

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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FILED
AUG 3 4 53 PM '98
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

Division of Health

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

CITE AUTHORITY W. Va. Code §§16-1-7 and 16-5E-1a(a)

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

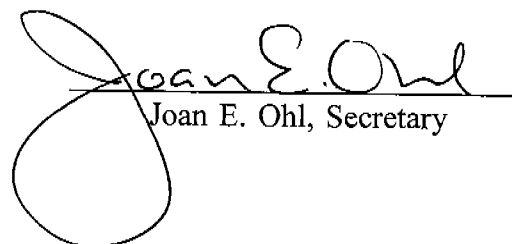
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 50

TITLE OF RULE BEING PROPOSED: Legally Unlicensed Health Care Homes

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


Joan E. Ohl, Secretary

\$13.20

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: July 27, 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: Medication Administration by Unlicensed Personnel,

64 CSR 60

1. Authorizing statute(s) citation: WV Code §§ 16-50-11 & 16-1-7

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

May 26, 1998

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

Notice of availability of the proposed rule was sent to the health care providers listed in the "facility" definition of the proposed rule, including residential board and care homes, personal care homes, behavioral health group homes, intermediate care facilities for the mentally retarded and home health agencies. The Department's Office of Social Services was provided written notice of availability of the proposed rule for distribution to their adult family care homes as applicable.

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

June 30, 1998

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

Attached Yes No comments received _____

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

August 3, 1998

- 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

Bldg. 3, 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 Beauchamp, Surveyor (304) 558-0607

Office of Health Facility Licensure & Certification

Bureau for Public Health, Department of Health and Human Resources

Building 3, Room 550, Capitol Complex, Charleston, West Virginia 25305

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

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.

TITLE 64

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

**SERIES 50
LEGALLY UNLICENSED HEALTH CARE HOMES**

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

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

**SERIES 50
LEGALLY UNLICENSED HEALTH CARE HOMES**

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

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 does not apply to adult family care providers approved and monitored by the department of health and human resources' office of social services. 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

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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,

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.

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within the limits of the applicable statute and appointing authority; and

2.5.i. An individual who has no financial ties to the legally unlicensed health care 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 within the degree of consanguinity of second cousin. These residents may be dependent upon the 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

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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 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

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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

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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.

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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. In addition, a chair, reading light and appropriate clothing space shall be available in the home for each resident.

§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.

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§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.

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§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; access to their 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 and documented in the resident's record.

§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. The service provider or any individual who has financial ties to the legally unlicensed health care home shall not serve as any resident's legal representative.

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.

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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.

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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.

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.

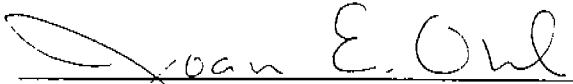
C. Impact on Citizens/Public at Large.

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

64 CSR 50

LEGALLY UNLICENSED HEALTH CARE HOMES

Commenters

1. Tilda J. Bolin, Adult Family Care Provider
2. Dellest Nelson, Adult Family Care Provider
3. Loretta Adkins, Adult Family Care Provider
4. Nettie Tomblin, Adult Family Care Provider
5. Beverly Browning, Adult Family Care Provider
6. Phyllis Pack, Adult Family Care Provider
7. Patricia Smith-Adkins, Adult Family Care Provider
8. Linda Gros lup, Adult Family Care Provider
9. Artina Pauley, Adult Family Care Provider
10. Della Walls, Adult Family Care Provider
11. Versa M. Workman, Adult Family Care Provider
12. Demi Paulsen, Adult Family Care Provider
13. Mable Loftis, Adult Family Care Provider
14. Patsy Johnson, Adult Family Care Provider
15. Helen G. Parsons, Adult Family Care Provider
16. Jean Lowe, Adult Family Care Provider
17. Sarah Meeks, Adult Family Care Provider
18. Janet Cooper, Adult Family Care Provider
19. Freda Smith, Adult Family Care Provider

