Arch A. Moore, Jr.
Governor

David K. Heydinger, M.D.
Director

State of West Virginia

DEPARTMENT OF HEALTH

CHARLESTON 25305

NOTICE OF AGENCY ADOPTION

AGENCY: Health Department

RULE TYPE: Legislative

RULE TITLE: Incorporation of Policy and Procedures Manual for the Special Supplemental Food Program for Women, Infants and Children (WIC Program)

SERIES #: 55

The above-titled rule constitutes the official rule adopted by this agency and filed with the Secretary of State on May 6, 1986. This rule is exempt from review by the Legislative Rule-Making Review Committee.

David K. Heydinger, M.D.

David K. Heydinger, M.D.
Director of Health

FILED
1986 MAY -9 PM 12:58
OFFICE OF SECRETARY OF STATE

1800 WASHINGTON STREET, EAST
OFFICE OF THE DIRECTOR
CHARLESTON, WEST VIRGINIA 25305
TELEPHONE (304) 348-2971

Arch A. Moore, Jr.
Governor

David K. Heydinger, M.D.
Director

State of West Virginia

DEPARTMENT OF HEALTH

CHARLESTON 25305

April 22, 1986

FILED
1986 MAY -6 PM 12:59
OFFICE OF THE
SECRETARY OF STATE

The Honorable Ken Hechler
Secretary of State
State of West Virginia
State Capitol
Charleston, West Virginia 25305

Dear Mr. Hechler:

Enclosed please find for filing a rule entitled "Incorporation of Policy and Procedures Manual for the Special Supplemental Food Program for Women, Infants and Children (WIC Program)." Also enclosed, please find a copy of the Policy and Procedures Manual. The format of this rule has been discussed with Mr. Rich Hartman of your office.

The WIC Program is a federal grant program, administered by the states, to provide supplemental foods, nutrition education and access to health services to pregnant and postpartum women, and to infants and children up to age 5. Eligibility is determined on the basis of income and nutritional risk. West Virginia Code § 29A-1-3 (c) requires that a copy of rules relating to the receipt of public assistance be filed in the State Register. In past administrative enforcement proceedings, the Department of Health has taken the position that the Policy and Procedures Manual is not a "rule" within the meaning of the State Administrative Procedures Act, because it is in actuality part of a federal grant application and program. Nonetheless, to promote maximum public accessibility, the Department requests that the enclosed rule and Manual be filed in the State Register.

Thank you for your attention to this request.

Sincerely,

David K. Heydinger, M.D.

David K. Heydinger, M.D.
Director

DKH/DPL:dk

cc: Charles Dawkins
Kay Howard

PROPOSED RULE ABSTRACT
WEST VIRGINIA BOARD OF HEALTH

TITLE: Licensure of Hospice Care Programs

TYPE: Legislative Rule

NUMBER: Chapter 16-51, Series 54 (1986)

AUTHORITY: Chapter 16, Article 51

RELATED: Chapter 16, Article 51 and Article 5D

ABSTRACT: This proposed rule establishes standards and procedures for the licensure of hospices, a new type of licensure program mandated by the 1984 Legislature in Chapter 16, Article 51 of the West Virginia Code. The 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 establishes basic programmatice requirements.

CONTACT PERSON: Kay Howard, Regulatory Services Division, 348-3223.

RESPONSIBLE DIVISON: Health Facilities Evaluation Division, 348-0050
John J. Jarrell, Director

FILED
1985 OCT 29 P 12:22

FISCAL NOTE FOR PROPOSED RULES

FILED
1985 OCT 29 PM 3

Rule Title: Licensure of Hospice Care Programs

Type of Rule: X Legislative ____ Interpretive ____ Procedural

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

1. Effect of Proposed Rule	ANNUAL Increase	ANNUAL Decrease	FISCAL YEAR Current	FISCAL YEAR Next	FISCAL YEAR Thereafter
Estimated Total Cost	$	$	$ 6,200	$ 6,510	$
Personal Services			4,000	4,200	
Current Expense			2,200	6,310	
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates.

Personal Services includes fractional surveyor and clerical positions. Current expense includes travel funds. Funds for this program (and others) have been incorporated into the Health Department budget request for fiscal 1987.

3. Objectives of these rules:

This rule establishes standards and procedures for the licensure of hospice care programs. This is a new licensure program established by the 1984 Legislature.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The cost of the administration of the licensure program will be supported by the General Revenue Fund.

