each person in the licensing office in Charleston and what their job classification is so that we can be assured of making contact with the right person whenever we have a problem. Also the communication from their office needs to be more efficient. Many times we make numerous call to the licensing office and wait and wait for an answer to a problem, or maybe we never hear from them and have to keep calling back.
12. Building codes
I feel the existing homes should be grandfathered for a lot of the new regulations that are trying to be imposed on them. If we are caring for our residents, and their safety, this is the most important thing. Also it is easy for a group of people to make all of the rules that should be followed, but what is not considered is the amount of money that each home has to work with. We are not funded Federally or by the State to make these costly changes. If these stringent rules are expected to take place there needs to be some funding for the changes required. Even newer homes will suffer from the great financial burden put on them. The residents of WV cannot afford for these costs to be passed onto them.

Please read over the whole set of new regulations, they are very long. We went from approx. 28 pages of regulations to 76. We don't need lengthy pages of regulations, but we do need clear and precise regulations. As you read over these regulations, try to put yourself in the homeowners place and see if you feel these guidelines need to be so stringent. After all our goal is to care for our residents and to always keep their best interest as our number 1 goal. Thank you for listening to the concerns of all of the Personal Care Homes in West Virginia.

One other concern I wanted to mention was about the Administrators for Personal Care Homes. The new regulations state a new Administrator must have an Associates Degree in the related field, but existing Administrators are not required. I don't believe it is necessary for an Administrator to have an Associates Degree for a personal care home. I don't think there have been any problems with Administrators running personal care homes who do not have a degree. Also you must look at the additional expenses involved if a person has a personal care home and wants to sell it. Whoever may purchase a home may not have a degree and it would make a great financial burden on them to hire someone else to be their administrator.

Sincerely


Administrator

Weinheimer

JOHN D. ROCKEFELLER IV
WEST VIRGINIA

United States Senate

WASHINGTON, DC 20510-4802

*** VIA FACSIMILE ***

December 22, 1995

The Honorable Ken Hechler
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard East
Charleston, WV 25305

Dear Ken,

I am writing to urge you to carefully consider a pending request by the Office of Health Facilities' Licensing and Certification (OHFLAC) to enact regulations on an emergency basis for personal care homes in West Virginia.

It is my understanding that while new physical plant and patient quality regulations have been developed as directed by Judge Copenhaver, a new reimbursement scheme to accompany them has not yet been developed. I have been contacted by representatives of the West Virginia Personal Care Home Association who are extremely concerned that enactment of new physical plant and patient quality regulations without any accompanying increase in reimbursement could be very detrimental to the continuation of some personal care homes in West Virginia. I have been told that there are estimates that up to 200 to 300 people could lose access to an assisted-living facility in the first year as a consequence.

Ken, I am sure you will take their views and concerns under careful consideration as you work to make sure residents of personal care homes receive high quality care. If there is anything I can do to be of further assistance, please let me know. My best to you.

Sincerely,



John D. Rockefeller IV

Woodridge Personal Care Home
3810 Grand Central Ave.
Vienna, WV 26105

December 21, 1995

Ken Heckler

I have informed my residents about the many new regulations that West Virginia Liscensure Office is trying to impose on the Personal Care Homes, not only the changes but the effect of the changes that it will have on the residents, the costs for the additional expenses, costs the residents and the homes cannot afford.

I have ask their cooperation in compiling this letter. I have a list of questions I ask them about the home they live in, and ask for a showing of responses. This is their response.

- 1. Are you satisfied with your current care provided for you? Yes 25 No _____
- 2. Does the home provide for all of your needs (Physically, Emotionally, Socially and Spiritually?) Yes 25 No _____
- 3. Are your meals provided for you meeting all of your Nutritional needs, Yes 25 No _____
- 4. Do you have a satisfactory bath schedule? Yes 25 No _____
- 5. Do you feel like this is your home and everyone treats you like a family member? Yes 25 No _____
- 6a. Do you want to have the same home environment setting that you are now living in? b. would you prefer to have an environment more like a nursing home or a hospital? a. Yes 25 No _____ b. Yes _____ No 25
- 7. Do you feel you are treated with respect by the staff and the other residents? Yes 25 No _____
- 8. Do you feel you have the appropriate amount of Nursing Care and the appropriate amount of care from your Physician/Psychologist/Podiatrist? Yes 25 No _____
- 9. Would you recommend/refer our Personal Care Home to someone who is in need of our services? Yes 25 No _____
- 10. Do you feel Personal Care Homes should be under stricter guidelines and that we need to have stricter regulations? Yes 25 No _____

Here are some signatures from our residents, some may not be able to sign for themselves, if they wish to have their name on this paper we will write their names down for them.

Thank you once again for listening to our concerns about the new regulations

Sincerely,

Spokane, Administrator

- 1 Miss [unclear] [unclear]
- 2 Leora Porter
- 3 [unclear]

SAMO

- 5 [unclear]
- 6 [unclear]

- 7 Richard E. Hill
- 8 [unclear]
- 9 [unclear]

- 10 Hulbert Rardon
- 11 ~~LEONOR STOTLER~~

- 12 Rachel M. Massey
- 13 Ray K. Watson

- 14 UND P (Vondra Report)
- 15 Jenna Stacker
- 16 Ben Dunge

- 17 [unclear]

- 18 [unclear] EUGENE THURMAN

- 19 [unclear] DUSTY GARD
- 20 EDNA HANING

- 21 Grace Stalnaker
- 22 Wilbur Zim [unclear]
- 23 Ray Deppert [unclear]
- 24 Roy D. Brown
- 25 [unclear]

Rachel Holiday at home
 Rachel Holiday was not available for the survey because she went to her parents for Christmas.



County Commission of Raleigh County

Post Office Drawer A.N

Beckley, West Virginia 25802-2836

(304) 255-9148

(304) 255-9166

Phone

Fax



THE FOLLOWING IS A FAX MESSAGE

Fax Number (304) 255-9166

TO: Ken Heckler

FROM: Jack MacDonald

SUBJECT: Personal Care Homes

Number of pages 4 (including cover page)

Date Transmitted 12-22-95

Special instructions or messages, if any: _____

The hard copy will follow in the

mail.

!

JACK P. MacDONALD, Owner

Rest Haven Licensed Personal Care Home

ROUTE 4, BOX 520

BECKLEY, WEST VIRGINIA 25801

PHONE 604-252-6941
FILED
DEC 22 10 48 AM '95OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

December 22, 1995

Honorable Ken Hechler
Secretary of State
Capitol Complex
Charleston, WV 25301

Dear Mr. Hechler:

I am writing you this letter in response to proposed regulations that have been filed in your office at the Secretary of State, drafted by the West Virginia Division of Health concerning personal care homes. In particular, proposed Title 64 of Administrative Rules, Series 14.

The first comment I would like to make concerns the filing of these proposed regulations. Most regulations, especially when they become involved where we are concerning the health and safety of individuals who find themselves in need of personal care home services, the laws are usually adopted and proposed through citizens representation which would be the legislature.

My first thought would be that the Division of Health is violating the very essence of one's rights to have any input to the legislative process concerning the rule making of the more than 2,478 of the residents who make their homes in personal care homes. I would question the denial of the legislature having any input on behalf of those people and also the personal care home owners of which I am one.

While regulations are often changed by State statutes, in this case, the denial of the legislative process which is guaranteed to each citizen of West Virginia under our Constitution where the citizen is represented constitutionally by the legislature whereby the acceptance of these regulations would, in fact, violate my right as a citizen and the rights of all 2,478 residents that are currently staying in the personal care homes. This would

Honorable Ken Hechler
Secretary of State
December 22, 1995
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lead us to question the constitutionality of these regulations.

In most cases I always support regulations that upgrade health care and protect citizens who cannot protect themselves and, most certainly, set forth more professional standards.

While reviewing these proposed changes, I find that many of the rules are, in fact, just that. I also find that many of the rules will become a very big burden for the personal care home industry and the owners and would, in fact, even threaten the very ownership of being able to operate a home.

The mere existence of making regulatory changes is wonderful if we lived in a perfect world where all the funding available to implement the changes was, in fact, available. To impose these regulations as they are currently written without adequate funding and without input from the industry itself is nothing more than a sham.

I would like to bring out the fact that what will you do with the 2,478 residents that now make their home in these facilities. I have asked Health Department officials before what are their plans for these residents. The answer is that we have not gotten that far. To me, that is very narrow minded and inappropriate and right down irresponsible.

I would also like to say that the legislature just recently closed a facility in St. Marys, WV, where there were less than 100 residents. As of this date, those residents have not found permanent homes and, in fact, there is question as to their very care to this day. I cannot imagine turning out twenty-five times that amount of people who need the same services. Where will these people go and what will happen to them.

While the State make look at imposing more regulations and eliminating the very existence of personal care homes, that does not release one's responsibilities of taking care of those who cannot care for themselves.

I have personally been in this business for twenty-one (21) years as an administrator. I have seen governors come and go, health administrators and health directors and inspectors come and go. While there have been many good changes in the past few years, the implementation of these rules without adequate funding and without a full developed plan is unacceptable and inappropriate.

Honorable Ken Hechler
Secretary of State
December 22, 1995
Page 3

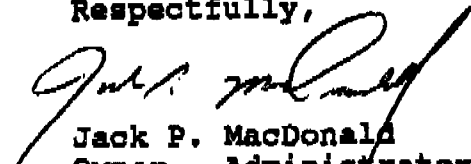
I strongly ask you, on behalf of the citizens of the State of West Virginia who are residents in these homes and as an owner and administrator of a personal care home facility, not to accept this administrative law change without appropriate action through the legislature who could address the funding to make these regulations, the ones that are good, become a reality.

The last thing I would like to bring to your attention Mr. Hechler, is the fact that the state legislature last year put a line item appropriation in the budget digest which increased OFLAC's budget, which is the licensing division that looks over personal care homes, line items by \$641,000 to beef up inspections.

