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State of West Virginia

DEPARTMENT OF HEALTH

CHARLESTON 25305

Notice of Adoption of a Legislative Rule Authorized by the Legislature

Legislative Rule: Licensure of Hospice Care Programs, Chapter 16-5I,
Series 54, 1986.

The Board of Health legislative rule Licensure of Hospice Care Programs is being adopted by this agency and final filed with the Secretary of State. This rule was authorized by the Legislature in Senate Bill 434, Section 64-2-16(5i)(5), passed March 8, 1986, effective from passage.

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FILED
1986 MAY -5 PM 1:09
OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Board of Health

Subject: Proposed rules and regulations relating to the
licensure of hospice care programs

PERTINENT DATES

Filed for public comment: December 19, 1984

Public comment period ended: February 6, 1985

Filed following public comment period: October 29, 1985

Filed LRMRC: October 29, 1985

Filed as emergency:

FN: \$6,200 (current year); \$6,510 (next year)

ABSTRACT

This proposed legislative rule is new. It establishes standards and procedures for the licensure of hospices mandated under Article 5I, Chapter 16 of the West Virginia Code.

Section 1 states that the scope of the proposed rule is the establishment of general standards and procedures for the licensure of hospice programs in West Virginia. It also gives the authority for the rule and will contain the filing and effective date.

Section 2 provides that the proposed rule will apply to any person or any local government unit establishing, conducting, managing or operating a hospice. The enforcement of the proposed rule is vested with the Department of Health.

Section 3 is a definition section.

Section 4.1, relating to general licensure provisions, requires that a hospice may not be operated without a license. Hospices already operating have thirty days from the effective date of the proposed rule to apply for a license. A license is not transferable or assignable and must be posted at the hospice.

Section 4.2 requires that an application for a license be submitted not less than thirty days nor more than ninety days prior to the date proposed for commencement of operation and be accompanied by a nonrefundable fee of \$100. An initial license shall only be issued after an inspection of the hospice by the director and is only valid for one year.

Section 4.3 requires that an application for a renewal license be submitted not less than sixty days nor more than ninety days prior to the current license expiration date. The fee for renewal is dependant upon the hospice's yearly caseload. Renewal licenses are valid for one year.

Section 4.4 allows the director, under certain circumstances to issue a nonrenewable provisional license, valid for not more than one year, to an applicant for a renewal license who is not in compliance with the provisions of this rule.

Section 4.5 requires the director to conduct an annual inspection of each hospice, to consist of an unannounced visit to the hospice office and announced visits to a sample of clients.

The director also has the right to enter a hospice that is believed to be unlicensed. The director may obtain a warrant authorizing inspection if the director is refused entry. After inspection, an unlicensed hospice has ten days to apply for a license or it will be subject to statutory penalties.

Inspection reports are to be written, kept on file and mailed to the hospice.

Section 4.6 gives a hospice, which has deficiencies found during an inspection, fifteen working days from receipt of the inspection report to develop a plan of correction and submit it to the director. The plan must specify a reasonable time, subject to approval of the director, within which each deficiency must be corrected. Specific factors to be used by the director in assessing the reasonableness of the time period are listed. The director may also approve, reject or modify the entire plan.

Section 4.7 permits any person to register a complaint with the Director alleging violation of applicable laws or rules and regulations by the hospice. After an investigation, the Director has fifteen working days to notify the complainant and hospice of the results of the investigation. The name of the complainant is confidential and may not be disclosed without the individual's prior written authorization.

Section 4.8 requires the director to make certain documents available for public inspection and requires him to delete, from any report or record, any confidential information which could reasonably permit identification of clients or complainants or other confidential information.

Section 5 mandates that a hospice have a governing body to determine, implement and monitor policies governing

the hospice's total operation. Hospices operated by a hospital, nursing home or other type of organization must have a separate administration to serve the governing body's function.

Section 5.2 relates to admission criteria. Documentation that the client is terminally ill must be submitted to the hospice by the attending physician or the physician member of the hospice interdisciplinary team upon acceptance of the client into the program or within five days of initiation of care. New documentation must be obtained at the end of specified time periods.

Section 5.3 allows a hospice to contract with other health care providers to provide services to the hospice patients if certain enumerated standards are met.

Section 5.4 prohibits a hospice from discontinuing or reducing care due to the client's financial inability to pay for the care.