20. Rona Adkins, Adult Family Care Provider
21. Mary L. Johnson, Adult Family Care Provider
22. Carol Smith, Adult Family Care Provider
23. Helen Parsons, Adult Family Care Provider
24. Myrtle Dalton, Adult Family Care Provider
25. Winford Dalton, Adult Family Care Provider
26. Nettie Meeks, Adult Family Care Provider
27. Herma Nelson, Adult Family Care Provider
28. Cora Brunty, Adult Family Care Provider
29. Kathy Cooper, Adult Family Care Provider
30. Vonetta Meeks, Greg Meeks, Thelma Toney, Francis Toney, Adult Family Care Providers
31. Virgie Meeks, Eddie Marks, Delsie Vance, Adult Family Care Providers
32. Susan Meeks, Wornie Meeks, May Browning, Adult Family Care Providers
33. Roy Herzbach, Ombudsman Surveyor

**Responses to Comments
and
Changes Made as a Result of the Public Comment Period**

General comment: Concern was raised by approximately thirty Adult Family Care providers that they are being classified as health care workers by this rule.

Response: Adult Family Care providers approved and monitored by Department of Health and Human Resources are not affected by this rule. Therefore, this will be addressed in the "Scope" of this rule to indicate the rule does not apply to Adult Family Care providers.

General comment: Recommend that there be language requiring both the posting of house rules, as well as, the provision that the home will provide the resident and/or their legal representative on admission with the house rules, procedures for making medical appointments, and the home's policy regarding room changes, retention during temporary illness or a significant change in resident status, transfers and discharges and the resident's and the home's transfer and discharge notification responsibilities.

Response: Requirements for house rules and policies and procedures exceed the mandate of the law to develop a rule to ensure the minimum health, safety and welfare standards.

Comments: Recommend the following language, at a minimum, be added to a new section dealing with Resident Rights.

1. Residents have the right to be free to leave the home.
2. The resident shall not be compelled to retire at night or arise in the morning at the same set time.
3. The resident has the right to have access to a telephone.
4. The resident has a right to send and promptly receive unopened mail..
5. The resident has the right to choose his or her own physician and pharmacist.
6. The resident has the right to refuse to perform services for the home.
7. 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. The resident has the right to privacy when personal assistance is being provided.

Response: These issues can be addressed under §10.1. in the Treatment section.

§2.5.i. Comments: “An individual who has no financial ties to the legally unlicensed health care home” does not constitute a legal representative. I think the intent of this section is to say a Legal Representative cannot have a financial tie to the Legally Unlicensed Health Care Home. I agree with the premise only that it needs to be included in the text of the Regs and not in the definition section.

Response: Agree. The wording in this definition is being changed to say “and” instead of “or”. In addition, wording will be added to §10.2. stating “The service provider or any individual who has financial ties to the legally unlicensed health care home shall not serve as any resident’s legal representative.”

§2.6. Comments: If read literally it would exclude a person for caring for a friend who was staying at their home who, for example, was recuperating from an illness or injury. Especially where there is no compensation involved this would seem to go against “common sense.”

Response: This would not exclude providing care to a friend. The friend can be included in the census of the home if it is the care giver’s home. If care was being provided in the individual’s home this rule would not apply.

§2.6. A line was inadvertently omitted from this definition. After the word “marriage”, on the fourth line, the wording “within the degree of consanguinity of second cousin. These residents may be dependent upon the” will be inserted.

§3.1.d. Comments: Could a husband and wife operate two homes, one in each of their names?

Response: Yes, if the homes are in separate locations, each spouse limits their administrative responsibilities to a single home, and the homes are operated as separate entities with separate staff.

§5.4. Comments: Need to set minimum spatial requirements. I suggest language from Board and Care Regs. requiring 80 square feet for a single bedroom and 60 square feet per resident if the bedroom has two or three residents.

Response: While this would be a preferable standard, it exceeds the mandate of the law to develop minimum standards for resident health, safety and welfare.

Comments: Section Physical Environment Requirements: Add each bedroom will have to have, at a minimum, a separate chest of drawers, a chair, and a reading light for each resident. In addition, the room will have adequate closet space for the residents to store their clothes.

Response: While these items may not fit in a resident's bedroom, they should be available to the resident in the home. Language will be added to §5.4. to state "In addition, a chair, reading light and appropriate clothing storage space shall be available in the home for each resident."

