WEST VIRGINIA
SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: DHHR-Office of Health Facility Licensure and Certification TITLE NUMBER: 64

CITE AUTHORITY: W. Va. Code § 16-5I

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 54

TITLE OF RULE BEING AMENDED: Hospice Licensure Rule

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

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

Martha Yeager Walker

Authorized Signature

Summary of rule

This rule repeals and replaces the hospice licensure rule with the effective date July 1, 1989. It sets forth the requirements for hospices to be licensed in the state of West Virginia.

Statement of Circumstances which require the proposed rule

The hospice licensure rule has not been update since July 1, 1989. The proposed rule brings the licensing requirements for hospices in line with current practice and current Centers for Medicare and Medicaid Services regulations.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Hospice Licensure Rule

Type of Rule: x Legislative ____ Interpretive ____ Procedural

Agency: **HEALTH AND HUMAN RESOURCES**

Address: **Health and Human Resources**
1 Davis Square, Suite 101
Charleston, WV 25301-1799

Phone Number: **558-1500** Email: anitabarnhouse@wvdhhr.org

Fiscal Note Summary

Summarize in a clear and concise manner what effect this measure will have on costs and revenues of state government.

There is no fiscal impact by this Rule because it is only a replacement for the current Hospice Licensure Rule

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	Fiscal Year		
	2007 Increase/Decrease (use"-")	2008 Increase/Decrease (use"-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services			
Current Expenses			
Repairs and Alterations			
Equipment			
Other			
2. Estimated Total Revenues			

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Memorandum

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date	Agency	Authorized Representative
7/27/07	Department of Health and Human Resources	Martha Yeager Walker
		Martha Yeager Walker Secretary

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: 7/27/07

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(*Agency Name, Address & Phone No.*) Office of Health Facility Licensure and Certification.
Dr. Anita Barnhouse, PMII; Aimee Jackson, Paralegal.
1 Davis Square, Suite 101, Charleston, WV 25301-1799.
558-0050; 558-0687

LEGISLATIVE RULE TITLE:
Hospice Licensure Rule

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

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

   6/27/07.

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

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

   7/27/07 at noon.

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

   Attached X   No comments received ______

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

7/27/07

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

Aimee Jackson, Paralegal, Office of Health Facility Licensure & Certification
1 Davis Square, Suite 101, Charleston, WV 25301-1799. Phone:558-0687. Fax: 558-5607. aimeejackson@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)

Dr. Anita Barnhouse, PMII, 1 Davis Square, Suite 101, Charleston, WV 25301-1799. Phone: 558-0050.

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

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

b. Date of hearing or comment period:

____

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

____

d. Attach findings and determinations and reasons:

Attached ____________________________________

International Code Council
1245 Sunbury Road, Ste. 100
Westerville, OH 43081
tel: 888.icc.safe (422.7233)
fax: 614.890.9712
www.iccsafe.org

July 26, 2007

Dr. Rose Lowther-Berman
John Wilkinson
BPH-Office of Health Facility Licensure and Certification
1 Davis Square, Suite 101
Charleston, WV 25301-1799

Re: 2007 WV 5105 Comments

To all concerned:

Section 13.2.a of the proposed Rule Title 64, Series 54 is in conflict with other codes and standards adopted by West Virginia for fire safety and building construction. It should not be adopted as proposed. By reference, Section 13.2.a requires that Section 4.2 Hospice Facilities of the 2006 edition of the Guidelines for Design and Construction of Health Care Facilities (Guidelines) be adopted without amendment for the construction, equipment, physical facility and related procedural standards in new construction and for additional alterations, renovations or conversions of existing buildings used as an inpatient hospice facility. In turn, Section 4.2 of the 2006 Guidelines adopts by reference a list of rules and regulations which are not in concert with the West Virginia Building and/or Fire Code. For example, the 2006 Guidelines will adopt by reference the 2006 edition of NFPA 101 without amendment; whereas the WV Fire Code did not adopt NFPA 5000 and which is referenced in NFPA 101-06. The WV Fire Code has also adopted other fire safety provisions which are more restrictive than NFPA 101.

While the Guidelines provide many useful planning tools and regulations for hospice facilities the adoption of Section 4.2 in its entirety will require the Office of Health Facility Licensure and Certification to sort through numerous conflicts with other building regulations adopted by West Virginia and rule upon them. This will delay processing of applications for licensure; confuse design professionals and contractors; put operators in a legal quandary and increase cost at each level. This will result in difficulties not addressed or foreseen in the fiscal analysis of the proposed rule.

The reference to the 2006 edition of the Guidelines needs to be closely reconsidered to select those passages which are most useful but are also correlated with the WV codes and current requirements of HHS-CMS.

Very truly yours,

John W. Payne, AIA, NCARB
Regional Manager, Government Relations
International Code Council
Ohio Field Office

1. Comment: The Regional Manager, Government Relations, for the International Code Council requests revision of section 13.2.a. He states that this is in conflict with other codes and standards adopted by West Virginia for fire safety and building construction. He further states that while the Guidelines provide many useful planning tools and regulations for hospice facilities the adoption of section 4.2 in its entirety will require the Office of Health Facility Licensure and Certification to sort through numerous conflicts with other building regulations adopted by West Virginia and rule upon them. This will delay processing of applications for licensure and increase costs.

   Response: Upon consideration, we will add an additional subsection to 13.2 to clarify this issue. It will read as:

   13.2.e. The current State Fire Code as adopted by the State Fire Commission.

   The Office of Health Facility Licensure and Certification sorts through conflicts with regulations frequently, so this should not cause any undue delay in processing applications for licensure, nor should any additional costs be added to a project.

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TITLE 64
LEGISLATIVE RULES
DEPARTMENT OF HEALTH

SERIES 54
HOSPICE LICENSURE RULE

§ 64-54-1. General.

1.1. Scope - This legislative rule establishes general standards and procedures for the licensure of hospice programs in West Virginia.

1.2. Authority. - W. Va. Code §16-5I.

1.3. Filing Date. -

1.4. Effective Date. -

1.5. Repeal of Former Rule. - This legislative rule repeals and replaces Licensure of Hospice Care Programs, West Virginia Department of Health and Human Resources Legislative Rules, 64 CSR 54, effective 1989.

