

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code §16-5C-5

AMENDMENT TO AN EXISTING RULE: YES NO

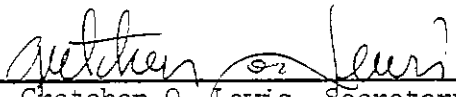
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 14

TITLE OF RULE BEING AMENDED: Personal Care Home Licensure Rule

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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



Gretchen O. Lewis, Secretary

DATE: January 4, 1996

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Health

LEGISLATIVE RULE TITLE: Personal Care Home Licensure Rule

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

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

November 22, 1995

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

Copies were sent to all personal care homes and various other interested agencies and organizations.

c. Date of hearing(s): Comment period 11-22-95 to 12-22-95

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

Attached X

No comments received _____

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

January 4, 1996

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

Kay Howard 558-3223

Nancy Tyler 558-0050

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

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

N/A

b. Date of hearing: N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

Commenters - Personal Care Homes, 64 CSR 14

Aging, Commission on - Carolyn S. Riffle, MSW, State Ombudsman
Alliance Personal Care Home - Peggy Haddix
Arlington Personal Care Home - George A. Polen, Administrator
Caldwell Cannon-Ryan & Riffie Lawyers - Joseph W. Caldwell
Chateau Grove Personal Care - Mark Groves, Owner & President Personal Care Assoc.
Colonial Place Assisted Living Facility - Sharon Mullenax RN, Administrator
Country Haven Rest Home - Jacquelyn A. Kiple & Patricia J. Hitchcock, Co-Administrators
Countryside Manor - Robert L. Curnutte, Sr., Administrator
Golden Age Paradise, Inc. - Dottie B. Markley, President
Harris, MA, LCSW, Wes - Former President; WV Dept. Of Health Behavioral Health Advisory
Council
Legal Aid Society of Charleston - Roy Herzbach, Ombudsman Supervisor
Lewis Wetzel Personal Care Home - Dewie Kernan R.N., Administrator
Lida Clark Licensed Personal Care Home - Opal L. Cottrill, Administrator
Marsh, Evelyn and Larry J.
Phillips Personal Care - Beverly Phillips, Administrator
Phillips Personal Care - Beverly Phillips, Administrator
Prince, LPN, Jean I. and Richard Wisnieski - Sheltering Arms Personal Care Home, Inc.
Ravenswood Care Center - Phyllis J. Myers, Administrator
Ravenswood Rest Home - June E. Harless, Owner
Rest Haven Licensed Personal Care Home - Jack P. MacDonald, Owner-Administrator
Sheltering Arms Personal Care Home - Randy Prince, Administrator
SweetBriar - Donna L. Gibeaut, Administrator
Valentine Personal Care Home - Maria Valentine, Administrator
Vintage Village - D. Robert Williamson, Administrator
We Care Personal Care Home - James E. Fox, Administrator
Wolfe, Vickie
Woodridge Personal Care Home - Sharon Weinheimer, Administrator

**Discussion of Public Comments Received
Concerning the Proposed Rule
Personal Care Homes, 64 CSR 14**

The proposed rule, **Personal Care Home Licensure Rule, 64 CSR 14**, is a major rewrite of the present rule. The rule contains standards and procedures for the operation and licensure of personal care homes. It: 1) makes the rule conform to revisions to Articles 5C and 5H of Chapter 16 of the W. Va. Code by the 1994 and 1995 Legislatures; 2) addresses problems with the current rule and an earlier proposed revision; and 3) complies with federal regulations and law.

A public comment period on the present draft was held from November 22, 1995 to December 22, 1995. The Department received numerous comments, which are summarized and discussed below. Minor stylistic changes and corrections of typographical and format errors are not documented. Some revisions have necessitated renumbering. Comments and discussion are keyed to the version of the rule offered for public comment.

The Department also filed the public comment draft of the rule with the Secretary of State on December 15, 1995, requesting approval for putting the rule into effect on an emergency basis. A copy of the Emergency Filing Notice is attached. Many commenters wrote to the Secretary of State as well as the Department, some apparently in anticipation of the emergency filing. The Secretary of State shared copies of the comments received in his office. Some commenters wrote to the Secretary of State using the Department address, and the Department made the Secretary of State aware of those comments. To the extent that different portions of the rule were cited or different comments made, this discussion includes all comments made, regardless of to whom they were addressed. The Department intends to file amendments to the proposed emergency rule to make it conform to any modifications to the rule which may be approved by the Legislative Rule-Making Review Committee.

Historical Background: A brief history of the development of the present draft may be helpful.

The Keys Amendment to the U. S. Social Security Act (42 U.S.C. §1382e(e)), passed in 1977, requires States to establish, maintain, and insure the enforcement of standards for any category of group living arrangements in which a significant number of recipients of SSI (supplemental social security income) are residing or likely to reside. These standards must be appropriate to the needs of the residents and the character of the facilities and must address admission policies, safety, sanitation, and protection of civil rights. Federal regulations at 45 C.F.R. §§1397.1 through 1397.20 more specifically define the required standards. Personal care homes in West Virginia have a significant number of residents who receive SSI.

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

Wolford v. Lewis, Civil Action No. 2:92-1151 (Wolford), a class action lawsuit, was filed

in federal court in 1992 alleging that the Department was not complying with the Keys Amendment or State law. At the time of the filing of Wolford, the Department had in place a personal care home licensure rule that had not been revised in over twenty years which did not meet the requirements of either the Keys Amendment or State law.

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

Proposed amendments to the personal care home rule filed for public comment during the summer of 1994 were a product of procedures related to resolution of Wolford issues, and had been filed as part of the Court-ordered Long-Term Care Plan. The Department received extensive comments about the proposed rule. The Department proposed some modifications of the rule, but was not in a position to propose improvements in response to some comments. The Legislative Rule-Making Review Committee approved the rule with some additional modifications and recommended the rule to the 1995 Legislature. The proposed rule was approved by both the Senate and House Health and Human Resources Committees, and was tabled subsequently in the Senate Finance Committee. The proposed rule later was amended out of a bill by the House Judiciary Committee, and thus died in the 1995 Legislative Session.

The lack of Legislative approval to make the rule effective became the subject of additional legal action. 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 a few additional revisions to the modified rule submitted to the 1995 Legislature, and to solicit comments, before resubmitting it to the Legislature for reconsideration. The present proposed rule is thus the end result of a second round of public comment. A summary of the revisions to the modified rule of January 16, 1995 is attached.

General Comments

Many commenters expressed general concerns about the cost of implementing the proposed rule. They cited the low state reimbursement of approximately \$17 per day. Several providers expressed concerns that the Department is making an effort to close or put some, or many, or all personal care homes out of business. They stated that putting personal care homes out of business will cause unemployment for staff, residents into nursing homes -- both of which would increase costs to State government. They stated that cost would be increased for private pay residents, even though they do not receive State assistance. "Senior citizens are being taken advantage of by both the State and federal government." They spoke to the effect of increases in paperwork, and stated that nursing staff who function as care givers will be taken off the floor to comply with paperwork requirements. One commenter stated that he was unaware of any reports criticizing the level of care presently offered at personal care homes.

One commenter noted that the Office of Health Facility Licensure and Certification

received a line item increase of \$641,000 for fiscal year 1996 to "beef up" inspections. "It would be nice if 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 the threat of being put out of business.

Response: The Department has no interest in putting personal care homes out of business. It is believed that providers have over-interpreted the revised rule and that, after training, the rule will be more acceptable. For example, a service plan is expected to identify resident needs and explain how these needs will be met. The rule does not require that a nurse complete any aspect of the service plan except the area that involves nursing care.

Physical facility requirements comply with the Wolford lawsuit that indicated that personal care homes did not have adequate oversight. This action will ensure that as new facilities are developed, basic structural issues will be considered so that residents have safe and adequate environments. If a provider is providing good care and the cost to comply with these regulations is prohibitive, the Department will work with the provider to ensure adequate time for compliance or to waive certain requirements if resident health and safety is not an issue.

It should be noted that the increased funding for the Office of Health Facility Licensure and Certification that occurred last year was not new monies from the State, but only a shift of money from other programs. One half of that money was provided to maintain the current staffing levels after a federal decrease in funding. The additional funding provided five (5) additional staff to the Office of Health Facility Licensure and Certification which is responsible for the oversight of 17 types of health facilities within West Virginia, encompassing approximately 2,700 or more activity sites, including complaint investigations of unlicensed facilities.

Comments on Specific Items

1.1. Comment: The State should make a copy of W. Va. Code § 16-5C-1 et seq. available as an appendix at the end of the rule to inform owners and operators of everything for which they will be held accountable.

Response: Rules are a more detailed explanation of the expectations of each facility. The West Virginia Code reference does not expand the expectations. The Code is available in many public libraries.

3.17. Comment: The State should develop a uniform assessment tool, or at least require approval of the form use by a personal care home. This would assure consistency and the use of an appropriate assessment instrument.

Response: The State has available an assessment tool that can be used by all personal care homes. The State chooses not to require a particular tool to be used, so that each personal care home can create a tool that is most effective for its environment. Assessment tools can be approved by the Office of Health Facility Licensure and Certification and a great deal of information will be provided at training seminars that will be available prior to implementation

of the new rule.

3.24. Comment: Although the definitions [of Legal Representative] are acceptable, consideration should be given to having the rule provide protection for the rights of residents in instances where an administrator or staff person of a personal care home is appointed as a legal representative, a situation in which there would be opportunity for clear conflict of interest. the commenter gave an example in which a resident was prevented from moving out of a home because the administrator was named as the representative payee.

Response: The Department agrees that the legal representative should be someone other than an employee of the facility to prevent a conflict of interest.

Modified: 3.24. Legal Representative -

...
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; and

3.24.9. An individual who is independent from the personal care home.

3.37. Comment: One commenter questioned the definition of personal care home with respect to limited and intermittent nursing care.

Response: The definition is statutory and can only be changed by the State Legislature.

3.42 & 3.43. Comment: Change "residential care staff" and "residential support staff" to personal care staff" and "personal support staff" in order to avoid confusion with residential board and care homes rules.

Response: Agreed. The terms have been changed in the definitions and the text of the rule.

4.3.1.d. Comment: Many providers objected to the new requirement for a bond or other form of guaranty to assure the provision for at least thirty days of care for residents in the event of closure of a personal care home. They stated concerns such as: they are unable to afford the cost; the Department is making them finance their own closing (in conjunction with the imposition of severe cost increases of the new rules); it will be necessary to finance this cost through mortgages on their own homes, producing the risk of personal bankruptcy. One commenter asked whether this is a way for the State to take over facilities and sell them when the owner or owners cannot afford the cost of the guaranty.

Response: This particular requirement was strongly recommended by the Department of Social Services, the Ombudsmen, the West Virginia Legal Advocates, the Office of Behavioral Health Services, and the Office of Health Facility Licensure and Certification, to ensure that residents are adequately cared for during the thirty (30) days after closure is announced. There have been situations where providers simply disappear and it becomes very difficult to find the

necessary resources to pay staff to continue to provide services until placements can be arranged. This is not an effort on the part of the Department to create problems. For example, a property lien placed on a property will have no cost to the facility and will be released by the State if a facility chooses to change location or sell that property as long as appropriate arrangements have been made during the thirty (30) day closure period required by the rule. The Department realizes that some providers feel that this is unfair, but it is the only method to protect residents to ensure continuing care if a provider does not take appropriate responsibility.

4.6.5. Comment: All facilities should be inspected. A number of suggestions were made concerning the inspection process and the responsiveness of the licensing unit.

Response: All facilities that have applied for licensure are inspected. When it comes to the attention of the Office of Health Facility Licensure and Certification that a facility exists that is not licensed, an order to close, apply for licensure or reduce the census to three or less is issued, with the appropriate information to become a licensed facility. The licensing unit attempts to respond to all questions, although there has been a problem with life safety and environment issues which is currently being resolved.

4.6.7 & 9.2.3. Comment: Commenters suggested that posting inspection reports is inappropriate and that making a copy accessible to current and prospective residents, families and legal representatives would be adequate.

Response: The Department agrees that posting the Secretary's report does not create a homelike environment and therefore will allow the availability of the Secretary's report in a place where residents are informed of its location.

Modified: 4.6.7. The administrator of the personal care home shall ~~post a copy~~ have available of the secretary's report in a place where residents have access to the report. The report shall remain ~~posted~~ available until the next inspection, and the home shall inform residents of its location.

4.8.5. Comment: Requiring a personal care home to hire a consultant is an unreasonable cost which will be passed on to residents. The commenter implied that consultants would not be necessary if inspectors or staff who take care of personal care homes were properly trained.

Response: § 4.8.5 does not require the hiring of a consultant, but only enables the Secretary to order one in those situations where the personal care home needs additional expertise that is not available on the staff. This would only be used in situations where there are significant deficiencies that the personal care home is not able to resolve independently.

4.9.3. Comment: The Commission on Aging suggested that residents should be provided with a list of the reasons for closure and other information deemed appropriate by the secretary.

Response: Agreed. According to the Keys Amendment, the Department is required to not only notify the Social Security Administration but also the residents in the facility. Therefore, after the words Social Security Administration, it shall read, "...and the residents or

their legal representatives.”

Modified: 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 report¹ the personal care home’s lack of compliance with this rule to the Social Security Administration and the residents or their legal representatives. The secretary shall also provide all residents with a list² of approved facilities and agencies to assist them to move. [The footnotes are not material to the modification, and are not reproduced here.]

4.10. Comment: The waiver process is too lengthy to be of any benefit to a resident having an immediate need. New facilities should not be eligible for waivers. A copy of the request for a waiver should be sent to the State ombudsman rather than “the ombudsman representing the residents of the home (§ 4.10.4)

Response: The Department believes that the waiver process provides the necessary information to make a determination of whether a waiver is appropriate. The Department has established a waiver team to evaluate any requests for a waiver, so that responsiveness will be quick. If there is a concern that an immediate need exists and it will impact on resident care, a decision can be made on an emergency basis by the Director. Concerning new facilities, a waiver team would be less likely to grant a waiver to a new facility unless there are extremely extenuating circumstances. It is the expectation of the Department that new facilities will plan to be in compliance upon opening. The Department acknowledges that in 4.10.4, “the Ombudsman representing the residents of the home”, should be changed to, “the State Ombudsman”.

Modified: 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 State ombudsman ~~representing the residents of the home~~, and the ~~guardians~~ legal representative 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.

4.12. Comment: The scoring system is confusing and difficult. Will surveyors be able to understand it?

Response: The point system is designed to comply with statutory requirements. Surveyors will be trained when the system is implemented. The Department hopes to have the statutory requirements for the system repealed.

5.2.1.f. Comment: The requirement for administrators to have an associate degree is unnecessary. There have not been any problems with administrators not having associates degrees. Potentially, new owners might need to hire an administrator, which would be a financial burden. This might be appropriate for large facilities, but not for small ones.

Response: The requirement for administrators to have an associate degree is a Wolford issue. It is not the intention of eliminating good providers, in that an associate degree or a certain amount of experience would be acceptable. This is an attempt to upgrade an administrator's credentials, in that there are more fiscal burdens and regulatory burdens placed on the administrators to ensure a good quality of care for the residents. An individual who has no experience and no education would have a great deal of trouble understanding the rule and ensuring complete compliance with the requirements of the rule. Waivers for existing administrators can be requested.

5.2.4. Comment: A quality assurance plan will take the administrator of a small home away from hands-on care. A suggestion would be to implement this requirement only when there is a repeated deficiency in care.

Response: The Department believes that a quality assurance plan is a basic component of providing quality care. This would enable facilities to identify problem areas prior to a survey and correct problems internally. This requirement does not require a sophisticated quality assurance system, but is simply an expectation that administrators and their staff will look at problem areas and attempt to resolve them on an ongoing basis. Training to assist providers to come into compliance with this requirement will be provided by the Department.

5.6.1.b. Comment: It was suggested that the licensure office set up a hotline to assist administrators with making an immediate criminal record investigation.

Response: The licensure office does not have direct access to these records at this time. The State police currently have records of any felony convictions and there is currently a bill being considered by the Government Organization Committee, to establish a registry of individuals who have been convicted of abuse, neglect or misappropriation of resident property. The Department feels that it is important to check past work histories of staff to prevent the potential of a continuation of abusive behavior against residents.

5.6.1.e. Comment: Providers objected to the requirement that employment physicals and TB screening be completed within the first week of employment.

