

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: Health Department TITLE NUMBER: 64

CITE AUTHORITY: §16-5I

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 54

TITLE OF RULE BEING AMENDED: Licensure of Hospice Care Program

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY:

TITLE OF RULE BEING FILED AS AN EMERGENCY:

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

These revisions to the "Licensure of Hospice Care Programs" rule implement changes made to the hospice licensure law by the 1987 Legislature in Senate Bill 295. The new provisions define circumstances which permit 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.

Under the present rule there are often delays in obtaining hospice care for individuals because of the length of the cumbersome court process of having an individual declared incompetent and designating a committee to assume all rights of the individual. This process can cause unwarranted delays in obtaining proper palliative care for individuals who are terminally ill. In some instances, death occurs before the court process can be completed, thus completely preventing the use of hospice services.

Emergency filing of these amendments will prevent further substantial harm to the public interest by eliminating these delays.

Use Additional Sheets If Necessary.


David K. Heydinger, M.D.
Director

DATE: June 22, 1988

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Health Department

EMERGENCY RULE TITLE: Licensure of Hospice Care Programs

1. Date of filing: June 22, 1988

2. Statutory authority for promulgating the emergency rule: §16-5I

3. Date of filing of proposed legislative rule: June 22, 1988

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Amends a current legislative rule

5. Has the same or similar emergency rule previously been filed and expired?
NO

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

SEE FILING NOTICE

[EMERGENCY]

TITLE 64

LEGISLATIVE RULES
DEPARTMENT OF HEALTH

LICENSURE OF HOSPICE CARE PROGRAMS

SERIES 54

1988

(EMERGENCY)
LEGISLATIVE RULES
DEPARTMENT OF HEALTH

LICENSURE OF HOSPICE CARE PROGRAMS

64 CSR 54

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[EMERGENCY]
TITLE 64
LEGISLATIVE RULES
DEPARTMENT OF HEALTH

SERIES 54
LICENSURE OF HOSPICE CARE PROGRAMS

§64-54-1. General

1.1. Scope - This legislative rule establishes general standards and procedures for the licensure of hospice programs in West Virginia. This rule is designed to assist in the establishment of comprehensive hospice care programs for the treatment of physical, emotional and mental symptoms of terminal illness, and to that end, shall serve as basic programmatic requirements for a hospice. This rule is not intended to serve as a substitute for Federal standards for certification of hospices to participate in the Medicare program and compliance with this rule should not be interpreted as qualification for such participation.

1.2. Authority - W. Va. Code §16-5I. Related - W. Va. Code §16-5I and §16-5D.

1.3. Filing Date - June 22, 1988

1.4. Effective Date - June 22, 1988

1.5. Supersession and Repeal of Former Rule - This rule supersedes and repeals Licensure of Hospice Care Programs, West Virginia Board of Health Legislative Rules, 64 CSR 54, 1986.

1.6. Final Approval - This rule was approved by the State Board of Health on April 29, 1988.

§64-54-2. Application and Enforcement

2.1. Application - This rule shall apply 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. A hospice program maintained and operated by a hospital, nursing home or other licensed health care facility shall comply with the applicable portions of this rule. Compliance with the hospice standards herein shall be evaluated independently from compliance with other licensure standards and sharing of staff, space, physical facilities and equipment or other shall be permitted only if the requirements of each applicable rule are satisfied in full.

2.2. Enforcement - The enforcement of this rule is vested with the director of the West Virginia department of health or his or her lawful designee.

§64-54-3. 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 - A document executed in writing in accordance with Chapter 39, Article 4, W. Va. Code by a competent individual which designates an individual or individuals who shall be empowered to make health care or comprehensive decisions on his or her behalf which contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity.

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 pro-

vides 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.

3.12. Next-of-kin Consent - Consent for health care decisions by designated family members for an incapacitated person: 1) in the absence of a durable power of attorney for health care or comprehensive decisions; 2) which is beyond the legal scope of duties of a court-appointed guardian or committee of the patient.

~~3-9-~~ 3.13. 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-~~ 3.14. 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.

