

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

Form #4

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code §16-5C-5

AMENDMENT TO AN EXISTING RULE: YES  NO

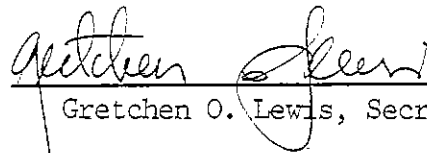
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 14

TITLE OF RULE BEING AMENDED: Personal Care Home Licensure

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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

  
\_\_\_\_\_  
Gretchen O. Lewis, Secretary

15.40

[PROPOSED]  
TITLE 64

WEST VIRGINIA DIVISION OF HEALTH  
ADMINISTRATIVE RULES

**PERSONAL CARE HOMES**

SERIES 14

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Modified Rule as Approved by  
Legislative Rule-Making Review Committee

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
1.1. Scope	1
1.2. Authority	1
1.3. Filing Date	1
1.4. Effective Date	1
1.5. Repeal of Former Rule	1
§ 64-14-2. Application and Enforcement	1
2.1. Application	1
2.2. Enforcement	1
§ 64-14-3. Definitions	1
§ 64-14-4. State Administrative Procedures	8
4.1. General Licensing Provisions	8
4.2. Licensure Application Procedure	9
4.3. Initial License	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
<b>§ 64-14-6. Admission and Discharge Policies</b>	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
<b>§ 64-14-7. Resident Care and Related Services</b>	32
7.1. Services	32
7.2. Individualized Functional Needs 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	41
<b>§ 64-14-8. Resident Rights</b>	42
8.1. Posting of Information and General Rights	42
8.2. Notice of Rights and Services	43
8.3. Treatment	44
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
<b>§ 64-14-9. Dietetic Services</b>	48
9.1. General	48
9.2. Administrative Requirements	49
9.3. Food Service Sanitation	49
<b>§ 64-14-10. Fire Safety, Disaster and Emergency Preparedness and Training</b>	50
10.1. Fire Safety	50
10.2. Disaster and Emergency Preparedness Plan	50
10.3. Disaster Training and Rehearsal	51
<b>§ 64-14-11. Physical Facilities</b>	52
11.1. Applicability; Construction; Additions; Renovation; Alteration; Other Standards; Waiver	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	59
11.8. Water Supply	59
11.9. Laundry and Linens	59
11.10. Food Service Facilities	60
11.11. Sewage	61
11.12. Solid Waste	61
11.13. Electrical Requirements	61
11.14. Lighting Requirements	62
11.15. Pets and Other Animals	63
<b>§ 64-14-12. Additional Requirements Related to the Provision of Limited and Intermittent Nursing</b>	63
12.1. Standard Requirements	63
12.2. Nursing Services	66
12.3. Personnel and Staffing	67
12.4. Resident Care and Related Services	68
<b>§ 64-11-13. Penalties; Administrative Due Process</b>	68
13.1. Secretary's Authority for Penalties and Disciplinary Actions	68
13.2. Administrative Due Process and Procedure for Penalties and Disciplinary Action	70
13.3. Hearings and Due Process	71
<b>§ 64-14-14. Severability</b>	73
<b>Table 64-14.1. Scores for A, B, C, And F Ratings in Each Category, Average Rating and Overall Rating</b>	74
<b>Table 64.65-2. Surety Bond Schedule</b>	76

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

FILED

JAN 23 2 49 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, or 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 (e.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 Section 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 Representative<sup>1</sup>** -

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);

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<sup>1</sup> 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 has no financial ties to 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 applicant 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, and 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 on that date, including all capital, surplus, reserve, depreciation and similar accounts;

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

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

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

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

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

4.4.4. The secretary may issue a renewal license or a provisional license when the home has met all class I standards and has attained at least a "C" rating under the rating system found at Section 4.12 of this rule and has made adequate provision for compliance with the remaining requirements of this rule within specified time periods.