§6.1. Comments: Add a substitute meal will be available to residents.

Response: The language already addresses providing nutrients and calories to meet residents' needs and choices.

§7.2. Comments: Add what the role of provider will be if the resident is no longer appropriate for the home. I recommend incorporating similar language from §5.7 of the 1997 Residential Board and Care Regs-(Discharge Procedures) into these Regs.

Response: This would be addressed in a directed plan of corrections should this situation arise.

§9.1. Comments: Are providers required under this section to absorb the cost to meet "the resident's needs" in the area of functional equipment? Examples given are hearing aides, canes and glasses. This section needs clearer language.

Response: No. The language states "provide with personal services" to meet residents' needs. This does not mean purchase their functional equipment. The language will be altered to state "access to their" functional equipment.

§9.3. Comments: What constitutes "trained staff" for purposes of the use of restraints. The improper use of restraints can have dire consequences and quality training is a necessity.

Response: Evidence of training would be correct application in accordance with the manufacturer's directions and this rule.

§9.4. Comments: Add a "resident file shall be maintained where such incidents are recorded."

Response: Agree that incidents should be recorded in the record. The language will be altered to add "and documented in the resident record." to the last sentence of this requirement.

§10.2. Wording will be added stating "The service provider or any individual who has financial ties to the legally unlicensed health care home shall not serve as any resident's legal representative."

§10-10.5 & 10.6. Comments: Do not seem to fall under the general heading of Treatment.

Response: Disagree. These are "treatment" issues.

§10.3. Comments: Should read "no resident shall be restrained (except as provided for by §9.3 of this rule), or experience interference..."

Response: Disagree. No resident should be restrained for exercising their rights.

§11.3 Comments: This section creates a potential problem which could have harmful results because the provider would want, in all probability, to avoid paying a continued fine. It is likely they will "discharge" residents in an expedited manner. This could easily lead to a resident being placed in an improper setting where their needs might not be met. I agree that providers who violate the Regs. should be assessed a penalty, but there needs to be protections to make sure there is a safe and orderly transfer for residents who will be leaving the out-of-compliance home.

Response: This would be addressed in a directed plan of corrections to the facility.

LEGAL AID SOCIETY OF CHARLESTON

LONG-TERM CARE OMBUDSMAN PROGRAM

922 Quarrier St., 4th Floor Charleston, WV 25301
(304) 343-4481 ext. 35 1-800-834-0598
FAX (304) 345-5934

July 21, 1998

REGION I

YWCA
1100 Chapline Street
Wheeling, WV 26003
233-6331

REGION I

P.O. Box 1865
Parkersburg, WV 26101
295-3339

REGION II

Legal Aid Society of
Charleston
922 Quarrier St., 4th Floor
Charleston, WV 25301
343-4481 ext. 31

REGION II

APPALRED
910 Fourth Ave., Suite 301
Huntington, WV 25701
522-1901

REGION III

P.O. Box 546
Keyser, WV 26726
788-6770

REGION III

1988 Listravia Avenue
Morgantown, WV 26505
296-0985

REGION IV

P.O. Box 2985
Elkins, WV 26241
636-4463

REGION IV

APPALRED
1428 Main Street
Princeton, WV 24740
425-9138

Sponsored by: Bureau of
Senior Services



Marsha Dadisman - Acting Director
Regulatory Department
Department of Health & Human Services
Capitol Complex - Building 3, Room 265
Charleston, WV 25305

Dear Ms. Dadisman:

I am writing to comment on proposed Legislative Rule § 16-1.7 and 16-5E-1a(a) - Legally Unlicensed Health Care Homes. I appreciate the opportunity to provide feedback.

§ 2-5(1) - Legal Representative: "An individual who has no financial ties to the legally unlicensed health care home" does not constitute a Legal Representative.

I think the intent of this section is to say a Legal Representative cannot have a financial tie to the Legally Unlicensed Health Care Home." I agree with the premise only that it needs to be included in the text of the Regs and not in the definition section.

§ 2-6 - If read literally it would exclude a person for caring for a friend who was staying at their home who, for example, was recuperating from an illness or injury. Especially where there is no compensation involved this would seem to go against "common sense."