I would be nice since we have the ultimate responsibility of taking care of those who cannot take care of themselves that some of this money could have been spent for the upkeep and care of the residents themselves. Instead we find ourselves with more regulations, less money, and threatening to put many personal care home owners out of business like myself. I do not think this is the avenue that the State of West Virginia needs to take in health care and I strongly recommend that you do not accept these regulations and that, in fact, a full investigation needs to be put forth to find out the policy and what would be the procedure to find out where these 2,500 residents will call their home if there are no personal care homes in West Virginia.

If you would need any further information or if I can be of any assistance, please do not hesitate to contact me.

Respectfully,


Jack P. MacDonald
Owner - Administrator
Rest Haven Personal
Care Home

Concord College

ATHENS, WEST VIRGINIA 24712 • 304/384-3115



December 20, 1995

**The Honorable Ken Hechler
Secretary of State
State Capitol Building
1900 Kanawaha Boulevard East
Charleston, West Virginia 25305-0770**

Dear Secretary Hechler:

This letter is written to express concern about proposed new regulations for Personal Care Homes. I believe that these regulations will have a potentially devastating effect, and may force the closure of many of them which are so important to many families in West Virginia.

Sir, please allow me to speak to you from my own personal experience. My Mother, a stroke victim, is now a resident at Phillips Personal Care Home in Lerona, West Virginia. I, or a member of my family, visit her on a daily basis. We have literally been amazed and pleased at the high quality of personal care. I emphasize personal care for that is what each resident receives in a loving, caring atmosphere. We arrive unexpectedly at different times daily, and find the Staff cheerfully providing for each and every need of the residents.

The facilities at Phillips Personal Care Home are modern, the Staff is competent and caring, and the owners, Larry and Beverly Phillips, are dedicated and committed to the task of making life more pleasant for the elderly residents. I believe that a special place in heaven is reserved for the Staff there. It is as if all the Personnel have a special calling to work with those who need special assistance in this difficult phase of their life. We have Mother at Phillips because we believe it is the best place in this entire area for her care. We visited many facilities before selecting Phillips Personal Care Home as the "Home" for our Mother.

I am frightened at the prospect of new governmental regulations which will elevate costs to such an extent that the average family may not be able to afford to keep their loved one in a Personal Care Home. I do not know what our family would do if it were not for this wonderful Home. In fact, I strongly believe that comparable care is not available at an affordable cost anywhere else in this area.

Mr. Secretary, I believe that I speak for many other families in West Virginia when I implore you to allow these Personal Care Homes to exist without further restrictive regulations which will jeopardize the best alternative of many families without unlimited financial and other resources.

I invite you, Sir, to come and visit Phillips Personal Care Home with me. I commend you for your important service to the people of West Virginia both as a Congressman and as an Official in State Government. Your consideration in this important matter will be greatly appreciated.

Respectfully,

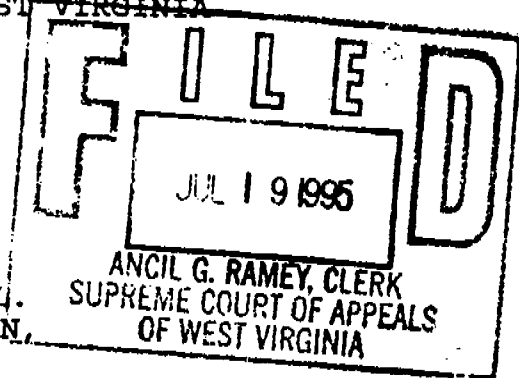

Augustus L. Cyphers, ED. D.

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 1995 Term

No. 22875

STATE OF WEST VIRGINIA EX REL.
LAURA MEADOWS AND DANNY MARTIN,
Petitioners



v.

KEN HECHLER,
SECRETARY OF STATE OF WEST VIRGINIA;
EARL RAY TOMBLIN,
PRESIDENT OF THE SENATE OF WEST VIRGINIA; And
ROBERT C. CHAMBERS,
SPEAKER OF THE HOUSE OF DELEGATES OF WEST VIRGINIA,
Respondents

Writ of Mandamus

WRIT GRANTED AS MOULDED

Submitted: June 27, 1995
July 19, 1995

Daniel F. Hedges
Charleston, West Virginia
Attorney for Petitioners

Daynus Jividen
Assistant Attorney General
Charleston, West Virginia
Attorney for Respondent Secretary of State

Michael R. Crane
Jennifer Bailey Walker
Charleston, West Virginia
Attorneys for Respondent Tomblin

M. E. Mowrey
Charleston, West Virginia
Attorney for Respondent Chambers

JUSTICE WORKMAN delivered the Opinion of the Court.
JUSTICE BROTHERTON did not participate.
JUDGE FOX sitting by temporary assignment.

SYLLABUS BY THE COURT

1. "Article V, section 1 of the Constitution of West Virginia which prohibits any one department of our state government from exercising the powers of the others, is not merely a suggestion; it is part of the fundamental law of our State and, as such, it must be strictly construed and closely followed." Syl. Pt. 1, State ex rel. Barker v. Manchin, 167 W. Va. 155, 279 S.E.2d 622 (1981).

2. "While the Legislature has the power to void or to amend administrative rules and regulations, when it exercises that power it must act as a legislature, within the confines of the enactment procedures mandated by our constitution. It cannot invest itself with the power to act as an administrative agency in order to avoid those requirements." Syl. Pt. 2, State ex rel. Barker v. Manchin, 167 W. Va. 155, 279 S.E.2d 622 (1981).

3. West Virginia Code § 29A-3-12(b) (Supp. 1994) violates the separation of powers requirement of Article V, Section 1 of the Constitution of West Virginia in that the legislative veto created through such section impermissibly encroaches upon the executive branch's obligation to enforce the law.

Workman, Justice:

Petitioners Laura Meadows and Danny Martin¹ seek a writ of mandamus² to compel the filing of certain agency regulations pertaining to personal care homes by Respondent³ West Virginia Secretary of State ("Secretary").⁴ As grounds for the requested relief, Petitioners aver that West Virginia Code § 29A-3-12(b) (Supp. 1994) is unconstitutional in that it violates the separation of powers provision of Article V, Section 1 of the West Virginia Constitution by enabling the Legislature to prohibit the implementation of specifically mandated regulations through purposeful languishment in legislative committees. Upon careful consideration of this issue, we conclude that West Virginia Code § 29A-3-12(b) is unconstitutional.

¹Both of these individuals are residents of the Kate Boone Personal Care Home in Oak Hill, West Virginia.

²Original jurisdiction is asserted under West Virginia Code § 53-1-2 (1994) and pursuant to Article III, Section 3 of the state constitution.

³Also named as respondents to this action are Earl Ray Tomblin as President of the Senate and Robert C. Chambers as Speaker of the House of Delegates. They are named as parties pursuant to this Court's admonition in Common Cause of West Virginia v. Tomblin, 186 W. Va. 537, 539, 413 S.E.2d 358, 360 n.2 (1991).

⁴The Secretary maintains that he was improperly joined as a party to this proceeding as the petition fails to aver that he did anything improper, illegal, or unconstitutional. Petitioners obviously included the Secretary as a party to this action with the hope that the Court would ultimately direct the Secretary to file the proposed regulations as approved in the state register. We concur with the Secretary's observation that his joinder was not required to effectuate any prospective filing of the regulations at issue, as he would be required by law to file any approved regulations. See W. Va. Code §§ 29A-2-1 to -5 (1993).

Discussion of this case requires a recitation of certain factual and procedural matters that impelled the filing of the instant action. In 1988, the Legislature substantially amended chapter sixteen of the West Virginia Code as it pertained to licensure, standards, and enforcement procedures for personal care homes.⁵ See W. Va. Code §§ 16-5C-1 to -18 (1995). One of the revised sections mandated that the Board of Health⁶ propose legislative rules establishing certain minimum standards for the operation and licensure of personal care homes for promulgation pursuant to the West Virginia Administrative Procedures Act ("APA"), West Virginia Code §§ 29A-3-1 to -17 (1993 & Supp. 1994). See W. Va. Code § 16-5C-5. The Legislature delegated responsibility for developing the proposed regulations to the Office of Health Facility Licensure and Certification.

⁵Personal care homes are defined by statute as:

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 hours, to four 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

W. Va. Code § 16-5C-2(e).

⁶The Board of Health is now the Department of Health and Human Resources.

In 1992, Petitioners' counsel instituted a class action in the United States District Court for the Southern District of West Virginia based on the lack of state regulations governing West Virginia's personal care homes.⁷ Through the complaint filed in that action, it was averred that the absence of adequate regulations, standards, and enforcement provisions violated the federal Keys Amendment⁸ as well as the prohibition against handicap discrimination. See Wolford ex rel. Mackey v. Lewis, 860 F. Supp. 1123 (S.D. W. Va. 1994). By order entered on March 21, 1994, the district court granted the Wolford plaintiffs' motion for summary judgment. The order granting summary judgment includes findings that the West Virginia regulations governing personal care homes do not comply with the applicable Keys Amendment provisions or state law mandating that new regulations be implemented. Because of this lack of compliance with state and federal law, the district court ordered that a remedial plan be submitted to and approved by it within ninety days. Id. at 1137.

The DHHR timely submitted the West Virginia Comprehensive Long-Term Care Plan ("Plan") required by Wolford with the district

⁷The suit was also filed on behalf of all present or future residents of West Virginia residential board and care facilities and nursing homes. See Wolford ex rel. Mackey v. Lewis, 860 F. Supp. 1123, 1126 (S.D. W. Va. 1994).

⁸The Keys Amendment is an amendment to the Supplemental Security Income Program, 42 U.S.C. § 1382e, which "is designed to insure that Supplemental Security Income benefits are not used to pay for substandard living arrangements." Wolford, 860 F. Supp. at 1126.

court in June 1994.⁹ According to the timetable included in the Plan, all of the substantive standards pertaining to personal care homes were to be in effect and implemented by June 1, 1995. The Plan further required that regulations regarding enforcement procedures were to be drafted by July 1, 1994, and to be finalized by July 1, 1995. Petitioners assert that the proposed regulations had to be filed in August 1994 to allow for legislative approval during the 1995 regular legislative session.