4.5. Provisional License

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

4.5.1.a. Receives an "F" rating under the rating system found at Section 4.12 of this rule in no more than one (1) or two (2) categories; or

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

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

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

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



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 or the facility alleged to be operating unlawfully as a personal care 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 legal 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. The 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, and fails to correct the violations within one hundred twenty (120) days of the completion of the inspection or investigation, the secretary shall give written notice of the uncorrected

violations and of the amount of time until the secretary will report<sup>2</sup> the personal care home's lack of compliance with the rule to the Social Security Administration and to all residents or their legal representatives. The secretary shall also provide all residents with a list<sup>5</sup> 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 report<sup>4</sup> 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 list<sup>5</sup> 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

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<sup>2</sup> Under the provisions of 42 U.S.C. 1616(e) and 45 CFR, Part 1397--Standard Setting Requirements for Medical and Nonmedical Facilities Where SSI Recipients Reside, all states are required to "establish, maintain, and ensure the enforcement of standards for any category [emphasis added] of institutions, foster homes, or group living arrangements, in which, as determined by the State, a significant number of recipients of Supplemental Social Security Income (SSI) benefits resides or is likely to reside. SSI residents who live in relevant facilities which violate any of the standards will be subject to a reduction in their SSI payments ... in an amount equal to any State supplementary benefit or other payment made by the State for any medical or remedial care provided them by the facility. As part of its responsibilities under the federal regulations, States are required to make certain reports to the residents of deficient facilities and to the appropriate regional office of the United States Social Security Administration.

<sup>3</sup> 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.

<sup>4</sup> See Footnote #2.

<sup>5</sup> See Footnote #3.

## 64 CSR 14

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

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

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

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

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

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

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

4.10.3.e. Document that there is no adverse effect on the resident's 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 any legal representative 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.

#### 64 CSR 14

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 section (category) of this rule are not permitted to offset deficiencies within another category. Therefore, a total of value points is not computed.

4.13.5. For purposes of assigning an overall rating:

4.13.5.a. A category rating of "A" is assigned a score of four (4);

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

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

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

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

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

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

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

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

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

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

4.13.9. The secretary shall not assign a rating higher than a "B" to a personal care home which has been denied a provisional license based on a violation of a Class I standard and is subsequently reapplying for an initial license as specified in Section 4.5.5 of this rule.



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

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

5.1.1. The licensee is responsible for compliance with this rule; the terms of the home's license; W. Va. Code § 16-5C-1 *et seq.*; other relevant federal, State 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 incorporated under W. Va. Code § 35-3-3, 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 the effective date of this rule to comply with the 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. The home shall make all employees and household members 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. The home shall provide training 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. The training will be provided within the first fifteen (15) days of employment including 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, including the State adult protective services agency, and its toll-free hot line number; the State licensure and certification agency, and its telephone number; the State commission on aging, and 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 applicable State and federal laws, rules, 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;

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 those 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; and

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 care needs set forth in this subdivision.

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 Section 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 Section 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 accounting 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 the 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 the bond is impaired, the licensee shall file an additional bond in an amount 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 Section 6.3.3 of this rule.

6.1.5. The personal care home shall obtain a medical and family history for each resident.

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

6.1.6.a. 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 is 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, an 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 of the agreement;

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 Section 6.3.3 or 6.4.6 of this rule;

6.3.2.b. The resident requires a level of service for which the home is not licensed or does not provide, 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 Section 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 Section 8.3.6 of this rule or to participate in the planning of his or her care and supervision as specified in Section 8.3.1 of this rule;

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

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

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

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

6.4.3.a. The home 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, the 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 and legal representative, if any, 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 activity 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 the utilization of social, recreational, and 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. Individualized Functional Needs 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 their 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 individualized 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 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 individual 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, the reviewer makes a determination 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 commissioner of the bureau of public health of the State 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 individualized 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 as needed (PRN) 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 the medication, the manufacturer's 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 and legal representative, physician or designated health service provider to communicate any apparent significant deviations from the resident's normal appearance, state of health or well-being.

7.5.4. If an injury or sudden change in the physical or mental condition of a resident occurs, the personal care home shall immediately arrange for needed care in accordance with the wishes of the resident. 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, a 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 are 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 residents' records.