1.6. Applicability - This rule applies to any person, partnership, association or corporation and any local governmental unit or any division, department, board or agency thereof establishing, conducting, managing or operating a hospice. Compliance with the hospice standards in this rule shall be evaluated independently from compliance with other licensure standards. The sharing of staff, space, physical facilities and equipment or other components is permitted only if the requirements of each applicable rule are satisfied in full.

1.7. Enforcement - This rule is enforced by the Secretary of the West Virginia Department of Health and Human Resources or his or her other lawful designee.

1.8. Purpose - The purpose of this rule is to ensure all West Virginia hospices conform to a common set of standards and procedures. All standards and procedures are minimum requirements whereby hospices may be surveyed and evaluated to ensure the health and safety of all patients treated in West Virginia hospices.

§ 64-54-2. Definitions.

2.1. Administrator – A qualified person who possesses education and experience as required by the hospice's governing body. The administrator reports to the governing body and is responsible for the day to day operation of the hospice.

2.2. Department - West Virginia Department of Health and Human Resources.

2.3. Director - The official designated by the Secretary of the West Virginia Department of Health and Human Resources as his or her designee unless otherwise specifically noted. This individual is the Director of the Office of Health Facility Licensure and Certification or his or her designee.

2.4. Emergency Medication Kits - Medication provided in the home that is not routine for the patient and may be required for emergency symptom management.

2.5. Governing Body - The designated persons assuming full legal authority and responsibility for the management of the hospice, the provision of all hospice services, its fiscal operations, and continuous quality assessment and performance improvement.

2.6. Hospice - a coordinated program of home and inpatient care provided under the direction of an identifiable hospice administration which provides palliative and supportive medical and other health services to terminally ill individuals and their families. Hospice utilizes a medically directed interdisciplinary team. A hospice program of care provides care to meet the physical, psychological, social, spiritual and other special needs which are experienced during the final stages of illness and during dying and bereavement.

2.7. Inpatient Hospice Facility - A satellite location of a hospice that provides inpatient services directly at a facility approved by the **Director.**

2.8. NFPA- National Fire Protection Association.

2.9. Restraint - Any medication used to control behavior or to restrict the patient's freedom of movement which is not part of the standard treatment for a patient's medical or psychiatric condition or any physical or mechanical device, material, or equipment attached to the patient's body that he or she cannot easily remove and restricts freedom of movement or normal access to one's body.

2.10. Satellite Location- A state approved location that provides hospice care and services within a portion of the total geographic area served by the hospice provider. The satellite location is part of the hospice and shares the same name, administration, and services in a manner that renders it unnecessary for the satellite location to independently meet this rule.

§ 64-54-3. State Administrative Procedures.

3.1. General Licensure Provisions

3.1.a. A person, partnership, association, corporation, or any governmental unit or any division, department, board or agency thereof may not operate a hospice, satellite location or inpatient facility in the State of West Virginia without first obtaining a license under this rule.

3.1.b. An original or a renewal license shall not be issued under this rule for a project reviewable under W. Va. Code § 16-2D-1, *et seq.*, unless the State Health Planning and Development Agency has issued a determination, after a final conformance review, that the completed project conforms to the terms of the Certificate of Need decision issued for the project. The hospice shall supply evidence of compliance with licensure applications.

3.1.c. A license is valid only for the premises and persons named and described in the application.

3.1.d. A license is not transferable or assignable.

3.1.e. A license is issued to applicants who are in compliance with the conditions of this rule, W. Va. Code § 16-51-1, *et seq*, and the Hospice Conditions of Participation promulgated by the Centers for Medicare and Medicaid Services.

3.1.f. A hospice license is surrendered to the Director:

3.1.f.1. Upon written demand stating the cause for the demand; or

3.1.f.2. In the event the hospice ceases to provide services.

3.1.g. A hospice shall report a proposed change of ownership, including a change in a controlling interest, to the Director a minimum of sixty (60) days prior to the change.

3.1.g.1. A new owner shall immediately apply for a new license.

3.1.g.2. A new owner's application for a license has the effect of a valid license for three (3) months from the date the application is received by the Director.

3.1.h. A license shall state:

3.1.h.1. The specific name of the hospice to which it applies;

3.1.h.2. The date of issuance; and

3.1.h.3. The expiration date.

3.1.i. A hospice name change shall be shown in the next license issued.

3.1.j. The license shall be posted in a conspicuous and public place of the hospice.

3.1.k. Any hospice, satellite location or inpatient facility's advertisement shall contain the legal name provided to the Director at the time of application.

3.1.l. A hospice shall apply and receive notification and approval from the Director before a hospice may operate an inpatient facility, satellite location or any other location.

3.2. Initial License

3.2.a. An applicant shall submit a completed application to the Director, on a form prescribed by the Director, not less than thirty (30) days and not more than ninety (90) days prior to the date proposed for commencement of operation for a hospice office, satellite location or an inpatient facility. A non-refundable fee of one hundred dollars ($100) shall be submitted with the application for the initial license.

3.2.b. A hospice shall identify the following as part of the application:

3.2.b.1. The hospice's operating name, the office location, the mailing address and telephone number;

3.2.b.2. The name and title of its administrator or other contact person;

3.2.b.3. A listing of services the hospice intends to offer either directly or by contractual agreement;

3.2.b.4. Written evidence that the building or part of the building in which the hospice office, satellite location or inpatient facility is to be located is in compliance with applicable local zoning, building and fire safety laws and chapters;

3.2.b.5. The mailing address, phone number and location of each satellite location or inpatient facility;

3.2.b.6. A copy of a valid Certificate of Need or a letter of exemption from the West Virginia Healthcare Authority; and

3.2.b.7. The name, address, principal occupation and official position of all persons who have ownership interest in the hospice or the name, address, principal occupation, and official position of each member of the board of directors, if a corporation.

3.2.c. If, at the initial licensing survey, an agency has more than five (5) violations of any minimum requirements or if any of the violations are determined to be of such a serious nature that they may cause or have the potential to cause harm, the Director shall deny licensing until such time the hospice is found to be in substantial compliance with this rule.