~~3-11-~~ 3.15. Terminally Ill - Means that the client has a medical prognosis that his or her life expectancy is six months or less.

§64-54.4. State Administrative Procedures

4.1. General Licensure Provisions

4.1.1. No person, partnership, association, corporation, or any local governmental unit or any division, department, board or agency thereof may operate a hospice in the State of West Virginia without first obtaining a license under this rule.

4.1.2. Any hospice in operation prior to the effective date of this rule which desires to continue operating as a hospice shall apply for a license within thirty days after the effective date of this rule.

4.1.3. Neither an original nor a renewal license shall be issued under this rule for a project reviewable under Chapter 16, Article 2D of the West Virginia Code unless the state health planning and development agency has issued a finding, after a final conformance review, that the completed project conforms to the terms of the certificate of need decision issued for the project. Evidence of compliance shall be supplied with licensure applications.

4.1.4. A license shall be valid only for the premises and persons named and described in the application, shall not be transferable or assignable and shall be surrendered to the director upon written demand stating the cause for the demand.

4.1.5. If the ownership of a hospice with a valid unexpired license changes, the new owner shall apply for a new license. The application of the new owner for a license shall have the effect of a valid license for three months from the date the application is received by the director.

4.1.6. A license shall state: (a) the specific name of the hospice to which it applies; (b) the date of issuance; and (c) the expiration date. A hospice name change shall be shown in the next license issued.

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

4.1.8. Neither the name of the hospice nor any advertising of the hospice's services shall suggest or claim any services other than those given on the application and for which the hospice is licensed.

4.2. Initial License

4.2.1. An applicant shall submit a completed application to the director, on a form prescribed by the director, not less than thirty days and not more than ninety days prior to the date proposed for commencement of operation. Information required may include affirmative evidence of ability to comply with this rule. A nonrefundable fee of one hundred dollars (\$100) shall be submitted with the application for an initial license.

4.2.2. The hospice shall identify the following as part of the application:

(a) 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; and

(b) if a hospice is located on or in leased real estate, the name of the lessor and any direct or indirect interest of the applicant or licensee;

4.2.3. An initial license shall be issued only after the director inspects the hospice and only if he or she finds that the hospice complies with this rule and Chapter 16, Article 5I of the West Virginia Code.

4.2.4. An initial license issued after the effective date of this rule shall be valid for a period of one year from the date of issuance.

4.3. Renewal License

4.3.1. 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 days and not more than ninety days prior to the scheduled expiration date of the current license. A nonrefundable fee of one hundred dollars (\$100) shall be submitted with the license renewal application for a hospice whose yearly caseload exceeds ten or more clients, and fifty dollars (\$50) for a hospice whose yearly caseload is less than ten clients.

4.3.2. The director shall issue a renewal license when he or she finds the hospice in compliance with this rule and the licensee submits a completed application and the correct renewal fee.

4.3.3. A renewal license shall be valid for a period of one year from the date of issuance.

4.4. Provisional License

4.4.1. If the director finds that an applicant for a renewal license is not in compliance with the requirements of this rule and Chapter 16, Article 5I of the West Virginia Code, the director may, at his or her discretion, issue a provisional license.

4.4.2. A provisional license may be issued only when the director finds that: (a) the care given by the hospice is adequate to meet client needs; and (b) the hospice has demonstrated improvement in and potential for compliance within the term of the license for which renewal is requested.

4.4.3. A provisional license shall not be issued for a period greater than twelve months; shall not be renewed; and shall not be issued to a hospice with uncorrected violations of this rule which would pose an imminent danger to the health and safety of any client.

4.5. Inspections

4.5.1. The director shall conduct at least one inspection of a licensed hospice annually to determine compliance with the provisions of this rule, and Chapter 16, Article 5I of the West Virginia Code, which shall consist of an unannounced visit to the hospice office and announced visits to a sample of clients.

