

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Department of Health TITLE NUMBER: 64

RULE TYPE: Legislative; CITE AUTHORITY Ch.16, Article 5I

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 54

TITLE OF RULE BEING AMENDED: Licensure of Hospice Care Programs

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

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: August 14, 1987 TIME: 9:00 A.M.

LOCATION OF PUBLIC HEARING: Department of Health
P&G Building, First Floor Conference Room
2019 Washington Street, East
Charleston, WV 25305

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

Department of Health
Regulatory Development Sec.
Room 7, P&G Building
2019 Washington Street, E.
Charleston, WV 25305

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


David K. Heydinger
Director

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Licensure of Hospice Care Programs

Type of Rule: Legislative Interpretive Procedural

Agency WV Department of Health Address 1800 Washington Street, E.
Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates.

The proposed rule is a revision of an existing rule. Changes will not alter existing workload.

3. Objectives of these rules:

The proposed amendment to the existing hospice licensure standards implements new provisions of the hospice licensure law enacted in March, 1987, relating to consent to hospice services for an individual by family members where there has been no adjudication of incompetence and no use of a durable power of attorney.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.


NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date July 1, 1987

Signature of Agency Head or Authorized Representative


David K. Heydinger, M.D.
Director

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WEST VIRGINIA BOARD OF HEALTH

RULE ABSTRACT

Rule Title: Licensure of Hospice Care Programs

CSR Title & Series: 64 CSR 54 Type: Legislative

Objective/Summary: The proposed amendment to the existing hospice licensure standards implements new provisions of the hospice licensure law enacted in March, 1987, relating to consent to hospice services for an individual by family members where there has been no adjudication of incompetence and no use of a durable power of attorney.

For further information contact: Kay Howard, Regulatory Development Section, telephone (304) 348-3223 or John Jarrell, Health Facilities Licensure and Certification Section, telephone (304) 348-0050, Department of Health, 1800 Washington Street, E., 25305.

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SECTION OF STATE

[PROPOSED]

TITLE 64

WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF HEALTH

Licensure of Hospice Care Programs

Series 54

198__

For Public Hearing
August 14, 1987

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SECRETARY OF STATE

[PROPOSED]
TITLE 64
WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF HEALTH
Series 54

Title: Licensure of Hospice Care Programs

Note: The proposed amendments apply to Sections 3, 5 and 11 of the present rule. Only those sections are presented.

Section 3. Definitions

3.1. Bereavement Services - Support services designed to assist clients to experience, respond emotionally to, and adjust to the death of another person.

3.2. Certification of Incapacity - The medical determination, by two physicians licensed to practice medicine or surgery in West Virginia, of the terminally ill patient's inability to independently execute the election of hospice services due to physical or mental incapacity.

~~3-2-~~ 3.3. Chore Services - Assistance provided to a client in performing necessary household chores and tasks which the client is unable to do for himself or herself because of limiting conditions of health. Chore services include: housecleaning, meal preparation, dishwashing, laundry, running errands such as paying bills, picking up prescriptions and shopping, lawn care, walk and step cleaning, snow removal and carrying in wood, coal or other types of fuel.

~~3-3-~~ 3.4. Director - The director of the West Virginia department of health.

~~3-4-~~ 3.5. Durable Power of Attorney for Health Care - In accordance with state law, a legally enforceable document, executed in writing by a competent individual, which designates an individual or individuals who shall be empowered to make health care decisions on his or her behalf should he or she become incapable, by reason of physical or mental disability, of making or communicating a choice regarding a particular health care decision.

~~3-4-~~ 3.6. Governing Body - The policy-making body of a government agency, the board of directors or trustees of a corporation whether for profit or not, or the proprietors of an organization.

~~3-5-~~ 3.7. Home Health Aide - An individual who assists, under supervision, in the provision of home health services and who provides related health care to hospice clients. Such services may include simple health care tasks, personal hygiene services, and housekeeping tasks essential to the client's health.

~~3-6-~~ 3.8. Homemaker Services - Services which are designed to preserve independent living through teaching and demonstrating

household management for self care and independent living, as well as assistance during a crisis situation. Training shall include such topics as: money management; nutrition; personal care which does not require nursing supervision; social and emotional support to alleviate loneliness or depression; light housekeeping; and safety techniques.