3.2.d. The Director shall issue an initial license only after the Director or his or her designee inspects the hospice or inpatient facility and finds the hospice complies with this rule and W. Va. § 16-5I-1, _et seq._

3.2.e. An initial license issued is valid for a period of one (1) year from the date of issuance.

3.2.f. A satellite location is inspected at the discretion of the Director prior to the issuance of a license.

3.3. Renewal License

3.3.a. An applicant for a renewal license shall submit a completed application to the Director, on a form prescribed by the Director, not less than sixty (60) days and not more than ninety (90) days prior to the scheduled expiration date of the current license. A non-refundable fee of one hundred dollars ($100) is submitted with the license renewal application for a hospice whose yearly caseload exceeds ten (10) or more patients, and fifty dollars ($50) for a hospice whose yearly caseload is fewer than ten (10) patients.

3.3.b. The Director shall issue a renewal license when he or she finds the hospice is determined to be in compliance with this rule and W. Va. 16-5I-1, _et seq_. and the licensee submits a completed application and the correct renewal fee.

3.3.c. A renewal license is valid for a period of one (1) year from the date of issuance.

3.3.d. A renewal license is given to each hospice office, satellite location and inpatient facility.

3.4. Inspections

3.4.a. The Director shall inspect all hospices that are subject to the provisions of this rule and W. Va. Code § 16-5I-1, *et seq.* periodically and at least as often as required by the Centers for Medicare and Medicaid Services in order to determine compliance with the provisions of this rule, W. Va. Code § 16-5I-l, *et seq.* and the Hospice Conditions of Participation promulgated by the Centers for Medicare and Medicaid Services.

3.4.b. The Director shall inspect or investigate a main hospice office, satellite location, inpatient facility or office advertised with the hospice name as he or she considers necessary.

3.4.b.1. The Director shall conduct an unannounced inspection of a hospice, satellite location or inpatient facility. This inspection may include home visits with prior patient consent, interviews with agency staff and family members, reviews of clinical records, environmental and life safety inspections and any other documents necessary for the determination of compliance with this rule.

3.4.c. The Director may enter the premises of any hospice the Director has reason to believe is being operated or maintained as a hospice without a license.

3.4.c 1. If the owner or person in charge of a licensed hospice or of an unlicensed hospice which the Director has reason to believe is being operated as a hospice refuses entry pursuant to this rule, the Director shall petition the Circuit Court of Kanawha County for an inspection warrant.

3.4.c.2. If the Director finds on the basis of the inspection that any person, partnership, association or corporation and any local governmental unit or any division, department, board or agency thereof is operating as a hospice without a license, the hospice shall apply for a license within ten (10) days, in accordance with the provisions of this rule.

3.4.d. A hospice that fails to apply for a license is subject to the penalties established by W. Va. Code § 16-5I, *et seq.*

3.4.e. The Director shall maintain a written report of the inspection on file.

3.4.f. The inspection report shall be sent to the hospice by the Director.

3.4.g. The hospice shall submit to the Director a plan of correction to any violations of this rule or W. Va. Code 16-5I, et-seq,. identified during an inspection of a hospice, satellite location or inpatient facility.

3.5. Complaint Investigation

3.5.a. Any person may register a complaint with the Director alleging violation of applicable laws, rules or requirements by a hospice. The complaint shall state the substance of the complaint, the patient's name if applicable and the hospice involved.

3.5.b. The Director may conduct an unannounced inspection of a hospice, satellite location or inpatient facility to determine the validity of the complaint.

3.5.c. The complainant shall be notified by the Director in writing, that an investigation was conducted.

3.5.d. The hospice shall be notified by the Director in writing of the results of the investigation no later than fifteen (15) working days after completing the investigation.

3.5.d.1. If the complaint is substantiated by the investigation as a violation of this rule or W. Va. Code § 16-5I-1, _et seq._, the Director shall require a plan of correction or may take other action authorized by state law or this rule.

3.6. Plans of Correction

3.6.a. A hospice, satellite location or inpatient facility found to have deficiencies based on an inspection or complaint investigation shall develop a plan of correction and submit it to the Director within ten (10) calendar days of receipt of the inspection report.

3.6.b. A plan of correction shall specify a reasonable time within which a hospice shall correct each deficiency cited in the report and in any case shall be no more than sixty (60) days after the date of the inspection.

3.6.c. The Director shall approve or reject a plan of correction submitted by a hospice. The Director shall notify the hospice within fifteen (15) working days whether a plan of correction has been approved or rejected. If the Director rejects the plan, he or she shall state the reasons for the action. When the Director rejects a plan of correction, the hospice may receive up to ten (10) calendar days for submission of a revised plan.

3.6.d. Upon failure of a hospice to submit an approved plan of correction or to correct any deficiency within the time specified in the approved plan of correction, the Director may initiate action in accordance with W. Va. Code § 16-5I-1, _et seq._

3.7. Availability of Reports

3.7.a. A copy of the inspection report is available from the Director upon written request. A reasonable fee may be charged to cover the cost of research and copying.

3.7.b. The inspection report is treated by the Director as public information from the time a written plan of correction is received and accepted by the Director.

3.7.c. A plan of correction shall be submitted by the hospice within twenty (20) calendar days or the report will be made available to the public.

3.7.d. Nothing contained in this section is construed to require or permit the public disclosure of confidential medical, social, personal or financial records of any patients.

§ 64-54-4. Organization and Management.

4.1. A hospice shall have a governing body that determines, implements and monitors policies governing the hospice's total operation in accordance with established bylaws.

4.1.a. If a hospice is operated by a hospital, nursing home or other type of organization, there shall be an identifiable separate administration which serves the function of the governing body for a hospice program, although a separate ownership or board of directors is not required.

4.1.b. The governing body will meet at least annually to review the hospice total operation including at a minimum:

4.1.b.1. Policy review;

4.1.b.2. Provision and coordination of inpatient care and in home care;

4.1.b.3. The quality assessment and performance improvement committee's reports and actions;

4.1.b.4. And any other reviews necessary to determine adequate care, treatment, health, safety, welfare and comfort of hospice patients .

4.1.c. Annual reviews shall be documented by signed meeting minutes kept at the hospice.

4.2. The governing body shall designate a person who is responsible for the day to day operation of the hospice.

4.2.a. The person designated shall be qualified by education or training as specified in a job description developed by the governing body.