7.7.3. The personal care home shall begin a record for each resident at admission and maintain and keep the record current. 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; the initial health assessment and social history; and admission, transfer and discharge data;

7.7.3.d. Physician's orders, a list of medications, and/or medication administration records (if appropriate); the resident's 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; and 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 or accident, 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 the resident's 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; and

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; or

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 him or her.

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 the need for changes in the personal care home policies or practices to the personal care home staff and outside representatives of the resident's choice.

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 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 products; 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; vegetables 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 the resident's 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. The 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 Rules, 64 CSR 17.

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

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

9.3.4. Food contact utensils and equipment shall be of approved material and easily cleanable construction and shall be kept in good repair.

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

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

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

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

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

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

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

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

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

9.3.11. Dishes for residents 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)**

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: a 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. The home's 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. The 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; Construction; Additions; Renovation; Alteration; Other Standards; Waiver. (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 specified in West Virginia Administrative Rules, Fees for Services, 64 CSR 51, 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 of the bed capacity 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 4<sup>6</sup> 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.

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 request, 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.

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<sup>6</sup> Available from the State Fire Commission or the Secretary of State. Section 4 of the above referenced Building Code rule incorporates by reference the BOCA National Building Code; BOCA National Plumbing Code; BOCA National Mechanical Code; BOCA National Existing Structures Code; BOCA National Energy Conservation and CABO One- and Two-Family Dwelling Code. You may purchase these books, collectively or separately, from Building Officials and Code Administrators International, 4051 West Flossmoor Road, Contra Club Hills, Illinois 60477-5795, 1-312-700-2300 or BOCA International Regional Offices, 3592 Corporate Drive, Suite 107, Columbus, Ohio 43229, 1-614-890-1064 or view a set at the Secretary of State's Office.

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

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

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

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

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

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

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

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

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 exits and resident rooms. 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 the 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" are 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 applicable fire and safety requirements. Non-slip surfaces are 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 it admits residents who exhibit behaviors which may cause harm to self or others or may place themselves or others in imminent danger or jeopardy. The 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. The home shall have 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, the secretary will grant a waiver of this requirement. 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 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 the 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 water supply by the local health department and shall sample the water 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)**



## 64 CSR 14

- 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 rules 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 and 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 the addition of the pets.

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 premises of the home.

**§ 64-14-12. Additional Requirements Related to the Provision of Limited and Intermittent Nursing.<sup>7</sup>**

**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.

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<sup>7</sup> The provisions of this section apply to personal care homes providing limited and intermittent nursing as stated in Section 4.1.3 of this rule.

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 professional nurse regarding care, services and staff training intended to protect the residents.

12.1.5. The home shall provide written notice to each resident regarding the availability of nursing services at the time of admission; or, for current residents, within thirty (30) days of the effective date of this rule.

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

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

12.1.6.b. All physician orders shall be reviewed every thirty (30) days for accuracy by the registered professional nurse or the appropriate licensed health care provider unless there is a medical condition requiring a more frequent review as determined by the resident's physician.

12.1.7. The home shall assure that:

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

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

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

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

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

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

12.1.8.b. The home shall report undesirable changes in body weight of five percent (5%) or more to the resident's physician within seventy-two (72) hours of the identification of the weight change.

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

12.1.10. The use of as needed (PRN) 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 therapists, occupational therapists, speech therapists, 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 registered professional 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, 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;

12.2.5.h. Provide to the personal care home a written record of training provided by the registered professional 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. 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. The secretary shall assess and apply penalties for violations of this rule 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; or

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

13.1.2.b. 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 for the reclassification, reduction in bed capacity, or both, 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 the plan was due, constitutes 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 State laws or rules 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 or her attorney of record, if any, of the action, by certified mail, return receipt requested;

13.3.4.c. Enter an 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, the order 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.