Response: Agreed. Although the Department feels that this is important, it is understood that these types of tests are not necessarily available on a weekly basis in all locales throughout the State. Therefore, the Department will amend this section, and it will be determined on a county by county basis. This will enable the facilities to have their people tested at local health departments, and thus prevent costs being passed on to potential new employees or the facility itself.

Modified: 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 on the next available testing time in the county.

5.8.2. Comment: Providers strongly objected to the proposed staffing ratios, and stated that they would be more appropriate to nursing homes or hospitals.

Response: After a careful review of the staffing ratio in the proposed rule, the Department agrees that this would be burdensome on facilities and has attempted to rewrite the rule in a more reasonable manner. The Department has no interest in over-burdening facilities that provide a good quality of care, but finds it necessary to have a staffing ratio to be applied when quality of care is not being provided

Modified: At a minimum, an additional ~~nursing assistant~~ direct care staff will be staffed available on the day and evening shifts for each ~~(10) ten~~ ~~(8) eight~~ residents identified on their functional needs assessment to have ~~(1) one~~ no more than (2) two of the following care ~~or behavior~~ needs: dependence on staff or needs assistance with for eating, toileting, ambulating, dressing, bathing, or repositioning, or special skin care, or one or more inappropriate behaviors that reasonably requires additional staff to control behavior (e.g., sexual acting out, stripping in public settings, refuses basic care, such as bathing, destroys property) or self injurious or injurious behavior directed at staff or other residents in appropriate or aggressive behavior; wandering; self-injurious behavior, and special skin care. An additional employee shall be staffed on the night shift for each ~~(12) twelve~~ (18) eighteen residents identified with (1) one or more of the above care needs.

5.8.3. Comment: The Secretary would probably not know the needs of the home. There will always be complaints from time to time regarding every facility, which might not all be justified.

Response: The Secretary would be provided with all reports developed by staff of the Office of Health Facility Licensure and Certification after on-site investigations of complaints or other surveys and would determine any additional needs with input from surveyors who have been actively involved in the facility itself. Therefore, the Department does not believe there is a need to change this particular section.

6.2.1. Comment: Needs clarification with respect to which inspection reports.

Response: The inspection reports done by the Office of Health Facility Licensure and Certification in response to complaints are clearly identified in this particular section of the rule, and are indicative of the expectation that these reports will be made available to residents. The survey reports additionally, must be made available to all residents and placed in an accessible location within the home. These requirements apply to the reports of the licensing group. Reports that come from other types of offices are not regulated in this document.

6.2.1 & 6.2.2. Comment: One commenter was critical of many of the specific requirements for admission agreements, although supportive of the general concept of a written agreement.

Response: The Department feels that it is important to clarify exactly what services will be provided by the home and also the expectations of the residents who enter the home and thus

some of the specific details of an admissions agreement are spelled out. These are minimum requirements, and the home can determine any additional requirements that it feels are appropriate, and develop its own type of admissions agreement that it feels will provide the basic requirements. It is hoped that the rule states only minimum requirements, and that each home will make its own decision based on its actual needs and the protection of the residents. The Department's expectations of the resident agreement are that the resident has their rights clearly specified so that there is no misunderstanding of the expectations.

6.2.2.k. Comment: This requirement needs clarification since some residents might not be capable of giving notification.

Response: The comment is accurate and this requirement simply indicates that there will be some statement in the agreement about discharge planning and transfers. If the resident is incapable of giving any type of notification, then this will be clearly indicated in the agreement that is made between the resident or the legal representative and the facility.

6.3.1. Comment: This requirement is vague and should be written in accordance with what is currently happening in assisted living across the United States. Do residents of West Virginia have the right to choose a place to live according to today's standards of what assisted living represents?

Response: Current State law establishes several levels of care for the elderly and incapacitated individuals of West Virginia. Rules, funding mechanisms, and populations served vary according to the type of facility (i.e., personal care homes, nursing homes, residential board and care homes). The Legislature has determined that these levels of care are necessary to ensure that all types of residents have available living situations. It is currently not acceptable in the State for a personal care home to provide the same care as a nursing home. Nursing homes have a great deal more State and federal requirements to meet. Personal care homes and residential board and care homes offer a type of facility that has less nursing care available. This is certainly within the authority of the Legislature to determine.

6.3.3 & 6.4.6. Comment: What constitutes a "mental disorder" for the purpose of not admitting a resident? What about the resident's right to refuse medical treatment stated in § 8.3.6?

Response: The Department believes that residents have a right to refuse medical treatments if they are competent to make decisions. In terms of behavioral disorders, the resident must either seek treatment or the facility has the right to deny admission, as indicated in 6.4.6. This is an effort to give the facility some control over individuals who are exhibiting behavior that is either self-injurious or potentially injurious to other people and not allow them to refuse treatment under those circumstances.

6.4. Comment: This section, which deals with the retention of transfer or placement of individuals whose condition and functional ability declines after admission, attracted several comments.

Response: The Department believes that the Legislature has determined that there are different levels of care needed in the state of West Virginia. The Department believes that all personal care homes have not chosen to provide nursing care to their residents and this is an acceptable alternative. If a resident has significant nursing care needs and is in a facility licensed by the State, it seems reasonable to assume that there would be certain regulatory requirements to ensure that the resident is receiving adequate care and that his or her needs are assessed and there is an effort to comply with the needs. The Department understands that there is a great deal of conflict concerning aging in place, but based on the current definitions in the West Virginia Code, the Legislature has determined that there should be different levels of care with different regulatory requirements. The requirements in a personal care home are significantly less stringent than those in a nursing home because the population served has less medical needs. In order to continue the less significant regulation, it seems reasonable that as an individual progresses in an illness to a point where ongoing and consistent nursing needs are required, he or she would move to a facility that provides that type of care. The reality in the state of West Virginia is that there are a number of personal care homes who choose not to provide nursing care at all, and, that those who do, provide limited and intermittent nursing care for temporary illnesses, etc. If a change is to be made, it must be made at the Legislative level. The Department believes that the requirements are minimum ones and in some cases those who have reviewed the document have over-read the expectations and have perceived a burden upon themselves that does not exist. The training will be provided by the Department in at least one if not two locations. In addition, video tapes will be made so that providers will have access to the training throughout the State. The Department believes that it has made every effort to have a reasonable response to the need to protect the residents of personal care homes. It is important to remember that there is a lawsuit filed against the state of West Virginia indicating that the State had not adequately protected residents in certain health care facilities, including personal care homes, and that the harm had occurred and would continue to occur until new, more explicit rules were developed. This is the State's response to that expectation.

6.4.2. Comment: Since the home "shall have to bear the cost of reassessment" even if the resident exercises his or her rights, it seems this could be used to discharge a resident. Some protection is needed for the resident in this section.

Response: The Department will determine if the resident's rights have been denied or that an accurate assessment has not been done and the home will be responsible to bear the cost of a reassessment. This does not indicate in any way that a facility can discharge a resident because they have not accurately determined the resident's needs. This section is written to ensure that residents receive needed services if it is determined that they are necessary by the Department. The resident is protected from inappropriate discharge by § 6.5.3. This section states that the home shall make provisions for transfer of the resident to another health care facility when the resident's physical or medical condition has changed so that the personal care home can no longer meet the resident's needs as required as defined by this rule or pending closure of the home. Additional protection is provided in § 6.5.4 where it states that the discharge of any resident is prohibited if it would violate any provision of this rule or the resident's rights.

6.4.5. Comment: There should be a requirement that the back-up generator be "capable

of supporting all necessary power.”

Response: The Department believes that this requirement is for those facilities who choose to provide services to hospice patients that necessitate auxiliary support systems that require electrical power. To require a back-up power generator in every facility would be an expense that could be prohibitive for many smaller facilities. In most cases if in fact electricity is lost in the facility, there would be time to relocate residents to a safe environment or request local community assistance.

6.4.7.a. Comment: Does not make sense.

Response: The Department believes that if it is determined that a resident needs to be relocated because his or her care needs are greater than the facility is capable of offering, the facility must show thorough documentation, and that they are making an on-going and regular effort to find the needed placement. This is an effort by the Department to be reasonable in its expectations of relocating residents, since it is understood that at times the availability of beds in a nursing home, for example, are limited.

6.5.2. Comment: The rule should be more specific on what constitutes an "outside service provider" for purpose of notification.

Response: The Department will clarify this in training, but believes that the provider should notify all providers of services to the specific resident under consideration.

6.1.3, 6.1.4 & 8.12.1. Comment: Clarification is needed with respect to possible confusion caused by these requirements. Personal care homes should not interpret § 6.1.3 to mean that they are in violation of regulations if they refuse admission to any prospective resident regardless of the individual's disability. On the other hand, it may be a violation of civil rights laws if a home refuses admission to a resident on the grounds that the home cannot meet the resident's needs when all other homes are capable of meeting the needs.

Response: Agreed. The Department believes that each home must develop an admissions policy that clarifies the population that they are capable of serving and not discriminate within the confines of that definition. For purposes of clarification, a parenthetical will be added to § 6.1.3.

Modified: 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 (note: each home shall state in their admissions policy, the resident population that they are capable of serving and shall not discriminate within the confines of that definition).

6.5.6. Comment: One commenter expressed an opinion that functional assessments and individualized plans are appropriate for nursing homes, but not personal care homes.

Response: The Department believes that a minimal need in personal care homes is that residents are assessed to determine their needs and that there is an effort on the part of the home

to provide the needed services. This does not necessitate an extensive nursing care plan, but an identified need and how the home is going to meet the need. A functional needs assessment has been implemented in residential board and care homes for some time and does not seem to create an extensive burden, but simply identifies some of the basic needs that need to be provided. The Department believes that this is a minimum requirement to ensure that residents are adequately cared for in these facilities.

6.6.3. Comment: One commenter stated that if the facility is private pay and has the personnel to offer the services, it should be able to advertise where and how it wishes.

Response: The Department agrees that a personal care home should be able to advertise where and how it wishes, although the Department believes that a home should advertise truthfully as they are licensed.

7.1.4. Comment: This provision is confusing and needs clarification. It seems to suggest that if a transfer is necessary, that it is the home's responsibility to take steps to minimize transfer items. Discharge should be added.

Response: The Department believes the statement is clear and if there is any confusion, it will be eliminated through the training process. The statement simply means that the facility shall provide assistance to the resident or family as they enter the home and as their condition deteriorates and they find they need to transfer to some other type of facility. This would be primarily emotional support.

Modified: 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 and or discharge when other levels of care become necessary.

7.1. Comment: One commenter stated that §§ 7.1.1 and 7.1.5 are nursing home requirements, and that § 7.1.8 (activity program standards) would depend on the size of the facility, the types of residents, and other factors.

Response: The Department believes that residents in a personal care home have some basic rights to activities and to having their basic needs cared for. The easiest way to cause resident mental deterioration is to provide no activities or create boredom. Game activities can be provided without expense (e.g., news discussions, card games, etc.).

7.2. Comment: The requirements regarding the details and preparation of functional assessments and individualized service plans are excessive, and will necessitate excessive R.N. time. The time needed for follow-up documentation on detailed service plans for assistance with such activities of daily living as brushing teeth, grooming, toileting, etc., is unreasonable, unnecessary; and unrealistic. It will inflate costs without producing better care.

Response: The Department asks that the section on functional assessment and on individual service plans be read very carefully. The only portion of the service plan that needs to be done by an R.N. is that portion related to nursing care. Other staff can do the service plans

for the other types of activity. This can be clarified in § 7.2.6, which states that the licensee or administrator shall designate a staff person to review, monitor, implement, and make appropriate modifications to the individualized service plan. For purposes of further clarification, the following statement has been added to the definition of an individualized service plan: "A written description by the licensee which identifies the functional needs of the resident and how these needs will be met." It should also be noted that under § 7.2 the activities of daily living states "generally" which implies that the personal care home will only have to write "assists with activities of daily living" rather than detailed service plans for some of the basic living skills.

Modified: § 3.18. Individualized Service Plan - A written description of actions to be implemented by the licensee to meet all of the needs identified in the resident's functional needs assessment by the licensee which identifies the functional needs of the resident and how these needs will be met.

7.2.1.b. Comment: This could become self-perpetuating for the elderly.

Response: The Department believes that those with behavioral health needs should be under the care of a behavioral health center or some other appropriate agency and that psychological assessments would be required in the other agencies and therefore there would be no additional expense. The reason for a yearly reassessment is to ensure that the resident's needs are being met and any changes in treatment would be appropriately made. The Department believes that the number of hours should be determined by each individual facility to ensure that the needed oversight is provided. A minimum number of hours will accomplish nothing if the assessments and oversight are not provided; therefore the Department would prefer that this decision be left to the individual home.

7.3.9. Comment: A minimum should be set for R.N. services to personal care homes not providing limited and intermittent nursing.

Response: The Department believes each home should determine the number of hours needed to assure compliance. This could change from facility to facility, so the Department does not want to potentially increase expenses unnecessarily.

7.4.1. & 7.4.2. Comment: The rule currently in effect permits medication administration by "an adult responsible employee of the personal care home or other qualified personnel." (§ 9.1.9) The new requirement that medication administration be in accordance with applicable State and federal laws and rules, in effect requires medication by licensed registered professional or practical nurses, and has caused considerable consternation and dismay among providers, many of whom are accustomed to using unlicensed aides to administer medication at least at certain times. Providers believe that appropriately trained aides can administer medications safely.

Response: The Department recognizes the concern. The Personal Care Home Rule cannot, in effect, ignore the Nurse Practice Act, and therefore this provision is necessary. The Department supports the potential of allowing unlicensed personnel to administer medication, and has made it clear to many providers that appropriate legislation would need to be passed. The Department believes with appropriate training, unlicensed personnel have potential for

administering medication safely. This issue needs to be dealt with by the Board of Nursing. It has stated that nurses' licenses would be in jeopardy if they are allow such medication administration to occur. This has been a conflictual situation during the past year.

7.7.3.f. Comment: What is the service plan?

Response: The service plan is defined in the definition section of the rule under "individualized service plan." Basically, a service plan is a document that identifies the needs of the resident and how the needs are going to be met. It does not need to be a complicated or extensive document and does not require each activity of daily living to have a plan provided.

8.3.4. Comment: Many providers objected to the requirement that ambulances be used for transporting residents to medical services, mental health services, dental services, physical therapy and other rehabilitation services only in emergency situations appears to create a problem for providers. In some areas, no other suitable form of transportation is available for frail elderly individuals. Also, some residents or their families prefer ambulances.

Response: Agreed. The Department was making an effort to prevent the unnecessary use of ambulances because of their significant cost. It is understood that there are locations throughout the State in which the only available transportation is ambulances or is the most cost effective method.

Modified: 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 unless other options are not available or are more expensive.

8.5.2. Comment: With respect to a statement of residents' right to assemble and organize themselves as a group, it was suggested that the word "affiliate" or something be substituted for the word "organize."

Response: Agreed. The Department recommends the elimination of the work organize and just use the word assemble. The purpose of this is to allow the getting-together of residents to let their needs be known and should not be read to include any potential for unionization because the requirement applies to the residents receiving services and not the staff.

Modified: Residents have the right to assemble ~~or 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.

8.5.4. Comment: It was suggested that the statement of a residents' right to leave the home be clarified with respect to the need of some residents for attendance or supervision by a care giver.

Response: For purposes of clarification, the Department proposes to add clarifying language.

Modified: Residents shall be free to leave the personal care home unless the resident is a danger to self or others and needs supervision.

8.10.3. Comment: Does this mean 24 hours a day? A recommendation was made for visitation from 8:00 a.m. to 10:00 p.m., in the absence of prior arrangements. This would provide protection from disruption [at night] and of resident privacy.

Response: The Department does not believe that relatives or members of the clergy will take advantage of this visitation availability. If this becomes a problem, and residents choose to limit visitation times to protect from disruption or to ensure their privacy, this is an acceptable practice.

9.1.2. Comment: One commenter stated that the increased requirement for 1,400 calories (instead of 1,200) is expensive. Older adults do not need the increase in calories. the current requirement meets the guidelines. (The commenter also mentioned other specific requirements which were not in the draft offered for public comment, although they had been in earlier drafts.)

Response: 1400 calories is the current American Dietetic Association (ADA) requirement to provide the necessary nutritional values for an adult. The Department believes that this indicates that the food needs to be available, although some residents will choose not to eat it.

9.1.3.a. Comment: Can coffee and eggs be added?

Response: Coffee and eggs can certainly be offered to residents as a normal option at breakfast. The list are the food groups that need to be made available to comply with ADA requirements. If residents choose to eat only coffee and eggs, that would be their option.