Section 5.5 requires that the hospice keep a signed informed consent form in the client's clinical record.

Section 5.6 requires each hospice to develop and implement written policies which are to be reviewed annually.

Section 6.1 lists the minimum services which a hospice must provide.

Section 6.2 allows the hospice to offer additional services and lists some examples.

Section 6.3 requires a hospice to have its services available seven days per week, twenty-four hours per day. Services are to be available in the client's home or in an appropriate licensed facility.

Section 7 requires a written plan of care for each client within seven days of admission. The plan is to be coordinated by a registered nurse and updated at least monthly.

Section 8 requires a hospice to conduct an annual comprehensive self-assessment. A non-inclusive list of areas for review is provided.

Section 9 requires that hospices establish and maintain a clinical record for every client receiving care and specifies the contents of such record. Records are to be maintained for five years after death or discharge.

Section 10 mandates that the hospice have a licensed physician to serve as medical director with overall responsibility

for the patient care program. An interdisciplinary team, to include certain specified individuals and which shall be responsible for certain specified duties, must be designated for each client.

Section 10.3 specifies criteria to be used in determining an adequate ratio of staff to patients.

Section 10.4 is to use volunteers in the provision of care and services and is to actively recruit them.

Section 10.5 requires a hospice to provide an employee and volunteer training and education program and specifies minimum components for the program.

Section 11 relates to client rights and requires that clients be informed in writing of their rights and responsibilities, the responsibilities of the hospice, and patient and family financial responsibilities. Clients have the right to participate in the development of their care plans and have a right to examine their records.

Section 12 states that any applicant for a license, any licensee or any other person aggrieved by an order or other action of the director has the right to a hearing and judicial review.

Section 14 is a severability clause.

AUTHORITY

Statutory authority: W. Va. Code, §16-5D-9 and 16-5I-5

W. Va. Code, §16-5D-9 provides as follows:

The Board, in collaboration with governmental and independent community based delivery level personnel, shall promulgate rules and regulations pursuant to the provisions of chapter twenty-nine-A of this Code to effectuate the purposes of this article.

W. Va. Code, §16-5I-5 provides as follows:

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. These rules and regulations shall include, but not be limited to:

(a) The qualifications and supervision of licensed and nonlicensed personnel;

(b) The provision and coordination of inpatient care and in-home treatment services, including the development of a written plan of care;

(c) The management, operation, staffing and equipping of the hospice program;

(d) The clinical and business records kept by the hospice;

(e) The procedures for the review of utilization and quality of patient care; and

(f) Such other requirements as the board of health determines to be appropriate.

ANALYSIS

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

No. Under the above-cited code provisions, the Board of Health has both general and specific authority to promulgate rules and regulations of the type proposed.

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

Yes. It is clearly the intent of the Legislature that the Board promulgate rules and regulations for the licensure of hospice programs. As cited above from W. Va. Code, §16-5I-5, the Legislature enumerated a minimum of five subjects which it intended for the Board to include in its rules and regulations.

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

Yes. Section 4.1.4 requires a license to "be surrendered to the Director upon written demand stating the cause for the demand." W. Va. Code, §16-5I-4(b) requires that prior to suspension or revocation, the licensee must be given written notice "stating the grounds of the complaint, and the date, time and place set for the hearing on the complaint." The

notice must be sent by registered mail.. It would seem that Section 4.1.4 needs to be modified to provide for all of the due process protections required by the statute.

W. Va. Code, §16-5I-5, enumerates five subjects, which at a minimum, must be included in the rule. Subsection (a) requires provisions dealing with supervision of licensed and nonlicensed personnel. The rule is not clear on supervisory matters and is completely silent on the supervision of volunteers.

Subsection (c) requires the rule to have provisions relating to business records kept by the hospice. There are no such provisions.

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

Yes.

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

Yes.

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

Yes. Several minor language clarifications are necessary. Also, the licensure sections need to be written more clearly to distinguish between the issuance of a license to hospices operated by a hospital, nursing home or other licensed agency and the issuance of a license to other hospices. Section 2.1 leaves some doubt as to whether the former types of facilities must acquire a license even though they are not required to submit an additional license fee.

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

Yes.

TITLE 64
LEGISLATIVE RULES
BOARD OF HEALTH
SERIES 54
LICENSURE OF HOSPICE CARE PROGRAMS

§64-54-1. General.