3-7- 3.9. Hospice - A coordinated program of home and in-patient care provided directly or through an agreement under the direction of an identifiable hospice administration which provides palliative and supportive medical and other health services to terminally ill clients 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.

3.10. Incapacitated Individual - Any individual who lacks sufficient physical or mental capacity to appreciate the nature and implications of a health care decision, to make a choice regarding the alternatives presented, and to communicate that choice in an unambiguous manner.

3-8- 3.11. Interdisciplinary Team - The hospice client and the client's family, the attending physician and the following hospice personnel: physician, nurse, social worker, clergy, and trained volunteer. Providers of supportive services such as mental health, pharmaceutical, and any other appropriate allied health services may also be included on the team as the needs of the client dictate.

3-9- 3.12. Palliative Care - Treatment directed at controlling pain, relieving other symptoms and focusing on the special needs of the client and family as they experience the stress of the dying process, rather than curative care.

3-10- 3.13. Respite Care Services - Temporary full-time or part-time care provided to clients who are dying in order to offer short term relief to regular caretakers. Respite care is designed to relieve families or residential caretakers to meet planned or emergency needs; to assist caretakers during a period of crisis such as illness, hospitalization, or death of a family member; to provide relief to the caretakers for vacations or other necessities or activities associated with family life; and to restore or maintain the client's physical or mental well-being, or the well-being of his or her family.

3.14. Substituted Consent - A mechanism designed, through medical certification, to facilitate the authorization of consent for health care decisions by designated family members for an incapacitated person in the absence of a durable power of attorney for health care or beyond the legal scope of duties of a court-appointed guardian or committee of the patient.

3-11- 3.15. Terminally Ill - Means that the client has a

medical prognosis that his or her life expectancy is six months or less.

Section 5. Organization and Management

5.1. Governing Body

5.1.1. A hospice shall have a governing body that shall determine, implement and monitor policies governing the hospice's total operation, except that: if the hospice is operated by a hospital, nursing home or other type of organization, there shall be an identifiable separate administration which shall serve the function of the governing body for the hospice program, although a separate ownership or board of directors shall not be required. The governing body shall also ensure that all services provided are consistent with accepted standards of practice.

5.1.2. The governing body shall designate an individual who is responsible for the management of the hospice program.

5.2. Substituted Informed Consent

5.2.1. The hospice shall demonstrate respect for a client's rights by ensuring that the client or his or her legally determined representative acknowledges in writing, the receipt of information that specifies the type of care and services that may be provided by the hospice during the course of the illness.

5.2.2. Substituted informed consent to elect hospice care may be acknowledged in writing for the physically or mentally incapacitated individual by:

(a) A court-appointed guardian or committee of the individual; or

(b) An individual designated in a written durable power of attorney for health care decisions; or

(c) An individual authorized to give such consent under the provisions of Section 5.2.4 of this rule.

5.2.3. For purposes of hospice services, including medicare reimbursements, where there has been no adjudication of incompetence of a terminally ill individual and where there is no durable power of attorney for such individual but where such individual is unable to execute an election for hospice services due to physical or mental incapacity, such incapacity may be certified by two physicians licensed to practice medicine and surgery in this State. At least one of the two certifying physicians shall have examined the individual in question within forty-eight hours prior to the date of certification. Such certification shall be documented in the client's health care record.

5.2.4. The following persons are deemed the client's representative under the circumstances of Section 5.2.3 and are

authorized to give substituted informed consent to hospice services in the order of class priority set forth below:

- (a) The client's spouse;
- (b) An adult child of the client;
- (c) A parent of the client;
- (d) An adult sibling of the client;
- (e) The nearest living relative of the client;

5.2.5. Substituted informed consent will not be recognized if:

(a) There is reason to believe that hospice services are contrary to the client's religious beliefs; or

(b) There is actual notice of opposition by a member of the same or prior class.

5.2.6. The hospice shall make a good faith effort to contact relatives in the order of class priority and attempt to contact all members of a class before the next class is contacted. The hospice shall document its efforts to establish a substitute consent on the client's behalf. In the case of a class with more than one relative, the hospice shall encourage the members of the class to select the member who will be the client's representative.