10.1. Comment: One commenter objected to a requirement for a quarterly inspection of sprinklers, and also suggested that the specifics of the Fire Marshal's inspections should be included in the personal care home rule.

Response: The specific requirement to which the commenter referred was not included in this draft. Details of Fire Marshal inspections and State Fire Commission rules are not subject to the authority of the Department of Health and Human Resources and therefore should not be incorporated in this rule. No change. This is available from the Fire Marshal.

Section 11, generally. Comment: Providers cited a number of physical facility requirements which would be extremely costly for older homes to implement. Some providers rent their buildings, and would have to negotiate remodeling with the building owners. Others cited lack of room to add certain requirements, such as a janitor's closet or wider hallways, without using resident rooms. In some instances, remodeling might not be structurally feasible or cost-effective. Providers questioned the cost benefit of various details. It was suggested that

all old facilities be grand-fathered with respect to construction and physical facility standards. Specific items mentioned were:

1. bathroom tubs, showers, toilets and sinks (§§ 11.5.2, 11.5.3);
 2. light switches by doors, outlets, lamps, other electrical requirements (§§ 11.4.11, 11.13, 11.14);
 3. janitor's closet (§ 11.3.17);
 4. number of residents in a bedroom (11.4.3);
 5. access to a corridor without passing through another resident's bedroom (§ 11.4.6);
- and
6. window area (11.4.10).

Response: The Department understands that there are some requirements that are of concern to the providers. It is not the intention of the Department to have costly requirements that would not be beneficial to the residents. If the renovation is physically impossible due to the structure of the home, a waiver will be considered as long as residents are in a safe environment. Consideration of room size and number of residents in a room is a privacy issue, and has been ordered by the court in the Wolford lawsuit and therefore, will have to be considered seriously. There is a significant period of time allowed to enable changes to be made slowly as finances permit so that all facilities in the State can provide a high quality living situation for the elderly in West Virginia. The purpose of these requirements is to improve the safety environment of residents. There continue to be some facilities in the State that provide inadequate living conditions for residents. These facilities need to be updated so that the State can guarantee adequate and safe facilities for its elderly and disabled population. Again, the Department would like to make it clear that the goal is not to demand outrageous expenses that would have little or no value for the residents and waivers can always be considered. Each facility should carefully evaluate their ability to comply and simply write a letter to the Department with an explanation of their concerns. A period of time will be developed to enable facilities to make any absolutely required changes over a period of time that is reasonable for their financial situation. The following statement shall be added to the rule to clarify for providers that reasonableness will be the overall basis of response. This will be done within the confines of the Wolford lawsuit and any American With Disabilities Act requirements.

Modified (new): 11.1.15. Existing facilities shall be considered for waiver of certain physical requirements based on the reasonableness of the expectation and the resident's safety and environmental issues.

12.1.6.b & 12.1.9. Comment: Physicians review their orders quarterly as needed and should be responsible for their own orders. Paying an R.N. to duplicate this service is unnecessary and costly for no obvious benefit.

Response: The Department understands that physicians review their standing orders on a quarterly basis, and reviewing prescription services on a quarterly basis would not increase expenses. It is a standard practice that physicians' orders be placed in writing and signed by the physician. This can be done through the mail by agreement with the physician so that orders can be given, written on an order pad and sent to the facility to staple into the resident's record. This should not increase expenses. Decisions on changes of physicians' orders must be made by the ordering physician to ensure the safety of the residents.

12.2.2, 12.2.5.b, 12.2.5.c, 12.2.5.d, & 12.2.5.e. Comment: The episodic charting done for years by personal care homes has sufficed for years and should be continued. Monthly notes do not assure better care, just less time with the residents. The plan outlined is for nursing home care, not personal care.

Response: The Department believes that there has been a requirement for nurse oversight for a number of years in personal care homes. This section applies only to those personal care homes providing limited intermittent nursing services, and monthly documentation that ensures that a nurse has assessed the resident's well-being does not seem inordinately extensive. This is significantly less than is currently required in any nursing home or other higher level of care medical facility in the state of West Virginia. This will ensure that there is some basic observation and assessment of residents who have nursing needs by nursing staff. Therefore, there will be no change in the proposed requirements.

12.4.1. - 12.4.4. Comment: The cost of implementation of the paperwork associated with these additional requirements related to resident care is prohibitive and the paperwork is unnecessary.

Response: The Department believes that some individuals with nursing backgrounds have read far more extensive requirements into the rule than what is stated. There have been some wording changes in terms of the definition of the individualized service plan to prevent unnecessary documentation from occurring. It is believed that the requirements are minimum requirements which will ensure that there is some observation and assessment of residents as they live in these facilities. Training will be provided to ensure that providers do not increase their documentation requirements unnecessarily. This training will be made available throughout the State and should alleviate the expressed concerns.

Section 13. Comment: One commenter expressed concerns with the 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 calls 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." Another provider recommended eliminating §§ 13.2.1 through 13.2.10.

Response: The Office of Health Facility Licensure and Certification attempts to respond to requests and has made every effort to respond as quickly as possible. It is assumed that on occasion, phone calls would not be returned due to a variety of circumstances or an emergency situation existing at that time. The goal of penalties is not to inappropriately penalize facilities for not being in compliance, but only to strongly support the necessity of coming into compliance. At this time, facilities have not been penalized who are actively attempting to improve and proceed with their plan of correction. Typically, penalties have only been used in those cases where personal care homes make no effort to come into compliance and have played a paper game with the Office of Health Facility Licensure and Certification. Typically, a majority of penalties are only imposed when there has been a pattern of not coming into compliance over a period of time. This seems to be an effective way of better ensuring that the residents are being adequately cared for and in an appropriate environment. It should be understood that penalties are placed into a fund for resident use if their property is misappropriated or to relocate them if there is a problem. The money has been consistently been used to cover the expense of placing temporary managers or handling misappropriated funds. The goal of the Department is to encourage compliance and, the penalties are considered a last resort.



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

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Filing Date

FILED

Dec 15 2 16 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

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.

RECEIVED

DEC 15 1995

Legislative Rule Making
Review Committee

[Handwritten Signature]
Signature

Use additional sheets if necessary

**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.

**A Comparison of the Modified Personal Care Home Licensure Rule
Approved by the Legislative Rule-Making Review Committee in January, 1995
and the Proposed Rule Submitted to the Committee in January, 1996**

This report summarizes the differences between the modified rule, which was approved by the Legislative Rule-Making Review Committee on January 9, 1995 and filed with the Secretary of State on 1/16/95 and the present proposed rule.

3.1 - 3.47, Definitions. The primary change is the addition of some definitions including the following: certified long-term care nursing assistant, developmental disorder, existing personal care home, functional needs assessment, and restorative care. These terms were added to the definition section of the rule for purposes of clarification.

4.1, 4.1.3 - 4.1.9, General licensing provisions. There are minimal changes in this particular section of the rule. The resident census form is no longer required, in that the information is covered in another document. Also, there is a new requirement that providers have some type of guaranty to ensure that residents will be provided continuing care during the 30 day period after notification of pending closure. This has been a problem with providers who decide to close and leave the facility immediately thereafter and thus require the Office of Health Facility Licensure and Certification or another State agency to attempt to cover expenses for staffing. This will not necessarily cost providers any money, in that it can be done through a property lien or any other suggestion that providers might have to ensure continuing care. This recommendation came from a group of State agency representatives who are attempting to coordinate responses to personal care homes which are being closed by providers and the residents are not being adequately cared for. Another change which is recommended in the feed-back from providers, is to allow the deficiency reports to be placed in a location accessible to residents, but not necessarily hanging on the wall because it decreases the home-like environment.

5.1 - 5.7. Although there continues to be a requirement for a tuberculosis screening, the rule has been changed to enable a tuberculosis screening to occur by the next available date a tuberculosis screening is being done within the particular county's health department. This was done in response to providers being concerned that the testing is not available through any other resource in the county and could delay hiring for several weeks.

5.8. This section has been revised to ensure that the staffing ratios are understood by providers. The original expectation was a complicated system that was difficult for staff and providers to understand. There is an effort to simplify and reduce these requirements to require an additional staff for each 10 residents who have been identified to have more than one of the following care or behavior needs: dependent on eating, toileting, ambulating or repositioning or special skin care needs or any residents who have more than one or more of the following care needs: self-injurious or injurious to other residents. It is also been reevaluated to require that staffing on the night shift for each eighteen (18) residents identified with some of the additional care needs listed above will be expected. This change is in response to concerns by providers, but the necessity of specifically spelling out a staff/resident ratio that will hold up in court if care needs are not being met is critical.

5.9, entitled "Management and control of resident's funds," has been minimally changed with the new version of the rule, increasing the recording requirements to purchases of over ten (10) dollars rather than one (1) dollar, in order to simplify record keeping responsibilities of providers.

6.5, Discharge and transfers. A new section has been added which requires a discharge summary for the resident including the functional assessment, individualized service plan, physician orders and dietary information, to enable the facility to have the necessary information to make appropriate decisions about the resident's care. This recommendation was made by providers to prevent the continuation of receiving new residents with absolutely no information whatsoever about any past care which certainly prevents the continuity of care that is so important for residents.

7.2, Functional assessments and individualized service plans. The latest version of the rule has been rewritten in an effort to more clearly establish the requirements. It should be noted that all assessments do not need to be done by a nurse but only the nursing assessment which is specifically related to nursing functions that are to be provided by a nurse. The individualized service plan definition has been changed slightly to insure that providers understand that the purpose of the service plan is to identify needs and establish how the needs will be met. It is not assumed that this will be a complicated extensive document but some indication that resident needs are being met. It should also be noted that activities of daily living generally must be identified but do not have to be spelled out in detail. The service plan could state simply "assist in ADL's". This is in response to providers' concerns that all residents of personal care homes need assistance with activities of daily living and to write out each activity that is assisted with would be burdensome. This documentation is not the expectation of the Department.

7.4, Medication, has been changed to include the statement that administration of medication must comply with State and federal law. At this time, according to the Nurse Practice Act, medication administration is a skilled nursing function and therefore must be done by a nurse. Although there is disagreement about the appropriateness of this, the current requirement is that the personal care homes respect the current Code. The Department of Health and Human Services does not have the authority to supersede that Code. This may be resolved by legislation this year.

7.7, Resident records. This section has been rewritten in a simplified manner to insure clarity and understanding by providers.

7.8, Resident activities. This particular section no longer exists but important aspects of this component have been incorporated into 7.1, entitled Services. Specific activities that should be provided by the home have been eliminated so that the home has the ability to creatively respond to the needs of the residents. The Department believes that it is appropriate to make some activities available to residents to prevent boredom, but that residents have a choice of whether to participate.

8.5, Self determination. The words "and organized" have been removed from the rule in that providers felt concerned about the word's implications. In addition the statement "residents shall be free to leave the personal care home" has been rewritten to include "...unless a danger to self or others" to insure that providers do not feel it necessary to allow residents who are not competent to roam freely.

8.8, Work. There are some new requirements added to protect residents from forced labor. This is not an effort to prevent residents from assisting in the normal activities of a family, but only to insure that residents are not taken advantage of by the personal care home. This includes requirements that the resident enter into the agreement voluntarily, and does not replace employees, and does not permit residents to perform work which creates conditions that could be hazardous to themselves or other residents. The Department has found that in some instances providers have used residents in an inappropriate manner to do dangerous activities.

9.1 through 9.3.11, Dietetic services. This has been rewritten reducing the number of specific requirements and making more general statements of providing adequate nutrition to residents and allowing meal choices without the prescriptive requirements of the previously filed rule. The latest version of the rule require 1400 calories a day be available for residents. This is based on the current ADA requirements. It is understood that all residents will not have that amount of intake, but the food should be available so that residents do not go hungry and have access to adequate nutrition.

9.4, "Reports, Menus, and Diet Manual", has been eliminated and the key aspects have been incorporated into other sections. There has been a significant effort to reduce the requirements but insure a variety of food and a balanced diet.

10.1, Fire Safety. All sections related to fire safety have been eliminated except for the requirement that the personal care homes must comply with the rules of the State Fire Commission. This is to prevent any duplicate rules that are not the same and prevent the Fire Marshal from changing rules and having to rewrite the personal care home rule to bring these homes into compliance. This will prevent any conflict between State agencies.

10.2, Disaster and Emergency Preparedness Plan. The latest version of the rule has decreased the requirements that seemed greater than necessary to insure protection of the residents, such as a written emergency water agreement, etc. It was felt by the Department that some basic information on the included areas would be adequate to insure resident safety in an emergency situation.

The Physical Facilities section, has not been changed significantly due to the requirements established in the Woford Law Suit by the Federal Court. It is understood that currently existing facilities will have the right to request a waiver of physical facility requirements, if the expense is prohibitive and it can be shown that it will not negatively impact on the residents. This specific statement has been added to the proposed rule to insure that providers understand that the Department is not interested in increasing expenses to personal care homes unnecessarily.

RULE ABSTRACT

Agency: Department of Health and Human Resources

Rule Title: Personal Care Home Licensure Rule, 64 CSR 14

Type: Legislative

Summary: This legislative rule prescribes specific standards and procedures to provide for the health, safety, and protection of the rights and dignity of residents of personal care homes. The proposed rule rewrites the current outdated personal care home licensure rule. Major changes bring the rule into conformance with changes in the licensure law enacted by the both the 1994 and 1995 Legislatures; respond to a Court Order; and make needed changes to further ensure the protection of the residents of such facilities based on actual field observation of needs and problems. The rule contains the following sections: general; application and enforcement; definitions; state administrative procedures; staffing and personnel requirements; admission and discharge policies; resident care and related services; resident rights; dietetic services; fire safety, disaster and emergency preparedness and training; physical facilities, and additional requirements related to the provision of limited and intermittent nursing; penalties; due process; and severability.

An earlier version of this rule was submitted to the 1995 Legislature; the Legislature did not act on the rule. The present rule has been revised and simplified somewhat, and where suitable is more comparable to Department regulatory requirements for other types of residential facilities. The Department believes that that changes will make the rule more acceptable to providers, but not compromise resident health and safety.

For further information contact: The Office of Health Facility Licensure and Certification, telephone (304) 558-0050, Bureau for Public Health, Department of Health and Human Resources, State Capitol Complex, Building 3, Room 518, Charleston, West Virginia, 25305; or the Office of Regulatory Development, telephone 1-304-558-3223, Bureau of Operations, Department of Health and Human Resources, State Capitol Complex, Building 3, Room 265, Charleston, West Virginia, 25305, telephone (304) 558-3223.

11/21/95

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Personal Care Home Rule, 64 CSR 14

Type of Rule: Legislative Interpretive Procedural

Agency: Department of Health and Human Resources
 Address: Building 3, Capitol Complex
 Charleston, W. Va. 25305

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current ('96)	Next '97	Thereafter
Estimated Total Cost	\$	\$	\$ 54,592	\$ 86,346	\$ 86,346
Personal Services			15,053	30,107	30,107
Current Expense			33,039	55,239	55,239
Repairs and Alterations			1,000	1,000	1,000
Equipment			4,500		
Other					

2. Explanation of above estimates.

Currently, \$183,148 is budgeted for personal care home licensure activity. The proposed revisions will increase the cost of personal care home licensure by approximately \$90,846, thus bringing the total cost of regulating personal care homes to \$273,994. See attachment for details.

3. Objectives of these rules:

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

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The proposed revisions will increase the cost of personal care home licensure by an estimated \$54,592 for six months of activity during Fiscal Year 1996 and \$86,346 thereafter.

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

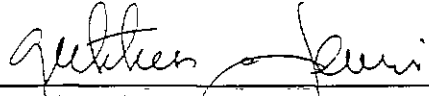
According to State Code, personal care homes bear the direct cost of initial inspections; the impact of this provision is minimal since personal care home licensure is not a new program. All costs to comply with the regulations will also be borne by the personal care home providers.

C. Economic Impact on Citizens/Public at Large.

Possible impact - increased costs in providing personal health care.