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

Specific data on costs of programs currently operating is not available. Preliminary review of this rule by hospice programs indicates no major or unreasonable increase in costs due to this rule.

C. Economic Impact on Citizens/Public at Large.

NONE

Date September 11, 1985

Signature of Agency Head or Authorized Representative

David K. Heydinger, M.D.
Director of Health

DATE: October 29, 1985

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Health Department

LEGISLATIVE RULE TITLE: Licensure of Hospice Care Programs

FILED
1985 OCT 29 PM 3:22

1. Authorizing statute(s) citation Chapter 16 Article 5I

2. a. Date filed in State Register with Notice of Hearing:

Decmeber 19, 1985

b. What other notice, including advertising, did you give of the hearing? Notice and copies of the rule were mailed to all hospices, miscellaneous concerned state agencies, professional organizations, health care provider organizations. Nursing homes, hospitals, county health departments and various others received the notice of hearing; copies of the rule were supplied on request.

c. Date of Hearing(s): January 21, 1985
Comment period extended to February 6, 1985 for written comments.

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

Attached X No comments received

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

October 29, 1985

f. Name and phone number of agency person to contact for additional information:

Kay Howard, 348-3223

Catherine Kenny, 348-2363

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

NOT APPLICABLE

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

_____

_____

b. Date of Hearing: _____

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

_____

d. Attach findings and determinations and reasons:

Attached _____

PUBLIC HEARING

Proposed Hospice Licensure Rule

January 21, 1985

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
STEVE McNEW	910 WEST. VA. AVE, PKBG.	HOSPICE ASSOC/PARKERSBURG	YES.
Douglas Thornton	RR1 Box 26A Butler, Oh	Hospice Assoc/Parkersburg	
JAN KIGER	1730 Woodland DR.	Hospice Assoc/Parkersburg.	
Linda Dye	2430 Dudley Ave.	Hospice Assoc./Parkersburg.	

Comments Received by Mail
Regarding Licensure of Hospice Care Programs
for Public Hearing and Comment
January 21, 1985, Extension to February 6, 1985

West Virginia Nurses Association Committee
on Practice
512 D Street
So. Charleston, West Virginia 25303
Carol Mollohan, Chairman

West Virginia Women's Commission
WB-9 Capitol Complex
Charleston, West Virginia 25305
Barbara Matz, Executive Director

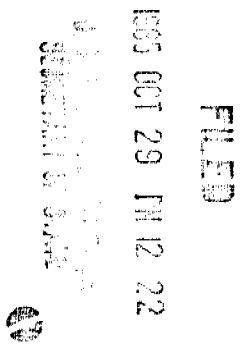
Health Insurance Association of America
919 Third Avenue
New York, New York 10022-9990
Purlaine Lieberman, Dir., Research

Health Department Staff

FILED
1985 OCT 29 PM 12 22

[PROPOSED]

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH



Licensure of Hospice Care Programs

Chapter 16-51
Series 54
1986

For Legislative Rule-Making Review Committee

October 29, 1985

[PROPOSED]

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Licensure of Hospice Care Programs

Chapter 16-51
Series 54
1986

FILED
1985 OCT 29 PM 12
SECRETARY OF STATE

INDEX

[PROPOSED]

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

FILED
1986 OCT 29 PM 12 23
SECRETARY OF STATE

Chapter 16-5I
Series 54
1986

Subject: 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

1.4. Effective Date

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, but shall not be required to submit an additional license fee for the hospice program. 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.

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 the director may, in 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, 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 such informed signed consent. 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. Failure to apply for a license shall be subject to the penalties established by Chapter 16, Article 51, 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 department 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 Law (Chapter 16, Article 51 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.

(e) The hospice shall maintain documentation of such licenses or credentials.

5.3.3. The hospice shall furnish to the provider a copy of the client's plan of care that specifies the care to be provided.

5.3.4. 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. Informed Consent - A hospice shall include in the clinical record a signed informed consent form that specifies type of care and services that may be provided as hospice care during the course of the illness.

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, responsiblities 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 death or discharge. In the case of a minor, the records shall be maintained for a period of five years after 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 patient and family; any existing pre-payment, refund and sliding scale fee policies; and, a statement of patient 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 51 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 51, 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.

