

**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, Department of Health & 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

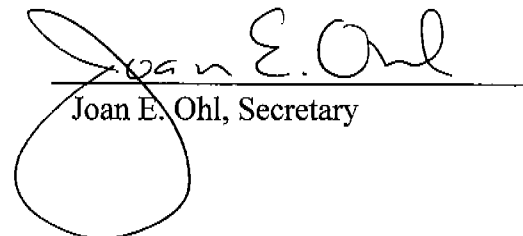
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 50

TITLE OF RULE BEING PROPOSED: Legally Unlicensed Health Care Homes

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.


Joan E. Ohl, Secretary

4.60

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

**SERIES 50
LEGALLY UNLICENSED HEALTH CARE HOMES**

**MODIFIED PROPOSED RULE
AFTER REVIEW BY THE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

64CSR50

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

**SERIES 50
LEGALLY UNLICENSED HEALTH CARE HOMES**

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TITLE 64
LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

FILED
DEC 23 2 24 PM '98
OFFICE OF THE CLERK OF THE 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 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 shall 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 those 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

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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;

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;

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);

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;

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;

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;

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; and

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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2.5.i. 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 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

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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. A person administering an unlicensed home shall register with the director as a service provider.

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:

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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 those offices.

3.1.f. Applicants for initial registration as a service provider shall complete and sign a form provided by the director and submit the form to the office of health facility licensure and certification of the West Virginia department of health and human resources.

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 may 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 issue to the service provider directed plans of correction for the deficiencies identified by any investigation or inspection, which specify time frame for correction and any disciplinary action to be taken by the director.

3.2.d. The director shall keep confidential the names of complainants and residents named in complaints unless written permission is granted by the complainant to disclose his or her name and unless written permission is granted by the resident or his or her legal representative to disclose the resident's name. 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.e. If a resident of a legally unlicensed home administered by a service provider files a complaint with the director, or if a complaint is 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, raises a rebuttable presumption that the treatment was taken by or under the administration of the service provider in retaliation for such complaint.

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3.2.f. 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.g. 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 of the home 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.h. The director may order the closure of a home for failure to correct deficiencies in accordance with the directed plan of corrections.

§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. The director shall be provided access to the information during an inspection.

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

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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 the resident's needs and choices and to maintain his or her 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.

6.3. The service provider shall maintain a daily record of actual foods served for each meal. Meal content shall be varied.

§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 that type of care.

7.2. A service provider shall not accept as a resident a person who is in need of extensive or ongoing nursing care and shall arrange for the transfer to an appropriate health care facility of a resident needing that type of 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 that type of care.

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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; 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 may be used only if all the following conditions are present:

9.3.a. The restraints are used under a physician's order;

9.3.b. The restraints are used in an emergency for the safety of the resident or others;

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9.3.c. The restraints are applied only by staff who have been trained in their use;

9.3.d. The restraints are cloth vests or soft belts;

9.3.e. The restraints are released every two (2) hours for at least ten (10) minutes;

9.3.f. Professional help is called; and

9.3.f. The restraints are only used until professional help arrives, in no case exceeding twenty-four (24) hours.

9.4. A resident's family, legal representative and physician shall be notified of any deviation from the resident's normal appearance, state of health or well-being. A resident's physician shall be notified of any major incident or significant change in the resident's condition, and the change shall be 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 service provider shall afford the legal representative full opportunity to exercise the authority. If the appointed or designated legal representative 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.

10.5. A resident has the right to receive visitors. Relatives and members of the clergy are may 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.

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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 her.

§64-50-11. Penalties.

11.1. Penalties are as provided in WV Code §16-5E-6.

§64-50-12. Administrative Due Process.

12.1. Administrative due process and remedies for actions taken under this rule, are set forth 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.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Health

Subject: Legally Unlicensed Health Care Homes, 64CSR50

PERTINENT DATES

Filed for public comment: June 22, 1998
Public comment period ended: July 22, 1998
Filed following public comment period: August 3, 1998
Filed LRMRC: August 3, 1998
Filed as emergency:

Fiscal Impact: None

OFFICE OF THE CLERK
SECRETARY OF STATE
GEORGIA

DEC 29 10 AM '98

FILED

ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 requires service providers to be licensed and permits them to only operate one legally unlicensed home.

It provides for the registering of complaints and allows the Director to conduct necessary investigations and inspect the home. It requires the Director to issue to the service provider directed plans of correction for identified deficiencies, with a time frame for correction and any pending disciplinary action. It requires the Director to notify the Social Security Administration when a service provider fails to correct a violation within 120 days of completion of the investigation.

Section 4 requires a service provider to assure that the home complies with all applicable laws and rules and to be available or have a responsible individual available at all times for resident assistance in the home.

Section 5 sets forth physical requirements for the home.

Section 6 sets forth nutrition requirements for the residents.

Section 7 requires the service provider to arrange for a RN to supervise limited and intermittent nursing care to residents who need that type of care.

Section 8 requires the service provider to make provision for the administration or self-administration of medicines and drugs according to a physician's order and in compliance with applicable laws.

Section 9 requires the service provider to provide residents with the personal services to meet their need. It limits the use of physical restraints to emergencies.

Section 10 sets forth rights of the patient, including the right to have visitors, to receive information from agencies acting as client advocates and to participate in the planning of his or her care.

Section 11 sets forth the penalties from the Code.

Section 12 references the appropriate procedural rule for administrative due process.

AUTHORITY

Statutory authority: W.Va. Code, §16-1-7 & 16-5E-1a, which provide, in part, as follows:

§16-1-7.

The secretary of the department of health and human resources shall have the power to promulgate such rules and regulations, in accordance with the provisions of chapter twenty-nine-a of the code, as are necessary and proper to effectuate the purposes of this chapter and prevent the circumvention and evasion thereof:

§16-5E-1a.

In the administration of this article, the director shall have the following powers, duties and rights:

(a) To promulgate and enforce rules governing complaint investigations within the homes of legally unlicensed health care providers registered under this article...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.



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Dec 21 2 09 PM '98

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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*Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel*

December 15, 1998

*Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant*

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Marsha Dadisman
Health & Human Resources
Capitol Complex
Building 3, Room 265

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Legally Unlicensed Health Care Homes, 64CSR50**

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.



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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December 15, 1998

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Kathy Bauchamp
Residential Program Manager
Capitol Complex
Building 3, Room 550

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Legally Unlicensed Health Care Homes, 64CSR50**

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