5-2- 5.3. Admission Criteria

5-2-1- 5.3.1. At the time an individual is accepted for care or no later than five calendar days after care is initiated, the hospice shall obtain documentation from the attending physician or the physician member of the hospice interdisciplinary team that the client is terminally ill.

5-2-2- 5.3.2. New documentation as defined in Section 5.3.1. shall be obtained at the end of the first ninety days of care and again at the end of the second ninety days of care, if the client remains under the care of the hospice.

5-2-3- 5.3.3. A client remaining under the care of the hospice for a period of time in excess of six months shall be reevaluated every thirty days with respect to the prognosis for life expectancy and should be considered for transfer to other types of health care providers.

5-2-4- 5.3.4. A hospice shall not deny acceptance to any client for services of the hospice on grounds of race, color, national origin, age, sex, religion or ethnicity.

5-3- 5.4. Contractual Services - A hospice may contract with other health care providers to provide services to the hospice patients clients. If services are provided under contract arrangement, the following standards shall be met:

5-3-1- 5.4.1. The hospice shall have a legally binding agreement for the provision of those services. Contracts shall

be written and shall clearly delineate the authority and responsibility of each of the contracting parties and the manner in which the contracted services are coordinated, supervised and evaluated by the hospice.

~~5-3-2-~~ 5.4.2. The provider of the hospice service under arrangement shall:

(a) have established policies consistent with those of the hospice;

(b) agree to abide by the patient care protocols established by the hospice for its clients;

(c) agree to furnish a record of all services and events to the client; and

(d) be licensed or credentialed in accordance with applicable state laws and regulations.

~~5-3-3-~~ 5.4.3. The hospice shall maintain documentation of the licenses or credentials of health care providers providing services under contract arrangement.

~~5-3-4-~~ 5.4.4. The hospice shall furnish to the provider a copy of the client's plan of care that specifies the care to be provided.

~~5-3-5-~~ 5.4.5. The client's interdisciplinary team shall review the medical record to ensure conformance with the established plan of care.

~~5-4-~~ 5.5. Continuation of Care - A hospice shall not discontinue or diminish care provided to a client because of the client's inability to pay for the care.

~~5-5-~~ 5.6. Scope of Services - A hospice shall include in the clinical records a form signed by the client or the legally determined representative which specifies the scope of care and services to be provided by the hospice.

~~5-6-~~ 5.7. Policies and Procedures - Every hospice shall develop and implement written policies consistent with this rule pertaining to the services provided. Such 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 basic hospice care services are delivered. All policies and procedures shall be reviewed annually, such review to be documented by the dated signature of the hospice administrator, and shall be revised as needed.

Section 11. Client Rights

11.1. The rights of the client shall only devolve to persons other than the client as set forth in this rule.

~~11-1.~~ 11.2. Clients shall be informed in writing of their rights and responsibilities.

~~11-2.~~ 11.3. Clients shall be clearly informed of the responsibilities of the hospice for care of the client, including services to be provided.

~~11-3.~~ 11.4. Clients shall be clearly informed at the time of admission, in writing, of the materials and equipment available to the client and family; any existing pre-payment, refund and sliding scale fee policies; and, a statement of client and family financial responsibility.

~~11-4.~~ 11.5. Upon written request, the hospice shall supply a client with an itemized statement detailing services provided and charges assessed at no additional cost to the client.

~~11-5.~~ 11.6. Clients shall have the right to participate in the development of their care plans.

~~11-6.~~ 11.7. Clients or their lawfully authorized agents or representatives shall have the right to examine their records at reasonable times and shall upon written request be provided with a copy or a summary of their record within a reasonable period of time. The hospice shall also comply with other provisions of State law found at Chapter 16, Article 29, Section 1 et seq. of the West Virginia Code relating to client records. The hospice shall have the right to charge a reasonable fee to cover the cost of expenses incurred in providing the copy.

11.8. If requested by a client or his or her representative, the hospice shall provide for or permit a reevaluation of the determination of incapacity by a physician licensed to practice medicine and surgery in West Virginia. The physician's certification of capacity upon reevaluation shall terminate any authority of a client's representative under Section 5.2.4 of this rule.