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 <sup>8</sup>	Rating			
					F <sup>9</sup>	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 \_\_\_\_\_

<sup>8</sup> Rating score values are:

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

<sup>9</sup> ≤ = Less than or equal to

Final Rating

\_\_\_\_\_



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

## 64 CSR 14

Table 64.65-2. Surety Bond Schedule (Contd.)

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$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
\$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

## 64 CSR 14

Table 64.65-2. Surety Bond Schedule (Contd.)

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$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
\$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

Table 64.65-2. Surety Bond Schedule (Contd.)

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$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 <sup>10</sup>

<sup>10</sup> 1.25 times the prior year's average monthly balance of client's funds

27 (d) The legislative rules filed in the state register on  
28 the fourth day of January, one thousand nine hundred  
29 ninety-six, authorized under the authority of section five,  
30 article five-c, chapter sixteen of this code, modified by the  
31 division of health to meet the objections of the legislative  
32 rule-making review committee and refiled in the state  
33 register on the twenty-third day of January, one thousand  
34 nine hundred ninety-six, relating to the division of health  
35 (personal care home licensure, 64 CSR 14), are authorized  
36 with the amendments set forth below:

37 "On page nine, section 4.3.1.d, after the word 'provi-  
38 sions' by inserting the words 'in policy';

39 On page nine, section 4.3.1.d, by striking out the fol-  
40 lowing: 'The provisions may be in the form of a bond, a  
41 property lien, or other form of guaranty acceptable to the  
42 secretary. The guaranty shall be in the amount of three  
43 hundred dollars (\$300) per resident or ten thousand dol-  
44 lars (\$10,000), whichever is greater.' and inserting in lieu  
45 thereof the following: 'If the owner does not provide  
46 continuing care to all residents during this thirty (30) day  
47 period, any expenses incurred by the Department to pro-  
48 vide continuing resident care (i.e., food, staff, etc.) during  
49 this thirty (30) day period, is the responsibility of the  
50 owner.';

51 On page seventeen, section 4.10.4, by striking out the  
52 word 'State' and inserting in lieu thereof the word 'Secre-  
53 tary';

54 On page seventeen, section 4.10.4, after the words 'for  
55 each of the residents' by inserting the words 'affected by  
56 the waiver request,';

57 On page twenty-four, section 5.8.2, after the words 'an  
58 additional' by striking out the words 'direct care' and  
59 inserting in lieu thereof the words 'personal care';

60 On page twenty-four, section 5.8.2, after the word  
61 'day' by striking out the words 'and evening shifts' and  
62 inserting in lieu thereof the word 'shift';

63 On page twenty-four in section 5.8.2, after the words  
64 'to have' by striking out the words 'no more than';

65 On page twenty-four in section 5.8.2, after the words  
66 'two (2)' by inserting the words 'or more';

67 On page twenty-four, line sixty-seven, by striking out  
68 the words 'no more than';

69 On page twenty-four, section 5.8.2, after 'residents.'  
70 by inserting the following sentence: 'At a minimum, an  
71 additional personal care staff will be available on the eve-  
72 ning shift for each fifteen (15) residents identified on their  
73 functional needs assessment to have no more than two (2)  
74 or more of the above care needs.';

75 On page twenty-four, section 5.8.2, after the words 'An  
76 additional' by striking out the word 'employee' and insert-  
77 ing in lieu thereof the words 'personal care staff';

78 On page twenty-four, section 5.8.2, after the word  
79 'with' by striking out the words 'one (1)' and inserting in  
80 lieu thereof the words 'two (2)';

81 On page twenty-seven, section 6.1.7, after the words  
82 'valid for' by striking out the words 'six (6) months' and  
83 inserting in lieu thereof the words 'one (1) year';

84 On page thirty-five, section 7.3.9, after the words 'per-  
85 sonal care home' by striking out the words 'in need of  
86 nursing services as specified in this rule' and inserting the  
87 following: 'The frequency with which a registered profes-  
88 sional nurse shall provide services to the personal care  
89 home not providing limited and intermittent nursing ser-  
90 vices shall be based upon the needs of the residents, but  
91 not less than weekly.';

92 On page thirty-five, subsection 7.3.9, after the word  
93 'Section' by striking out the number '13' and inserting in  
94 lieu thereof the number '12';

95 On page thirty-five, section 7.3.9, after the words  
96 'professional registered nurse.' by striking out the follow-  
97 ing: 'The frequency with which a registered professional

98 nurse shall provide services to the personal care home not  
99 providing limited and intermittent nursing services shall be  
100 based upon the needs of the residents.'

