

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

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #2

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

Division of Health

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

RULE TYPE: Legislative; CITE AUTHORITY WV Code §§16-1-7 & 16-5E-1a(a)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 50

TITLE OF RULE BEING PROPOSED: Legally Unlicensed Health Care Homes

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 22, 1998 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Regulatory Development

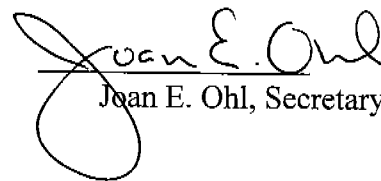
Department of Health & Human Resources

Capitol Complex - Building 3, Room 265

Charleston, WV 25305

ATTN: Marsha Dadisman, Acting Director

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.


Joan E. Ohl, Secretary

\$4.00

Brief Summary of the Rule

The proposed rule, Legally Unlicensed Health Care Homes, establishes minimum standards for inspection and operation of these homes in the areas deemed necessary to ensure the health, safety and welfare of the residents. This is in accordance with West Virginia Code §16-5E-1 et seq.

Statement of the Circumstances Which Require the Proposed Rule

The proposed rule, Legally Unlicensed Health Care Homes, is required by WV Code §16-5E-1 et seq.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Legally Unlicensed Health Care Homes

Type of Rule: Legislative Interpretive Procedural

Agency Department of Health and Human Resources

Address Building 3, Capitol Complex
Charleston, W. Va. 25305

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$ 2,851.00	\$
Personal Services				1,837.00	
Current Expense				1,014.00	
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates.

These estimates represent the total cost of performing the inspections within the current budget. There will be no additional general revenue cost to the state government.

3. Objectives of these rules:

The proposed rule, Legally Unlicensed Health Care Homes, establishes minimum standards for inspection and operation of these homes in the areas deemed necessary to ensure the health, safety and welfare of the residents, in accordance with West Virginia Code § 16-5E-et seq.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The staff in Personal Care Home Division will be performing the inspection. There will be no additional general revenue cost to the

state government.

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

The Registered Unlicensed Rules will benefit consumers of services for the aging population needing some assistance and care.

The office of Health Facility Licensure and Certification will provide a written notice of the availability of this proposed rule, to all registered legally unlicensed service providers, provider associations who may have an interest in distribution to their members, including Residential Board and Care Association, Personal Care home Association, West Virginia Health Care Association, interested state agencies and advocacy groups.

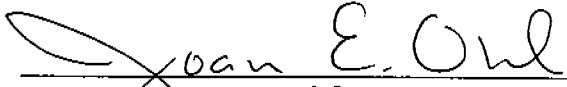
C. Impact on Citizens/Public at Large.

Refer to first paragraph of B.

The proposed rule, Legally Unlicensed Health Care Homes, establishes minimum standards for inspection and operation of these homes in the areas deemed necessary to ensure the health, safety and welfare of the residents, in accordance with West Virginia Code § 16-5E-1 et seq.

Date 6/22/98

Signature of Agency Head or Authorized Representative



Joan E. Ohl, Secretary
Department of Health and Human Resources

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June 22, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency name, Address & Phone No.) Department of Health and Human Resources

State Capitol Complex, Building 3, Room 265, Charleston, WV 25305

Telephone: (304) 558-3223

LEGISLATIVE RULE TITLE: Legally unlicensed Health Care homes

1. Authorizing statute(s) citation: WV Code §§16-1-7 and 16-5E1a(a)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 22, 1998

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

The office of Health Facility Licensure and Certification will provide a written notice of the availability of this proposed rule to all registered legally unlicensed service providers, provider associations, and interested state agencies and advocacy groups.

c. Date of Public Hearing(s) or Public Comment Period ended:

July 22, 1998

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

Attached N/A No comments received N/A

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

N/A

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule (please type):

Marsha Dadisman, Acting Director

Regulatory Development/Department of Health and Human Resources

Room 265, Capitol Complex

Charleston, West Virginia 25305

(304) 558-3223 FAX: (304) 558-1130 MDadisman@WVDHHR.ORG

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

Kathy Bauchamp

Residential Program Manager

1900 Kanawha Blvd. East, Building 3 Room 550

Charleston, WV 25305

Phone: (304) 558-0050 Fax: (340) 558-2515

3. If the statute under which you promulgated the submitted rules requires certain

findings and determinations to be made as a condition precedent to their promulgation:

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

N/A

- b. Date of hearing or comment period:

N/A

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

N/A

- d. Attach findings and determinations and reasons:

Attached N/A

TITLE 64

**WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

SERIES 50

LEGALLY UNLICENSED HEALTH CARE HOMES

1998

TITLE 64

**WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH**

**SERIES 50
LEGALLY UNLICENSED HEALTH CARE HOMES**

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TITLE 64
WEST VIRGINIA LEGISLATIVE RULE
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 50
LEGALLY UNLICENSED HEALTH CARE HOMES

§64-50-1. General.