4.2.b. The person designated shall be responsible for the overall supervision of all staff working on behalf of the hospice.

4.2.c. The person designated shall be responsible for the overall development of staff qualifications and shall develop and approve job descriptions for each job classification.

4.2.d. Each job description will designate by job title who is responsible for supervision for all licensed and unlicensed staff providing services to the hospice.

4.3. A current organizational chart which clearly delineates the lines of authority and supervision of all staff shall be developed and maintained by the governing body.

4.4. The hospice shall develop and implement written policies and procedures consistent with this rule.

4.4.a. Policies and procedures shall accurately reflect a description of the hospice's goals, methods by which these goals are sought, and mechanisms by which the hospice care services are delivered.

4.4.b. The clinical policies and procedures shall be reviewed annually by an interdisciplinary team documented by a dated signature.

4.4.c. The policies and procedures shall be revised by the interdisciplinary team as needed.

4.5. Clinical records and business records pertaining to the patient shall be maintained per hospice policy.

4.5.a. The hospice shall establish policies and procedures specifying who may use the records, under what conditions the records are removed from the hospice and under what conditions the information from the records is released.

4.5.b. A hospice that discontinues operation shall inform the Director, in writing, where the clinical and business records are stored and how the records may be accessed.

4.5.c. The hospice shall take measures to ensure the safety of the clinical and business records.

4.5.d. The patient or legal representative has the right to examine their clinical record at reasonable times and shall, upon written request, be provided with a copy or a summary of the clinical record within a reasonable time. A hospice shall comply with other provisions of W. Va. Code § 16-29-1 et seq.

4.6. The patient or legal representative can voice complaints regarding the care or lack of care and services provided by the hospice.

4.6.a. The person designated by the governing body for the day to day operation of the hospice shall be responsible for the complaint process.

4.6.b. The hospice shall designate a person or persons who shall be responsible for reviewing and investigating allegations.

4.6.c. The hospice shall communicate the results of the investigation in writing to the patient or legal representative as soon as possible but no later than 30 days after the receipt of the complaint.

4.6.d. The documentation of the investigation shall be maintained by the hospice.

4.7. The hospice shall have a legally binding contract for any services provided by contract at the hospice.

4.7.a. The contract shall state the services to be provided.

4.7.b. The contract shall state how the hospice will be responsible for the supervision of services.

§ 64-54-5. Provision of care.

5.1. A hospice shall provide services seven days a week, twenty-four hours a day to meet the needs of the patient.

5.2. A hospice shall provide the services described in section 5.6. and 5.7. of this rule to the extent necessary to meet the needs of patients that are reasonable and necessary for the palliation and management

of the terminal illness.

5.3. Services are made available at the patient's place of residence.

5.3.a. Services provided to patients residing at skilled nursing facilities, nursing facilities, intermediate care facilities for the mentally retarded or any other facilities, must meet all the same requirements as any other patient of the hospice and the hospice must have an agreement for services.

5.3.a. The hospice shall retain professional management of hospice care.

5.3.b. The hospice shall ensure continuity of care.

5.3.c. The hospice shall ensure care is provided in accordance with the plan of care.

5.3.d. The hospice shall develop a way to monitor and supervise hospice services in these facilities.

5.4. Services shall be provided in a manner consistent with accepted standards of practice.

5.5. Services shall be provided under the supervision of a hospice Interdisciplinary Team.

5.6. The hospice shall provide the following services at a minimum:

5.6.a. Physician services which shall meet the medical needs of the patients for the palliation and management of the terminal illness. The medical director, hospice physicians and the patient's attending physician are licensed by the West Virginia Board of Medicine or the West Virginia Board of Osteopathy.

5.6.b. Nursing services which shall meet the nursing needs of all patients for the palliation and management of the terminal illness. Each patient shall be under the care of a Registered Nurse, who is licensed by the West Virginia Board of Examiners for Registered Professional Nurses. Licensed Practical Nurses are licensed by the West Virginia State Board of Examiners for Licensed Practical Nurses.

5.6.c. Medical social services which shall meet the needs of the patients for the palliation and management of the terminal illness. The medical social worker will have at least a Bachelor's degree from an accredited Social Work study and be licensed in accordance with the West Virginia Board of Social Work Examiners.

5.6.d. Spiritual care which shall meet the spiritual needs of the patients. Spiritual care is provided under the direction of a person who has received education or training in providing spiritual care.

5.6.e. Bereavement services which are provided up to one year after a patient has died. Bereavement services shall be provided under the direction of a person who has received education or training in bereavement counseling.

5.6.f. Interdisciplinary team services which includes a Physician, Registered Nurse, Social Worker, Counselor and any other services required to meet the

needs of the patient for the palliation and management of the terminal illness.

5.6.g. Nutritional counseling which shall meet the needs of the patients.

5.7. Additional services shall be provided by the hospice as needed for the support and care of hospice patients.

5.7.a. Therapy services shall be provided under the supervision of a Physical Therapist, Occupational Therapist or Speech Pathologist Therapist as needed for the palliation and management of the terminal illness.

5.7.a.1. The Physical Therapist or Physical Therapist Assistant is licensed and supervised in accordance with the West Virginia Board of Physical Therapy.

5.7.a.2. The Occupational Therapist or Certified Occupational Therapy Assistant is licensed and supervised in accordance with the West Virginia Board of Occupational Therapy.

5.7.a.3. The Speech - Language Pathologist is licensed in accordance with the West Virginia Board of Examiners Speech-Language Pathology and Audiology.

5.7.b. Home Health Aides and homemaker services shall be provided to meet the personal care needs of the patient.

5.7.b.1. The Home Health Aide shall be competency evaluated for all duties he or she performs.

5.7.b.2. The Home Health Aide shall be under the supervision of a Registered Nurse. A Registered Nurse shall make an onsite visit to the patient's place of residence no less than every 14 (fourteen) days to assess the home health aide's services. The home health aide does not need to be present during this visit. A Registered Nurse shall make an onsite visit to the patient's place of residence in order to observe and assess each aide while he or she is performing care no less than every 28 (twenty eight) days.

5.7.b.3. The Homemaker shall be under the supervision of the Registered Nurse and shall be supervised directly at the patient's residence by the Registered Nurse every 30 (thirty) days.