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Marsha Dadisman - Acting Director
July 21, 1998
Page 2

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In addition to sections mentioned, I would recommend the following language, at a minimum, be added to a new section dealing with Resident Rights.

- 1). Residents have the right to be free to leave the home.

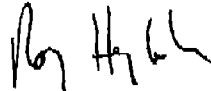
Marsha Dadisman - Acting Director
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In addition, I recommend that there be language requiring both the posting of house rules, as well as, the provision that the home will provide the resident and/or their legal representative on admission with the house rules, procedures for making medical appointments, and the home's policy regarding room changes, retention during temporary illness or a significant change in resident status, transfers and discharges and the resident's and the home's transfer and discharge notification responsibilities.

If you have any questions related to this matter, please do not hesitate to contact me.

Very truly yours,



Roy Herzbach
Ombudsman Supervisor

RH:cm

To whom it may concern: This is an important letter concerning House Bill's # 50 and # 60.

As an Adult Family Care Provider, I am deeply concerned about the proposed changes in the laws concerning health care workers. Certain legislative changes are trying to reclassify AFC providers as health care workers.

While we have nothing against health care workers, we do have problems with the reclassification because it will decimate the AFC home provider program. Most of the AFC providers are women of middle age or older who have opened their homes after the children have left to give the mentally impaired a place to stay rather than have them shipped off to state hospitals. Our homes are family-oriented and we have taken in these people because they need homes and not because they need health care. Many of the women involved in this occupation are unable to compete on the job market, but have solid skills as homemakers and provide the client with an environment of caring and understanding they can not get in a hospital or health care facility.

Most patients do not need nursing care and most are able to take their medication with some supervision.

Many of the rules the Legislature seeks to have enforced are already enforced by the Department of Health and Human Resources. We do not advertise for clients, as most hospitals do. We receive our new family members from the Department of Health and Human Resources.

One of the bills being considered forces the home provider to provide hearing aids, eye glasses and canes without specifying how these medical aids will be paid for. The legislation replies that the provider will be financially responsible, but providers are paid \$525 per month. Hearing aids cost nearly \$1,000 a piece and glasses are rarely found for less than \$200.

We AFC providers provide a loving, compassionate home for clients and we do not wish to be lumped in as health care providers. When a nurse's day is over, she goes home as do most health care workers. We simply stay home and care for our new family members.

As I said before, such changes would force many to leave the profession because such changes would make AFC providing economically unfeasible. It would force many who are coping well in AFC homes back into hospitals and that is more expensive for the state. Most of the AFC providers are women who are in their 40's, 50's and 60's. Most of today's young people would not opt to take care of people for 24 hours a day for \$525 a month, and most do not care to stay home that often.

Please remember that the disabled of the state need our care and please remember to make provisions that will protect homes that are currently in operation. Also remember that some of you have family members that may need, or are already receiving care in homes like ours.

RECEIVED

NURSING ASSISTANT TRAINING

AND JUL 21 1998

COMPETENCY EVALUATION
PROGRAM

Sincerely,

Linda J. Berlin

P.O. Box 44

West Hamlin WVa 25371

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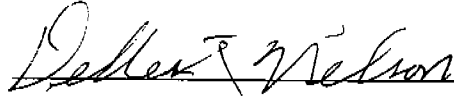
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Sincerely,

Loretta Adkins
RR-1, Box 12
West Hamlin, WV, 25591

I am Mary Johnson's daughter & live next door to her and I sit with her clients sometime. they get the best of care and plenty of love and attention from our family. this bill would only hurt a lot of people. thank you

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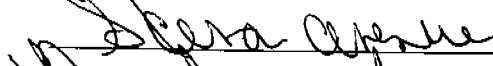
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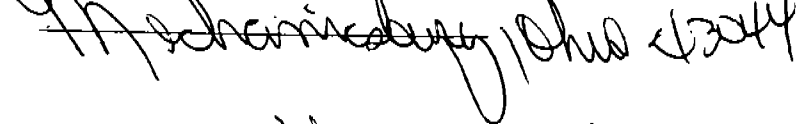
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A daughter of a AFC worker. These Bill Den
Unfair to people who have been doing the work
for many years.