Date November 20, 1995

Signature of Agency Head or Authorized Representative



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

Estimated Increased Funding Required

PERSONAL SERVICE:	<u>FTEs</u>	<u>CURRENT RULE</u>	<u>FTEs</u>	<u>REVISED RULE</u>	<u>RESULTING INCREASE</u> (for 6 months)
Program Administrator	.50	\$17,388	.50	\$17,388	0
Secretarial/Clerical	1.00	13,200	1.00	13,200	0
Nurse Surveyor	1.00	33,270	1.00	33,270	0
Social Work Surveyor	.41	12,103	1.00	29,520	\$ 8,708
Social Work Surveyor	.00	0	.25	6,438	3,219
Life Safety Surveyor	<u>.42</u>	<u>10,504</u>	<u>.67</u>	<u>16,756</u>	<u>3,126</u>
TOTAL PERSONAL SERVICE	3.33	\$86,465	4.42	\$116,572	\$15,053
CURRENT EXPENSE:					
Fringe Benefits		\$33,775		\$45,240	\$ 5,765
Travel		15,006		23,780	8,774
Vehicle Expense		12,480		12,480	0
Other Current Expense ¹		23,422		25,422	2,000
Legal Fees		<u>12,000</u>		<u>45,000</u>	<u>16,500</u>
TOTAL CURRENT EXPENSE		\$96,683		\$151,922	\$33,039
REPAIR and ALTERATIONS		0		\$1,000	\$1,000
EQUIPMENT:					
Desk and Chair for one (1) add'l Charleston Based Surveyor		0		\$1,200	\$1,200
Laptop Computer		<u>0</u>		<u>3,300</u>	<u>3,300</u>
TOTAL EQUIPMENT		0		\$4,500	\$4,500
TOTAL		<u><u>\$183,148</u></u>		<u><u>\$273,994</u></u>	<u><u>\$54,592</u></u>

¹ Other Current Expense includes such items as rent and utilities for office space, telephone costs, office supplies, copy costs, etc.

[PROPOSED]
TITLE 64

WEST VIRGINIA DIVISION OF HEALTH
ADMINISTRATIVE RULES

PERSONAL CARE HOMES

SERIES 14

For Submission to the
Legislative Rule-Making Review Committee

January 4, 1996

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

TABLE OF CONTENTS

§64-14-1. General	1
1.2. Authority	1
1.3. Filing Date	1
1.4. Effective Date	1
1.5. Repeal of Former Rule	1
§64-14-2. Application and Enforcement	1
2.1. Application	1
2.2. Enforcement	1
§64-14-3. Definitions	1
§64-14-4. State Administrative Procedures	8
4.1. General Licensing Provisions	8
4.2. Licensure Application Procedure	9
4.3. Initial License	9
4.4. Renewal License	11
4.5. Provisional License	11
4.6. Inspections	12
4.7. Complaint Investigation	13
4.8. Plans of Correction	14
4.9. Reports and Records	15
4.10. Waivers	16
4.11. Classification of Standards	17
4.12. Point System Scoring	17
4.13. Rating	18
§64-14-5. Staffing and Personnel Requirements	19
5.1. The Licensee	19
5.2. The Administrator	20
5.3. Personnel Standards	21
5.4. Staff Training and Orientation	22
5.5. Volunteers	23
5.6. Personnel Records	23
5.7. First Aid Qualifications and Supplies	24
5.8. Minimum Standards for Staffing	24
5.9. Management and Control of Resident Funds	25

§64-14-6. Admission and Discharge Policies	26
6.1. Admission Policies and Procedures	26
6.2. Admission Agreement	27
6.3. Restricted Admissions to Personal Care Homes	29
6.4. Retention of Residents Whose Condition and Functional Ability Declines after Admission	29
6.5. Discharges and Transfers	31
6.6. Other Uses of the Home	31
§64-14-7. Resident Care and Related Services	32
7.1. Services	32
7.2. Functional Assessment and Individualized Service Plans	33
7.3. Resident Health	34
7.4. Medications	36
7.5. Accidents, Illnesses and Major Incidents	39
7.6. Resident Death	40
7.7. Resident Records	40
§64-14-8. Resident Rights	42
8.1. Posting of Information and General Rights	42
8.2. Notice of Rights and Services	43
8.3. Treatment	43
8.4. Protection of Resident Funds	44
8.5. Self Determination	44
8.6. Privacy and Confidentiality	45
8.7. Complaints	45
8.8. Work	45
8.9. Mail and Communication	46
8.10. Access and Visitation Rights	46
8.11. Personal Property	47
8.12. Civil Rights	47
§64-14-9. Dietetic Services	48
9.1. General	48
9.2. Administrative Requirements	49
9.3. Food Service Sanitation	49
§64-14-10. Fire Safety, Disaster and Emergency Preparedness and Training	50
10.1. Fire Safety	50
10.2. Disaster and Emergency Preparedness Plan	50
10.3. Disaster Training and Rehearsal	51
§64-14-11. Physical Facilities	52
11.1. Applicability	52
11.2. Site Characteristics and Accessibility	53
11.3. Physical Facilities and Equipment	54

11.4. Sleeping Facilities	56
11.5. Toilets, Hand Washing and Bathing Facilities	57
11.6. Dining Area	58
11.7. Recreation and Leisure Area	58
11.8. Water Supply	59
11.9. Laundry and Linens	59
11.10. Food Service Facilities	60
11.11. Sewage	60
11.12. Solid Waste	61
11.13. Electrical Requirements	61
11.14. Lighting Requirements	62
11.15. Pets and Other Animals	62
§64-14-12. Additional Requirements Related to the Provision of Limited and Intermittent Nursing	63
12.1. Standard Requirements	63
12.2. Nursing Services	65
12.3. Personnel and Staffing	67
12.4. Resident Care and Related Services	67
§64-11-13. Penalties; Administrative Due Process	68
13.1. Secretary's Authority for Penalties and Disciplinary Actions	68
13.2. Administrative Due Process and Procedure for Penalties and Disciplinary Action	69
13.3. Hearings and Due Process	71
§64-14-14. Severability	72
Table 64-14.1. Scores for A, B, C, And F Ratings in Each Category, Average Rating and Overall Rating	73
Table 64.65-2. Surety Bond Schedule	74

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

FILED

JAN 4 1 06 PM '96

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, substance 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 by the licensee which identifies the functional needs of the resident and how these needs will be met.

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; and

3.24.9. An individual who is independent from the personal care home.

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 himself 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. **Personal 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. - **Personal 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 submit an application for a license containing all information required for an initial license at least ninety (90) days prior to the proposed inception of the 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.

64 CSR 14

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;

64 CSR 14

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 have available a copy of the secretary's report in a place where residents have access to the report. The report shall remain available until the next inspection, and the home shall inform residents of its location.

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 ombudsmen 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,

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 and the residents or their legal representatives. 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.

and ensure the enforcement of standards for any category [emphasis added] of institutions, foster homes, or group living arrangements, in which, as determined by the State, a significant number of recipients of Supplemental Social Security Income (SSI) benefits resides or is likely to reside. SSI residents who live in relevant facilities which violate any of the standards will be subject to a reduction in their SSI payments ... in an amount equal to any State supplementary benefit or other payment made by the State for any medical or remedial care provided them by the facility. As part of its responsibilities under the federal regulations, States are required to make certain reports to the residents of deficient facilities and to the appropriate regional office of the United States Social Security Administration.

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.

4.10.2. The secretary shall impose specific conditions on a waiver needed to protect the health, safety, rights, or welfare of the residents. Violation of the conditions under which a waiver is granted constitutes a violation of this rule.

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

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

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

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

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

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

4.10.4. The person requesting the waiver shall send a copy of the request for the waiver to the residents of the home, the State, and the legal representative 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:

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.g. 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 on the first available testing time in the county.

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) personal care staff twenty-four (24) hours per day.

5.8.2. At a minimum, an additional direct care staff will be available on the day and evening shifts for each (10) ten residents identified on their functional needs assessment to have no more than two (2) of the following care needs: dependence on staff for eating, toileting, ambulating, repositioning, special skin care, or one (1) or more inappropriate behaviors that reasonably requires additional staff to control behavior (e.g., sexual acting out, stripping in public settings, refuses basic care, such as bathing, destroys property) or self injurious or injurious behavior directed at staff or other residents. An additional employee shall be staffed on the night shift for each eighteen (18) residents identified with one (1) or more 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 personal 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 (note: each

home shall state in their admissions policy, the resident population that they are capable of serving and shall not discriminate within the confines of that definition).

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

64 CSR 14

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.

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, which shall include the resident's 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 I)

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 or 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 earlier 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 twelve (12) 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 home with 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 license.

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 in this rule, by physician orders, by the resident's individual functional needs assessment, 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 personal 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;

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 of 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 and 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 and administered or self-administered only as permitted by State and federal laws, rules and regulations. The home shall ensure that the licensed health care professional who is managing the resident's health care is notified 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 by 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. Smoking shall be prohibited in any location where 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 or neglect 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 or neglect 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. The resident's name; social security number; birth date; sex; marital status; religious preference and affiliation, if any;

7.7.3.b. The 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, the 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 the resident or his or her legal representative 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 himself 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 himself 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 home shall document the investigation, and take appropriate action to alleviate a recurrence of any neglect or abuse.

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, unless other options are not available or are more expensive.

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 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 unless the resident is a danger to self or others and needs supervision.

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 himself 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 residents to perform work in a manner which creates conditions 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, give separate treatment, restrict in the enjoyment of any advantage or privilege enjoyed by others in the personal care home, or provide any resident 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:

64 CSR 14

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 .

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.

11.1.15. Existing facilities shall be considered for waiver of certain physical requirements based on the reasonableness of the expectation and the resident's safety and environmental issues.

11.2. Site Characteristics and Accessibility (Class I)

11.2.1. Sites for all new homes and sites of additions to existing homes shall be inspected by the secretary prior to the architect beginning work on final drawings and specifications.

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

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

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

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 60477-5795, 1-312-700-2300 or BOCA International Regional Offices, 3592 Corporate Drive, Suite 107, Columbus, Ohio 43229, 1-614-890-1064 or view a set at the Secretary of State's Office.

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

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

11.2.7. Parking areas shall be constructed using clean, solid earth bed, a compacted stone base and a hard surface all weather finish coat with a slope which permits good drainage. There shall be parking spaces for all staff on duty, and a minimum of one (1) parking space for each five (5) beds. A minimum of (2) two handicapped parking spaces shall be located at the main entrance. All parking areas shall be free of broken, gaped or uneven paving.

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

11.3. Physical Facilities and Equipment (Class I)

11.3.1. Existing and newly constructed buildings to be offered, maintained, and operated as personal care homes shall provide for accessibility in their entirety to individuals with a physical disability.

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, free from unfilled cracks, and 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 who 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. Newly constructed or renovated homes shall have no more than two (2) persons per bedroom.

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 on the sides and the ends of the beds. Beds shall not be placed so that residents will experience discomfort because of proximity to heat sources or 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. The home shall make a toilet facility available to meet the needs of individuals with disabilities.

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 for 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 minimum 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, or 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 at least 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 areas, and at mirrors and hair styling areas.

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

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

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.

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:

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 shall 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 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, 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 personal 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 or neglect 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 64-14.1. Scores for A, B, C, And F Ratings in Each Category, Average Rating and Overall Rating

#	Category	Point Value Score	Rating	Rating Score ⁸	Rating			
					F ⁹	C	B	A
5	Staffing & Personnel				≤52	53-60	61-67	68-76
6	Admission & Discharge				≤35	36-40	41-45	46-51
7	Resident Care & Related Services				≤45	46-52	53-58	59-66
8	Resident Rights				≤70	71-80	81-90	91-101
9	Dietetic Services				≤18	19-21	22-23	24-27
10	Fire Safety, Disaster ...				≤20	21-23	24-26	27-30
11	Physical Facilities ...				≤97	98-111	112-125	126-140
12	Additional Requirements ...				≤20	21-23	24-26	27-30

Average Rating Score	Rating
3.6 - 4.0	A
2.6 - 3.59	B
2.0 - 2.59	C
1.99 or less or zero in any category	F

Total Rating Score _____

Average Rating Score _____

Final Rating _____

⁸ Rating score values are:

A = 4

B = 3

C = 2

F = 0

⁹ ≤ = Less than or equal to

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 (Contd.)

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 (Contd.)

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

CAROLYN S. RIFFLE, MSW
STATE LONG-TERM CARE OMBUDSMAN

12-22-95

Kay Howard-

My comments on the
PCH rule.

Thanks

CSR

RECEIVED

DEC 22 1995

REGULATORY DEVELOPMENT



Carolyn S. Riffle, MSW
State Ombudsman
Commission on Aging
1900 Kanawha Blvd. E.
Charleston, WV 25305
(304) 558-3317



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 ^{qualified} 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.

Should be Standardized by Staff

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.

3.41. **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. ^{Personal} **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. ^{Personal} **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.

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.~~ *Delete this part -*

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.

compliance with the rule to the Social Security Administration to all residents, their families and any legal representatives. The secretary shall also provide all residents with a list 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.

Reasons for closure and other information deemed appropriate by the Secretary.

4.10. Waivers — (NO Waivers for new homes)!

an existing home

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 ^{State} 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

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. *not clear*

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;

6.4.3. 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.

Capable of supplying all necessary power.

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.

(Such as Depression - Adjustment disorder?)

This section does not apply to the elderly. It is not appropriate because some symptoms may be a normal reaction to life events such as grief. They are short term.

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.

This makes no sense

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.

*Vague
Service
outside
service plans
is not
offered*

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.

7.3.5. 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.

*A minimum
should be
set.*

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:

in the file

2.3.13b. Supervision and monitoring as identified by physician orders, resident's individual functional needs assessments, and as specified within the resident's individualized service plan.

2.3.13c. 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.

2.3.13d. 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.

2.3.13e. Supervision of supervised or assisted self-administration of medication procedures.

2.3.13f. Supervision of medication storage, dispensing systems and disposition; and

2.3.13g. Admission and discharge planning as it relates to the medical component of resident care.

2.3.11. 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.

2.3. Medications. (Class D)

2.3.1. 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 medications 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.

2.3.2. 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.

2.3.3. 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 or local authority to prescribe medications within ten (10) working days from the original

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;

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

7.73.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;

7.73.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;

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

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

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

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

7.73.j. Other information required by this rule.

7.74. 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.

7.75. 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.

864.143 Resident Rights

Nov. 29, 1995

Secretary of State
Kass 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 homes 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 loose what it took 4 years to build. We need your help desperately. We need for you to hear our story. You see we need regulation, but not the stiffest reqs of any state in the country as it stands now. Please listen to us.

GP - 12/25/1

Thank you
Peggy Haddad
William Personal Care Home
Stratton W.V. 26354.

House of Polen's Inc.
ARLINGTON PERSONAL CARE HOME
2301 Kennedy Avenue
Parkersburg, West Virginia 26104-2799

RECEIVED

DEC -4 1995

REGULATORY DEVELOPMENT

Administrator
George A Polen
Joan M. Polen
(304) 485-5503

December 1, 1995

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

Dear Ms. Howard,

I wish to offer the following comments on the Proposed Legislative Rule, title number 64, 16 Sc-5, Personal Care Home Licensure

Paragraph 4.1.3. Limited and Intermittent as reads comply with section 13 of this rule should read..... comply with section 12

4.3.1d Surety Bond, guaranty, etc. In instances wherein a facility may be forced to close. This follows a recent requirement for surety bond for patient funds at considerable expense.

5.6.1e Employment physicals and TB screening shall be obtained in the first week of employment. The best arrangements that I could make with the Wood County Health Department was on the 3rd Friday of each month. My employees can get them free or at low cost.

5.8.2 Staffing. A ratio 1:8 nursing assistants on days and evening shifts, would require me to hire 8 more staff (4 X 2), a ratio of 1:12 on nights would require 3 more staff. Eleven employees per day with 8 hour shifts equals 88 hours at minimum wage is \$374.00. Extending this mathematically, \$374.00 X 365 costs \$136,510.00 per annum. Our outcomes have been acceptable with current staffing and we have no complaints from residents nor staff. Please consider striking out assistance with eating, toileting, ambulating, dressing, bathing, wandering, and repositioning from this list. Every 85-90 year old needs assistance with these. However, those with inappropriate, aggressive, and self-injurious behaviors do need more care.

7.2 Functional assessments and individualized service plans should be completed to accomplish the desired outcomes. Innovative ways to accomplish this and document it should be encouraged. These rules are unduly harsh, necessitating an RN's time and talent. Example: assistance with brushing teeth, grooming, toileting. Can you imagine the follow-through documentation generated? Recommend this idea be required only for limited and intermittent level.

7.4.1 & 7.4.2. Administration of medicines and drugs in compliance with State and Federal laws, R & R's, only by an MD or licensed nurses. We have coverage 16 hours per day with licensed nurses. However, the 11:00-7:00 shift and relief on 3:00 - 11:00 are trained but unlicensed. This has provided satisfactory results for 18 years with a great saving in costs.

8.3.4 Transportation to necessary services shall be arranged for provided that ambulance shall be used only in emergencies. Parkersburg has three Funeral Homes that use ambulances for scheduled transport. Hopefully, someday they will use conversion vans. This would be a major problem for us.