5.7.c. Nutritional services shall be provided to meet the dietary needs of the patient. These services shall be under the direction of a person who is qualified by training or education.

5.7.d. Pharmaceutical services shall be provided to meet the patients' needs for palliative care and symptom management. The Pharmacist is licensed in the state in which he or she practices.

5.7.e. Volunteer services shall be provided to meet the patient's needs. The services shall be provided under the direction of a person qualified by training or education.

5.7.f. Respite and Inpatient care shall be provided for symptom management or caregiver relief. The care

shall be provided in a facility licensed by the Office of Health Facility Licensure and Certification.

5.7.g. Continuous care nursing shall be provided on a twenty-four hour basis for palliative care and symptom management at the patient's residence during periods of crisis.

5.7.h. Medical supplies including drugs and biologicals, as needed for the patient's palliation and symptom management, shall be provided by the hospice.

5.8. A hospice program shall provide or arrange a competency evaluation, employee training and continuing education program.

5.8.a. The hospice shall ensure all licensed and unlicensed staff are competent to perform the duties assigned to them.

5.8.b. The orientation and continuing education program for all patient care staff shall contain at a minimum:

5.8.b.1. Orientation and training for new employees to acquaint them with the philosophy, organization, services, practices and goals of the hospice program;

5.8.b.2. The psychological aspects of terminal disease and the hospice's goal in providing palliative care and supportive services;

5.8.b.3. Family dynamics and psychosocial issues surrounding terminal disease, death and bereavement;

5.8.b.4. Communication and documentation skills;

5.8.b.5. Policies and services of the hospice;

5.8.b.6. The role of the plan of care in determining the services to be provided;

5.8.b.7. Ethics, confidentiality of patient information, patient and family rights and grievance procedures; and

5.8.b.8. Additional initial and continued training needed specific to the duties, responsibilities and the competency of the employee.

5.9. A hospice shall admit a patient only on the recommendation of the medical director or physician designee in consultation with the patient's attending physician.

5.10. A patient shall not be denied acceptance to the hospice service based on race, color, national origin, age, sex, religion or ethnicity.

5.11. A patient or legal representative shall be informed in writing at the time of admission and informed again per hospice policy with any changes to the following:

5.11.a The responsibilities of a hospice in regards to the care of the patient, including services to be provided by the hospice and the patient's and caregiver's

role in the care;

5.11.b. The materials and equipment available to the patient and family;

5.11.c. Any existing pre-payment, refund or sliding scale fee policy;

5.11.d. A statement of the patients and families financial responsibility if any;

5.11.e. The phone number of the Office of Health Facility Licensure and Certification with instructions on how to make a complaint; and

5.11.f. Drugs and biologicals for which the patient and the hospice would be responsible. This list shall be updated with each new medication.

5.12. Once a patient has been accepted for care, care shall not be reduced due to the patient's inability to pay for the care unless the following are met:

5.12.a. A list of services is provided to the patient or legal representative detailing what the patient shall be responsible for with the dollar amount of those services; and

5.12.b. A review of the finances and referrals to outside agencies shall determine no further financial assistance is available and the patient or legal representative refused continued services based on this assessment.

5.13. A hospice may discharge a patient if:

5.13.a. The patient moves out of the hospice service area or transfers to another hospice;

5.13.b. A hospice determines the patient no longer meets the terminally ill diagnosis; or

5.13.c. A hospice policy determines justifiable reason for the discharge.

5.14. A hospice shall assist a patient in obtaining necessary follow up care before discharging or transferring the patient and must give the patient at least a 48 hour notice of the pending discharge from hospice services.

5.15. A hospice shall complete a discharge summary to provide important clinical information to health care professionals assuming the care of the patient.

5.15.a. The discharge summary along with pertinent hospice documentation shall be provided to the patient's attending physician.

5.15.b. The discharge summary along with pertinent hospice documentation shall be provided to the agency or facility assuming the patients care.

5.16. A hospice shall supply an itemized statement detailing services provided and charges assessed at no additional cost upon request from the patient or legal representative.

§ 64-54-6. Coordination of care.

6.1. At the time an individual is accepted for care, no later than the second calendar day, a hospice shall obtain documentation from the attending physician and the physician member of the hospice interdisciplinary team or medical director stating the client is terminally ill.

6.1.a. The patient shall be certified to be terminally ill indicating a life expectancy of six (6) months or less or another length of time as determined by the Centers for Medicare and Medicaid Services and designated in federal hospice regulations.

6.1.b. When the written certification is not obtained by both physicians within two (2) calendar days following the initiation of hospice care, a verbal certification shall be obtained and signed by both physicians.

6.1.c. The certification may be completed up to two (2) weeks before hospice care is elected.

6.2. The physician member of the hospice interdisciplinary team or medical director shall document re-certification of the terminal illness at the end of the first ninety (90) days of care and again at the end of the second ninety (90) days of care if the patient remains under the care of the hospice.

6.3. A patient remaining under the care of a hospice for a period of time in excess of six (6) months shall be re-evaluated every sixty (60) days by the physician member of the interdisciplinary team or medical director with respect to the prognosis for life expectancy and shall be considered for transfer to other types of health care providers.

6.3.a. The documentation shall be included in the clinical record and shall be signed by the hospice physician within fourteen (14) days of the re-evaluation assessment.

6.4. A registered nurse shall make an initial assessment evaluation visit to the patient's residence within twenty-four (24) hours after a hospice receives a physician's order for care, unless ordered otherwise by the physician, to determine the patient's immediate care and support needs.

6.5. The medical social worker shall make an initial home visit to assess the patients needs no later than four (4) days after the initial visit by the registered nurse.

6.6. The initial spiritual assessment and documentation of volunteer services shall be conducted within four (4) days after the initial visit.

6.7. All other assessments shall be conducted as soon as possible but no later than five (5) days after the request.

6.8. The interdisciplinary team in consultation with the patient's attending physician shall complete a comprehensive assessment no later than four (4) days after the patient elects the hospice benefit.

6.8.a. The comprehensive assessment shall include an assessment of the patients physical, psychosocial, emotional and spiritual needs and a family bereavement assessment.

6.9. The interdisciplinary team shall develop an interdisciplinary plan of care within seven (7) days of the patient's acceptance into the hospice program.