1.1. Scope. -- This legislative rule prescribes specific standards and procedures to provide for the health, safety, and protection of the rights and dignity of residents of legally unlicensed health care homes administered by service providers. This rule must be read in conjunction with WV Code § 16-5E-1 et seq.

1.2. Authority. -- WV Code §§16-1-7 and 16-5E-1a(a).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Applicability. -- This rule applies to service providers, legally unlicensed health care homes administered by service providers, legal representatives of residents in such homes and complainants against service providers.

1.6. Enforcement. -- This rule is enforced by the secretary of the West Virginia department of health and human resources or his or her lawful designee.

§ 64-50-2. Definitions.

2.1. Abuse. -- Mistreatment of residents, including physical bodily harm, misuse of physical or chemical restraints, verbal abuse, and infliction of emotional suffering.

2.2. Director. -- The secretary of the department of health and human resources or his or her designee.

2.3. 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.

2.4. Immediate and Serious Threat. -- A situation that presents a high probability of serious harm or injury to one or more residents. An immediate or serious threat need not result in actual harm to any resident.

2.5. Legal Representative¹. --

2.5.a. A conservator, temporary conservator or limited conservator appointed pursuant to the West Virginia guardianship and conservatorship act, WV Code, § 44A-1-1 et seq., within the limits set by the order; or

2.5.b. A guardian, temporary guardian or limited guardian appointed pursuant to the West Virginia guardianship and conservatorship act, WV Code, § 44A-1-1 et seq., within the limits set by the order; or

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

2.5.d. An individual having a medical power of attorney pursuant to the West Virginia medical power of attorney act, WV Code §16-30A-1 et seq., within the limits set by the law and the appointment; or

2.5.e. An individual named as representative payee under the United States social security act, title 42 U.S.C. §301 et seq., within the limits of the payee's legal authority; or

2.5.f. A surrogate decision-maker appointed pursuant to the West Virginia health care surrogate act, WV 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; or

2.5.g. An attorney in fact appointed with power of attorney under common law or pursuant to uniform durable power of attorney, WV Code §39-4-1 et seq., within the limits set by the appointment; or

2.5.h. 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; or

2.5.i. An individual who has no financial ties to the legally unlicensed health care

¹

Service providers 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 that may require action by a legal representative. For example, a conservator may have responsibility for financial affairs, but not personal affairs, such as medical expenses.

home.

2.6. Legally unlicensed health care home, unlicensed home, or home. -- Any place in this state in which a service provider provides accommodations and personal assistance, whether for compensation or not, for a period of more than twenty-four (24) hours, to one (1) to three (3) residents who are not related to the service provider or his or her spouse by blood or marriage services of others by reason of physical or mental impairment or may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice.

2.7. Licensed health care professional. -- Any health care professional currently licensed in West Virginia such as, but not limited to a: social worker, dentist, practical nurse, occupational therapist, physician, physician assistant, psychologist, registered professional nurse, or speech-language pathologist.

2.8. Limited and Intermittent Nursing Care. -- Direct hands on nursing care of an individual who needs no more than two (2) hours of nursing care per day for a period of no longer than ninety (90) consecutive days per episode. Limited and intermittent nursing care shall be provided under the supervision of a registered professional nurse and in accordance with this rule, and may only be provided when the need for such care meets the following factors:

2.8.a. The resident requests to remain in the home;

2.8.b. The resident is advised of the availability of other specialized health care facilities to treat his or her condition; and

2.8.c. The need for such care is the result of a medical pathology or a result of normal aging process.

2.9. Neglect. -- Failure to provide for the necessities of daily living or the lack of care for significant medical problems.

2.10. Nursing Care. -- 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, such procedures as; irrigations; catheterization; special procedures contributing to rehabilitation; and administration of medication by any method prescribed by a physician which involves a level of complexity and skill in administration not possessed by the untrained person.

2.11. Ongoing Nursing Care. -- The nursing care required when a deviation in health is expected to continue over a lengthy period or time (i.e., in excess of ninety (90) days) with

expected to continue over a lengthy period or time (i.e., in excess of ninety (90) days) with minimal or no improvement.

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

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

2.14. Resident. -- An individual who is provided services, whether or not for a fee, by a service provider, but resident does not include a person receiving services provided by another who is related to him or her or the spouse thereof by blood or marriage, within the degree of consanguinity of the second cousin.

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

2.16. Service Provider or provider. -- The individual administratively responsible for operating a legally unlicensed home.

§ 64-50-3. State Administrative Procedures.