On August 15, 1994, the DHHR filed the proposed legislative rules regarding personal care homes with the legislative rule-making review committee ("Committee") and the Secretary. On January 1, 1995, the proposed rules were approved, with minor modifications, by the Committee. As required by West Virginia Code § 29A-3-11(c), the Committee filed notice of its approval of the proposed rules in the state register and the modified proposed rules were filed with the Secretary of State on January 16, 1995. In accordance with West Virginia Code §§ 29A-3-11 and -12, bills authorizing the promulgation of the proposed rules were introduced in the Senate on January 20, 1995, and in the House of Delegates ("House") on January 23, 1995.

The President of the Senate triple referred the Senate bill to the Committees on Health and Human Resources, Finance, and the

⁹The district court order approving the plan was entered on October 4, 1994.

Judiciary. On February 10, 1995, the Senate Committee on Health and Human Resources recommended passage of the bill and sent the bill to the Finance Committee. Then on February 28, 1995, the Senate Finance Committee tabled the bill by voice vote.

Prior to the recommendation of passage by the Senate Committee on Health and Human Resources, the House Committee on Health and Human Resources had already rendered the same recommendation on February 2, 1995. The House bill, however, did not proceed to the House Judiciary Committee for consideration when it was learned that the Senate version of the bill had died in the Finance Committee. No further consideration of the bill was made by either the Senate or the House.

This original proceeding was initiated to determine whether West Virginia Code § 29A-3-12(b), which permits proposed administrative regulations to "die" if the Legislature fails to take action on them, is a violation of our constitutional

separation of powers requirement found in article V, section 1.¹⁰

The language of West Virginia Code § 29A-3-12(b) provides that:

If the Legislature fails during its regular session to act upon all or part of any legislative rule which was submitted to it by the legislative rule-making review committee during such session, no agency may thereafter issue any rule or directive or take other action to implement such rule or part thereof unless and until otherwise authorized to do so.

Id. Petitioners argue that the broad legislative veto power created by West Virginia Code § 29A-3-12(b) upsets the balance of power required between the executive and legislative branches of state government by invasively intruding into executive function.¹¹

¹⁰Article V, section 1 provides:

The legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the legislature.

W. Va. Const. art. V, § 1.

¹¹Petitioners also contend that the exercise of legislative veto in the context of an express legislative delegation pertaining to a comprehensive regulatory scheme is unconstitutional because it prevents compliance with substantive law and thereby interferes with execution of the law. Petitioners further posit that, even if legislative veto were constitutionally permissible in limited scenarios, it could never be exercised via legislative inaction and be consistent with legislative function as mandated by article VI, section 1 of the state constitution and could never be exercised without presentment to the governor as required by article VII, section 14 of the constitution. Because we find West Virginia Code § 29A-3-12(b) to be unconstitutional on the original separation of powers argument raised by Petitioners, we do not address these alternate grounds.

The separation of powers doctrine¹² expressly stated in our constitution¹³ is a core principle of our system of government, whose roots can be traced back to the founding of this country. See Hodges v. Public Serv. Comm'n, 110 W. Va. 649, 652-54, 159 S.E. 834, 835-36 (1931) (discussing the origin of the separation of powers principle and noting "that the very first resolution passed in the convention which framed our national Constitution called for a separation of governmental powers"); see generally Buckley v. Valeo, 424 U.S. 1, 120-24 (1976). In State ex rel. State Building Commission v. Bailey, 151 W. Va. 79, 150 S.E.2d 449 (1966), we discussed this fundamental precept of government:

'The Constitution, in distributing the powers of government, creates three distinct and separate departments--the legislative, the executive, and the judicial. This separation

¹²As noted in Consumer Energy Council of America v. Federal Energy Regulatory Comm'n, 673 F.2d 425 (1982), aff'd sub nom. Process Gas Consumers Group v. Consumer Energy Council, 463 U.S. 1216 (1983),

Justice Brandeis' famous quotation still stands as the most concise statement of this objective:

'The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but, by means of inevitable friction incident to the distribution of governmental powers among the three departments, to save the people from autocracy.'

673 F.2d at 471 (quoting Myers v. United States, 272 U.S. 52 (1926)) (Brandeis, J., dissenting).

¹³In contrast, the United States Constitution does not contain an express separation of powers provision.

is not merely a matter of convenience or of governmental mechanism. Its object is basic and vital, namely, to preclude a commingling of these essentially different powers of government in the same hands. * * *.

If it be important thus to separate the several departments of government and restrict them to the exercise of their appointed powers, it follows, as a logical corollary, equally important, that each department should be kept completely independent of the others-- independent not in the sense that they shall not cooperate to the common end of carrying into effect the purposes of the Constitution, but in the sense that the acts of each shall never be controlled by, or subjected, directly or indirectly, to, the coercive influence of either of the other departments. . . .

In considering the importance of provisions relating to the separation of the departments of government, the Supreme Court of the United States in *Kilbourn v. Thompson*, 103 U.S. 168, 26 L.Ed. 377, said: 'It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to government, whether State or national, are divided into the three grand departments, . . . It is . . . essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other.'

151 W. Va. at 85-86, 150 S.E.2d at 453 (quoting, in part, *O'Donoghue v. United States*, 289 U.S. 516, 530 (1933)) (citation omitted) (emphasis supplied).

We crystallized the significance of the separation of powers doctrine in syllabus point one of *State ex rel. Barker v. Manchin*, 167 W. Va. 155, 279 S.E.2d 622 (1981):

Article V, section 1 of the Constitution of West Virginia which prohibits any one department of our state government from exercising the powers of the others, is not merely a suggestion; it is part of the fundamental law of our State and, as such, it must be strictly construed and closely followed.

Id. at 155-56, 279 S.E.2d at 624.

West Virginia Code § 29A-3-12(b) grants, in effect, an outright veto power to the Legislature by permitting that branch to block the implementation of proposed agency regulations "[i]f the Legislature fails during its regular session to act upon all or part of any legislative rule . . . submitted to it by the legislative rule-making review committee." The question before us is whether this unchecked legislative veto power over administrative agency rules impermissibly encroaches upon the functioning of the executive branch in violation of the separation of powers provision of our constitution.

Respondents Tomblin and Chambers (hereinafter the "legislative Respondents")¹⁴ plenary deny the existence of a separation of powers issue. They argue that the executive branch and the attendant concerns of separation of powers are not introduced into the rule-making equation until the Legislature actually approves of proposed agency rules. The legislative Respondents premise their reasoning upon the postulate that rule-making "at its essence, [is]

¹⁴See supra note 3.

a legislative function" which only becomes executive in function upon an express delegation of authority by the Legislature. Specifically, the legislative Respondents contend that: "The agency was never authorized to act, only to propose a rule. The agency has no power to promulgate the rule until such time as the Legislature . . . has authorized the promulgation." Based on this view that the executive branch lacks authority to promulgate regulations, the legislative Respondents deny the existence of a legislative veto arising from the provisions of West Virginia Code § 29A-3-12(b). In other words, until the Legislature approves of proposed regulations, no delegation of executive authority has occurred and therefore, no separation of powers problem comes into existence.

Not only do we find this argument to be spurious, but as Petitioners observe, such a position "is the most extreme assertion of legislative authority."¹⁵ As we explained in Barker, "When the Legislature delegates its rule-making power to an agency of the Executive Department, as it did here . . . , it vests the Executive Department with the mandatory duty to promulgate and to enforce rules and regulations." 167 W. Va. at 169, 279 S.E.2d at 631. Contrary to the argument advanced by the legislative Respondents, the rule-making function comes under the executive department's bailiwick upon the delegation of the duty to propose rules for

¹⁵Petitioners' counsel notes that "in the many cases striking down legislative veto, such a contention of the breadth of permissible legislative authority has never been made."

promulgation. See id. at 168, 279 S.E.2d at 631 (recognizing Legislature's option to delegate to the Executive its power to enact rules and regulations to protect the welfare, safety and health of the public); accord Nonintoxicating Beer Comm'r v. A & H Tavern, 181 W. Va. 364, 366, 382 S.E.2d 558, 560 (1989); see also Consumer Energy Council of America v. Federal Energy Regulatory Comm'n, 673 F.2d 425, 471 (1982), aff'd sub nom. Process Gas Consumers Group v. Consumer Energy Council, 463 U.S. 1216 (1983) (recognizing that United States "Supreme Court has held that rulemaking is substantially a function of administering and enforcing the public law . . . [and] [a]s such, Congress may not create a device enabling it, or one of its houses, to control agency rulemaking); General Assembly of New Jersey v. Byrne, 448 A.2d 438, 443 (N.J. 1982), superceded by statute/rule on other grounds as stated in Kimmelman v. Burgio, 497 A.2d 890 (N.J. 1985) (recognizing that "administrative agencies are the arms of the executive branch of government through which it executes the laws").