Visits conducted in the homes of hospice clients shall be announced in advance and conducted only with the permission of the hospice client. The state of health of the hospice client shall be respected in determining which clients will be visited in the home. The health department staff shall seek the advice of hospice staff to identify suitable hospice clients for home visits. The hospice shall, at the time of admission, inform clients of the possibility and purpose of such visits and shall request that each client sign a written consent which authorizes such home visits. The director may, at his or her discretion or at the client's request, request the presence of hospice staff at such home visits. An individual client's refusal to permit home visits by health department staff shall not in any way affect the hospice's licensure status.

4.5.2. The director shall have the right to enter the premises of a hospice which he or she has reason to believe is being operated or maintained as a hospice without a license.

4.5.3. 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 take action to secure a lawful warrant authorizing inspection.

4.5.4. 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 within ten days for a license in accordance with the provisions of this rule.

4.5.5. A hospice which fails to apply for a license shall be subject to the penalties established by Chapter 16, Article 5I, Section 6 of the West Virginia Code.

4.5.6. A report of any inspection made pursuant to this rule shall be made in writing and shall be maintained on file by the director.

4.5.7. Inspection reports shall specifically list each deficiency in the hospice's compliance with applicable statutes and rules.

4.5.8. The director shall send a copy of a report of an inspection to the hospice.

4.6. Plans of Correction

4.6.1. A hospice found on the basis of an inspection to have deficiencies in compliance with this rule shall develop a plan of correction and submit it to the director within fifteen working days of receipt of the inspection report.

4.6.2. A plan of correction shall specify a reasonable time within which the hospice shall correct each deficiency cited in the report, which time shall be the shortest possible time within which the hospice reasonably can be expected to correct the deficiency.

4.6.3. The time stated shall be subject to approval or modification by the director. In determining whether to approve the time submitted by the hospice the director shall consider the following factors: (a) the seriousness of the deficiency; (b) the availability of required equipment or personnel; (c) the estimated time required for delivery and installation of required equipment; and (d) any other relevant circumstances.

4.6.4. A plan of correction submitted by a hospice shall be approved, modified or rejected by the director. The director shall notify the hospice within fifteen working days as to whether a plan of correction has been approved, modified or rejected. If the director rejects or modifies the plan, the reasons for the action shall be stated. When the director rejects a plan of correction, up to ten days may be allowed for submission of a revised plan.

4.6.5. Upon the failure by a hospice with deficiencies to submit a plan of correction which is approved by the director or to correct any deficiency within the time specified in an approved plan of correction, the director may initiate legal action available to him or her in accordance with the West Virginia Code and this rule.

4.7. Complaint Investigation

4.7.1. Any person may register a complaint with the director alleging violation of applicable laws or rules and regulations by the hospice. A complainant shall state the substance of the complaint and shall identify the hospice involved.

4.7.2. The director may conduct either an announced or an unannounced inspection of the hospice to determine the validity of the complaint. The director shall conduct such other investigations as may be necessary to determine the validity of the complaint. The director shall provide the hospice with notice of the substance of the complaint only at the completion of the investigation of the complaint.

4.7.3. The director shall notify the complainant and the hospice in writing of the results of the investigation no later than fifteen working days after completing an investigation of a complaint. If the complaint is substantiated by the investigation as a violation of this rule or of the Hospice Licensure

Act (Chapter 16, Article 5I of the West Virginia Code), the director may require a plan of correction or may take other action authorized by state law or this rule.

4.7.4. Upon written request, the director will send the complainant a description of any action the hospice will be required to take and of any disciplinary action to be taken.

4.7.5. The name of a complainant or of any person named in a complaint shall be safeguarded by the director and shall not be disclosed without the individual's prior written authorization. Before any complaint is disclosed to a hospice or to the public pursuant to this rule, any information in the complaint which could reasonably identify the complainant or a client shall be deleted. If a complaint becomes the subject of a judicial proceeding, nothing in this rule shall be construed to restrict disclosure of information which would otherwise be disclosed in a judicial proceeding.

4.8. Availability of Reports and Records

4.8.1. The director shall make available for public inspection and upon written request may provide copies of the following documents: (a) inspection reports; (b) reports of investigations conducted in response to complaints; and (c) any other reports filed with or issued by the director pertaining to the compliance of a hospice with applicable laws, rules and regulations. A fee may be charged to cover the cost of research and copying.