1.1. Scope. -- This legislative rule establishes general standards and or the licensure of hospice programs in West Virginia. This rule to assist in the establishment of comprehensive hospice care programs for the treatment of physical, emotional and mental symptoms of nal 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 and 5D

1.3. Filing Dat. -- May 5, 1986

1.4. Effective Date. -- August 1, 1986

§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. 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. Director -- The director of the West Virginia department of health.

3.4. 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. 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, per- sonal hygiene services, and housekeeping tasks essential to the client's health.

3.6. 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. Hospice -- A coordinated program of home and inpatient care pro- vided 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.

3.8. 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. 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. 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. 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 51 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 51 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 51 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.

§64-54-5. 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. Admission Criteria

5.2.1. 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. New documentation as defined in Section 5.2.1. 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. 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. 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. Contractual Services -- A hospice may contract with other health care providers to provide services to the hospice patients. If services are provided under contract arrangement, the following standards shall be met: 5.3.1. 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. 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. The hospice shall maintain documentation of the licenses or credentials of health care providers providing services under contract arrangement.

5.3.4. 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. The client's interdisciplinary team shall review the medical record to ensure conformance with the established plan of care.

5.4. 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. Scope of Services -- A hospice shall include in the clinical record a form signed by the client which specifies the scope of care and services to be provided by the hospice.

5.6. 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 interdisciplinary 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.

8.1. 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. Clients shall be informed in writing of their rights and responsibilities.

11.2. Clients shall be clearly informed of the responsibilities of the hospice for care of the client, including services to be provided.

11.3. 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. 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. Clients shall have the right to participate in the development of their care plans.

11.6. 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.

§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 16-1, Series 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.

14.1. 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.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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Deputy Secretary of State

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VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

March 11, 1986

IMPORTANT NOTICE

TO: Kay Howard
FROM: RICH O. HARTMAN, DIRECTOR
RE: LEGISLATIVE RULE License of Hospice Care Programs

THE 1986 LEGISLATURE HAS AUTHORIZED YOUR AGENCY TO FINAL FILE AND ADOPT THE ABOVE LEGISLATIVE RULE. THIS AUTHORIZATION IS IN S.B. 434 SECTION 64-2-16(5i)(5) PASSED ON March 8, 1986, EFFECTIVE FROM PASSAGE. YOU HAVE 60 DAYS FROM THAT DATE TO FINAL FILE THE ABOVE RULE WITH THIS OFFICE. NO RULE WILL BE ACCEPTED AFTER THAT DATE. YOU MAY ESTABLISH ANY EFFECTIVE DATE FOR YOUR RULE RANGING FROM THE SAME DATE YOU FINAL FILE TO 90 DAYS FROM THE DATE YOU FINAL FILE. REMEMBER TO RE-TYPE YOUR RULE IN ITS ENTIRETY FOLLOWING THE PROPER FORMAT. PLEASE CALL IF YOU HAVE ANY QUESTIONS.

1 Bill 14

H. B. 1759

2
3 (By Delegate Casey)
4 (Introduced February 5, 1986; referred to the
5 Committee on Health and Welfare with the direction,
6 that it later be referred to the Committee on the
7 Judiciary.]
8
9

10 A BILL to amend article two, chapter sixty-four of the code of
11 West Virginia, one thousand nine hundred thirty-one, as
12 amended, by adding thereto two new sections designated
13 section sixteen(five-d)(nine) and sixteen(five-i)(five),
14 relating to authorizing the state board of health to
15 promulgate legislative rules relating to the licensure of
16 hospice care programs.

17 Be it enacted by the Legislature of West Virginia:

18 That article two, chapter sixty-four of the code of West
19 Virginia, one thousand nine hundred thirty-one, as amended, be
20 amended by adding thereto two new sections, designated sections
21 sixteen(five-d)(nine) and sixteen(five-i)(five), to read as
22 follows:

23 ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
24 LEGISLATIVE RULES.

25 §64-2-16(5d)(9). State board of health.

1759

1 The rules promulgated by the Legislature in subsection (a),
2 section sixteen(five-i)(five) of this article were also proposed
3 by the state board of health pursuant to section nine, article
4 five-d, chapter sixteen of this code.

5 §64-2-16(5i)(5). State board of health.