In the Barker case, we examined the provision of the APA which previously permitted the legislative rule-making review committee to veto rules and regulations otherwise validly promulgated¹⁶ and

¹⁶The version of West Virginia Code § 29A-3-11 in effect at the time of Barker provided, in pertinent part, that the legislative rule-making committee "shall study all proposed rules or regulations and . . . [w]ithin six months after the proposed rule or regulation is presented to the committee, the committee shall either approve, approve in part and disapprove in part, or
(continued...)

concluded that such provision violated the separation of powers doctrine. 167 W. Va. at 166-78, 279 S.E.2d at 630-36. In reaching that conclusion, we stated:

What the Legislature has attempted to do here is to invest itself with the power to promulgate rules having the force and effect of law outside the constitutional limitations imposed upon the legislative branch in the exercise of that power. In effect, the Legislature abdicates in favor of the executive its power to make rules and then asserts that because the rule-making power so delegated is legislative in nature, it may step into the role of the executive and disapprove or amend administrative regulations free from the constitutional restraints on its power to legislate. . . . Such a mechanism for legislative review of executive action may properly be called an 'extra-legislative control device' for it permits the Legislature to act as something other than a legislative body to control the actions of the other branches. This is in direct conflict with our constitutional requirement of separation of powers. The power of the Legislature in checking the other branches of government is to legislate. While the Legislature has the power to void or to amend administrative rules and regulations, when it exercises that power it must act as a legislature through its collective wisdom and will, within the confines of the enactment procedures mandated by our constitution. It cannot invest itself with the power to act as an administrative agency in order to avoid those requirements.

Id. at 172-73, 279 S.E.2d at 633 and Syl. Pt. 2 (citation omitted). The Legislature responded to Barker by amending West Virginia Code § 29A-3-11 to delineate the Committee's review function and further, to limit the Committee's power concerning passage or

¹⁶(...continued)
disapprove the proposed rule or regulation. . . ."

denial of proposed regulations to making a recommendation to the Legislature.¹⁷

¹⁷In response to the Barker decision, the Legislature amended West Virginia Code § 29A-3-11 to delineate the review and recommendation functions of the Committee. Pursuant to subsection b of West Virginia Code § 29A-3-11, the Committee's review of a proposed legislative rule

shall include, but not be limited to, a determination of: (1) Whether the agency has exceeded the scope of its statutory authority in approving the proposed legislative rule; (2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific; (3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency; (4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the rule was proposed for promulgation; (5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it; (6) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and (7) Whether the proposed legislative rule was proposed for promulgation in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.

Subsection c of West Virginia Code § 12A-3-11 requires that

[a]fter reviewing the proposed legislative rule, the committee shall recommend that the Legislature: (1) Authorize the promulgation of the legislative rule, or (2) Authorize the promulgation of part of the legislative rule, or (3) Authorize the promulgation of the legislative rule with certain amendments, or (4) Recommend that the proposed rule be withdrawn.

There is very little to distinguish between what we found to be unconstitutional in Barker and what is at issue here. In Barker, we found a separation of powers violation resulting from the provisions of the APA which authorized the legislative rule-making review committee to veto proposed administrative rules and regulations. Id. at 178, 279 S.E.2d at 636 and Syl. Pt. 3. Borrowing from the reasoning articulated by H. Lee Watson in his article, Congress Steps Out; A Look at Congressional Control of the Executive, 63 Cal. L. Rev. 983 (1975), we identified in Barker the inherent shortcomings of permitting direct legislative review of executive action without the countervailing safeguards of the enactment process:

Watson concludes that the legislative committee veto is the most clearly constitutionally invalid of the legislative control devices, rendered invalid per se by virtue of its impact on the process. By placing the final control over governmental actions in the hands of only a few individuals who are answerable only to local electorates, the committee veto avoids the concept of 'constitutional averaging' foreseen by the framers of the constitution as a means of balancing the dual role given legislators. While Watson views this consequence to our system of government as the most significant constitutional deficiency of the committee veto, he also considers it infirm in that it gives a small portion of the legislative membership a continuing role in governmental decision making once the formal lawmaking processes have been completed. The legislature vests the members of the committee with a post-legislative discretionary power, the exercise of which impermissibly fosters legislative dominance and expansion of power in several ways. First, by providing that the executive exercises discretion only at the pleasure of the reviewing committee, the legislature usurps the traditional role of the

executive to fill in the interstices left by flexible statutory standards by exercising legislatively delegated discretionary power. In effect the executive exercise of discretion is replaced by committee exercise of discretion, increasing the role of the legislature at the expense of the executive.

167 W. Va. at 177, 279 S.E.2d at 635-36.

Petitioners argue that the proposed regulations were prevented from being approved by the full Legislature because of one or two individuals who were acting at the behest of special interest groups. Since the legislative Respondents do not dispute Petitioners' contention that the tabling of the proposed regulations can be and was effectuated by one or two individuals, the separation of powers concerns that Watson, supra, described are obviously present here. Moreover, this ability of a few individuals to curb further consideration of proposed regulations illustrates the very abuse of power that our country's forefathers sought to prevent by requiring a separation of the three branches of government.

In the case of Byrne, the New Jersey Supreme Court reviewed a legislative veto statute which permitted "the Legislature to veto by a concurrent resolution of both houses ' [e]very rule hereafter proposed by a State agency,' with certain limited exceptions." 448 A.2d at 439. The court ruled that the statute violated the separation of powers principle

by excessively interfering with the functions of the executive branch. The Legislature's

power to revoke at will portions of coherent regulatory schemes violates the separation of powers by impeding the Executive in its constitutional mandate to faithfully execute the law. The legislative veto further offends the separation of powers by allowing the Legislature to effectively amend or repeal existing laws without participation by the Governor.

Id.

The full impact of legislative veto was realized in Byrne:

Even where the Legislature is not using its veto power to effectively change the law, the veto can illegitimately interfere with executive attempts to enforce the law. The chief function of executive agencies is to implement statutes through the adoption of coherent regulatory schemes. The legislative veto undermines performance of that duty by allowing the Legislature to nullify virtually every existing and future scheme of regulation or any portion of it. The veto of selected parts of a coherent regulatory scheme not only negates what is overridden; it can also render the remainder of the statute irrational or contrary to the goals it seeks to accomplish. . . . Moreover, the Legislature need not explain its reasons for any veto decision. Its action therefore leaves the agency with no guidance on how to enforce the law.

Broad legislative veto power deters executive agencies in the performance of their constitutional duty to enforce existing laws. Its vice lies not only in its exercise but in its very existence. Faced with potential paralysis from repeated uses of the veto that disrupt coherent regulatory schemes, officials may retreat from the execution of their responsibilities. They will resort to compromises with legislative committees aimed at drafting rules that the current Legislature will find acceptable.

Id. at 443-44.

In our case, the Legislature delegated a broad responsibility to the Executive branch for the purpose of establishing standards and enforcement mechanisms concerning personal care homes. After the Executive branch developed the regulations necessary to implement the comprehensive regulatory scheme, implementation was thwarted by legislative veto. The veto amounted to an intrusion into the Executive branch's ability to effectuate its mandated responsibilities. Accordingly, we determine that the legislative veto contained within the APA is unconstitutional based upon the same reasoning expressed in Barker and Byrne. West Virginia Code § 29A-3-12(b) violates the separation of powers requirement of Article V, Section 1 of the Constitution of West Virginia in that the legislative veto created through such section impermissibly encroaches upon the executive branch's obligation to enforce the law.

Especially troubling regarding the legislative veto which occurred in this case is the resulting noncompliance with a federal court order. It is significant to note that Respondents raise no substantive objections to implementing the proposed regulations. The eighty-nine pages of modified proposed regulations, as recognized by the Committee, are necessary to fully accomplish the objectives of the statute under which the proposed regulations were promulgated. Yet, because of the possible involvement of special interests and because of a statutory provision that permitted legislative veto through committee inaction, the long-overdue

regulations¹⁸ regarding personal care homes have not been implemented and West Virginia remains out of compliance with federal law.

While it remains for the Legislature to draft a new provision for the APA regarding the approval or disapproval of administrative regulations, we observe that several states permit regulations to automatically go into effect if the Legislature fails to reject the proposed regulations within a specified number of days. See Conn. Gen. Stat. Ann. § 4-170(c) (West 1988) (providing that failure of joint legislative committee to act upon proposed regulations within sixty-five days after submission results in automatic approval); Ohio Rev. Code Ann. § 119.03 (I) (1994) (providing that rule-making agency may adopt proposed rule if legislature fails to invalidate proposed rule during sixty-day period following filing of original version of rule); Okla. Stat. Ann. tit. 75, § 308I (West 1995) (providing that automatic approval occurs if legislature fails to disapprove proposed rule within thirty legislative days); cf. Mich Comp. Laws Ann. § 24.245(10) (a) (West 1994) (stating that failure of joint legislative committee to approve of proposed administrative rule within sixty days requires approval by general assembly for implementation).

¹⁸The court observed in Wolford that "regulations governing personal care homes have not changed significantly in over twenty years. . . ." 860 F. Supp. at 1128.

At least two states have codified exceptions to compliance requirements for legislative approval of administrative regulations in certain circumstances. Ohio does not require that its administrative procedures be followed with regard to:

Any proposed rule, amendment, or rescission that must be adopted verbatim by an agency pursuant to federal law or rule, to become effective within sixty days of adoption, in order to continue the operation of a federally reimbursed program in this state, so long as the proposed rule contains . . . (a) A statement that it is proposed for the purpose of complying with a federal law or rule; (b) A citation to the federal law or rule that requires verbatim compliance.

Ohio Rev. Code Ann. § 119.03(H)(2). Similarly, Michigan has a special exemption for "a rule that is promulgated under the Michigan occupational safety and health act, that is substantially similar to an existing federal standard that has been adopted or promulgated under the occupational safety and health act of 1970." Mich. Comp. Laws Ann. § 24.245(13) (West 1994) (citations omitted).

The Ohio statute, which provides for implementation of administrative regulations without adherence to typical approval procedures where compliance with federal law is at issue, illustrates a need for consideration of analogous legislation in this state. A statutory provision similar to that of Ohio might eliminate the procedural quagmire in which this state is now ensnared--noncompliance with federal law due to unimplemented regulations, that were otherwise validly promulgated. While the Ohio statute's premise is tied to losing federal funds for

noncompliance, the absence of lost federal funds¹⁹ does not negate the need for an alternate statutory method by which regulations necessary for compliance with federal and state mandates can be implemented.