6.9.a. The plan of care shall contain at a minimum the following:

6.9.a.1. Diagnosis and prognosis;

6.9.a.2. Orders for each service that includes the scope and frequency of visits needed to meet the patient's needs;

6.9.a.3. Orders for medications and treatments;

6.9.a.4. Orders for medical tests; and

6.9.a.5. Any other information needed to meet the needs of the patient for palliation and management of the patient's terminal illness.

6.9.b. The interdisciplinary team shall update the plan of care as frequently as the patients condition requires:

6.9.b.1. But no less than every fourteen (14) days; and

6.9.b.2. At the time of each re-certification.

6.9.c. All personnel representing the scope of services being provided to the patient shall participate in the plan of care.

6.9.d. The patient and family shall be included in the establishment and review of the plan of care.

6.10. When the patient requires an inpatient stay for services related to the hospice diagnosis the hospice shall provide, at a minimum, the written interdisciplinary team plan of care to the facility within twenty- four (24) hours of the patient's transfer.

6.10.a. An inpatient stay for acute symptom management shall:

6.10.a.1. Be in a facility certified and licensed by the Office of Health Facility Licensure and Certification; and

6.10.a.2. Include the hospice ensuring a Registered Nurse is directly available for care of the patient at all times.

6.10.b. Respite care for caregiver relief shall:

6.10.b.1. Be in a facility certified and licensed by the Office of Health Facility Licensure and Certification.

6.10.c. Upon transfer to an inpatient facility the hospice make a visit to the facility to provide instructions and ensure the patient's continuity of care.

6.10.c.1. If the visit to the facility can not be completed on admission then the hospice shall contact the facility with a verbal report to the nursing staff and follow up with a visit within forty-eight (48) hours of the transfer.

6.10.d. The plan of care shall be updated to reflect the change in the patient's status.

6.10.e. The hospice shall continue to make visits as noted in the plan of care to the patient during the inpatient stay to ensure the continuity of care.

§ 64-54-7. Infection Control

7.1. A hospice shall maintain an effective infection control program that protects the patients, families and hospice personnel by preventing and controlling infections and communicable diseases.

7.2. The program includes the implementation of a nationally recognized system of infection control guidelines.

7.3. A hospice shall designate a person or persons responsible for the education and training of all staff in regards to infection control.

§ 64-54-8. Quality Assessment and Performance Improvement

8.1. A hospice shall establish a quality assessment and performance improvement program that ensures quality of care is provided to all patients. The program will monitor, identify and take corrective actions to identified problems.

8.2. The hospice will designate a person or persons responsible for the quality assessment and performance improvement program.

8.3. The designated person or persons of the quality assessment and performance improvement program shall have a written plan for the annual review and evaluation of all hospice care and services.

8.4. The annual review and evaluation shall include a representative of each hospice service offered.

8.5. The annual review shall be sent to the governing body for review.

§ 64-54-9. Volunteer Services

9.1 A hospice shall use volunteers in the provision of care and services under the direction of the interdisciplinary team.

9.2. The hospice shall designate a person or persons responsible for the training, education and supervision of volunteers.

9.3. A hospice shall develop written policies and procedures for volunteers providing care and services.

9.4. A hospice shall document training of volunteers. The training shall contain at a minium:

9.4.a. Volunteer duties and responsibilities;

9.4.b. The person or persons to whom the volunteer reports;

9.4.c. The person or persons to contact if the volunteer needs assistance and instructions regarding the performance of his or her duties and responsibilities;

9.4.d. Confidentiality and

protection of the patient's and family's rights;

9.4.e. Procedures to be followed in an emergency;

9.4.f. Job responsibilities specific to the individual responsibilities;

9.4.g. Instructions on documentation of volunteer hours and documentation of patient contacts; and

9.4.h. Training regarding procedures to follow at the time of a patient death;

9.5. A hospice shall ensure volunteers document patient encounters which are included in the clinical record.

9.6. A hospice shall provide and document a continuing education program for volunteers.

§ 64-54-10. Counseling Services

10.1. A hospice shall designate a person or persons responsible for the delivery and supervision of nutritional counseling, spiritual counseling and bereavement services.

10.2. The hospice program shall provide for delivery of nutritional counseling, spiritual counseling and bereavement services that reflect the patient and family needs and desires and is delivered based on the plan of care.

10.3. Spiritual counseling may be provided through a working arrangement with individual clergy, clergy associations and other religious programs in the community or by clergy employed by the hospice.

10.3.a. The hospice shall maintain documentation of a patient's or family's request for clergy and the delivery of the services.

10.4. Bereavement services shall be provided by a qualified person or persons for a minimum of twelve (12) months after the patient's death as requested. Refusal of bereavement services must be documented.

10.4.a. A bereavement assessment of survivor risk factors shall be completed after a patient's admission to hospice and updated at the patient's death.

10.4.b. The bereavement care plan shall be established for those requesting bereavement care within six (6) weeks after a patient's death.

10.4.c. The bereavement care plan shall contain information about who shall receive bereavement services, how often services are to be provided and what services will be offered.

10.4.c.1. Bereavement services may also extend to residents and employees of a skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded or other facility identified in the bereavement plan of care.

10.4.d. The bereavement care plan shall be updated as needed.

10.4.e. Discharge from bereavement services before the twelve (12)

months expire must be justified and documented.

10.5. Nutritional counseling shall be performed by a qualified individual to address and assure the dietary needs of the patient are met.

§ 64-54-11. Pharmaceutical Services

11.1. All drugs and biologicals shall be administered in accordance with standards of practice by:

11.1.a. Appropriately licensed employees of a hospice; or

11.1.b. The patient and family who have been properly educated on administration of the medications by a licensed employee of the hospice.

11.2. The hospice shall formulate written policies and procedures relative to medications and biologicals in accordance with accepted standards of practice.

11.3. The hospice shall formulate written policies and procedures for the control and accountability of all drugs and biologicals to prevent unauthorized use or distribution.

11.4. The hospice shall formulate written policies and procedures for the use of emergency medication kits left in the patient's home for emergency use.