8.5.2. Self Determination. "Residents have the right to assemble and ORGANIZE themselves as a group." Please substitute the word affiliate or something.


8.5.4. Self Determination. "Residents shall be free to leave the Personal Care Home". Please qualify with something like.....except that those requiring assistance shall be attended by their caregivers, legal representative, or

9 1.3a. Breakfast: can we add coffee, eggs?

11.4.3. Within 24 months, no bedroom shall be occupied by more than 4 persons. I have 16 ladies, 26% of residents, above the age of 90. All are private pay. Some prefer a less expensive 4-bed Ward than Private or Semi-Private rooms. Please don't take away patient choice.

In my humble opinion, this proposed legislative rule is a major re-definition of the general standards and procedures for personal care homes. They are in direct opposition to the national trend and that in most progressive states, which is to become less restrictive, offer more patient choices, encourage innovative ways to cut costs, offer services that are personalized to the individual's needs. Allow family participation in service planning. Treat each resident with dignity and respect. Allow residents varied lifestyles. Allow residents the right to select/reject food; accept/reject medication; participate/decline social activities. Insist on higher standards of care and resident outcomes. Please come unannounced to tour my facility and talk with my residents regarding their care.

Sincerely,


George A. Polen
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
J. W. Caldwell
Susan Cannon-Ryan
Charles A. Riffe, II
REGULATORY DEVELOPMENT
Shari L. Collier

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

Chateau Grove Personal Care

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DEC 21 1995

REGULATORY DEVELOPMENT

Owned and Operated by Gene & Dorothy Grove

ADDING YEARS TO LIFE AND LIFE TO YEARS

3410 Rt. 60, East • Near the Huntington Mall
Barboursville, West Virginia 25504
PHONE 736-3443

Dear Mr. Hechler:

I am writing to inform you of my concern for the Personal Care industry in the State of West Virginia. I am President of the West Virginia Personal Care Association, which represents 32 Homes throughout the State and approximately 928 beds. We have had many meetings with the Office of Health Facility Licensure & Certification. In these meetings we have agreed on changes but for some reason these changes never reached the print because the regulations did not reflect these changes. We as an Association are not against regulation that can be adhered to but we are against regulations that overwhelm and stifle freedom of choice. These proposed regulations will do just that by closing numerous homes. In the first meetings, OFLAC stated at least 15-26 homes would have to be closed because they would not be able to comply. Is this the direction that you want to lead the personal care home industry?

Mr. Hechler, I have followed your political achievements and have the utmost respect for yourself and your office. Please consider the emergency situation that you will be creating if you sign these regulations into affect and do not let all the seniors suffer from these unfair and stifling regulations. I am including a few concerns for your viewing. Thank you for your assistance with this matter.

Sincerely,

Mark Groves
President Personal Care Home Assoc.
Owner, Chateau Groves

/jas

Enclosure

Chateau Grove Personal Care

Owned and Operated by Gene & Dorothy Grove

ADDING YEARS TO LIFE AND LIFE TO YEARS

3410 Rt. 60, East • Near the Huntington Mall
Barboursville, West Virginia 25504

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.

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.

5.8.2. 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.

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.

64 CSR 14

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.

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



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

Ms. Kay Howard
Office of Human Resources
1900 Kanawha Blvd.
Charleston, WV 25301

Dear Ms. Howard,

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

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.

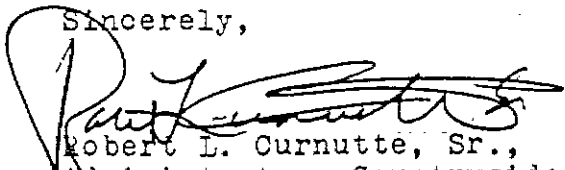
SECTION 5.8.2 - Our understanding is that assistance in eating, toileting, and ambulating, dressing, bathing are common aging processes that all daily living residents require. We could agree that behavior problems and special skin care would require more staffing hours. To say that for normal assistance 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.
6472 Farmdale Rd.
Barboursville, WV., 25504
Phone: 1-304-736-1382
Fax: 1-304-736-8512

RLC/pc

Golden Age Paradise, Inc. RECEIVED

'An Assisted Living Home For Adults'

DEC 21 1995

REGULATORY DEVELOPMENT

December 19, 1995

Dottie B. Markley
President

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

Reference: Proposed Personal Care Regulations
Cite Authority 16-5C-5

Dear Kay:

Attached are (8) pages of my comments regarding the Proposed Title 64 regulations regarding Personal Care Homes.

I believe there should be regulations.

However, the proposed regulations as written by the State should be denied for the following reasons.

1. As I understand the Judge's ruling, regulations must be written for Personal Care Homes but they should not be a hardship or be cost prohibitive on the facility owners.

The Regulations as written will require cost increases whether you are a small, medium or large operation.

2. I don't believe the Regulations are realistic for Assisted Living Homes referred to in West Virginia as Personal Care Homes.

3. Regulations should be written for current 1995 and the future of what the residents of the State can afford and what the State can afford.

4. If statistics are factual, the regulations do not coincide with present day resident incomes, families and workers.

Dependency ratios - or elderly support ratios.

Proportionately fewer employed persons to support older persons today.

Statistics are:

1910 ratio was less than .10 (i.e. 10 working people per older person).

1980 ratio was .18 (i.e. 5 or 6 working people per older person).

2010 ratio will be ratio of .22 or about 4.5 working people per retired person.

Page 2

Kay Howard

December 19, 1995

Studies using the rough calculations of dependency ratios have concluded that the result will be an increased "burden" on the working age population.

5. Another way to look at Statistics to be able to implement workable regulations *etc.*

- 5,000 Americans turn 65 every day.

- In 1996 Baby Boomers will turn 50 at the rate of one every 18 seconds.

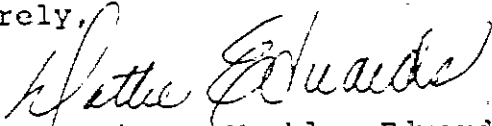
- Over one-half of all the people who ever turned 65 in the world are alive today.

- Between 1990 and 2020 the number of individuals over 50 will increase 74% and those under 50 one percent.

I would ask you to take 4 and 5 of this memo and analyze the regulation work that was done and you will immediately see from a business - cost analysis- common sense viewpoint, the regulations are way out of line to support the West Virginia population that is getting older, population decreasing every year, not enough New Corporation to make up the difference of people leaving, State Medicaid in the red approximately 161Million and certainly SSI benefits of \$500 a month could not support the regulations as you have them written and Private Pay people on fixed incomes couldn't come up with the shortage either.

6. Why does West virginia need 74 pages of regulations for Personal Care/Assisted Living? Couldn't this be condensed to 40 or less?

Sincerely,



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

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

PROPOSED RULE - TITLE 64

Response to the Above rule
Rebuttal

Kay Howard

From: Golden Age Paradise, Inc.

64-14-1 GENERAL

1.1. SCOPE

W.V. Code 16-5C-1 should be made available at the end of the regulations as an addendum if Personal Care Homes are to be held accountable for the Code. Personal Care Home (owners and operators) should have in their possession at all times, everything they are to be judged by from the State Licensing Department.

3.2.2. INDIVIDUALIZED SERVICE PLAN

This written description coincides with Nursing Home Care not Assisted Living and/or Personal Care. Assisted Living was designed to curtail paperwork (not individualized care) and to keep costs under control due to the "Graying of America". Personal Care is an arcade term - the United States goes by "Assisted Living" except for the Licensing. Individualized Service Plans only creates more costs to the residents which they cannot afford. Facilities cannot absorb additional expenses particularly the State of West Virginia. (All regulations first should take into account of the costs factors) If other States are deregulating why is West Virginia attempting to over regulate when the State does not have the money to do so? Why is West Virginia so opposed to Assisted Living?

3.3.7 PERSONAL CARE HOMES

Limited an intermittent Nursing Care. Need to check nationally since most States are changing requirements due to wanting more Senior Citizens in Assisted Living facilities as opposed to Nursing Homes due to costs. Perhaps more Nursing Homes will get into Assisted Living but don't they have a separate set of regulations. Isn't the norm i.e. --Independent Living, Assisted Living, Intermediate, Skilled and/or Rehabilitation with branches and/or segments of Alzeheimers and Hospice etc.

4.3.1.d This should not be in the Regulations. Homes should be able to close when they desire by working with the Guarantor of the residents. Private Pay facilities should not be told by the State when they will close. The State of West Virginia is not furnishing

Page 2

To: Kay Howard
From: Golden Age Paradise
December 19, 1995

4.3.1.d (continued)

any money toward the Private Pay sector. What do other States do?

Unless a facility accepts State Funding the State has "no" right to advise when a facility will close down.

The monetary values placed on the regulation is ridiculous.

Does the State of West Virginia feel the Personal Care Homes can make up in money what the State doesn't have? Is this a way for the State to take over facilities and sell them when the owner or owners cannot afford to pay the \$300.00 per resident or \$10,000.

Sounds like easy money and quick BUCKS for the State that they don't deserve? Is this ethical?

4.6.5

4.6.5 (a) INSPECTIONS

All facilities should be inspected.

Due to the State's cash shortages/financial constraints couldn't inspections be better controlled if the facility had:

- first one inspector unannounced to arrive walk through the facility advise the improvements that needed to be made, if any. This would have to be common sense improvements not cost prohibitive improvements. The inspector and the owner or manager or Administrator would then set down and discuss what the inspector found. After discussions the owner, manager or administrator would be given a copy of the needed improvements and date mutually agreed by both parties to complete the tasks. This paper will be carbonized an/or (2) part form where the owner, manager or administrator would keep one copy and the inspector would keep the other one.

- The second inspection would be announced, The inspection would be a compliance to the Inspectors previous visit.

Inspectors should be in a training mode not an adversal mode as they presently are. Adversal modes are arcade.

Health Care inspections were never designed to be derogatory instruments nor ones where inspectors wanted operators to constantly spend money.

Page 3

To: Kay Howard
From Golden Age Paradise, Inc.

4.6.5. (a) Inspections
(continued)

Inspectors should be trained or have been operators/or owners of a facility, understand the Business financial workings of the facility and the demographics of the area they are inspecting. (Not all areas i.e. counties of West Virginia are the same i.e.) Consideration needs to be taken into account of what the resources are the county has. (you cannot inspect apples and oranges and expect to get results).

Needs to be better relationship with inspectors and facility operators and the entire Department of Licensing and Certification.

What operator wants to call the Department of Licensing and Certification and have someone be rude and/or curt with them.

The Department does represent the citizens of West Virginia and funded by the taxpayers.

As a result of arcade thinking not wanting to listen to the West Virginia Personal Care Association officers and/or members residents of West Virginia are being penalized as to "Freedom of choice".

Rules Regulations are great but the financial impact has to be studied before they are put into use. (Will they work in small, medium and large facilities)?

4.6.7 POSTING a Secretary's report is ridiculous. How many states do this??? If residents or families want to see the report it can be shown from the records in the office of the facility. THIS IS NOT GOOD BUSINESS SENSE.

4.8.5 State has no right to authorize a consultant when they are operating in the red at OR APPROXIMATELY \$161 MILLION IN MEDICAID. Again, where is the money coming from? Do you think the Personal Care Operators which receive the SSI of a little over \$500 could afford a consultant. What about the residents expenditures? Consultant costs would be passed on to the resident. You shouldn't need Consultants if you have properly trained inspectors or staff that takes care of Personal Care homes who should have business knowledge, medical knowledge and common sense. People should learn to work together.
What do other States do?????

4.1.2 - POINT SYSTEM SCORING

4.1.2.1. through 4.1.3.9 - This needs to be totally abolished.

Page 4

To: Kay Howard

From Golden Age Paradise, Inc.

4.1.2.1. through 4.1.3.9 (continued)

How fair would this be? Would it be subjective or objective?

Ridiculous and arcade for Health Care Management of the 90's in Assisted Living.

This system does not coincide with the present day of "Graying America" You develop workable solutions of how to take care of the increasing numbers of Senior Citizens. How many other States have a point system in Assisted Living??????

Instead of a point system the State needs to determine how the Seniors will be taken care of in a financial depressed State where the population continues to decrease. Are there other places in West Virginia that is growing besides the Eastern Panhandle???

There are many ways surveys can be completed and done correctly without POINTS.

5.2 THE ADMINISTRATOR

5.2.1b When and where will the training be given. The Personal Care Association has always been advised there was never any money for training.

Under the direction of Mark Grove, the Personal Care Association did come up with training and Mark has done an excellent job. However, it appears from his comments - this has fell on deaf ears. (What's wrong with team management concepts)

I feel the regulation is good. Everyone needs to constantly update their skills but will it happen.

5.2.1 f. ASSOCIATE DEGREE is fine if the State wasn't hampered with financial constraints and you had large facilities that would require Associate Degrees. Unless you were involved in a Continuing Care Community this is not necessary. Small homes, medium size homes or even large ones do not need Degrees. Assisted Living and/or Personal Care Homes are Not Nursing Homes. They are not dealing with the acute care. Again, the United States and most States are looking for ways to cut costs not create more. Is this a way to close down small homes? Don't residents and families have a right to choose where they want their loved ones to live. Education is fine but you need experience as well. Theory is not hands on practice.

I have a Master's Degree, working on a Ph.d and teach Health Care Management.

Unless I have been asleep I believe consumers are looking for Quality care for their residents ie., odor free facilities, good food, excellent personal hygiene practices etc.

Page 5

To: Kay Howard

From: Golden Age Paradise, Inc.

December 19, 1995

Assisted Living/Personal Care:

5.2.4 - QUALITY ASSURANCE PLANS do not belong in Assisted Living and/or Personal Care.

5.6 - PERSONNEL RECORDS class III

5.6.1.B - Criminal record Investigation is good. Where will the help come from to do these criminal record investigations? Aren't there costs constraints? Again, does West Virginia have the funds and the manpower to do this???

5.6.1.c - Pre- employment physicals are not always possible. Physicals can be accomplished usually within 2 weeks of employment by a physician. Is this not discriminatory re the American Disabilities Act?

5.8.2 - Staffing ratios - This would depend on the type of facility. The ratios are ridiculous. do Nursing Homes comply with this reg???. Assistant Living is not designed to be acute care, therefore, you do not need the ratios you recommend. Also each facility is different depending on the mix of residents they have.

Again the State is trying to Dictate rather than analyze what's best for the resident and the owner operator of the facility.

(Common Sense)

5.8.3. Secretary probably would not know the needs of the home. Each facility is different. There will always be complaints from time to time re every facility. Are they justified?

6.2. ADMISSION AGREEMENT

6.2.1 Written admission agreement is acceptable. (The rest of the regulation is garbage for "Assisted Living" i.e. 6.2.2a, 6.2.2.b, 6.2.2.c, 6.2.2.d, 6.2.2.e, 6.2.2.f, 6.2.2.g 6.2.2.h, is for Nursing Homes not Assisted Living.

(Assisted Living facilities were never intended to be the manufacture of paper and the families do not want reams of policies and procedures). Business people and professional people want everything done with brevity.

6.2.2.1 - acceptable

6.2.2.j - ridiculous - this is Assisted Living and the residents families will immediately tell you they will be involved and they will take the resident to the Doctor.

6.2.2.k - acceptable

Page 6

To: Kay Howard

From: Golden Age Paradise, Inc.

6.2 Admission Agreement section (continued)

6.2.2.1 - acceptable

6.2.3 - acceptable

6.2.4 - acceptable

6.2.5 - This would/should be categorized under Continuing Care Communities.

6.3 - RESTRICTED ADMISSIONS TO PERSONAL CARE HOMES

6.3.1 - Vague.

This needs to be written in accordance with what is currently happening in Assisted Living across the United States.

What is the norm?

Do residents of West Virginia have the right to choose a place to live according to today's standards of what Assisted Living represents?

We need to think in terms of "today - 1995 and the future"

6.4.1.a This is Nursing Home not Assisted Living.

6.4.2. - Where's the money coming from? Needs to be written as to what the State can afford.

6.4.4 - RESIDENT AND FAMILY CONFERENCES

Administrators, Owners, Managers cannot/should not make decisions without conferring with the family unless the situation is life threatening.

6.4.5 - Families and residents should be able to choose were they want their loved one to spend their remaining years. Terminable diseases - if the facility can accommodate the resident they should be able to stay. If the physician feels the resident can stay, a letter in writing should be placed in the file. Back up power generator is not feasible for small facilities. Perhaps medium ones also. In the event of a Power failure there is a stand alone or Portable Oxygen.