6 The legislative rules filed in the state register on the
7 twenty-ninth day of October, one thousand nine hundred eighty-
8 five, modified by the state board of health to meet the
9 objections of the legislative rule-making review committee and
10 refiled in the state register on the twenty-seventh day of
11 December, one thousand nine hundred eighty-five, relating to the
12 state board of health (licensure of hospice care programs) are
13 authorized.

14
15
16
17 NOTE: The purpose of this bill is to authorize the state
18 board of health to promulgate legislative rules relating to
19 licensure of hospice care programs.

20
21 This section is new; therefore, strike-throughs and
22 underscoring have been omitted.
23

SENATE BILL NO. 442

1 Bill 14

2 (By Senator R. Williams

3
4 [Introduced February 3, 1986

5 referred to the Committee on Health and Human Resources;
6 then to the Committee on the Judiciary]

7
8
9
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PROMULGATION HISTORY ABSTRACT

AGENCY: Board of Health

RULE TITLE Licensure of Hospice Care Programs

Chapter 16-5I SERIES # 54

RULE TYPE: Legislative

NEW RULE: ; AMENDMENT OF EXISTING RULE: _____

SECTION(S) AMENDED: _____

DATE FILED PROPOSED RULE OR AMENDMENTS FOR PUBLIC HEARING: December 19, 1984

DATE(S) OF PUBLIC HEARING: January 21, 1985

For Interpretive, Procedural or Exempt Rules ONLY

DATE AGENCY ADOPTED RULE FILED: _____
DATE EFFECTIVE: _____

For Legislative Rules ONLY

DATE AGENCY APPROVED RULE FILED: <u>May 24, 1985</u>
DATE OF ACTION BY L.R.M.R.C. : Approved <u>1-10-86</u> , Amended _____
Approve Part _____, Reject _____
MODIFIED TO MEET L.R.M.R.C. COMMENTS; yes <input checked="" type="checkbox"/> , no _____
BILL OF AUTHORIZATION # <u>SB 434</u> , PASSED ON <u>3-8-86</u>
AMENDED BY THE LEGISLATURE, yes _____, no <input checked="" type="checkbox"/>
FINAL FILING ON <u>May 5, 1986</u>
EFFECTIVE ON <u>August 1, 1986</u>

DATE RULE OR AMENDMENT FILED AS AN EMERGENCY RULE: _____

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Licensure of Hospice Care Programs

Chapter 16-5I
Series 54
1986

OFFICE OF THE
SECRETARY OF STATE

1986 MAY -5 PM 1:09

FILED

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Licensure of Hospice Care Programs

Chapter 16-5I
Series 54
1986

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WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Chapter 16-5I
Series 54
1986

FILED
1986 MAY -5 PM 1:00

OFFICE OF THE SECRETARY OF STATE

Title: Licensure of Hospice Care Programs

Section 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 - Chapter 16, Article 5I, of the West Virginia Code. This rule is related to Chapter 16, Articles 5D and 5I of the West Virginia Code.

1.3. Filing Date - May 5, 1986

1.4. Effective Date - August 1, 1986

Section 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.

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. 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. Director - The director of the West Virginia department of health.

3.4. 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. 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. 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. Hospice - A coordinated program of home and inpatient 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.

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

Section 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 51 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 51 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.

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. Admission Criteria

5.2.1. 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. New documentation as defined in Section 5.2.1. 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. 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. 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. Contractual Services - A hospice may contract with other health care providers to provide services to the hospice patients. If services are provided under contract arrangement, the following standards shall be met:

5.3.1. 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. 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. The hospice shall maintain documentation of the licenses or credentials of health care providers providing services under contract arrangement.

5.3.4. 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. The client's interdisciplinary team shall review the medical record to ensure conformance with the established plan of care.

5.4. 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. Scope of Services - A hospice shall include in the clinical record a form signed by the client which specifies the scope of care and services to be provided by the hospice.

5.6. 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 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.

Section 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 interdisciplinary 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.

Section 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.

Section 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.

Section 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.

Section 11. Client Rights

11.1. Clients shall be informed in writing of their rights and responsibilities.

11.2. Clients shall be clearly informed of the responsibilities of the hospice for care of the client, including services to be provided.

11.3. 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. 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. Clients shall have the right to participate in the development of their care plans.

11.6. 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.

Section 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.

Section 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 16-1, Series 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.

Section 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.