11.5. If the hospice utilizes emergency kits in the patient's home then the following minium requirements shall be met:

11.5.a. A licensed physician shall order all medications included in the medication kit;

11.5.b. The emergency medication kit shall include a list of the medications with information on each drug included in the emergency medication kit;

11.5.c. The emergency medication kit shall contain only medications needed for palliative care;

11.5.d. A licensed nurse shall assess the emergency medication kit at least weekly, or the next scheduled visit if not weekly, to ensure unauthorized use has not occurred; and

11.5.e. Documentation of the above shall be kept in the patients clinical record.

§ 64-54-12. Inpatient Facility Services

12.1. If a hospice administers an inpatient facility for acute symptom management, respite care or residential care, the provisions of this section apply.

12.2. An inpatient facility shall have a full time administrator. The administrator shall designate an individual who shall act in his or her absence as needed.

12.3. An inpatient facility shall have a full or part time physician to meet the needs of the patient.

12.3.a. A physician, who can be the medical director for the hospice, or designee shall be available on call at all times.

12.4. An inpatient facility shall make reasonable efforts to safeguard personal property and promptly investigate complaints of any loss. At the time of admission, the inpatient facility shall prepare a record of all clothing, personal possessions and money brought by the patient to the inpatient facility. The inpatient facility shall update the record as additional personal property is brought to the inpatient facility.

12.5. If an inpatient facility keeps patient funds, the funds shall be kept in an account separate from the inpatient facility funds. Patient funds shall not be used by the inpatient facility.

12.6. An inpatient facility shall have a policy to admit only patients who:

12.6.a. Have been diagnosed as terminally ill;

12.6.b. Have personally or through a legal representative, in writing, given informed consent to receive hospice care.

12.7. Inpatient facility admissions in excess of the licensed bed capacity are prohibited except when the Director approves an emergency admission.

12.8. If a patient is transferred from in-home hospice care to the inpatient facility then the following shall occur:

12.8.a. The home hospice staff shall contact the inpatient facility with a report including the services to be provided;

12.8.b. The home hospice care shall provide a copy of the interdisciplinary team care plan within twenty-four (24) hours to the inpatient facility;

12.8.c. The home hospice care shall provide significant information to the inpatient facility to ensure continuity of care.

12.9. Nursing requirements.

12.9.a. An inpatient facility shall provide nursing care and services by or under the direct supervision of a Registered Nurse at all times.

12.9.b. An inpatient facility shall have a Registered Nurse on site at all times.

12.9.c. Nursing care and services shall be provided in accordance with the plan of care developed by the interdisciplinary team and as ordered by the physician.

12.9.d. Nursing care, staffing and services shall meet the needs of the patients.

12.9.e. A Registered Nurse shall assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the specialized qualifications and competence of the nursing staff available.

12.9.f. Nursing care and services shall be provided in accordance with recognized standards of practice.

12.10. Pharmaceutical Services

12.10.a. The pharmaceutical services shall be under the direction of a licensed pharmacist.

12.10.b. There shall be a medicine room or drug preparation area of sufficient size for the orderly storage of drugs, both liquid and solid dosage forms, and for the preparation of medications for patient administration within the unit. In the event that a drug cart is used for storage and administration of drugs, the room shall be of sufficient size for storage of the cart without crowding.

12.10.c. An inpatient facility shall develop policies to identify, monitor and track medication errors and adverse drug reactions. The results shall be reported to the quality assurance program.

12.11. Laboratory and Radiological Services.

12.11.a. An inpatient facility shall maintain or have available, whether directly or through a contractual agreement, adequate laboratory and radiological services available to meet the needs of the patients.

12.12. Food and Dietetic Services.

12.12.a. An inpatient facility shall comply with W. Va. Code § 64-17-1, _et seq._

12.12.b. An inpatient facility shall designate a person, either directly or by contractual agreement, to serve as the food and dietetic services manager with responsibility for the daily management of the dietary services.

12.12.c. An inpatient facility that does not provide the services of a certified dietary manager shall, at a minimum, train all employees through the county health departments' food managers training course or a comparable course.

12.12.d. An inpatient facility shall designate a qualified dietitian, either directly or through a contractual agreement, who is responsible for the development and implementation of a nutrition care program to meet the needs of the patients. This dietician is available as needed to assist in nutritional assessment, menu planning, educating staff and evaluating safe food production.

12.12.e. Menus shall meet the needs of the patients. Special diets shall be prepared and served as ordered.

12.12.f. A current therapeutic diet manual approved by the dietitian and medical director shall be readily available to all medical, nursing and food service personnel.

12.12.g. Families shall be allowed to store home cooked food for a patient. This storage shall be readily available. Food brought from home shall not be co-mingled with the food prepared by the hospice for other patients.

12.13. Restraints

12.13.a. A patient has the right to be free from a restraint of any form imposed as a mean of coercion, discipline, convenience or retaliation by staff.

12.13.b. The use of a

restraint shall be:

12.13.b.1. Selected only when less restrictive measures are found ineffective to protect the patient or others from harm;

12.13.b.2. Only used as ordered by the hospice physician or attending physician;

12.13.b.3. Implemented in the least restrictive manner possible not to interfere with the palliative care being provided;

12.13.b.4. In accordance with safe and appropriate restraining practices; and

12.13.b.5. Ended at the earliest possible time.

12.13.c. The hospice shall have policies and procedures for the use of restraints.

12.13.d. All staff shall receive training in proper and safe restraining techniques and training in de-escalation of behaviors at least annually.

12.13.e. The patient shall be monitored and evaluated to ensure the safety of the patient.

§ 64-54-13. Inpatient Physical Facilities, Equipment, and Related Items.

13.1. The provisions of this section apply to all hospice inpatient facilities. An inpatient facility licensed prior to the effective date of this rule shall be maintained in accordance with applicable standards of practice as referenced in "Sections 8 and 13" in the 2001 edition of The Guidelines for Design and Construction of Hospital and Health Care Facilities as recognized by the American Institute of Architects Academy of Architecture for Health.