The State needs to think in terms of what's best for the resident and family.

What are other states doing??

Regulations needs to be written for 1995 and the future.

6.5.6 - Discharge summary but not functional assessment, individualized plans etc. Functional Assessment and individualized plans are for Nursing Homes. The appropriate Discharge form or transfer form has detailed data on the form for appropriate transfer.

Page 7

To: Kay Howard

From: Golden Age Paradise, Inc.

6.6.3 - DISAGREE

The facility is paying the money to advertise. If the facility is Private Pay and they have the Personnel to offer services they should be able to advertise where and how they want too. A good example: State inspector to a Family member of a resident at the Golden Age Paradise. Family member was very emphatic - The State does not pay for my loved one therefore I do not want you to dictate to me. This is the care I want.

Also the State has to take into consideration where the advertising is being done. What county, town - how large?

Telephone Directories mostly do not have a category for Personal Care. Personal Care is known as Assisted Living.

I believe the Federal Government wants residents out of Nursing Homes and into Assisted Living to curtail costs.

7.1. - SERVICE CLASS

7.1.1. This is Nursing Home not Assisted Living

7.1.5 - This is Nursing Home not Assisted Living

7.1.8 - This would depend on size of the facility types of residents etc.

7.2 through 7.2.2. - Totally ridiculous for Assisted Living. These regulations are for Nursing Homes.

7.2.3 ridiculous - Nursing Homes regulations

7.2.4 Nursing Home not Assisted Living

7.2.5 Nursing Home not assisted living

7.2.6 Nursing Home not Assisted Living

7.2.7 This is not necessary in Assisted Living. Residents will tell you - I do not want to be bothered re paper work. I want my freedom which is their right under RESIDENTS RIGHTS.

7.3.1.2 - Registered Professional Nurse. Is this for a Registered Nurse and/or Licensed Practical Nurse?

11.4.....6 - Needs to be Grandfathered - wavered

Older facilities may not be able to change. This would not be fair to the owner or the residents who wanted to live there.

11.5.1 - Needs to be Grandfathered - wavered

Older facilities and/or small facilities may not be able to change. This would not be fair to the owner.

11.5.3 - Needs to be Grandfathered - wavered

Older facilities and/or small facilities may not be able to change. This would not be fair to the owner.

Page 8
Kay Howard
December 19, 1995

13.2 - ADMINISTRATIVE DUE PROCESS AND PROCEDURE FOR PENALTIES AND
DISCIPLINARY ACTION

13.2.1 thre 13.2.10 - Should be abolished completely from the regulatinns.

What is the national trend?

What do other states have in their regulations, if anything??????

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."

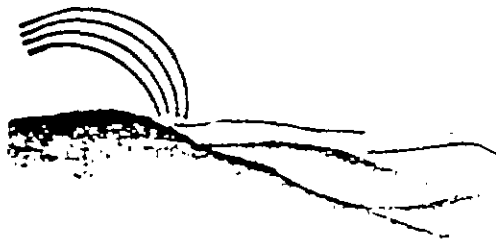
Suffice it to say: Check it OUT! Ms. Lewis has lied to one and all. Costs to our state from these proposed rules will be large both in human (seldom important I've learned) and financial. These rules will feed the greed of medical systems while bleeding our state coffers -- while reducing quality of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

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

Sincerely,

Wesley W. Harvin MA, LCSW

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



Estimated Increased Funding Required

PERSONAL SERVICE:	<u>FTEs</u>	<u>CURRENT RULE</u>	<u>FTEs</u>	<u>REVISED RULE</u>	<u>RESULTING INCREASE</u> (for 6 months)
Program Administrator	.50	\$17,388	.50	\$17,388	0
Secretarial/Clerical	1.00	13,200	1.00	13,200	0
Nurse Surveyor	1.00	33,270	1.00	33,270	0
Social Work Surveyor	.41	12,103	1.00	29,520	\$ 8,708
Social Work Surveyor	.00	0	.25	6,438	3,219
Life Safety Surveyor	<u>.42</u>	<u>10,504</u>	<u>.67</u>	<u>16,756</u>	<u>3,126</u>
TOTAL PERSONAL SERVICE	3.33	\$86,465	4.42	\$116,572	\$15,053
CURRENT EXPENSE:					
Fringe Benefits		\$33,775		\$45,240	\$ 5,765
Travel		15,006		23,780	8,774
Vehicle Expense		12,480		12,480	0
Other Current Expense ¹		23,422		25,422	2,000
Legal Fees		<u>12,000</u>		<u>45,000</u>	<u>16,500</u>
TOTAL CURRENT EXPENSE		\$96,683		\$151,922	\$33,039
REPAIR and ALTERATIONS		0		\$1,000	\$1,000
EQUIPMENT:					
Desk and Chair for one (1) add'l Charleston Based Surveyor	0		1,200	\$1,200	
Laptop Computer		<u>0</u>		<u>3,300</u>	<u>3,300</u>
TOTAL EQUIPMENT		0		\$4,500	\$4,500
TOTAL		<u>\$183,148</u>		<u>\$273,994</u>	<u>\$54,592</u>

¹ Other Current Expense includes such items as rent and utilities for office space, telephone costs, office supplies, copy costs, etc.

PROPOSED RULE FISCAL NOTE ATTACHMENT
Personal Care Homes, 64 CSR 14

This revised fiscal note assumes that, if passed, these regulations will become operational during State Fiscal Year 1996. Prior to imposing the new regulations, staff will need to prepare training for providers to explain the regulations, update survey considerations and new procedures. It is expected that the actual survey activity under the revised regulations would begin at a time mid-year during the 1996 Fiscal Year.

Number of Facilities

Total known personal care facilities	72
Estimated license	72

Time Required for Inspections

1. During the period of July 1, 1994 through and including June 30, 1995, a total of 3,358.25 surveyor hours (1.83 FTEs) were devoted to personal care home licensure activity. The total hours include related travel time; however, they do not include administrative, clerical, and/or legal hours.

2. It is estimated that the revised regulations will increase surveyor inspection time by fifty-eight percent (58%) requiring an estimated 5,099 surveyor hours (2.92 FTEs).

Appeal/Court Time will SOAR

Revenues

The revisions to the rule have no impact on fees or revenue. The licensure program generates some revenue, but it is not a self-supporting program. The renewal licensure fee was raised by Order from \$5.00 to \$5.25 per bed on April 1, 1994. West Virginia Code §16-5B-6 permits fee adjustments based on the consumer price index (CPI-U).

Revenues for Fiscal Year 1996 are estimated based upon the licensure rate schedule in effect on the date of this fiscal note and an existing 2,478 personal care home beds at a licensure renewal rate of \$5.25 per bed. Additionally, an estimate of 5 new personal care home to be inspected each year is used. It is further estimated that each new facility would pay an average initial inspection cost of \$838.00 plus the initial application fee of \$63.00.

Initial Inspections Fees	\$838.00 x 5 homes	\$ 4,190
Initial Application Fees	\$ 63.00 x 5 homes	315
Renewal Licensure Fees	\$ 5.25 x 2,478 beds	13,010
		<hr/>

TOTAL ESTIMATED REVENUE \$ 17,515

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The proposed revisions will increase the cost of personal care home licensure by an estimated \$54,592 for six months of activity during Fiscal Year 1996 and \$86,346 thereafter.

Ignores cost of litigation & cost of increased re-inbursement to homes -- a cost virtually guaranteed to be imposed by the courts.

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

According to State Code, personal care homes bear the direct cost of initial inspections; the impact of this provision is minimal since personal care home licensure is not a new program. All costs to comply with the regulations will also be borne by the personal care home providers.

*Personal Care Residents will pay heavily in increased rates.
State will pay huge amount in increased pay to P.C.H. providers.*

C. Economic Impact on Citizens/Public at Large.

Possible impact increased costs in providing personal health care.

JOKE!

Date November 20, 1995

Signature of Agency Head or Authorized Representative

Gretchen O. Lewis

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

**LEGAL AID
SOCIETY
OF CHARLESTON**

RECEIVED

DEC 22 1995

REGULATORY DEVELOPMENT

922 Quarrier St., Fourth Floor Charleston, WV 25301
(304) 343-4481 FAX (304) 345-5934
Toll Free WV 1-800-834-0598
December 22, 1995

Kay Howard
c/o Regulatory Development
DHHR
Capitol Complex Building 3, Room 265
Charleston, WV 25305

Dear Ms. Howard:

This letter represents my comments to DHHR concerning proposed Personal Care Home Regulations. I wish to express my strong support for the proposed regulations notwithstanding my comments and suggested changes.

Enclosed, also, find some suggested language changes and additions which are marked in red throughout the text of the proposed regulations. I am available for clarification if needed. My comments follow:

Section 3.17 - Functional Needs Assessment:

I recommend that the state develop a uniform assessment tool. This would provide consistency and a higher probability that personal care home staff are providing an appropriate assessment. If staff are already using a tool which fulfills the regulations' expectations, then that tool can be approved by the secretary or their designee.

Section 3.24.7 - Legal Representative:

Although I have no disagreement with the definition section, consideration should be given to establish regulatory standards that protect the rights of residents where the administrator or other staff of a personal care home, in which the resident lives, are appointed the resident's legal representative. Our program staff are aware of situations where an administrator who was appointed the representative payee prevented the resident from moving out of that home into a living situation the resident preferred. Situations, like the one described, clearly create a conflict-of-interest which jeopardize a competent resident's right to make their own decisions.

Putnam Office
Courthouse Annex
P.O. Box 261
Winfield, WV 25213
(304) 586-4239

Boone Office
County Courthouse, Room 202
Madison, WV 25130
(304) 369-4939

Clay Office
Old Courthouse
P.O. Box 561
Clay, WV 25043
(304) 587-4668

Section 3.30 - Neglect:

What constitutes a "significant" medical problem. Significant should be defined.

3.42 and 3.43 - Recommend reference to Residential Care staff be changed to Personal Care staff so as not to confuse such staff with those of Residential Board and Care homes. This change would require all references in text of the regulations to, likewise, be changed.

Section 4.6.7 - Suggest the following language: "Copy should be in a conspicuous place where present or prospective residents, their families and/or legal representatives have access to the report".

Section 4.7.8 - Protection should be extended to other persons, including family members or staff of the facility, who register a complaint in good faith.

Sections 6.13 - 6.14 and 8.12.1 - Section 6.13 states that the home "shall not discriminate . . . on basis of disability". Section 6.14 speaks to not admitting a prospective resident unless the home can meet their needs. Clarification is needed in order to make sure these two sections are read together so that personal care home staff do not interpret 6.13 to mean they are in violation of regulations if they refuse admission to any prospective resident regardless of their disability. On the other hand, it may be a violation of Civil Rights laws if a home refuses admission to a resident stating "that the home cannot meet the resident's needs" where all other personal care homes are capable of meeting those needs? These two sections, taken together, need to have more clarification and guidance as to when a home would violate disability provision.

6.2.2.k - Uncertain as to what is intended in terms of the "resident's . . . responsibility for notification". Is this suggesting the admission agreement, for example, could require the resident to be solely responsible for contacting other parties, such as family, in case of discharge or is this suggesting resident can be required to give notice if they voluntarily leave the facility? Needs clarification since some residents may be incapable of giving notification.

Sections 6.3.3 and 6.4.6 - What constitutes a "mental disorder" for the purpose of not admitting a resident?" What about a resident's right to refuse medical treatment as stated in Section 8.36?

Kay Howard
December 22, 1995
Page 3

Section 6.4.2 - Since the home "shall have to bear the cost of reassessment" even if the resident exercises rights it is entitled to it seems this could be used to discharge a resident. Some protection for the resident needs to be built into this section.

Section 6.5.2 - Need to be more specific as to what constitutes an "outside service provider" for purposes of notification.

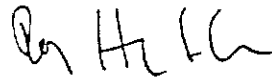
Section 7.1.4 - Confusing: Seems to suggest that if a transfer is necessary then it is the home's responsibility to take steps to minimize transfer trauma. Needs clarification.

Section 8.5.4 - Does this mean a resident may discharge themselves at anytime or come and go as they wish? What if a resident has been adjudicated incompetent? This section needs clarification.

Section 8.10.3 - Does this mean 24 hours a day? I recommend visits be allowed from 8:00 a.m. to 10:00 p.m. unless prior arrangements have been made. This protects disruption to other residents, including their right to privacy.

Section 9.2.3 - See comments under Section 4.6.7.

Yours very truly,



Roy Herzbach
Ombudsman Supervisor

RH:cm

Enclosure

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 ^{substance} ~~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 ^{or} 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?; *whom*

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.

3.24.6. 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; assault~~x~~ on a resident resulting in injury; or event~~x~~ which cause^s 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 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 and/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. ^{PERSONAL} **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. ^{PERSONAL} **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

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.

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.

✓ 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 ^{provision 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; ^{able to care} 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

✓ 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 ^{§ 128} 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 IID)

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 ^{includes} contains written assurance that the ~~personal care home~~ ^{all} offers the services necessary to meet the ^{resident's} 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 ^{ability to coordinate} 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, ^{to} ~~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 ^{has indicated 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.

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, ^{and their legal representative} 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 ^{have} meet the his or her needs ^{met} in the 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 ^{adequate} 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. ^{when needed actively} The home shall assist the resident to attempt on ^{an on-going} 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. ^{Those alternative}

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. ^{which should include resident's}

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 ^{all needed} 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 ^{all} dietary and general household services ^{which are} 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 ^{well-}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 ^{for their participation} 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 ^{and not} ~~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 ^{identified} behavioral health needs, completed upon admission and updated ^{earlier} 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 ^{resident's} 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 home with} 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 ^{who} assigned by their supervising physician and within the parameters of their professional ~~licensing~~ ^{license}.

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. ^{PROVIDED} ~~of~~ 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 ^a 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. ^{AK} ~~Home~~ whose administrator or supervisor-in-charge is a registered professional nurse ^{is} 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 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, ^{and} 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, ^{and} 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 ^{responsible for} 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 ^{all} the prescriptions or written orders for drugs shall be retained in the resident's record. Verbal orders shall be reviewed and signed ^{by} 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 ^{resident's ability} ~~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 ^{other} 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 ^{other} judgment capabilities beyond the expertise of unlicensed staff or a fluctuating medication regimen is prohibited, unless the self-administering resident is capable of determining ^{for him or her own self} when the medication is needed or the medication administration and management ~~is~~ ^{would} otherwise ^{be} 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. ^{where} 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 ^{where} 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 ^{either} 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 ^{the home waits for} awaiting law enforcement or professional help.

7.5.2. Physical restraints shall not be used except in an emergency, under ^aphysician'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. ^{or other local agency in the} 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 ^{or neglect} 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 ^{or neglect} 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's⁴ licensing board.

professional

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. (c)

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, ^{to} 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, ^{and} 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)

upon admission a

✓ 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 ^{at a reasonable cost.}

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 ^{the resident and his or her family or legal representative} 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 ^{his} 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 ^{prevent} 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 ^{when he or she is able and willing to provide} ~~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 home's physician and pharmacist. The home shall promptly notify the resident's physician when there is a major incident or any significant change in the resident's condition.

8.3.6. 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 ^{first} 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 ^{expect} prompt action by the home ^{in resolution} to resolve grievances the residents might have, including those ~~with respect to~~ ^{involving} the behavior of other residents.

8.7.3. The personal care home shall permit a resident to express grievances and to ^{inform} ~~communicate~~ to the personal care home staff and outside representatives of the resident's choice ^{of how or whether} ~~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 ^{in a manner} which creates conditions or ~~in a manner~~ potentially hazardous for themselves or others.

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 ^{at a minimum} a variety of foods at meals ^{that} 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 ^{due} consideration ~~of~~ to 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.

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 ^{advance} 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 4^o is hereby adopted as a standard for on-site inspections .

^o 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 I)

11.2.1. Sites for all new homes and sites of additions to existing homes shall be inspected by the secretary prior to the architect beginning work on final drawings and specifications.

11.2.2. Homes shall be located in a residential setting as convenient as possible ^{to} necessary services and access, if local zoning laws allow.

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

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

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

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

11.2.7. Parking areas shall be constructed using clean, solid earth bed, a compacted stone base and a hard surface all weather finish coat with a slope which permits good drainage. There shall be parking spaces for all staff on duty, and a minimum of one (1) parking space for each five (5) beds. ^a minimum of (2) two handicapped parking spaces shall be located at the main entrance. All parking areas shall be free of broken, gaped or uneven paving.