3.1. General Registration Provisions.

3.1.a. No person may administer or operate an unlicensed home without being registered as a service provider by the director.

3.1.b. A registration is valid only for the individual submitting the application for registration and for the structure named in the application. The registration is not transferable or assignable.

3.1.c. The words, "clinic", "hospital", "nursing home", "personal care home", "residential board and care home", or any other words which suggest a type of facility other than an unlicensed home, shall not be used in the name of the home or in any of the home's advertising. The provider shall notify the director of any change in the name of the home.

3.1.d. A service provider shall operate no more than one legally unlicensed home and shall notify the director if the location of his or her administration of services is changed.

3.1.e. A service provider shall:

3.1.e.1. Provide residents at the time of admission with the name, address and telephone number of the offices of health facility licensure and certification, the state long-term care ombudsman, and adult protective services; and

3.1.e.1. Advise residents both orally and in writing of their right to file a complaint with the aforementioned entities.

3.1.f. Applications for initial registration as a service provider shall be submitted to the West Virginia office of health facility licensure and certification of the department of health and human resources on the form prescribed by the director and shall be signed by the applicant.

3.2 Complaint Investigations.

3.2.a. Any person may register a complaint with the director alleging a violation or violations of this rule by a service provider. The complainant shall state the substance of the complaint and identify the home or building by name or address and the name, if known, of the service provider.

3.2.b. The director has the authority to conduct investigations as necessary, to determine the validity of the complaint and shall notify the service provider of the substance of the complaint at the time of the completion of any investigation.

3.2.c. The director shall have the right of entry into any place where services are provided by a service provider, to determine the number of residents therein and the adequacy of services being provided to them. The director may obtain a search warrant to inspect those premises that the director has reason to believe are being used to provide services. The director shall have access to all parts of the home and grounds, including, but not limited to, all areas of all buildings on the grounds of a home, food supplies, resident medications and resident medical records. The director shall be permitted to conduct private interviews with all residents and staff of a home.

3.2.d. The director shall issue to the service provider directed plans of correction for the deficiencies identified, which specify time frame for correction and any disciplinary action to be taken by the director.

3.2.e. The names of the complainant and of any resident named in the complaint shall be kept confidential and shall not be disclosed to the public without written permission of the complainant and the resident or the resident's legal representative. 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.

3.2.f. If a resident of a legally unlicensed home administered by a service provider files a complaint with the director, or if a complaint is so filed on his or her behalf, his or her receipt of any type of discriminatory treatment within one hundred twenty (120) days of the filing, shall raise a rebuttable presumption that such treatment was taken by or under the administration of such service provider in retaliation for such complaint.

3.2.g. If after investigating a complaint, the director determines that the complaint is substantiated and that an immediate and serious threat to a resident's health or safety exists, the director may petition the circuit court for an injunction, order of abatement or other appropriate action or proceeding in order to: close the home; transfer residents in the home to other facilities; or where there is need, appoint temporary management to oversee the operation of the home and assure the health, safety, welfare and rights of the home's residents. Any home aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in WV Code § 16-5C-12.

3.2.h. If, after an investigation, the director determines that the complaint has merit, he or she shall advise any injured party of the possibility of a civil remedy. In addition, residents, residents' families or legal representatives or ombudsmen may also pursue independently in court remedies for violations of this rule.

3.2.i. If a service provider who is found to have violated one (1) or more requirements of this rule during a complaint investigation fails to correct the violations within one hundred twenty (120) days of the completion of the investigation, the director shall report to the Social Security Administration the service provider's lack of compliance with this rule and the address or addresses of the homes administered by the service provider. The director shall also provide all residents with a list of licensed health care facilities and state agencies to assist them with moving.

3.2.j. Failure to correct deficiencies in accordance with the directed plan of corrections may result in closure of the home, if the director so orders.

§ 64-50-4. Administration of the Legally Unlicensed Home.

4.1. In administering an unlicensed home, a service provider shall assure compliance of the home with this rule and any applicable state and local laws and rules.

4.2. The service provider or a responsible individual shall be available for resident assistance in the home at all times.

4.3. Any information pertaining to residents shall be retained at the home in a secure area and shall be made available for inspection by the director's duly authorized representative.

4.4. In an unlicensed home administered by a service provider, the service provider, household members, exclusive of residents, and all care givers shall have a personal history which is free of: evidence of abuse, neglect, 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 conviction of crimes relevant for the provision of care to a dependent population as evidenced by a background check of the WV state police central abuse registry.

§ 64-50-5. Physical Environment Requirements.

5.1. The unlicensed home shall have electric power and have hot and cold running water adequate to meet the needs of the residents, household members and employees.

5.2. Services utilizing equipment which requires auxiliary electrical power shall not be used unless the home has a backup power generator.