As we explained in Barker, we do not advocate the elimination of all legislative review of administrative rule-making:

Legislative rule-making review has purpose and merit and may be beneficially exercised and employed when contained within its proper and constitutional sphere. . . We do not question that some procedure for review of agency rules and regulations may well be warranted, but we must require that it be done within the limits of the separation of powers doctrine and according to the system of checks and balances in our governmental framework.

167 W. Va. at 175-76, 279 S.E.2d at 634-35 (footnote omitted).

Based on the foregoing, the writ of mandamus is granted insofar as we determine that the legislative veto scheme encompassed within West Virginia Code § 29A-3-12(b) is unconstitutional. In Barker, we ordered the Secretary of State to file as approved and to place in force and effect the regulations

¹⁹Under 42 U.S.C. § 1382e(e)(4) (1988), the penalty for noncompliance with the Keys Amendment requires that supplemental security income "[p]ayments made under this subchapter with respect to any individual shall be reduced by an amount equal to the amount of any supplementary payment . . . (1) to such individual as a resident or an inpatient of such institution if such institution is not approved as meeting the standards" Id. Petitioners argue that the funds which stand to be lost are federal in nature, whereas the legislative Respondents maintain that the funds emanate from the state. We take no position on this issue.

at issue there.²⁰ 167 W. Va. at 178, 279 S.E.2d at 636. We hesitate to order the filing of the regulations in the instant case without their having had legislative review, although we could do so. As a matter of comity to the Legislature, we decline to do so at this time in order to give the Legislature the opportunity in its next regular session to consider the regulations. Further, we direct the Legislature to promptly draft legislation to replace the unconstitutional section of article 29A and additionally, to consider passage of legislation that would exempt certain administrative regulations from conformance with APA implementation requirements, such as where compliance with federal law is mandated. Should the Legislature fail to exercise its proper prerogative to consider these regulations and to consider such recommended legislation, then this Court will be required to fill these legal voids.

Writ granted as moulded.

²⁰The approval of those regulations was a matter of some urgency, as they dealt with mine safety regulations.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

PAUL WOLFORD, by his next friend,
LIDA MACKEY; HENRY BIAS, by his
next friend, LIDA MACKEY; and
CODY BURDETTE, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

CIVIL ACTION NO.: 2: 92-1151

RUTH ANN PANEPINTO, Ph.D., in her official
capacity as Secretary, West Virginia
Department of Health and Human Resources;
ANN STOTTLEMYER, in her official capacity
as Director of Medical Services, West Virginia
Department of Health and Human Resources;
LYNDA G. KRAMER, in her official capacity
as Director, Office of Health Facilities-
Licensure and Certification, Bureau of
Administration and Finance, West Virginia
Department of Health and Human Resources;
SANDRA L. DAUBMAN, in her official capacity
as Program Administrator, Office of Health
Facilities-Licensure and Certification,
Bureau of Administration and Finance,
West Virginia Department of Health and
Human Resources; and GASTON CAPERTON,
in his official capacity as Governor of
the State of West Virginia,

Defendants.

AMENDED COMPLAINT

Introduction

1. This is a class action seeking declaratory and
injunctive relief on behalf of a class of plaintiffs who are
eligible Medicaid recipients residing in West Virginia's personal
care homes, residential board and care homes, and nursing homes.
The West Virginia Department of Health and Human Resources has

followed a policy of gross and total nonenforcement of state and federal policy with regard to the members of the class, which has resulted in denial of access to medical, psychological and rehabilitative care.

2. The situation of the named plaintiff Paul Wolford graphically demonstrates the impact of this gross neglect and nonenforcement by the defendants. In seven short months in three personal care homes the plaintiff was unsupervised and neglected. As a result he suffered a number of falls, became malnourished (because he was not fed), lost weight, and was left to fend for himself under very unsanitary conditions. His clothing became infested with roaches and his body infested with lice, and he was routinely covered with feces and reeked of body odors. He was not provided needed medical care or rehabilitative or other needed services.

Jurisdiction

3. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331 which provides for original jurisdiction over all civil suits arising out of Constitutional laws or treaties of the United States. This Court also has jurisdiction under 28 U.S.C. § 1343(3) and (4) which provide for original jurisdiction of this Court over all suits to address the deprivation under common and State law of any rights, privileges and immunities guaranteed by the Constitution of the United States or by Acts of Congress. This action is authorized under Section 504 of the Rehabilitation

Act of 1973, 29 U.S.C. § 794 and 42 U.S.C. § 1396 et seq.,
42 U.S.C. ~~§ 1382e~~, 42 U.S.C. § 1382e, and the Constitutional
guarantee of due process of law.

4. The plaintiffs' action for declaratory and
injunctive relief, and for other appropriate relief, is
authorized by 28 U.S.C. §§ 2201 and 2202 of the Federal Rules of
Civil Procedure 57 and 65.

Parties

5. The plaintiff, Paul Wolford, until on or about
November 19, 1992, resided in three personal care homes in
calendar year 1992: Mountain View Personal Care Home
(Fayette County), Lewis Wetzel Personal Care home, and
Personal Care Home of Bluefield Inc., all in West Virginia.
Said plaintiff is now a resident of a nursing home, Cumberland
Care Center. He is 73 years old and is an individual with
handicaps in that he has a physical impairment which
substantially limits one or more of his major life activities or
is regarded as having such an impairment. He is eligible for and
a qualified beneficiary of SSI and Medicaid. He is proceeding by
his next friend, Lida Mackey.

6. The plaintiff, Henry Bias, until on or about
November 25, 1992 resided in Personal Care Home of Bluefield Inc.
for a period of years. Said plaintiff is now a resident of
Cumberland Care Center, Inc. He is 65 years old and is an
individual with a physical impairment that substantially limits

one or more of his major life activities (caused by Parkinson's Disease). He is eligible for and a qualified beneficiary of Medicaid. He is proceeding by his next friend, Lida Mackey.

7. The plaintiff, Cody Burdette, has been a resident of the Sheltering Arms Personal Care Home in Fayetteville, Fayette County, West Virginia for approximately four years. He is 31 years old and is an individual with handicaps in that he has a physical or mental impairment which substantially limits one or more of his major life activities or is regarded as having such an impairment. He has a Medicaid card and receives SSI assistance.

8. The defendant Ruth Ann Panepinto, Ph.D. is the duly-appointed Secretary of the West Virginia Department of Health and Human Resources, the state agency responsible for the administration of the Medicaid program and the licensure, certification and inspection of nursing homes, personal care homes, and residential board and care homes. The defendant Ruth Ann Panepinto's responsibilities include the supervision and control of the Medicaid program and the certification programs, so as to secure full compliance with the covering laws. Defendant Panepinto is sued in her official capacity.

9. The defendant Ann Stottlemeyer is the duly-appointed Director of Medical Services of the West Virginia Department of Health and Human Resources. As such, said defendant has a duty, pursuant to W. Va. Code § 16-29D-3 to develop a plan to ensure that a reasonable and appropriate level of health care is

provided to the beneficiaries of the state Medicaid program. The defendant Ann Stottlemeyer is sued in her official capacity.

10. The defendants Lynda Kramer and Sandra L. Daubman are, respectively, the Director and Program Administrator within the Office of Health Facilities-Licensure and Certification of the Bureau of Administration and Finance, West Virginia Department of Health and Human Resources, whose responsibility it is to assure access to services and meaningful conditions in the state's personal care homes, residential board and care homes, and nursing homes. The defendants Lynda Kramer and Sandra L. Daubman are sued in their official capacities.

11. The defendant Gaston Caperton is the Governor of the State of West Virginia and as such is responsible for employment decisions in the West Virginia Department of Health and Human Resources and for the overall enforcement policy within the Department. Defendant Caperton is sued in his official capacity.

Class Action

12. (a) The plaintiffs bring this action on their own behalf and pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf on the class of all Medicaid-eligible residents of the state's personal care homes, residential board and care homes, and nursing homes.

(b) The class is so numerous that joining all members is impracticable. All the members of the class share common issues of law and fact, in that the plaintiffs are or are

being denied access to the medical, psychological and rehabilitative care to which they are entitled under state and federal policy as eligible Medicaid recipients residing in West Virginia's personal care homes and residential board and care homes. Common issues of law and fact predominate over any individual questions, and the adjudication of the rights of the class is superior to all other methods of adjudicating the controversies herein described. The claims of the named plaintiffs are typical of the claims of the class they represent, and the plaintiffs will fairly and adequately protect the interests of the class they represent. The prosecution of separate claims against the defendants by the individual members of the represented class would create risk of inconsistent and varying adjudications which would establish incompatible standards of conduct for the defendants. The plaintiffs' counsel will adequately represent the interests of the class since plaintiffs' counsel have expertise in numerous class actions. The defendants have acted and continue to act on grounds generally applicable to the class that the plaintiffs represent, thereby making relief in favor of the plaintiffs and the class they represent appropriate to the class as a whole.

Statement of Facts

A. Statutory Framework

13. In 1965, Congress enacted Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396s, establishing a cooperative federal-state medical assistance program designed to provide necessary medical services to poor people who previously had been denied access to medical care provided by private practitioners or other health care professionals. Known as "Medicaid," the program is administered by the states, subject to mandatory federal statutory and regulatory guidelines.

14. The State of West Virginia has elected to participate in the Medicaid program and it is commonly called "Medicaid" or "Medical Assistance." To comply with federal law, Medicaid must provide a range of health care benefits to certain poor persons --those receiving Aid to Families with Dependent Children ("AFDC") because they are members of certain families with dependent children or those receiving Supplemental Security Income ("SSI") because they are aged, blind, or disabled. Medicaid also provides benefits to individuals who would be eligible for AFDC and SSI except for "excess" income or resources. Such "medically needy" individuals become eligible for Medicaid when they have obligated their excess income, also called their share of cost, to pay for medical care.

15. To comply with federal law, Medicaid must cover certain "mandatory" services, including physicians' services.

Federal laws apply equally to all services, whether mandatory or optional.