Proposed Rules
Public Comments Received
Discussion and Response

Rule, Title, Type and Number: Licensure of Hospice Care Programs, West Virginia Board of Health Legislative Rules, Chapter 16-51, Series 54, 1986.

Public Hearing Date and Location: January 21, 1985 at 1:00 p.m. in the Conference Room of the P & G Building, 2019 Washington Street, East, Charleston, West Virginia. Due to inclement weather, the comment period was extended to February 6, 1985.

The public hearing was attended by four people, only one of whom offered any comment. An attendance record is attached. Other comments were received in the mail. A list is attached.

Directly below is a summary of oral and written comments received, responses to those comments, and any action proposed to be taken relating to those comments. Language added to the rule is indicated by underlining; language to be deleted is indicated by strike-through. We believe that none of the proposed changes "change the main purpose of the rule" nor are they of sufficient substance to require another public hearing. It should be noted that a public hearing on an earlier draft of this rule was held on September 21, 1984. The present proposed rule was extensively revised in response to comments received at the first public hearing.

1) Comment: These regulations, aimed as they are at commercial organizations, will put a strain on all-volunteer organizations.

Response: Not true. Many hospices in West Virginia are generally satisfied with these regulations.

Proposed: None specifically related to this comment.

2) Comment: §2.1. This favors hospice programs maintained and operated by hospitals, nursing homes and other licensed health care facilities by not requiring those programs to obtain an additional license.

Response: The fee of $100 is minimal. Licensed health care facilities should not be assessed for each health service provided.

Proposed: No change

3) Comment: §3. A definition of nursing care consistent with that contained in the West Virginia Nurse Practice Act should be included among the §3 definitions.

Response: Most definitions have been omitted from these regulations, except those needed for clarification. Sections 6.3.6, 7.4., and 10.2.4 adequately deal with this comment.

Proposed: No change

4) Comment: §3.1. What constitutes "support services" should be made clear.

Response: Disagree. This is implied in the definition. The item has probably been misinterpreted by the commentator.

Proposed: No change

5) Comment: §3.7. "Social" needs are not defined; neither are they elaborated on elsewhere in the rule. Perhaps social needs should not be mentioned in the regulations.

Response: Disagree. We believe that the term is generally well understood in the overall philosphy of hospice care and does not require a definition.

Proposed: No change

6) Comment: §3.8. To be consistent with other requirements of the regulations, a registered nurse should be required to be a member of the interdisciplinary team.

Response: Chapter 16-5I-2(d) of the West Virginia Code states nurse. The rule does require that a registered nurse coordinate the overall plan of care.

Proposed: No change

7) Comment: §4.1.6. The name of the owner should be required to be stated on the license. If owners change, a new license will be required anyway, and this should be public information.

Response: Disagree. This information is available as public information. We believe the amount of interest in this information does not justify adding it to the license itself.

Proposed: No change

8) Comment: §4.5.1. The department's seeking the advice of the hospice staff as to which hospice clients to visit at home allows the staff to control feedback to the department.

Response: Not necessarily. Under no circumstances should a State Health Department investigator undermine the dignity of a hospice patient. Also, the department does not have to follow the advise of hospice staff. See §4.5.1.

Proposed: No change

9) Comment: §4.6.4. The "reasonable" time for submission of a revised plan should be restated in terms of days. "Reasonable" is too vague.

Response: Agree. We have added the time parameter routinely used.

Proposed: §4.6.4. ... When the director rejects a plan of correction, ~~a reasonable time~~ up to ten days for submission of a revised plan may be allowed.

10) Comment: §4.7.3. If notice of the investigation results is mailed to the complainant, chances are that the hospice staff will discover the complainant's identity. A better way to ensure the confidentiality required by §4.7.5. is necessary.

Response: This comment is well taken and the Health Department needs to take care to protect confidentiality. However, confidentiality could be protected by the use of a plain envelope marked "confidential" or by devising some other protecting arrangement.

Proposed: No change

11) Comment: §4.7.4. A written request should not be required; it is impractical and nonconducive to confidentiality.

Response: This is for a full report of all actions to be taken, not the routine report of results. We believe the magnitude of the full report to be sufficient to require a written request.

Proposed: No change

12) Comment: §5.2.1. This documentation should be required to be obtained from a physician, preferably the patient's attending physician or the hospice medical director or physician.

Response: Agree. We believe this to be assumed under routine medical practice standards and/or law, but have added clarifying language.