4.8.2. The director shall treat a report of inspection of a hospice as public information from the time a written plan of correction is submitted.

4.8.3. If the hospice does not submit a written plan of correction within the time specified by the director pursuant to this rule, reports pertaining to the hospice shall be made public at the expiration of the specified time.

4.8.4. Other records and reports shall be treated as public information from the time they are issued by the director.

4.8.5. Nothing contained in this section shall be construed to require or permit the public disclosure of confidential medical, social, personal or financial records of any clients.

4.8.6. Before releasing a report or record deemed public information the director shall delete any confidential information which could reasonably permit identification of clients or of complainants or any other information required to be held confidential under this rule.

864-54-5. 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 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. Consent to elect hospice care may be given 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 or comprehensive decisions; or

(c) An individual authorized to give such next-of-kin 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 health care or comprehensive decisions 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 seven days prior to the date of admission. 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 next-of-kin 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. Next-of-kin 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 shall attempt to contact all members of a class before the next class is contacted. The hospice shall document its efforts to establish a next-of-kin 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 his or her 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.

§64-54-6. Hospice System of Care

6.1. Minimum Services - A hospice shall at a minimum provide the following services:

6.1.1. Physician directed medical care which shall meet the medical needs of the clients for palliation and for management of terminal illness.

6.1.2. Nursing care and services which shall be provided by

or under the supervision of a registered nurse.

6.1.3. Medical social services.

6.1.4. Spiritual care.

6.1.5. Bereavement services.

6.2. **Additional Services** - A hospice may offer additional services as needed for the support and care of hospice clients such as:

6.2.1. Respite services.

6.2.2. Physical therapy services, occupational therapy services and speech language pathology services.

6.2.3. Nutritional, pharmaceutical, psychiatric, psychological, radiological, pediatric, oncologic and other specialists available for consultation or direct services.

6.2.4. Home health aide and homemaker services to meet the needs of the clients. Home health aide services shall be provided under the general supervision of a registered nurse.

6.2.5. Medical supplies and appliances, including drugs and biologicals, as needed for the palliation and management of the terminal illness. A hospice shall have a policy to recommend the destruction of controlled drugs maintained in the client's home if they are no longer needed by the client, in compliance with state and federal requirements.

6.3. **Availability and Delivery of Services**

6.3.1. Hospice services shall be available seven days a week, twenty-four hours a day.

6.3.2. A hospice shall provide the services described in Section 6.1 to the extent necessary to meet the needs of clients for care that is reasonable and necessary for the palliation and management of terminal illness.

6.3.3. Services shall be made available in the client's home.

6.3.4. When home care is not feasible for pain control, symptom management and respite purposes, inpatient care shall be arranged as part of the hospice program. Inpatient care shall be provided in a licensed facility which is most appropriate to the needs of the client, such as a hospital or nursing home.

6.3.5. Hospice care shall be offered in the least costly setting that can assure the quality of care and the kinds and amounts of services necessary to meet the client's needs.

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

§64-54-7. Plan of Care

7.1. A written plan of care shall be established by the interdisciplinary team and maintained for each client admitted to a hospice program, within seven days of admission and the care provided to a client must be in accordance with the plan.

7.2. The plan shall be reviewed and updated at least monthly, and more often if necessary, by the inter-disciplinary team. These reviews shall be documented in the client's clinical record.

7.3. The plan shall include assessment of the client's needs and identification of the services needed, including the management of discomfort and symptom relief.

7.4. The hospice shall designate a registered professional nurse to coordinate the overall plan of care for each client.

§64-54-8. Quality Assurance - A hospice shall conduct annually, a comprehensive self-assessment of the quality and appropriateness of care provided, including inpatient care. The findings which shall be documented, shall be used by the hospice to correct identified problems and to revise hospice policies if necessary. The review shall include but not be limited to:

(a) review and evaluation of the hospice program goals and objectives;

(b) evaluation of the appropriateness of the scope of services offered;

(c) review of administrative and client care policies and procedures;

(d) review of professional and volunteer staffing qualifications, responsibilities and needs;

(e) review of financial policies and practices;

(f) review of infection control procedures;

(g) review of a random sample of client and family (if any) records and written evaluation on quality of services provided; and

(h) linkages to other services and levels of care within the health care system. Review of clinical matters shall be conducted by an interdisciplinary team composed of members relevant for services provided and coordinated by the hospice.