13.2. The following documents shall be adopted as construction, equipment, physical facility, and related procedural standards for all inpatient facilities, new construction and any additions, alterations, renovations, or conversions of existing buildings:

13.2.a. "Section 4.2: of the 2006 edition of The Guidelines for Design and Construction of Hospital and Health Care Facilities as recognized by the American Institute of Architects Academy of Architecture for Health with assistance from the United States Department of Health and Human Resources shall be used as planning standards;

13.2.b. The State Building Code, which is the 2003 Edition of the International Building Code;

13.2.c. Provisions applicable to nursing homes, electrical standards, medical gas standards and patient care equipment standards and health care emergency management standards as defined in the applicable subsections in the 2005 Edition of NFPA 99, Standard for Health Care Facilities; and

13.2.d. The guidelines set forth in the Americans With Disabilities Act, 28 CFR Part 36.

13.2.e. The current State Fire Code as adopted by the State Fire Commission.

13.3. An inpatient facility shall comply with applicable rules of the West Virginia State Fire Commission.

13.4. An inpatient facility shall ensure that patient rooms are designed and equipped for nursing care, as well as the dignity, comfort, and privacy of patients.

13.4.a. Maximum room occupancy is one (1) patient unless justified by the hospice. In no case shall a patient room exceed two (2) occupants.

13.4.b. All patient rooms shall provide a minimum of one hundred and twenty (120) square feet of clear floor space excluding toilet room space per patient. Each patient room shall have private toilet and bathing space.

13.4.c. A minimum of fifty (50) percent of the patient rooms shall meet the guidelines set forth in the Americans With Disabilities Act, 28 CFR Part 36.

13.5. The interior and exterior of the inpatient facility shall be maintained to provide a clean, safe, sanitary environment free of hazards for patients, staff, and visitors.

13.6. An inpatient facility shall have an emergency operations plan in effect for managing the consequences of power failures, natural disasters, and other emergencies that would affect a hospice's ability to provide care or interrupt normal operations.

13.6.a. There is a written emergency operations plan that all staff shall be familiar with developed in accordance with the standards identified in NFPA 99.

13.6.b. New employees shall be trained in emergency operations upon hire and annually thereafter in accordance with the requirements identified in NFPA 99.

13.6.c. The administrator shall review the emergency operations plan on an annual basis, which shall be verified by signature and date.

13.6.d. There shall be at least one (1) rehearsal of the emergency operations plan on a semiannual basis.

13.7. An inpatient facility shall develop procedures for managing the control, reliability, and quality of the physical facility. This shall include the light, temperature, humidity, ventilation and air exchanges, and air quality throughout the hospice.

13.8. An inpatient facility shall have adequate drainage, electricity, telephone, sanitation, water, and other necessary facilities available on or near the site.

13.9. An inpatient facility shall meet local building codes and zoning restrictions. Where local codes or regulations permit lower standards than required by this rule, the standards contained in this rule take precedence.

13.10. Site conditions shall comply with the relevant sections of the 2006 Edition of The Guidelines for Design and

Construction of Hospital and Healthcare Facilities as recognized by the American Institute of Architects Academy of Architecture for Health.

13.11. An inpatient facility shall request, in writing, an inspection of a proposed inpatient facility site and obtain approval for construction from the Director before beginning construction.

13.12. For new construction, renovations and alterations, an inpatient facility shall submit to the Director for review and approval, complete construction drawings and specifications for the inpatient facility construction project which alters a floor plan, impacts life safety or requires approval under W. Va. Code § 16-2D-1, *et seq*, prior to beginning work on the project. An architect or engineer registered to practice in West Virginia shall prepare and sign and seal the drawings and specifications including architectural, life safety, structural, mechanical, and electrical drawings and specifications.

13.12.a. Each new inpatient facility constructed after the effective date of this rule shall provide a private room for family members to place telephone calls.

13.12.b. Prior to starting any renovations an inpatient facility shall complete an infection control and safety risk assessment and shall develop a plan to control exposure of patients, employees and the public. This plan shall be implemented prior to and during construction phases.

§ 64-54-14. Penalties.

14.1. Director's Authority

14.1.a. The Director may suspend or revoke a hospice license according to the provisions of W. Va. Code § 16-5I-1, *et seq*, if he or she finds upon inspection that there has been a substantial failure to comply with the provisions of this rule or with the laws of this state or with any other order or final decision.

14.1.b. The Director shall refuse to grant a license if he or she finds that the applicant has failed to be in substantial compliance with the provisions of this rule or the laws of this state or with any other order or final decision.

14.1.c. When the Director takes action pursuant to the suspension or revocation of a license issued under this rule, he or she shall comply with the requirements and procedures set forth in W. Va. Code § 16-5I-1, *et seq.*

14.2. The Secretary shall assess a civil money penalty not to exceed fifty dollars ($50) for each violation of operation of a hospice without first obtaining a license or violation of any provisions of the Code or any rule lawfully promulgated under the Code.

13.4.a. A separate violation shall be considered for each day of operation of a hospice without first obtaining a license or violation of any provisions of the Code or any rule lawfully promulgated under the Code.

14.3. The Director may institute an action to restrain or prevent establishment or operation of any hospice, because of violation of any provision of the code or rules, in the circuit court of the county where

the hospice is located or the Circuit Court of Kanawha County.

§ 64-54-15. Administrative Due Process.

15.1. Before revoking or suspending a hospice license, the Director shall serve the licensee with written notice of the grounds of the complaint, and the procedure for challenging the allegation.

15.1.a. The notice shall be sent by certified mail to the licensee at the address where the hospice is located.

15.2. All formal hearings shall be governed by W.Va. Code § 29A-5-1, et. seq. and "Rules of Procedure for Contested Case Hearings and Declaratory Rulings" 64 CSR § 1, et seq, (1981), and "Rules for Hearings Under the Administrative Procedures Act" 69 CSR § 1, et seq, (1990). These rules of procedure are incorporated in this rule by reference.

15.3. If the license is revoked as a result of these proceedings, the Director may consider a new application for a license if the conditions upon which the revocation is based have been corrected and adequate proof of such correction is furnished.

15.3.a. A new license is issued upon proper inspection and all provisions of the article and rules promulgated have been satisfied.

15.4. Any applicant or licensee aggrieved by the decision of the Secretary may, within thirty (30) days after receiving the final administrative order, appeal to the Circuit Court of Kanawha County for judicial review of that decision.

15.5. The court may affirm, modify or reverse the decision of the Secretary and either party may appeal the court's decision to the Supreme Court of Appeals of West Virginia.