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

11.3. Physical Facilities and Equipment (Class I)

11.3.1. Existing and newly constructed buildings to be offered, maintained, and operated as personal care homes shall provide for accessibility in their entirety to individuals with a

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 ^{who} 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. ~~room~~ ^{bed 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 ^{on the} 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 ^{that} ~~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. ^{for}

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

✓ or
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 D)

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 ^{areas for} shaving and grooming, at mirrors and hair stylist areas.

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

12.1.11.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 shall 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

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. ^{Personal} 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:

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. ^{or neglect} 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 ^{individual} 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

Lewis Wetzel
Personal Care Home
Appalachian Community Services, Inc.

RECEIVED

DEC 14 1995

REGULATORY DEVELOPMENT

DEC 10, 1995

KAY HOWARD
1900 KANAWHA BOULEVARD
OFFICE OF HUMAN RESOURCES
CHARLESTON, WV 25301

DEAR KAY HOWARD:

AFTER REVIEWING THE NEWEST SET OF PROPOSED REGULATIONS FOR PERSONAL CARE HOME. I FIND THAT IT WOULD BE IMPOSSIBLE FOR MY HOME TO CONTINUE TO PROVIDE CARE TO CLIENTS. THE COST TO IMPLEMENT THE REGS WOULD BE TOO HIGH. LEAVING NO NO MONEY TO FELD OR HOUSE THEM.

I WILL JUST REVIEW TWO OR THREE OF THE MAJOR ITEMS.

1. MINIMUM STAFFING FOR CLIENTS ARE ONLY 12- 1 FOR NURSING HOMES YET YOU ARE ASKING US TO HAVE A RATIO OF 8-1. WE GET \$17.47 A DAY WHERE NURSING HOMES GET \$90-\$100.

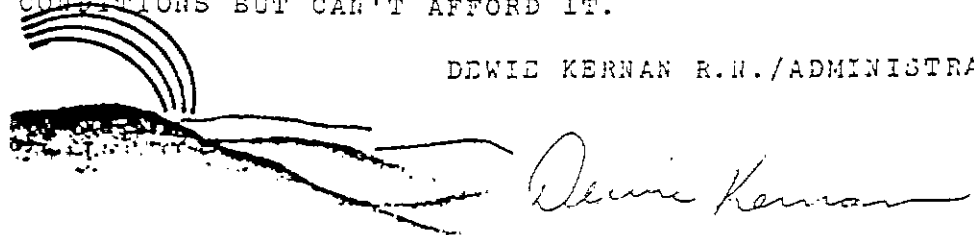
2. 2. FUNCTIONAL ASSESSMENT AND INDIVIDUAL SERVICE PLANS THESE ARE ALSO NURSING HOME ASSESSMENTS IN MY FACILITY I HAVE 50 CLIENTS WITH THE MONTHLY, QUARTERLY AND ANNUAL REVIEWS WE WOULD HAVE TO HIRE ANOTHER RN TO KEEP UP WITH THESE ALONE.

3. WE HAVE AN OLDER BUILDING THAT WE RENT THERE FORE ANY RENOVATIONS WOULD HAVE TO BE CLEARED WITH THE OWNER THESE REGS WOULD REQUIRE THE INSTALLATION OF FIVE MORE TUBS/SHOWERS AND THREE TOILETS & SINKS. THIS WOULD REQUIRE THE REMOVAAL OF AT LEAST FIVE CLIENTS AND THEIR ROOM LOSS AC WELL AS THE COST OF INSTALLING THESE ITEMS.

4. ITEMS SUCH AS LIGHT SWITCHES BY THE DOORS, MORE OUTLETS, LAMPS, ETC WOULD REQUIRE REWIRING OF MY WHOLE BUILDING AT A COST OF AT LEAST \$30,000

I HAVE ONLY LISTED A FEW OF THE COSTLY ITEMS FOR MY FACILITY OTHER FACILIT ARE IN THE SAME CATAGORIES AND WOULD BE AFFECTED AS WELL. THESE WOULD NEGATE THE LOSS OF FIFTY BEDS IF WE CLOSE. WERRE ARE THEY TO GO AND WHO IS TO CARE FOR THEM. WE GET \$17.47 DOLLARS A DAY FOR THEIR CARE. WE WOULD ALL LOVE TO HAVE IDEAL CONDITIONS BUT CAN'T AFFORD IT.

DEWIE KERNAN R.H./ADMINISTRATOR



80 E. Benjamin Drive

P. O. Box 428

New Martineville, WV 26155

455-5666

**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 18 1995

REGULATORY DEVELOPMENT

Kay Howard
Office of Human Resources
1900 Kanawha Boulevard
Charleston, W.V. 25301

Dear Ms. Howard,

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,

Gwynn Marshall
PO Box 173
Belington, WV 26250

RECEIVED

DEC 18 1995

REGULATORY DEVELOPMENT

Kay Howard
Office of Human Resources
1900 Kanawha Boulevard
Charleston, W.V. 25301

Dear Ms. Howard

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

RECEIVED

DEC 14 1995

REGULATORY DEVELOPMENT

Dec 11, 1995
Phillips Personal Care
Po Box 99
Lerona, WV 25971

Dear Ms. Howard:

I'm writing in regards to the new proposed regulations for Personal Care Homes.

If we are forced to have a RW, Post surety bonds and insurance bonds on Residents we will probably have to close.

In order to hire an RW full-a-part-time I would have to raise each resident at least \$150.00 a month on top of the Rate increase. I'm having to pass along in January due increase in our compensation rate.

If a bond issue is passed we would have to increase even more and there is no way families can do this. They already pay a monthly rate plus medicines which cost each resident at least \$150-200 a month.

What purpose would be served to have an RW on staff when we provide Personal Care not "Nursing Care" that is paid for by government and insurances.

We care about our people and take
very good care of them.

If these regulations are passed you
people will be putting a number
of people out of work and elderly people
without homes. How can this be
justified?

Our families are very concerned
because they don't want to ~~put~~ their
family member in a regular nursing
home because of the financial
status of each. They don't want to see
all their savings taken over-night
and a decrease in the care they now receive.

We couldn't impose these increases
to our families because they can't afford
it for the most part. Secondly they would
move them to unlicensed homes in
the area forcing us to close.

I'm a LPN and can do more and do
more paper work than most RN's I know.
Most LPN's do care plans, give all medicines do
all the charting in hospital and nursing homes
so why should personal care homes have to
hire RN's to do this?

There's no way we can afford to
post bonds we don't have that kind of money
as I'm sure no one else does.

Thank you for your time and
listening to me.

Sincerely,
Beverly Phillips
Ph., RN, Personal Care
Adm.

Dec. 11, 1995
Phillips Personal Care.
Po Box 99
Lerma, WU 25971

Dear Mr. Secretary,
I'm writing to you regarding the new regulations being sent to you for your attention.

We operate a small home with 18 residents. If these new rules are put into effect there is a great possibility that we will have to close.

I don't know why the people who write these rules think that you have to have licensed personal care homes to operate. Most people in personal care homes don't need "nursing care" just family care to make sure they're safe, have a clean environment and eat well and get their medicines.

Why should a personal care home be placed in the same category as "nursing home"?

It is unreasonable for the state to ask us to post a bond for residents. The amounts that is being required is alot for large corporations to come up with let alone a small business as most personal care.

Why should we have to hire an RN to be on staff? I'm an LPN and work for a local hospital and I can and do more care plans and paper work than the RN's. They have to co-sign, approved for insurance purposes. These people don't need 24hr nursing care.

Everyone needs to look at the numbers of people the personal care industry take care of - and employ. This is also beneficial to the state. With all the new health care reforms that are taking place a lot of people in "nursing homes" are going to get a lot less care than before. We're not government funded and this helps to cut costs for the state as well. If we were funded we could hire all licensed people and provide more services.

Personal care homes serve our communities well. We are reasonably priced, provide excellent care, home like environments, freedom to help each person retain some dignity and self-worth and families are assured of their care.

I just don't see how you or anyone can justify not giving us the opportunity to continue our

businesses without forcing us to do things that is going to cause us to fail.

We're just trying to survive in this world like everyone else. We believe in the freedoms of this Country that we will be treated equal and fair.

Please take a long look at this new laws and the possibilities of closing a number of homes putting several people out of work and more elderly left without any where to go. Families should have a say in how they feel about all the regulations being imposed because it certainly will hurt them to.

Please vote "NO" and give the Personal Care Association a chance to make the difference for a better change.

RECEIVED
DEC 15 1995
REGULATORY DEVELOPMENT

Sincerely
Beverly Phillips
owner-administrator
Phillips Personal Care Home Inc



SHELTERING ARMS
Personal Care Home, Inc.
Box 37, 122 2nd Ave.
Fayetteville, W.Va. 25840

RECEIVED

DEC 11 1995

REGULATORY DEVELOPMENT

12-6-95

Kay Howard
Regulatory Development
Department of Health & Human Resources
Capital Complex, Building 3, Room 265
Charleston, WV 25305

I am writing to you to express my views on the Proposed Rules and Regulations for Personal Care Homes that are going before the Legislature soon. The State is over regulating Personal Care Homes, these regulations are more suited for Skilled and Intermediate Nursing Homes. A Personal Care Home provides what is called Custodial Care. We assist in bathing, feeding and dressing if the need arises. We can not keep residents who need nursing care, then why would we need a Registered Nurse on staff. Our medications are set up by a Registered Pharmacist in daily doses. The current regulation on a 21 year old adult dispensing these medications is adequate. A Registered Nurse would be waisting her skills and talent being employed by a Personal Care Home. For the low reimbursement of \$17.46 a day from the State for S.S.I. residents we can not employ Skilled and Licensed Personnel. I am a Licensed Practical Nurse who works 40 hours a week in our facility, in my opinion any Personal Care Home who employes a LPN has an adequate skilled employee to over see the residents care (LPN's have to have 12 continuing education hours a year RN's don't). I repeat myself in saying a Personal Care Home can not keep residents who need nursing care. On the inadequate reimbursement from the State we can only provide the basic care of cleaning, meals, and laundry and the basic care of the residents. There is no extra monies for the repairs and maintenance of the building. I don't know if you are aware of the type of structure Personal Care Homes are, usually they are older type buildings in need of constant repairs. Our building is 50+ years old, is in a nice residential part of Fayetteville. When we are surveyed by the State our deficiencies are usually of cosmetic nature, not on resident care.

I know Personal Care Homes need new Rules and Regulations, but not the one proposed now. We can not live with these regulations and stay in business. I feel Sheltering Arms would be forced out of business by these Regulations. Instead of the State working with us and trying to help us it seems they are pushing us down. I was at a trial with Dan Hedges representing the residents for more monies for Personal Care Home Providers to better the care for there residents. A Mr. Garrett Maran representing the State Office made the comment that all Personal Care Homes needed bulldozed over. If this was to happen there would be at our facility



SHELTERING ARMS

Personal Care Home, Inc.
Box 37, 122 2nd Ave.
Fayetteville, W.Va. 25840

33 residents needing a place to live and 16 employees out of work. This would be added expense on the State because the residents would be placed in Nursing Homes at \$120.00 a day or back to the State Hospitals at \$500.00 a day. Employees would be on Unemployment or Welfare. Some of the residents and employees could become homeless.


Is this the focus of the Proposed Rules and Regulations? I certainly hope not.

Sincerely yours,

Jean I. Prince LPN
Jean I. Prince, LPN

12/6/95 jp

cc: Ken Hechler, Secretary of State
Senator Jo Manchin
file



Ravenswood Care Center

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



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DEC 14 1995

REGULATORY DEVELOPMENT

Consider these written comments on the Personal Care Home Licensure Regulations.

4.3.1D - We have been in business for 35 years and have always complied with current regulations and feel it unnecessary to provide the State with a surety bond, property lien or any other guaranty. The additional cost of this requirement would have to be passed on to the residents therefore increasing their cost unnecessarily.

4.10 - Waivers

The process is too lengthy to be of any benefit to the resident having an immediate need.

4.12 - Point System Scoring

This scoring system appears to be confusing and difficult. Will the State surveyors understand this system?

5.2.4 -A Quality Assurance plan will take the Administrator of a small home away from "Hands On Care" to "Hands On Paperwork".

Suggestion: A paper requirement could and should only be put into place when there is a repeated deficiency in that area.

5.6.1e - Employment physicals and TB screenings shall be obtained in the first week of employment. The Health Dept. provides these services on a monthly basis. Our employees can get them free or at low cost.

5.8.2 - One nursing assistant to every resident is a staffing level that hospitals nor nursing homes could accommodate. This would increase residents cost by \$1400 per year. The residents are on a fixed income and the cost of living increases provided by Medicare does not increase by \$1400 per year. Our staffing level is 1-11 on day shift, 1-16 on evening shift and 1-20 on midnight shift. We have never been cited for lack of staffing nor have we had any complaints from families.

Every resident entering a Personal Care Home needs assistance

with eating, toileting, ambulating and usually dressing. The State pays approximately \$16 per day per resident therefore if a facility had only welfare clients, the staffing would be 1-25 which is the amount provided by the State.

In my opinion, all homes who do not have a mixture of 80% private pay and 20% welfare would close immediately. The Ravenswood Rest Home has had 20 welfare clients for 35 years. This requirement would close this building immediately leaving 20 welfare clients to be placed in a local nursing home facility at the State's expense. The moral aspects of this situation is usually not considered but perhaps it's time to start. These people consider this house their home and moving to another home would induce unnecessary trauma. Another fact worth mentioning is the fact that 7 employees would be added to the State's unemployment statistics which is already at an elevated rate.

7.2 - Functional Assessment and Individualized Service Plans (7.2.1 - 7.2.6 inclusive)

An Individualized Service Plan requires approximately 1.45 hours by an RN at a cost of \$16-\$20. The welfare office pays approximately \$16 per day - Who will be paying for the other 22.15 hours to care for this resident? Individualized Service Plans could require as many as 3 hours to complete per resident. Most Personal Care Home residents are admitted directly from home, extreme amounts of paperwork are costly and unnecessary for Activities of Daily Living. Assessments and Care Plans should only be required for those people requiring more than 2 hours of nursing care in 24 hours.

Emphasizing paperwork and shifting funds to administration instead of "Hands On Care" is an Archaic Philosophy in health care. We question a system purposely writing regulations to increase health care costs and directly contributing to the increasing number of elderly people needing

nursing home beds for financial reasons.

11.3 - Physical Facilities & Equipment

11.3.17 - In our particular home, one bathroom would have to be removed to make a janitor's closet and service sink. We feel that non-life threatening situations should be Grandfathered in to keep from disrupting the resident's home.

11.4 - Sleeping Facility

11.4.6 - This regulation would require two of our state clients to leave their home immediately and be placed elsewhere. Many older homes do not have hallways and most providers can't afford to build new buildings. I think this regulation should also be Grandfathered to include only new construction.

11.4.10 - We have very large semi-private rooms with private baths in our larger facility. This requirement would take out the private bathroom in each of these rooms at 10% of the floor space needing to be a window. Our heating and cooling units are under our windows in all 26 rooms. This would require more renovation and reconstructing than the city would allow or that we could afford. Our window space is nice and adequate. We have never received a complaint from a resident or been questioned about a larger window.

12.1- Standard Requirements

Physician's review their orders quarterly and as needed.

Physician's need to be responsible for their own orders. Requiring a Registered Nurse to duplicate this service is expensive and unnecessary.

12.1.9 - The private physician again should be responsible for his/her own orders. Paying someone else to review the resident orders increases the cost of health care for no obvious benefit.

12.2 - Nursing Services

12.2.2 - Personal Care Homes have always done episodic charting;

12.2 - Nursing Services

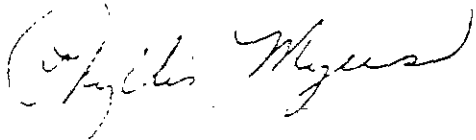
12.2.2 - Personal Care Homes have always done episodic charting; this has sufficed for years and should be continued accordingly. Writing monthly note's does not ensure better care, just less time with the residents. (12.2.5B,12.2.5C,12.2.5D & 12.2.5E)

This plan outlines Nursing Home care and not Licensed Personal care. Again, on behalf of the elderly population who do not want to be pigeonholed or have their rights and time taken away from them, we respectfully request that this amount of "Hands On Paperwork" be replaced with "Hands On Care".

12.4 - Resident Care and Related Services

12.4.1, 12.4.2, 12.4.3, 12.4.4 - The added cost to the resident is prohibitive and letters stating the same could be sent to your office if requested. The extra staffing would be a financial burden to the elderly population for unnecessary paperwork.