16. The state and federal governments share the cost of the Medicaid program. As a condition to the receipt of federal Medicaid funds, the State of West Virginia must implement a program that meets the minimal requirements of federal law. The federal requirements contained in the Social Security Act are imposed on the State through provisions in the Act itself and under the Supremacy Clause of the United States Constitution.

17. If a state accepts Medicaid funds, the federal government mandates that it must:

(a) ensure that medical assistance is furnished with "reasonable promptness to all eligible individuals," 42 U.S.C. § 1396a(a)(8);

(b) ensure that medical care and services will be provided "in a manner consistent with . . . the best interest of the recipients," 42 U.S.C. § 1396a(a)(19);

(c) designate a single state agency to administer the Medicaid program; 42 U.S.C. § 1396a(a)(5); 42 C.F.R. § 431.10;

(d) assure the availability of transportation to necessary medical care for recipients. 42 C.F.R. § 440.170; and

(e) assure that medical care is equal in amount, duration and scope to all eligible individuals, 42 U.S.C. § 1396a(a)(10)(B).

B. State Law and Practice

18. West Virginia law designates the Department of Health and Human Resources as the single state agency responsible for the receipt of all Medicaid funds and compliance with all federal requirements therewith. W. Va. Code § 9-2-3 & 6; W. Va. Code § 16-29D-3(b).

19. (a) West Virginia law requires that all departments and divisions of the state operate to ensure the quality of the health care services delivered to the beneficiaries of the Division of Human Resources, namely, Medicaid recipients. W. Va. Code § 16-29D-3(a).

(b) West Virginia law also expressly precludes any entity from interfering with the Division of Human Services which is given the authority to administer the Medicaid program. W. Va. Code § 16-29D-3(b).

(c) West Virginia law further imposes upon such department the mandate to develop plans to "ensure that a reasonable and appropriate level of health care is provided" to the beneficiaries of the state Medicaid program.

20. (a) West Virginia law provides for the comprehensive regulation of nursing homes, personal care homes, and residential board and care homes by the West Virginia Department of Health and Human Resources, W. Va. Code § 16-5C-1, et seq.;

(b) Under West Virginia law, a "nursing home" includes any facility which provides accommodations and care to three or more persons who are:

...ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment, or which provide services for the rehabilitation of persons who are convalescing from illness or incapacitation.

W. Va. Code § 16-5C-2(c)

(c) Under West Virginia law, a "personal care home" includes any facility providing accommodations and personal assistance for three or more persons:

...who are dependent upon the service of others by reason of physical or mental impairment but who do not require extensive, ongoing nursing care.

W. Va. Code § 16-5C-2(d)

(d) Under West Virginia law, a "residential board and care home" includes any facility providing accommodations and personal assistance for three to eight persons:

...who are dependent upon the services of others by reason of physical or mental impairment but who are capable of self-preservation and do not need nursing care.

W. Va. Code § 16-5C-2(e)

21. Due to West Virginia's practice, procedure and policy of nonenforcement as hereinafter set forth, in fact there are a number of persons in such homes who do not receive the Medicaid services to which they are entitled, and are subject to discrimination in access to services. Additional results include (1) persons residing in personal care homes and residential board and care homes that have a higher need for services than those in

nursing homes and who as a result do not receive Medicaid nursing services, and (2) persons residing in nursing homes who do not require such level of care.

22. (a) Under W. Va. Code § 16-5C-3, the duty is imposed upon the defendants to enforce the rules and regulations of the standards for nursing homes, personal care homes and residential board and care homes; to sponsor educational and training programs for all of said homes; to survey, research, and plan project programs relating to the administration and operation of said homes; to inspect such facilities; to investigate such facilities; to subpoena witnesses; to institute proceedings against such facilities in Circuit Courts; and to make annual reports to the Governor.

(b) In fact, the defendants take very minimal, if any, enforcement action against any of the homes, and no significant actions have been instituted in Circuit Courts for enforcement of conditions in the homes in the last three years.

23. (a) W. Va. Code § 16-5C-5 requires comprehensive rules and regulations and minimum standards for such personal care homes, residential board and care homes and nursing homes. Such rules and regulations must include minimum numbers and qualifications of personnel (W. Va. Code § 16-5C-5(b)(2)); classifications for various types of standards and violations (W. Va. Code § 16-5C-5(c)); and the categorization of various standards and assigning numerical values to represent the acceptable level or levels of compliance (W. Va. Code § 16-5C-

5(c) & (d)), which system was to be in effect no later than March 1, 1989 (W. Va. Code § 16-5C-5(e)).

(b) All licenses are required to state the rating assigned to the facility pursuant to the classification system under W. Va. Code § 16-5C-5(e).

(c) The State has yet to have any such regulations in place for such classification and numerical system for either personal care homes or residential board and care homes.

(d) At the present time none of such licenses have such rating assigned based upon the classification system.

24. (a) The state has had the current regulations for personal care homes in effect since the 1970's with no substantive amendments;

(b) The state has not yet put into effect regulations on residential board and care homes. A proposed draft is deficient in many respects.

25. (a) West Virginia law requires that personal care homes disclose in writing to all prospective patients a complete and accurate list of all costs which might be incurred by them. W. Va. Code § 16-5C-7(a).

(b) This requirement is not enforced as to personal care homes. There is nothing whatsoever in regulation.

(c) This requirement is not enforced as to nursing homes.

26. (a) West Virginia law requires a procedure for prompt investigation of all complaints and appropriate disciplinary action. W. Va. Code § 16-5C-8.

(b) Under state law inspection reports are public records.

(c) In fact, from the time of complaint to investigation of complaint can take up to six months. It routinely takes up to ninety days, in most cases long after the condition complained of is ascertainable.

27. (a) West Virginia law requires the director to advise any injured party of the possibility of a civil remedy under the law for any violations of the law. W. Va. Code § 16-5C-8.

(b) In fact, the defendants never advise injured parties of their rights to bring action against a home.

28. (a) The enforcement section provides for civil penalties or other disciplinary action. W. Va. Code § 16-5C-10.

(b) W. Va. Code § 16-5C-10(d) mandates the assessment of civil penalties for violations of standards.

(c) In fact the defendants have seldom, if ever, since the appointment of Defendant Lynda G. Kramer in February, 1990, assessed a civil penalty against an offending facility.

(d) Since February, 1990 there have been reported violations from inspections totalling in the thousands for all nursing homes and personal care homes.

29. (a) West Virginia requires there to be a bond for patient monies handled by personal care homes or residential board and care homes (W. Va. Code § 16-5C-7(b)) and requires that there be the monies be held in separate accounts in trust, that the monies not be used for personal use, and that the home render a true accounting to the patient on demand and upon termination. W. Va. Code § 16-5C-18.

(b) There is no procedure in place by regulation or otherwise that, when monies are misused or an accounting is not made in violation of law, defendants provide notice to the person of his/her right to apply under the bond to seek recovery or otherwise take action.

30. The defendants' failure to properly enforce law and regulation with respect to nursing homes results in persons being housed in nursing facilities who do not need such level of care and the exclusion of persons needing nursing services into residential board and care homes and personal care homes, hence denial of Medicaid coverage for the nursing services to which they are entitled.

31. (a) Until in or about February, 1990, the division of the department responsible for licensing and certification of nursing homes, personal care homes, residential board and care homes, and other facilities was directed by John J. Jarrell. He had held this position for approximately ten years.

(b) In or about the beginning of 1989 the nursing home trade association began a concerted effort to have Mr.

Jarrell replaced.

(c) In February, 1990, Mr. Jarrell's authority or supervision was reduced by approximately 70% and defendant Lynda G. Kramer was placed over all homes and licensing and certification.

(d) Immediately prior to her appointment the defendant Kramer was a nursing home administrator and her facility's representative with said trade association.

(e) Since the appointment of defendant Kramer as Director of the Office of Health Facilities Licensure and Certification (OHFLAC) there has been no meaningful enforcement of standards, law or regulations.

(f) Upon information and belief, not one nursing home, personal care home, or residential board and care facility has been assessed a single civil penalty since the appointment of defendant Kramer as Director.

32. Most of the residents of the state's personal care homes, nursing homes, and residential board and care homes are recipients of Supplemental Security Income (SSI) assistance.

C. Mountain View Personal Care Home (Oak Hill, Fayette County)

33. Defendants are aware of the poor conditions at the Mountain View Personal Care Home. No meaningful enforcement of state law has been taken against this personal care home, notwithstanding its deficiencies, poor conditions and violations of state law.

34. The Home houses approximately 30 residents, most of whom receive SSI assistance.

35. (a) Bedrooms are crowded and afford no privacy. There is a ward with nine beds and another with four beds. Residents of the 9-bed ward must walk through the 4-bed ward to use the bathroom;

(b) Bathroom facilities are atrocious in their crowding and lack of privacy:

(i) Thirteen women share one bathtub;

(ii) Bathrooms have two toilets side by side with no privacy partitions between them.

(c) These conditions have been in violation of state regulations for over fifteen years and have gone without correction.

36. (a) Personal care of residents is inadequate in that residents are not provided appropriate clothing, are subjected to the discomfort of having to wear the wrong size, and have gone without basic apparel such as socks in cold weather;

(b) Residents do not leave the grounds very often. The road to a nearby store is unsafe.

37. (a) Supervision of personal care residents with serious behavioral problems is grossly inadequate, resulting in frequent and very serious injury to residents: One resident confronted another, screaming in the middle of the night, and lost an eye as a result of the other resident's reaction.

(b) Mountain View does not provide the necessary level of supervision to protect either the disturbed and the aggressive or the frail and the elderly.

D. Sheltering Arms Personal Care Home (Fayette County)

38. Defendants are aware of the poor conditions at the Sheltering Arms Personal Care Home. No meaningful enforcement of state law has been taken against this personal care home, notwithstanding its deficiencies, poor conditions and violations of state law.

39. The physical conditions in this facility, a deteriorating old home, are depressing, unhealthy and actually dangerous to residents.