Proposed: §5.2.1. "... the hospice shall obtain documentation from the attending physician or the physician member of the hospice interdisciplinary team that the client is terminally ill."

13) Comment: §5.2.2. A reevaluation of life expectancy should be required after 90 days. There should be an absolute limit set on the amount of time that may be spent in the hospice.

Response: Agree to reevaluation of life expectancy. The hospice should not, however, have to set an absolute limit on the time spent in the hospice ... let the insurance companies set their own limits. This provision was in the earlier draft and was inadvertently omitted from the present proposed rule.

Proposed: §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. (Change old §5.2.2 to §5.2.3; change old §5.2.3 to §5.2.4.)

14) Comment: §5.2.3. Humane and discreet treatment must be maintained in the hospice. Perhaps aspects of patient condition such as that emphasized in this section should not be emphasized.

Response: Considered is the key word here.

Proposed: No change

15) Comment: §5.4. The regulations should provide some protection of this sort for the hospice as well.

Response: Disagree. This is a problem the hospice needs to resolve, not the State Health Department.

Proposed: No change

16) Comment: §6.1. The minimum services required to be provided under this section should be spelled out.

Response: Disagree. This section does "spell out" the minimum services.

Proposed: No change

17) Comment: §6.1.2. The minimum services required to be provided under this section should be stated in more detail. Any definition of "nursing care" should be consistent with the West Virginia Nurse Practice Act."

Response: Disagree. See comment #3. Sections 6.3.6 and 7.4. address this issue.

Proposed: No change

18) Comment: §6.1.3. Several commentators expressed the opinion that the medical social services required to be provided under this section should be expounded upon.

Response: Same response as in #17 (above).

Proposed: No change

19) Comment: §6.1.4. The "spiritual care services" required to be provided under this section need defining.

Response: Same response as in #17.

Proposed: No change

20) Comment: §6.2.3. This section should read as follows: "Nutritional, pharmaceutical, psychiatric, psychological, radiological, pediatric, oncologic and other specialists available for consultation or direct services".

Response: Agree

Proposed: §6.2.3 "Nutritional, pharmaceutical, psychiatric, psychological, radiological, pediatric; ~~and~~ oncologic and other specialists available for consultation or direct services."

21) Comment: §6.2.5. It should be emphasized in the regulations that a hospice is merely to have a policy of recommending the destruction of certain drugs in a client's home.

Response: We believe the provision to be stated clearly.

Proposed: No change

22) Comment: §7.2. This section should read as follows: "The plan shall be reviewed and updated ~~monthly~~ at least monthly and more often if necessary by the interdisciplinary team. These reviews shall be documented in the client's clinical record."

Response: Agree

Proposed: As stated. We believe this to be assumed under routine medical practice, but have added clarifying language.

23) Comment: §8. Infection control should be required to be reviewed here also.

Response: While infection control would be a standard client care procedure, we agree to add a specific mention in this subsection for emphasis, particularly because of AIDS.

Proposed: New "f" - (f) Review of infection control procedures. (Renumber as needed.)

24) Comment: §9.5. This section should provide safeguards for the client.

Response: Section 9.1 provides for this.

Proposed: No change

25) Comment: §10.2.3.(a). Some person or group of people, most likely the interdisciplinary team, should be given direct responsibility for formulating the plan. Having a responsibility merely to participate in the development of the plan is insufficient.

Response: The medical director has overall responsibility for the hospice's patient care program (§10.1) and a nurse is coordinator (§7.4.).

Proposed: No change

26) Comment: §11.2.4. This requirement should more properly be stated in Section Seven (Plan of Care), although it need not also be deleted from this section.

Response: Agree

Proposed: Move §11.2.4 to Section 7 - §7.4 Add "registered professional nurse"

27) Comment: §10.2.4. Several commentators stated that the regulations should establish a set of minimum education and/or training requirements for all personnel so that personnel requirements will not differ materially from hospice to hospice. Records should be kept not only on personnel but on volunteers as well.

Response: Since most hospices are young and/or developmental, this rule should not be too rigid. Section §10.2.4 provides flexibility, yet still provides for the use of standards set by professional organizations.

Proposed: No change

28) Comment: §11. One commentator suggested that this section should require that clients be given information on the option of a "living will". Consent and authorization forms should state whether this information has been given. A few hospice administrators suggested this wasn't necessary.

Response: It is our opinion that the distribution of "living will" information should remain optional.

Proposed: No change.