§64-54-9. Clinical Records

9.1. In accordance with accepted principles of practice, the hospice shall establish and maintain a clinical record for every client receiving care and services. The record shall provide for identification, security, confidentiality, control, retrieval and preservation of client care data and information.

9.2. Each clinical record shall be a comprehensive compilation of information. Entries shall be made for all services provided. Entries shall be made and signed by the staff providing the services. The record shall include all services whether furnished directly or under arrangements made by the hospice. In addition, each client's record shall contain:

- (a) the initial and subsequent assessments, including documentation that the client is terminally ill;
- (b) the plan of care;
- (c) identification data;
- (d) consent and authorization forms; and
- (e) pertinent medical history.

9.3. The hospice shall safeguard the clinical record against loss, destruction and unauthorized use.

9.4. All records shall be maintained for a period of five years after the client's death or discharge. In the case of a minor, the records shall be maintained for a period of five years after the client's death or, if a minor attains majority, for a five year period thereafter.

9.5. The hospice shall establish written policies and procedures specifying who may use the records, under what conditions they may be removed from the center and under what conditions information from them may be released.

§64-54-10. Staffing Requirements

10.1. **Medical Director** - A hospice shall have a licensed physician to serve as medical director and who shall assume overall responsibility for the hospice's patient care program.

10.2. Interdisciplinary Team

10.2.1. The hospice shall designate for each client an interdisciplinary team as defined in this rule to provide or supervise the care and services offered.

10.2.2. The interdisciplinary team shall also include the following individuals as determined by the client's needs:

- (a) physical therapists;

- (b) occupational therapists;
- (c) speech therapists;
- (d) pastoral or other counselors;
- (e) homemaker/home health aides;
- (f) chore workers;
- (g) family and friends; and
- (h) consultants, including nutritionists, pharmacists, psychiatrists, psychologists, oncologists, funeral home directors, and other caregivers as may be appropriate.

10.2.3. The interdisciplinary team shall be responsible for:

- (a) participation in the development of the plan of care as described in Section 7 of this rule;
- (b) provision or supervision of hospice care and services;
- (c) periodic review and updating of the plan of care for each client receiving hospice care; and
- (d) establishment of policies governing the day-to-day provision of hospice care and service.

10.2.4. Hospice interdisciplinary team members shall be qualified for their jobs by virtue of training, experience or a combination of both. There shall be a written record for each team member to include verification of education, training, and license or certification, if applicable. The hospice program shall develop written policies which state the minimum education, experience and training requirements for each team member. These policies shall be reviewed annually and revised as necessary in accordance with the hospice program policy. Each interdisciplinary team member shall have a current license or certification, as appropriate, in accordance with state law.

10.3. Ratio of Staff to Patients - The ratio of staff to hospice clients shall be adequate to meet the needs of the hospice clients and their families, consistent with:

- (a) the number of and intensity of services provided by the hospice program;
 - (b) the number of and intensity of services required by the hospice client and family;
 - (c) the experience and efficiency of the hospice program;
- and

(d) documentation in records that the hospice program has fulfilled its obligations under law and this rule.

10.4. Volunteers

10.4.1. The hospice shall use volunteers in the provision of care and services.

10.4.2. The hospice shall document active and ongoing efforts to recruit and retain volunteers.

10.5. **Staff Development** - The hospice program shall provide or arrange an employee and volunteer training and continuing education program which shall provide at a minimum:

(a) orientation and training for new employees and volunteers to acquaint them with the philosophy, organization, services, practices and goals of the hospice program;

(b) the physiological and psychological aspects of terminal disease;

(c) family dynamics and psychosocial issues surrounding terminal disease, death, and bereavement;

(d) communication skills; and

(e) additional initial and continued training needed specific to the duties, the responsibilities and the competency of the employee or volunteer.