101 On page fifty-four, section 11.3.1, by striking out the  
102 sentence 'Existing and newly constructed buildings to be  
103 offered, maintained, and operated as personal care homes  
104 shall provide for accessibility in their entirety to individu-  
105 als with a physical disability.' and inserting in lieu thereof  
106 the sentence 'Those personal care homes housing any  
107 resident with a physical disability shall provide access to  
108 areas used in common by all residents as well as to the  
109 resident's personal area.';

110 On page fifty-five, section 11.3.8, in the second sen-  
111 tence, after the word 'widths' by inserting the words 'for  
112 new construction';

113 On page fifty-five, section 11.3.10, after the words  
114 'shall have a' by striking out the word 'central';

115 On page fifty-five, section 11.3.10, after the word  
116 'weather' by striking out the following: 'Individual room  
117 units known as 'through the wall heating and cooling units'  
118 are acceptable.';

119 On page fifty-five, section 11.3.17, after the word  
120 'residents.' by adding the following: 'However, if existing  
121 facilities cannot comply with the janitor closet requirement  
122 on each floor, the facility must demonstrate a sanitary  
123 means of disposal of wastewater in an area that is not a  
124 resident sleeping area.';

125 On page fifty-seven, section 11.4.10, at the beginning  
126 of the first sentence, by striking out the word 'The' and  
127 inserting in lieu thereof the words 'In new facilities the';

128 On page fifty-seven, section 11.4.10, after the word  
129 'area.' at the end of subsection ten by adding the following  
130 sentence: 'In existing facilities residents' rooms shall have  
131 an outside exposure through a vertical transparent win-  
132 dow. In existing facilities rooms extending below ground  
133 level shall be allowed only if approved by the Secretary.';

Enr. Com. Sub. for H. B. 4225] 6

134 On page fifty-eight, section 11.5.2, after the word  
135 'every' by striking out the words 'four (4)' and inserting in  
136 lieu thereof the words 'five (5)';

137 On page fifty-eight, section 11.5.3, after the word 'per'  
138 by striking out the words 'five (5)' and inserting in lieu  
139 thereof the words 'ten (10)';

140 On page fifty-eight, section 11.5.3, after the word  
141 'residents.' by striking out the following sentence: 'If the  
142 facility can show a process that functions well for resi-  
143 dents, upon application, the secretary will grant a waiver of  
144 this requirement.'

145 On page sixty-one, section 11.13.3.a, at the beginning  
146 of the first sentence, by striking out the word 'Outlets' and  
147 inserting in lieu thereof the words 'In new facilities electri-  
148 cal outlets';

149 On page sixty-one, section 11.13.3.a, after the word  
150 'walls;' by inserting a period and the words 'In existing  
151 facilities electrical outlets to meet the needs of the resi-  
152 dents shall be provided;';

153 On page sixty-six, section 12.2.5.a, after the word  
154 'services' by striking out the words 'through daily contact  
155 with the home and visits to the residents at least eight (8)  
156 hours a week'; and inserting in lieu thereof the words 'to  
157 residents';

158 On page sixty-six, by striking out section 12.2.5.d:

159 And,

160 By relettering the remaining subdivisions."





FILED

JAN 19 2 13 PM '96

West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vicki Douglas, Co-Chair

January 9, 1996

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register
TO: Ms. Gretchen G. Lewis, Secretary
Dept. of Health and Human Resources
Capitol Complex, Bldg. 3
Charleston, WV 25305
FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Personal Care Home Licensure Rule

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

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

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

cc: Kay Howard
Regulatory Development
Nancy Tyler
Division of Health