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Sincerely,

Beverly Bauman
P.O. Box 334
West Henri, WV 25571

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Sincerely,

Phyllis Pack
RT 3 Box 256
Branch Island WVA
25506

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Sincerely,

Patricia Smith-Adkins
Rt 3 Box 258
Branchland WV 25306

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Sincerely,

Judy Crosby
Judy Crosby
RTA, Box 128
Branchland WV
25506

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Sincerely,

Antonia Pawley
Box 186 - Laurel Park R.D.
Sumner WA 25567

I Enjoy my work Keeping People in my Home but I Sure don't get Enough Pay for my work. They are my family and my home is this Home. Please help us to get a Rate we deserve it thank you

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Sincerely,

Hella Walls
PO Box 5-29
West Vash
WA 25-5-71

I Hella Wall have had clients in my home ~~some~~ for 20 years. I'm doing everything a nursing home does, plus running them to the doctor. so I don't feel like your doing any service for us you are degrading us.

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Sincerely,

Janet M. Wintman
P.O. Box 15 Hummelia
25523
7-15-98

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Sincerely,

Demi Paulsen
R2 Box 277
Wards Wn

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Mable Satter
26 Laurel Fork RD
Sumner WV 25567

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for all i do for them

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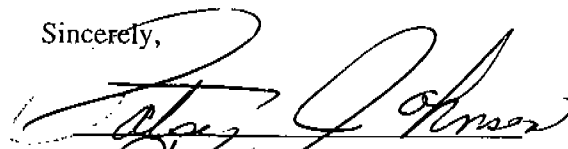
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AT 304292
William W. W. W.

25571

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Sincerely,

Jean Lowe
PO Box 598
West Hedden WV 25571

I Jean Lowe have had clients in my home for 12 yrs. I keep them for the small amount of money the State Pays. So if the bill goes thru you have up in will be a disgrace to the Adult family care providers

Thank you

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Sarah Maska
PO Box 174
Warto Wisc 28524

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Janet Cooper
13 Circle Dr
W. Hamden WVA 25571

304-824-7364

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Sincerely,

Fred Smith
Rt 3 Box 259
Branchland, WV 25506

304-778-2085

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Sincerely,

Tom M. Galkins
362 Long Branch Rd
Branchland, W Va 25506
Phn # (804) 824-3569

*Due to the amount of care we provide for our clients
I believe and know for certain we deserve to receive ~~more~~ more
money for these services.*

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Sincerely,

Mary L Johnson
RR-1 - Box 12
West Hamlin, WV. 25571

I have had twenty one years of experience at taking care of the sick & elderly, and all prescriptions come with complete directions & side effects possible. I attend training sessions whenever we have them. I am perfectly qualified to take care of clients. We do not make enough money to be classified health care workers. This new law would force many providers to close their homes and force clients into nursing homes & mental institutions and ultimately cost our state more money.

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Sincerely,

Carol Smith

503 Rachel Ave

Branchland, WV 25506

11

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Sincerely,

Helen Parsons
Box 13
West Harrison MO
25571

I Helen Parsons have been keeping clients in my home since 72. I keep them for a small amount of pay from the state. So if this bill passes you are doing unjust to me.

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Sincerely,

Yvonne Dalton
R.R. 2 Box 281
North, W. Va. 25524

*We ask that
these house bills be move from Client
to Providers*

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RRF-2 Box 281

Hart, WA 25524

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Sincerely,



Robert W. Adams 374

We ask that these house Bills be
more fair to providers + to the clients

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Deanna Nelson
193. Box 187
Bronckland W.V. 25506

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Rt 3 Box 487
Blairsville GA
25506

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Rt 3 Box 256
Branchland WV 25506

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Veretta Meeks

Dreg Meeks

Thelma Jones

Frankie Tony

i would like to just ad to this letter a few words
i bin in this busnis 28 years it is verry
hard work but it help the hosales and me
to take my job and give it to some one
else he is all ready got job would
sure not be fall we think you please study
on this

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Virgie Meeks
Eddie Meeks
Doris Vance

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