(a) The home houses 33 residents, most of whom are SSI recipients.

(b) The facility is not well kept. There are signs of sagging floors and outdoor chipping paint. Irregularities in floor level from room to room, caused by structural work to the home at different times, may cause residents to fall and sustain serious injury. The staircase to the second floor has very uneven steps and is not lighted. The second story floor of the facility is spattered with paint.

(c) The second floor has only one exit.

(d) The home is crowded and affords residents no privacy at all in bedrooms, bathrooms, or otherwise. Bedrooms house up to eight persons.

(e) Certain bedrooms on the second floor are small and contain no mirrors, bedside lights, or reading lights. They contain only one dresser and one small closet, to be shared by residents assigned to those bedrooms. They contain fewer chairs than the number of persons using the rooms.

(f) Second floor bathrooms have more than one toilet with no privacy in the toilets, without regard to the fact that both men and women use this second floor facility.

(g) There is only one small living area. When no seats are available there during the day, the residents have no alternative but to lie on their beds.

(h) The so-called dining room is designed to prevent social interaction. All seats face the wall and a 2-foot counter which runs around the wall. Thus each person sits with his or her back to everyone else. There are 16 steps between the dining room and the first floor.

(i) Some residents sweep and mop in an attempt to improve unclean conditions.

40. A nurse comes to the facility only once per week.

41. Personal hygiene care in day treatment is inadequate. Residents are neither assisted nor encouraged to bathe. Essential clothing is in short supply, in poor condition with holes and lacking buttons, inappropriate and nonprotective in cold seasons.

42. There is no social program at the home, and recreational activities are only occasional. None but the ablest

residents may relieve isolation and boredom by walking downtown. Many residents who are actually in need of appropriate day treatment services have abandoned this facility because there is nothing worthwhile to do there.

E. Personal Care Home of Bluefield Inc.

43. Over the past several years, the defendants have been aware of the very poor conditions at the Bluefield Personal Care Home. No meaningful enforcement of state law has been taken against this personal care home, notwithstanding tremendous deficiencies and tremendous violations of state regulation and gross conditions.

44. The Home routinely houses 26 to 34 residents, virtually all of whom receive SSI assistance.

45. Social workers have had to remove residents who have been bedfast for periods of weeks and take residents in ambulances to hospitals in emergency and critical condition.

46. The physical conditions in the facilities are deplorable. The beds are routinely, thoroughly soaked with urine. Bedrooms house up to five people. Bathrooms are shared by both sexes without privacy between toilets. Floors are routinely very dirty. The overall physical environment of the facility is dirty, crowded, and in atrocious disrepair.

47. (a) Routine complaints are made about inadequate medical care, handling of patients' funds, lack of supervision and inadequate meals. The complaints go unenforced.

(b) Residents entitled to their SSI \$55.00 a month spending money do not receive it. Some staff are paid as little as \$10.00 a day.

(c) Meals are very poor. No milk is served, but Kool-Aid and pop are routinely served. Residents are being served beans, meal after meal.

(d) Residents such as the plaintiff Wolford who cannot feed themselves are not fed.

(e) The lack of cleaning and other supplies is ongoing.

(f) Staff turnover is high, and there is a tremendous shortage of staff. Often there is only one aide present during an entire shift. During periods of time the only employee present is the maintenance man, who dispenses medications.

(g) Personal hygiene is very poor because staff do not assist residents in changing. Clothes are not laundered and are very poor quality. They are purchased from a used consignment shop that one of the staff members has an interest in. Clothes are not suitable, do not fit, and are in very poor condition. The laundry room is closed much of the time.

(h) Prescribed medications are often not provided. Medications are dispensed haphazardly. Records are of poor quality.

(i) Defendants will routinely write letters to the facility after mandatory inspections, noting deficiencies and

requesting that there be a plan of correction, but the corrections are never made and no civil penalties are assessed against the facility.

48. (a) Adult Protective Services workers in Mercer County, employees of the Department of Health and Human Resources, received one to two complaints a month about Bluefield Personal Care Home for long periods of time;

(b) These complaints were turned over to Defendant Lynda Kramer, Director, Office of Health Facilities-Licensure and Certification, Bureau of Administration and Finance, West Virginia Department of Health and Human Resources during the three years of her tenure;

(c) Virtually no action was taken on these complaints;

(d) Eventually the APS employees removed all residents from the facility, complaining that if the OHFLAC had enforced its regulations, there would have been no need to do so and the gross and serious neglect of the residents could have been avoided.

F. Lewis Wetzel Personal Care Home

49. Over the past several years, the defendants have been aware of the very poor conditions and lack of services and supervision at the Lewis Wetzel Personal Care Home. No meaningful enforcement of state law has been taken against this

personal care home, notwithstanding deficiencies, poor conditions and violations of state regulation.

50. (a) The home houses 50 residents, virtually all of whom receive SSI. The "home" is very institutional.

(b) The common areas of the home are inadequate in that the dining and living rooms cannot accommodate everyone at one time. Most bedrooms house two people, some housing three.

51. Supervision is grossly inadequate if not altogether lacking:

(a) One resident fell seventeen times in six weeks, resulting in several hospital stays. Upon being admitted to Weston Hospital, said resident's body was found to be extensively bruised and she was then in a semi-comatose state. Thereafter, upon being admitted to Stonewall Jackson Hospital, where the bruises were again observed, said resident was also found to be dehydrated and suffering from digitalis intoxication. It was concluded that the resident required more supervision to prevent her falling and consequent serious injury.

(b) Two residents of the home, a man and a woman, became involved in violent physical confrontation with each other, resulting in extremely serious injury.

52. The facility's "open door" policy of allowing residents to come and go at will, without supervision, regardless of their mental or physical condition, has subjected residents to danger, injury, and death: A delusional resident departed from the home unattended and his body was found a month later in the

river; Another resident who was encouraged to take walks outside the home by herself during psychotic episodes was frequently missing for hours; on one such occasion she didn't come back and was found asleep in a ravine.

53. Personal hygiene care is inadequate: Residents often come to program without having completed their personal hygiene. Residents are often seen wearing ill-fitting clothes around town.

54. The owner/operator of the home discourages residents from participating in services offered by the area community behavioral health center, which is the provider for case management services, day services, and other behavioral health services which many of the residents need. The defendants have knowledge of this but have taken no action.

G. Plaintiff Paul Wolford

55. (a) Plaintiff Paul Wolford was, until February, 1992, a resident of New Creek, West Virginia and a lifelong resident of Mineral County, West Virginia, and is 73 years of age.

(b) In or about February, 1992, said plaintiff entered Potomac Valley Hospital in his resident Mineral county for treatment of an infection and diabetes.

(c) When plaintiff was ready to leave the hospital in March, 1992 and had no place to go, the general hospital, in order to empty the bed, transferred him to a state facility for

evaluation. After a short-term evaluation, in April, 1992, the state facility, which operates under the supervision of the defendant Secretary, placed him in Lewis Wetzel Personal Care Home.

56. (a) During his stay in Lewis Wetzel Personal Care Home, the plaintiff did not receive many of the Medicaid services to which he was entitled.

(b) During his stay in Lewis Wetzel Personal Care Home, the plaintiff's personal needs were not attended to in a meaningful fashion.

(c) During his stay in Lewis Wetzel Personal Care Home, without adequate supervision, the plaintiff wandered off and fell on several occasions.

(d) After plaintiff resided in Lewis Wetzel Personal Care Home for approximately four months, Lewis Wetzel desired to place him elsewhere.

57. (a) Lewis Wetzel Personal Care Home placed the plaintiff at Mountain View Personal Care Home in Oak Hill, Fayette County, West Virginia, in the last part of August, 1992.

(b) While the plaintiff was in said home he was subjected to the conditions and lack of services hereinabove set forth. His condition and health deteriorated.

(c) While he was at Mountain View Personal Care Home, the plaintiff suffered a fall, outside of the home, at night, after which he was hospitalized and then returned to the Home for two to three days.

(d) After plaintiff was returned to the Home, the Home hospitalized him in Beckley. While plaintiff was in the hospital, Mountain View Personal Care Home refused to take him back and caused his transfer.

(e) While plaintiff was in Mountain View Personal Care Home, he was not provided the personal care services that he needed.

(f) The Mountain View facility according to defendants' records is owned by the sister of the owner of the Bluefield facility to which the said plaintiff was transferred. The owner of the Bluefield facility has in the past been charged with Medicaid fraud.

58. (a) The Mountain View Personal Care Home placed the plaintiff at Personal Care Home of Bluefield Inc. in or about September, 1992.

(b) Plaintiff was sent to the Bluefield facility with no belongings except the clothes he had on.

(c) While he was in the facility he was not provided any personal care services and suffered from the poor conditions.

59. On or about November 19, 1992, plaintiff was removed from Personal Care Home of Bluefield Inc. by Mercer County Adult Protective Services on a complaint of abuse and neglect against the personal care home.

60. During his stay in Mountain View Personal Care Home and Personal Care Home of Bluefield Inc., the plaintiff, due to

his condition, was not able to walk to or otherwise secure access to Medicaid services (except when he was transferred to the hospital in emergency conditions after substantial delay). The failure of the personal care home to provide such and the failure of the defendants to enforce such access means that the plaintiff was effectively denied, or substantially delayed, in access to needed medical care.

61. Said plaintiff was never informed of or provided an evaluation or opportunity for evaluation for waiver services;

62. Said plaintiff has never been provided home nursing services, day services, or case management services.

63. Plaintiff was placed in the Cumberland Care Center, a nursing home, by the adult protective services on or about November 19, 1982.

64. Personal Care Home of Bluefield Inc. received monies for the plaintiff which they refused to release to the plaintiff or to any other person. This includes December 1982 monies.

65. (a) While in personal care, the plaintiff had to be admitted to the emergency room several times. When he was admitted to the hospital and when taken to the personal care, he complained of hunger.