§64-54-11. 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.

§64-54-12. Penalties

12.1. Director's Authority

12.1.1. The director is authorized to suspend or revoke a hospice license according to the provisions of Chapter 16, Article 5I of the West Virginia Code, 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 order or final decision of the director.

12.2. The director may refuse to grant a license if he or she finds that the applicant has attempted to obtain the license by means of fraud or deceit.

12.3. The director may suspend or revoke a license if he or she finds that the license has been obtained by means of fraud or deceit.

12.4. 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 specified by Chapter 16, Article 5I, of the West Virginia Code.

§64-54-13. Administrative Due Process

13.1. An applicant for a license or a licensee or any other person aggrieved by an order or other action by the director pursuant to this rule or the laws of this state shall have the opportunity for a hearing by the director, upon written request to the director in a manner prescribed in and by the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, West Virginia Board of Health Procedural Rules, Chapter-16-17, Series-17, 64 CSR 1, 1983, promulgated by the board of health. The aforementioned rules of procedure are incorporated herein by reference.

13.2.--A hearing pursuant to this section shall be conducted in accordance with the pertinent provisions of Chapter 29A, Article 5 of the West Virginia Code and the aforementioned Rules of Procedure for Contested Case Hearings and Declaratory Rulings.

13.3. The director's order shall be final unless vacated or modified by judicial review in accordance with the provisions of the law of this State.

§64-54-14. Severability - The provisions of this rule are declared to be severable. If any provisions of this rule shall be held invalid, the remaining provisions of this rule shall remain in effect.



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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

August 4, 1988

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Health

RULE: Amendments to Series 54, Licensure of Hospice Care Programs

DATE FILED AS AN EMERGENCY RULE: June 22, 1988

DECISION NO. 8-88

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE August 4, 1988
ADMINISTRATIVE LAW DIVISION



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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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DECISION

EMERGENCY RULE DECISION
(ERD 8-88)

AGENCY: Department of Health
RULE: Amendments to Series 54, Licensure of Hospice Care Programs
DATE FILED AS AN EMERGENCY RULE: June 22, 1988

- par. 1 The Department of Health has filed amendments to the above rule as emergency amendments.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Department of Health has filed these emergency amendments with supporting documents with the Secretary of State on June 22, 1988 and with the LRMRC on June 22, 1988.

par. 7 It is the determination of the Secretary of State that the Department of Health has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §16-5I=5 reads in part:

The state board of health, after soliciting the advice and recommendations of the West Virginia continuum of care board, shall promulgate reasonable rules and regulations for the licensure of hospice programs as it finds necessary in order to ensure adequate care, treatment, health safety, welfare and comfort of hospice patients.

par. 9 It is the determination of the Secretary of State that the Department of Health has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Department of Health are as follows:

These revisions to the "Licensure of Hospice Care Programs" rule implement changes made to the hospice licensure law by the 1987 Legislature in Senate Bill 295. The new provisions define circumstances which permit consent to hospice services for an individual by family members where there has been no adjudication of incompetence and use of a durable power of attorney.

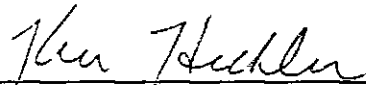
Under the present rule there are often delays in obtaining hospice care for individuals because of the length of the cumbersome court process of having an individual declared incompetent and designating a committee to assume all rights of the individual. This process can cause unwarranted delays in obtaining proper palliative care for individuals who are

terminally ill. In some instances, death occurs before the court process can be completed, thus completely preventing the use of hospice services.

Emergency filing of these amendments will prevent further substantial harm to the public interest by eliminating these delays.

par. 13 It is the determination of the Secretary of State that this proposal meets the standards for emergency rule.

par. 14 This decision shall be cited as Emergency Rule Decision 8-88 or ERD 8-88 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Health, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered _____

THIS DATE

August 4, 1988

ADMINISTRATIVE LAW DIVISION