It is my understanding that these proposed regulations were not to cause an undue burden on the Licensed Personal Care Home Industry. I know for a fact that all these statements have been brought to the Health Department in every meeting. Is anyone listening?



RAVENSWOOD CARE CENTER
1113 WASHINGTON STREET
RAVENSWOOD, WV 26164-1020

Ravenswood Rest Home, 402 Sand St., Ravenswood, WV 26164

November 29, 1995

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

RECEIVED

DEC -4 1995

REGULATORY DEVELOPMENT

Dear Mr. Hechler:

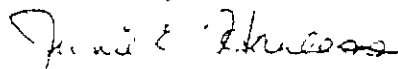
I am writing to ask you for help concerning the new regulations from the Dept. of Health and Human Services. I have 23 welfare residents, many of whom have lived at the Rest Home for more than 10 years. These residents will lose their home and 8 employees will lose their jobs should these regulations pass.

I cannot pay an RN \$16.00 per hour when the State give me \$16.00 per day per resident. I would have to choose between paying the RN to write care plans or feed our residents.

I have been able to meet all regulations by doing some of the work myself which includes cooking, cleaning and taking people to appointments. I feel that I have provided a home atmosphere and fulfilled my moral obligations to my residents while the State has tried to put me out of business in one way or another for over 35 years. My love for these people have kept me fighting the battle but the new regulations would cause more of a hardship emotionally and monetarily than I could afford.

I have never asked for your help before but respectfully ask your full attention and consideration with this matter as the public comment period ends December 22, 1995, on these regulations. Thank you for your assistance.

Sincerely,


Junie E. Harless, Owner

/jas

Enclosure

Ravenswood Rest Home
402 Sand St.
Ravenswood, WV 26164

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DEC 13 1995

REGULATORY DEVELOPMENT

Consider these written comments on the Personal Care Home Licensure Regulations.

4.3.1D - We have been in business for 35 years and have always complied with current regulations and feel it unnecessary to provide the State with a surety bond, property lien or any other guaranty. The additional cost of this requirement would have to be passed on to the residents therefore increasing their cost unnecessarily.

4.10 - Waivers

The process is too lengthy to be of any benefit to the resident having an immediate need.

4.12 - Point System Scoring

This scoring system appears to be confusing and difficult. Will the State surveyors understand this system?

5.2.4 -A Quality Assurance plan will take the Administrator of a small home away from "Hands On Care" to "Hands On Paperwork".

Suggestion: A paper requirement could and should only be put into place when there is a repeated deficiency in that area.

5.6.1e - Employment physicals and TB screenings shall be obtained in the first week of employment. The Health Dept. provides these services on a monthly basis. Our employees can get them free or at low cost.

5.8.2 - One nursing assistant to every resident is a staffing level that hospitals not nursing homes could accommodate. This would increase residents cost by \$1400 per year. The residents are on a fixed income and the cost of living increases provided by Medicare does not increase by \$1400 per year. Our staffing level is 1-11 on day shift, 1-16 on evening shift and 1-20 on midnight shift. We have never been cited for lack of staffing nor have we had any complaints from families.

Every resident entering a Personal Care Home needs assistance

with eating, toileting, ambulating and usually dressing. The State pays approximately \$16 per day per resident therefore if a facility had only welfare clients, the staffing would be 1-25 which is the amount provided by the State.

In my opinion, all homes who do not have a mixture of 80% private pay and 20% welfare would close immediately. The Ravenswood Rest Home has had 20 welfare clients for 35 years. This requirement would close this building immediately leaving 20 welfare clients to be placed in a local nursing home facility at the State's expense. The moral aspects of this situation is usually not considered but perhaps it's time to start. These people consider this house their home and moving to another home would induce unnecessary trauma. Another fact worth mentioning is the fact that 7 employees would be added to the State's unemployment statistics which is already at an elevated rate.

7.2 - Functional Assessment and Individualized Service Plans (7.2.1 - 7.2.6 inclusive)

An Individualized Service Plan requires approximately 1.45 hours by an RN at a cost of \$16-\$20. The welfare office pays approximately \$16 per day - Who will be paying for the other 22.15 hours to care for this resident? Individualized Service Plans could require as many as 3 hours to complete per resident. Most Personal Care Home residents are admitted directly from home, extreme amounts of paperwork are costly and unnecessary for Activities of Daily Living. Assessments and Care Plans should only be required for those people requiring more than 2 hours of nursing care in 24 hours.

Emphasizing paperwork and shifting funds to administration instead of "Hands On Care" is an Archaic Philosophy in health care. We question a system purposely writing regulations to increase health care costs and

directly contributing to the increasing number of elderly people needing nursing home beds for financial reasons.

11.3 - Physical Facilities & Equipment

11.3.17 - In our particular home, one bathroom would have to be removed to make a janitor's closet and service sink. We feel that non-life threatening situations should be Grandfathered in to keep from disrupting the resident's home.

11.4 - Sleeping Facility

11.4.6 - This regulation would require two of our state clients to leave their home immediately and be placed elsewhere. Many older homes do not have hallways and most providers can't afford to build new buildings. I think this regulation should also be Grandfathered to include only new construction.

11.4.10 - We have very large semi-private rooms with private baths in our larger facility. This requirement would take out the private bathroom in each of these rooms at 10% of the floor space needing to be a window. Our heating and cooling units are under our windows in all 26 rooms. This would require more renovation and reconstructing than the city would allow or that we could afford. Our window space is nice and adequate. We have never received a complaint from a resident or been questioned about a larger window.

12.1- Standard Requirements

Physician's review their orders quarterly and as needed. Physician's need to be responsible for their own orders. Requiring a Registered Nurse to duplicate this service is expensive and unnecessary.

12.1.9 - The private physician again should be responsible for his/her own orders. Paying someone else to review the resident orders increases the cost of health care for no obvious benefit.

12.2 - Nursing Services

12.2.2 - Personal Care Homes have always done episodic charting; this has sufficed for years and should be continued accordingly. Writing monthly note's does not ensure better care, just less time with the residents. (12.2.5B,12.2.5C,12.2.5D & 12.2.5E)

This plan outlines Nursing Home care and not Licensed Personal care. Again, on behalf of the elderly population who do not want to be pigeonholed or have their rights and time taken away from them, we respectfully request that this amount of "Hands On Paperwork" be replaced with "Hands On Care".

12.4 - Resident Care and Related Services

12.4.1, 12.4.2, 12.4.3, 12.4.4 - The added cost to the resident is prohibitive and letters stating the same could be sent to your office if requested. The extra staffing would be a financial burden to the elderly population for unnecessary paperwork.

It is my understanding that these proposed regulations were not to cause an undue burden on the Licensed Personal Care Home Industry. I know for a fact that all these statements have been brought to the Health Department in every meeting. Is anyone listening?

Jane E. Hanks

JACK P. McDONALD, Owner

PHONE 304-252-6941

Rest Haven Licensed Personal Care Home

ROUTE 4, BOX 520

BECKLEY, WEST VIRGINIA 25801

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
Page 2

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

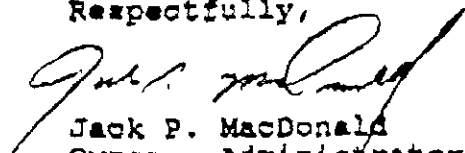
I strongly ask you, on behalf of the citizens of the State of West Virginia who are residents in these homes and as an owner and administrator of a personal care home facility, not to accept this administrative law change without appropriate action through the legislature who could address the funding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



SHELTERING ARMS

Personal Care Home, Inc.
Box 37, 122 2nd Ave.
Fayetteville, W.Va. 25840

RECEIVED

DEC 14 1995

REGULATORY DEVELOPMENT

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

Ms Howard

I am writing to air my opinions of the proposed Personal Care Home Regulations. I realize Personal Care Homes need new Regulations and are under Court Order to do so. Do we need these Regulations? Certainly not. Let us look at the issues. Personal Care Homes are Custodial Care, not Skilled Care. Why the need for Registered Nurses and Licensed Practical Nurses and Certified Nursing Aides? This would be a waste of their skills and a waste of funds for Personal Care Homes. Therefore over regulating an already struggling industry. Rumor has it that these Regulations were drafted to close Personal Care Homes. Could that be true? Let us take a look, in October 1995 in a hearing at the Federal Building in Charleston, WV Dr. Garrett Maran said Personal Care Homes needed Bull dozed down, in a November meeting with Nursing Home Operators it was said that Personal Care Homes would be closed. If that is the intent of the State of West Virginia , it's a sad situation.

Personal Care Homes receive \$17.00 per day to provide 24 hour care for SSI Residents. Certainly we could agree it would be impossible to provide Skilled Care Givers an immaculate building and a perfect world atmosphere for this \$17.00 a day.

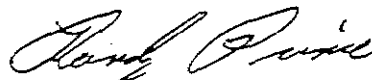
Personal Care Home Operators and OHFLAC need to unite and strive for workable Regulations and adequate reimbursement.

In the Proposed Regulations I must have a Surety Bond. Therefore I must finance my own closure.

These Regulations are a back door method to close Personal Care Homes.

I was born and raised in West Virginia, have been in business for 10 years at Sheltering Arms Personal Care Home. As I look over these Regulations and there intent, IT JUST MAKES ME SICK.

Respectively yours,



Randy Prince
Administrator

Orig: Kay Howard
cc: Ken Hechler, Secretary of State
Senator Jo Manchin
File

12-11-95

jp

Kay
Howard



DEC -5 1995
REGULATORY DEVELOPMENT

November 30, 1995

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

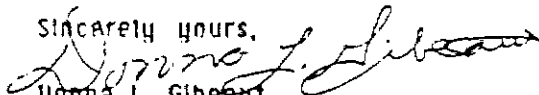
Re: Proposed Personal Care Home Licensure Regulations

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 ever 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. Gibert
Administrator

Member: WUNCA
WV Personal Care Association

Senior Living at its Best

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

December 5, 1995

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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
501 Davis Ave.
Elkins, WV 26241

VINTAGE VILLAGE

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

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DEC -7 1995

REGULATORY DEVELOPMENT

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

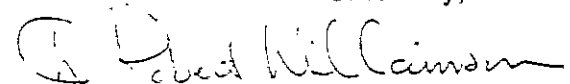
Mr. Hechler,

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

We Care Personal Care Home

1038-42 Collins Memorial Drive
Chester, WV 26034

Phone (304)387-0140

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DEC 22 1995

REGULATORY DEVELOPMENT

December 19, 1995

Regulatory Development - Attn: Kay Howard
Department of Health & Human Resources
Capitol Complex, Building 3, Room 265
Charleston, WV 25305

Dear Sir:

I wish to comment on the proposed admendment to the Personal Care Home Licensure, Legislative Rule 16-5C-5.

Section 4.3 Surety Bonds. Bonds are not required of other health care facilities and should not be required for Personal Care Homes.

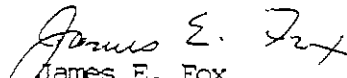
Section 5.8.2 Minimum Standards for Staffing(Class 1).
These standards are too strict and should not be more than a 12/1 ratio.

Section 5.7.2 First Aid Qualifications and Supplies(Class III).
This is not feasable due to the turnover of personnel and the lack of first aid certificate issuing agencies within many communities. Very few persons who are applying for employment have a first aid certificate.

Section 7.2.2 Individualized Service Plan(Class II).
Many Personal Care Homes can not afford to employ full time Nursing Staff. Individualized Service Plans add extra costs to a facility that is already struggling to survive financially and would not insure improved resident care.

I understand that regulations are necessary, but I truly believe that many Personal Care Homes in West Virginia will not be able to comply with the regulations as written and therefore will be forced out of business.
WHO IS GOING TO PROVIDE CARE FOR THE DISPLACED RESIDENTS AND WHAT RESIDENT IS GOING TO BE ABLE TO PAY THE INCREASED COST OF LIVING IN THE SURVIVING PERSONAL CARE HOMES?

Sincerely,


James E. Fox
Administrator

Richard H. Wisniewski
Rt. #3, Box #367
Grafton, W. Va. #26335
Phone #304-265-1714

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DEC 22 1995

REGULATORY DEVELOPMENT

December 19, 1995

Mr. Ken Hechler
Secretary of State
Building 1, Suite #157K
Kanawha Blvd.
Charleston, West Virginia #25305

Dear Mr. Hechler

I am concerned about the legislation reference document
Proposed Title 64 West Virginia Division of Health
Administration Rule for Personal Care Homes, Series 14.

I oppose and urge you not to sign these new regulations
which could jeopardize the future existence of the privately
owned personal home care facilities.

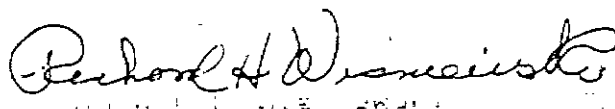
In the past 50 years, the state of W. Va. had a decline in
industries, closing or moving of plants to other states. To
mention a few - mining, chemicals, oil refineries,
automobile parts, clothing, shoe, electrical boxes,
electrical insulators and the biggest loss has been in the
glass industries.

The trend continues recent closings, coal mines in various
towns, including Fawcett Col., Morgantown, Heildord Bros. in
various towns, Grafton Ship Col., Grafton, and Anchor Glass
Co. in Mason, Va. Could the personal home care industry be
targeted or in jeopardy to join this trend.

Loss of the past industries and been detrimental to the
state economy and has eroded our tax base and loss of jobs,
therefore I ask you not to sign these rules and suggest the
DHHR and private owned personal home care facilities work
for a solution to develop realistic regulations to benefit
both parties, the state, especially the patient and families
who care for their loved ones in these facilities.

This is not a complaint but my personal concern and hope you
realize the problem and all the involved and results will
be for the most viable solution.

I hope you will advise me for your consideration in the matter
of the proposed Title 64, West Virginia
Division of Health Administration Rules for Personal Care
Homes, Series 14.



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DEC 14 1995

REGULATORY DEVELOPMENT

TO WHOM IT MAY CONCERN

I HAVE LIVED IN A PERSONAL CARE HOME IN WETZEL COUNTY FOR THE LAST SEVEN YEARS. THIS IS AFTER BEEING PLACED IN NUMEROUS AFG HOMES. I AM FROM WOOD COUNTY BUT AFTER SEVEN YEARS FEEL THIS IS MY HOME. I HAVE HAD A CHANCE TO DISCUSS THE PROPOSED REGULATIONS WITH THE OWNERS AND THE GREAT COST TO START THESE PROGRAMS. I KNOW THAT MOST OF US WHO LIVE HERE ARE "WELFARE" CLIENTS WHO WITH THE PAYMENT THE DMHR PAYS GIVE THE HOME A TOTAL OF \$17.47 DAY. THEY CAN NOT AFFORD TO START THESE REGULATIONS SO WHERE AM I TO GO. I DON'T LIKE IT OUT THERE. PLEASE TRY TO MAKE THE REGULATIONS REASONABLY.

I AM HAVING SOMEONE TYPE THIS FOR ME BECAUSE YOU COULD NOT READ MY HAND WRITING THAT DOES NOT MEAN I CAN'T UNDERSTAND THE REGULATIONS GREAT COST AND THE MEANING IF HOMES CAN'T COMPLY.

VICKIE WOLFE

Vickie Wolfe

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

December 12, 1995

Kay Howard

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.

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 calls 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 lengthly 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

Sharon Westheimer
Administrator

RECEIVED
DEC 20 1995
REGULATORY DEVELOPMENT

Woodridge Personal Care Home
3810 Grand Central Ave.
Vienna, WV 25108

December 21, 1985

Ken Heckler

I have informed my residents about the many new regulations that West Virginia Licenseurs Office is trying to impose on the Personal Care Home, 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 Physcian/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,

Stewart Henderson, Administrator

EUGENE W. HURMAN

1
2 *Laura Porter*
3 *Josephine*

4 SAMO

5 *Ann M. Lyons*
6 *James*

7 *Richard E. Hill*

8 *Ann M. Hill*
9 *Vonda Goodwin*

10 *Hubert Rardon*
11 *Eleanor Stotler*

12 *Rachel M. Mandy*
13 *Roy E. Watson*

14 *UND P (Vonda Goodwin)*
15 *Jenna Stotler*

16 *Ben Dunge*
Patricia Clark Bunge

17 *Kay*
18 *Ann*
19 *Ann*

20 *Edna Han*

21 *Grace Stalman*

22 *William Zim*

23 *Reg Dept*

24 *Roy D. Brown*

Company's

Reached Holiday at Home Visit
Hotel Holiday was not
available for the survey
because they were to hold
parties for Christmas.