(b) The only response of the personal care home staff was that he would not eat food that he was offered.

(c) When he was fed by the nurses in the hospital and in the nursing home, he ate all that was given to him and pleaded for more.

66. When plaintiff Wolford was placed by Adult Protective Services in Cumberland Care on November 19, 1992, he had many sores and scabs, injuries, cigarette burns, and dried feces all over his body. He smelled of body odor. He exhibited fear of staff which is indicative of physical abuse. He also had lice in his hair and in his moustache. He weighed 100 pounds and was 50-60 pounds underweight. Medical testing indicated malnourishment. Roaches were observed in all his personal belongings. Among plaintiff's clothing were no shoes whatsoever and only one pair of pants. He had bruises/reddened areas on both shoulders which could only have been caused by prolonged use of a physical restraint mechanism.

67. Earlier, at the time of his entry into the hospital in February, 1992,, the plaintiff's body weight was good and his physical condition -- insofar as nourishment was concerned -- was good.

68. (a) Immediately upon entry in the nursing home he had to be provided meal supplements.

(b) During the course of his residence in these three personal care homes over approximately seven months, the plaintiff's physical condition, nourishment and health has deteriorated very substantially due to a lack of care.

69. Plaintiff is now placed in Mercer County, the county that is the greatest distance from his home and family members of any county in the state, and where family visits are impossible.

His transfers and ultimate placement are due to the policy of nonenforcement and inaction of the defendants.

70. At no time was the plaintiff informed of the opportunity to seek or provided an evaluation for waiver services

H. Plaintiff Henry Bias

71. Plaintiff Henry Bias was for a period of years residing in Personal Care Home of Bluefield Inc. until he was removed by Adult Protective Services on or about November 25, 1992 because of the conditions in the home.

72. Plaintiff Bias was then placed at Cumberland Care Center, Inc., Bluefield, Mercer County, West Virginia, a nursing home. When he was admitted he was filthy dirty, unbathed for some time, with strong odors, and hungry.

73. While at Personal Care Home of Bluefield Inc. said plaintiff suffered from lack of care and all conditions heretofore set forth.

74. While at Personal Care Home of Bluefield Inc., in October, 1991, said plaintiff wandered off due to lack of supervision and was missing for about three months. On information and belief, the Home collected said plaintiff's SSI benefits even though he was not residing there.

75. At no time was the plaintiff provided an evaluation for or informed of the opportunity to obtain an evaluation for waiver services.

I. Plaintiff Cody Burdette

76. Plaintiff Cody Burdette is 31 years old and has lived for some time in the Sheltering Arms Personal Care Home.

77. The plaintiff is afforded no privacy in the bathroom.

78. Plaintiff is provided an inadequate bedroom in terms of space, closet space, drawer space, comfort, seating arrangements, reading light.

79. Plaintiff is provided an inadequate and abnormal eating environment where he has to sit facing the wall.

80. Plaintiff is not provided adequate case management services and rehabilitation services for his needs.

J. All Named Plaintiffs

81. (a) The personal care homes in which the named plaintiffs resided have never once since February, 1990 been assessed a civil penalty, notwithstanding violations.

(b) No civil actions were taken against said homes.

(c) Inspections of said homes were made but there was no meaningful follow-up enforcement;

(d) The personal care homes in which the plaintiffs resided were not classified with a rating system;

(e) The personal care homes in which the plaintiffs resided were continually since January, 1990 relicensed notwithstanding noncompliance and/or poor conditions;

(f) The personal care homes in which the plaintiffs resided did not disclose fee schedules;

(g) The plaintiffs were not informed of the possibility of civil remedies by any of the defendants.

82. The defendants have failed to insure the enforcement of all existing standards.

83. The defendants have failed to establish standards appropriate to the needs of recipients in personal care homes and residential board and care homes as to admission policies, civil rights, residential services and other areas.

84. The plaintiffs have no adequate remedy at law to prevent the continuing wrong and irreparable injury caused by the defendants' practices and policies.

Claims for Relief

A. Failure to Enforce and Establish Appropriate Standards

85. For their first claim, the plaintiffs on behalf of themselves and all others similarly situated allege that the defendants have failed and refused to establish and/or ensure the enforcement of standards appropriate to the needs of said plaintiffs for personal care homes, residential board and care homes, and nursing homes wherein a substantial number of SSI recipients reside, in violation of 42 U.S.C. § 1382e(e).

86. For their second claim, the plaintiffs on behalf of themselves and all others similarly situated allege that the defendants' practices and policy of failing and refusing to meaningfully regulate or enforce regulatory standards has a disparate impact upon members of the class, in violation of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the guarantee of equal protection of law guaranteed by the Fourteenth Amendment to the United States Constitution, and the Americans with Disabilities Act, ~~42 U.S.C. § 12112~~

B. Access to Medicaid Services

87. For their third claim, the plaintiffs on behalf of themselves and all others similarly situated allege that the defendants' failure to provide a means for the Medicaid-eligible residents of personal care homes and residential board and care homes to meaningfully access medical services, nursing services, rehabilitation services, dentures, eyeglasses, physical therapy, and other Medicaid services has a disparate impact upon said members of the class in access to Medicaid services, in violation of 29 U.S.C. § 794 and the guarantee of equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution and ~~42 U.S.C. § 12112~~

C. Impermissible Delegation

88. For their fourth claim, the plaintiffs on behalf of themselves and all others similarly situated allege that the defendants, by their delegating to personal care homes and residential board and care homes the responsibility for assuring

access to Medicaid services, are in violation of the single state agency mandate, 42 U.S.C. § 1396a(a)(5); 42 C.F.R. § 431.10.

D. Denial of Due Process of Law

89. For their fifth claim, the plaintiffs on behalf of themselves and all others similarly situated allege that the defendants, by their failure to give notice to the members of the class, when their monies are improperly used or accounted for, of opportunity to recover those monies either from the licensee or from the bond and of their rights to seek civil remedy for violations of state standards, have denied the members of the plaintiff class due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

E. Failure to Provide Access to Specific Medicaid Services in Personal Care and Residential Board and Care Homes

90. For their sixth claim, the plaintiffs on behalf of themselves and all others similarly situated allege that the defendants, by their failure to provide to persons who are elderly or have diagnoses of mental retardation evaluations of the need for nursing facility services or ICFMR services and their failure to inform such persons of the opportunity for an evaluation for waiver services, are in violation of 42 U.S.C. §§ 1396n(c)(2) & 1396n(d)(2).

91. For their seventh claim, the plaintiffs on behalf of themselves and all others similarly situated allege that the defendants, by their failure to provide to those residing in

personal care homes and residential board and care homes meaningful and coordinated case management services, 42 U.S.C. §§ 1396d(a)(19) & 1396n(g)(2), and meaningful access to rehabilitation services, 42 U.S.C. § 1396d(a)(13), which defendants purport to provide to other categorically and medically needy individuals, are in violation of the duty to provide services to residents of personal care homes and residential board and care homes which are equal in amount, duration and scope to services provided to other individuals. 42 U.S.C. § 1396a(a)(10)(B).

F. Accessibility

92. For their eighth claim, the plaintiffs on behalf of themselves and all others similarly situated allege that the defendants, by their failure and refusal to enforce wheelchair accessibility in the personal care homes and residential board and care homes, are in violation of ~~42 U.S.C. § 1396a(a)(10)(B)~~.

PRAYER

WHEREFORE, the plaintiffs and the class they represent respectfully pray that this Court:

1. Order that this action be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, and the plaintiffs hereby so move;

2. Enter a declaratory judgment that the practices of the defendants as alleged violate their constitutional and statutory rights as set forth in the claims for relief.

3. Enter a permanent injunction enjoining the defendants from:

(a) Failing to enforce and establish standards for personal care homes and residential board and care homes, and nursing homes;

(b) Failing to provide the plaintiffs and members of the class the means to obtain all the Medicaid services to which they are entitled, including but not limited to medical services, nursing services, rehabilitation services, dentures, eyeglasses, and physical therapy;

(c) Failing to provide a procedure for informing and evaluating the plaintiffs and members of the class and persons who are elderly or who have been diagnosed as mentally retarded for waiver services;

(d) Failing to provide a procedure for notifying the plaintiffs and members of the class of their right to opportunity recover monies mishandled by personal care homes and

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

PAUL WOLFORD, et al.,

Plaintiffs,

v. CIVIL ACTION NO.: 2:92-1151

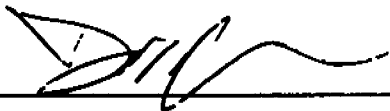
RUTH ANN PANEPINTO, Ph.D., et al.,

Defendants.

CERTIFICATE OF SERVICE

I, Daniel F. Hedges, counsel for the plaintiffs in the above-styled matter, do hereby certify that I have served a true and exact copy of the foregoing Amended Complaint upon counsel for the defendants by depositing the same in the regular course of the United States Mail, postage prepaid, on this 19th day of February, 1993, addressed as follows:

Thomas M. Woodward
Assistant Attorney General
State Capitol Complex
Building 3, Room 210
Charleston WV 25305



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

FILED 15

PAUL WOLFORD, et al.,

Plaintiffs,

v.

CIVIL ACTION NO.: 2:92-1151

RUTH ANN PANEPINTO, Ph.D., et al.,


Defendants.

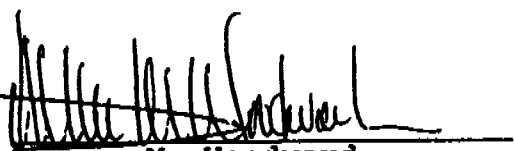
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STIPULATION


Now come the parties, by counsel, and hereby stipulate to the amendment of the Complaint to correct a typographical error occurring in a citation contained in ¶¶ 3, 86, 87, and 92. The citation 29 U.S.C. § 12132 is hereby corrected to 42 U.S.C. § 12132.

STIPULATED to this 19th day of February, 1993.


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