5.3. The interior, exterior and grounds of the home shall be maintained in a clean, safe and sanitary condition, and the home shall be in good repair.

5.3. No smoking or open flames shall be allowed in a room where oxygen is being used or stored.

5.4. A separate bed shall be provided for each resident, for their own use, in a bedroom.

§ 64-50-6. Nutrition Requirements.

6.1. Each resident shall be offered at least three (3) meals daily, seven (7) days a week and special diets and snacks that provide nutrients and calories to meet resident needs and choices and to maintain their normal weight.

6.2. Therapeutic or modified diets, as recommended by the resident's physician, shall be prepared according to written instructions obtained from the resident's physician or dietitian.

§ 64-50- 7. Requirements related to the Provision of Limited and Intermittent Nursing.

7.1. The service provider shall arrange for a registered professional nurse to supervise limited and intermittent nursing care to residents needing such care.

7.2. Residents may require limited and intermittent nursing care but shall not require extensive or ongoing nursing care.

7.3. The service provider 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 supervision for the limited and intermittent nursing care provided to the residents.

7.4. The service provider shall implement, within reasonable expectation, the recommendations of the registered nurse regarding limited and intermittent nursing care and staff training intended to protect the residents requiring such care.

7.5. The service provider 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. No medication, diet, medical procedure or treatment shall be started, changed or discontinued by the service provider without an order by a lawfully authorized health care professional.

§ 64-50-8. Medication Administration Requirements.

8.1. The service provider shall make provisions for the administration or self-administration of medicines and drugs according to physician orders in compliance with applicable state laws.

8.2. 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. All medications shall be kept in their original labeled containers and shall be labeled in accordance with the rules of the West Virginia board of pharmacy and in a manner that the name and strength of medication, manufacturer name, lot number, and expiration date can be readily identified.

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

§ 64-50-9. Protective and Personal Care Requirements.

9.1. The service provider shall provide the residents with personal services to meet their needs, including but not limited to: self-administration of medically prescribed drugs and treatments; any planned diet, rest or activity regimen; functional equipment (e.g. hearing aides,

glasses, canes); and activities of daily living.

9.2. Residents who are incapable of self-preservation shall only be housed on a floor that has direct ground level egress through a door to the outside.

9.3. 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 or others in the home until 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.

9.4. Any deviation from the resident's normal appearance, state of health or well-being shall be reported to the resident's family, legal representative and physician. A major incident or significant change in the resident's condition shall be promptly reported to his or her physician.

§ 64-50-10. Treatment.

10.1. Residents shall be treated with respect and dignity and retain their rights protected by the state of West Virginia and the United States.

10.2. 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 do so in a manner consistent with all applicable state and federal laws.

10.3. No resident shall be restrained, or experience interference, coercion, discrimination, or reprisal from the service provider or those under his or her influence for exercising his or her rights.

10.4. Residents have the right to voice grievances with respect to treatment or care furnished without discrimination or reprisal for voicing the grievance.

10.5. A resident has the right to receive visitors. Relatives and members of the clergy are permitted to visit at any time with the consent of the resident. Any entity or individual that provides health, social, legal or other services to a resident shall be permitted access to the resident subject to the resident's right to deny or withdraw consent at any time.

10.6. 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.

10.7. The resident has the right to participate in planning his or her overall care, to utilize the physician of his or her choice, and to be fully informed in advance about care and treatment that may affect him or herself.

§ 64-50-11. Penalties.

11.1. Any service provider who fails to register with the director shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred (500) dollars or more than twenty-five hundred (2,500) dollars or imprisoned in jail not less than ten (10) days, or more than thirty (30) days after notice by certified mail by the director to such service provider of the requirements of this rule.

11.2. Any person who interferes with or impedes in any way the lawful enforcement of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred (500) dollars or more than twenty-five hundred (2,500) dollars or imprisoned in the jail not less than ten (10) days, nor more than thirty (30) days.

11.3. If after investigating a complaint, the director determines that the home is housing more than three residents, the director shall assess a civil penalty of fifty (50) dollars for each resident exceeding three (3). Each day the violation continues after the date of citation shall constitute a separate violation. The date of citation is the date the facility receives the written statement of deficiencies.

11.4. The director may in his or her discretion bring an action to enforce compliance with the provisions of WV Code §16-5E-1 et seq. and this rule.

11.5. The circuit court of Kanawha County or the circuit court of the county in which the conduct occurred shall have jurisdiction in all civil enforcement actions brought under WV Code §16-5E-1 et seq. and this rule and may order equitable relief without bond.

§64-50-12. Administrative Due Process.

12.1. Administrative due process and remedies for actions taken under this rule, are as provided in the division of health procedural rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1 and Articles 4 and 5 of the State Administrative Procedures Act, WV Code Chapter 29A.