

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code § 16-5C-5

AMENDMENT TO AN EXISTING RULE: YES NO

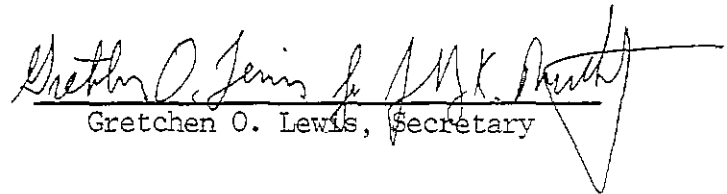
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 65

TITLE OF RULE BEING PROPOSED: Residential Board and Care Homes

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


Gretchen O. Lewis, Secretary

16, 20

DATE: November 27, 1995
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: Department of Health and Human Resources
Kay Howard

LEGISLATIVE RULE TITLE: Residential Board and Care Homes

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

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

June 30, 1995

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

Copies were sent to residential board and care homes
and several professional associations.

c. Date of hearing(s): Comment period 6-30-95 to 7-31-95,
extended to August 21, 1995

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)

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

Kay Howard 558-3223

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

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

_____ N/A _____

b. Date of hearing: _____ N/A _____

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

_____ N/A _____

d. Attach findings and determinations and reasons:

Attached _____ N/A _____

**Discussion of Public Comments Received
Concerning the Proposed Rule
Residential Board and Care Homes, 64 CSR 65**

The proposed rule, **Residential Board and Care Home Licensure Rule, 64 CSR 65**, is a major rewrite of the present rule. The rule contains standards and procedures for the operation and licensure of residential board and care homes. It: 1) makes the rule conform to revisions to Articles 5C and 5H of Chapter 16 of the W. Va. Code by the 1994 and 1995 Legislature; 2) addresses problems with the current rule and an earlier proposed revision; and 3) complies with federal regulations and law.

A public comment period was held from June 30, 1995 to July 31, 1995, and was extended to August 21, 1995. The Department received numerous comments, which are summarized and discussed below. Minor stylistic changes and corrections of typographical and format errors not documented. Some revisions have necessitated renumbering. Comments and discussion are keyed to the version of the rule offered for public comment.

Historical Background: A brief history of the development of the present draft may be helpful.

The Keys Amendment to the U. S. Social Security Act (42 U.S.C. §1382e(e)), passed in 1977, requires States to establish, maintain, and insure the enforcement of standards for any category of group living arrangements in which a significant number of recipients of SSI (supplemental social security income) are residing or likely to reside. These standards must be appropriate to the needs of the residents and the character of the facilities and must address admission policies, safety, sanitation, and protection of civil rights. Federal regulations at 45 C.F.R. §§1397.1 through 1397.20 more specifically define the required standards. Residential board and care homes in West Virginia have a significant number of residents who receive SSI.

W. Va. Code §16-5C-5 requires the Department to promulgate a rule establishing minimum standards for these facilities. The rule must include administrative policies, staff requirements, safety requirements, sanitation requirements, services to be provided, dietary services, maintenance of records, and social and recreational activities. The rule must also establish a system of ratings for these facilities and enforcement mechanisms.

Wolford v. Lewis, Civil Action No. 2:92-1151 (Wolford), a class action lawsuit, was filed in federal court in 1992 alleging that the Department was not complying with the Keys Amendment or State law. At the time of the filing of Wolford, the Department had in place a personal care home licensure rule that had not been revised in over twenty years which did not meet the requirements of either the Keys Amendment or State law. The Department had no rule in place regarding residential board and care homes. An initial version of a new residential board and care home licensure rule was in process during the pendency of Wolford. The new residential board and care home rule was approved by the 1993 Legislature, and became effective October 1, 1993. This rule is now being proposed for amendment.

On March 21, 1994, Judge Copenhaver issued an Order granting in part plaintiffs' motion for summary judgement. The Court found that the existing personal care rule and the new residential board and care rule did not comply with the Keys Amendment or State law. The Court

further ordered the parties to confer and agree on a plan to change the rules so that they would comply with both federal and State law.

Proposed amendments to the residential board and care home rule filed for public comment during the summer of 1994 were a product of procedures related to resolution of Wolford issues, and had been filed as part of the Court-ordered Long-Term Care Plan. The Department received extensive negative comments about the proposed rule. The Department was not in a position to propose improvements in response to comments on some items without first approaching the court. As a result of the comments received by the Department, and because some errors had been detected, the Department did propose revisions in the proposed rule to the Court. After discussion and negotiation, Judge Copenhaver agreed to many, although not all, of the Department's proposals. The present proposed rule is the result of this process and the response to comments received on the 1995 proposal.

General Comments

1. **Comment:** The provisions for limited and intermittent nursing care are not appropriate for the home where there may be rare occasions or a single episode whereby a resident needs such care, perhaps for a period of less than thirty (30) days. This rule provides an either-or situation which could encourage homes to admit more frail residents. The time ninety (90) days is mentioned. What if a home provided limited and intermittent nursing care and then claimed that for a period of one twenty-four (24) hour period the person did not need this care. Would the home then be able to provide another ninety (90) days of this service? At Greenvew, there have been fewer than ten (10) such instances in ten (10) years and these have been short term, i.e., from two (2) weeks to thirty (30) days. More work needs to be done. Home operators should be consulted so that positive and practical results can be expected. Has this concept been tested elsewhere? If so, what are the results?

Response: The Department agrees that the potential for abuse exists and will add a phrase to the definition of limited and intermittent nursing care preventing a home from extending the ninety (90) day period by allegedly skipping a day. The purpose of this section is to allow residents to remain in their home during a temporary illness when it is expected that the resident will again be self preserving.

2. **Comment:** There are too many Class I categories or inappropriate items placed within a category that should be a Class I. Examples follow: 8.5.9., 8.5.12.a., 8.5.13, 11.2.4., 11.2.8.e (for institutional setting), part of 11.2.11.b.

Response: Class levels are assigned to groups (subsections) of specific statements, and are determined by the general level of potential for harm to residents when there is a violation. In such a system, logical groupings of standards may occasionally generate some mixing of levels in the individual items that make up the group.

3. **Comment:** There should be requirements regarding an administrator's responsibility in the case of a home's closing - voluntarily or involuntarily. Examples include: notice to residents, responsibility to help residents find another appropriate living situation, and return of any unused

portion of resident's funds, including deposits. A residential board and care home should be required to have a bond to cover thirty (30) days of operating funds to insure proper care if a home closes, either voluntarily or involuntarily.

Response: The Department agrees that this has created problems and has resolved the issue by adding § 4.2.1.a.J which requires a guaranty by owners of facilities so that residents are given adequate care for thirty (30) days. Facilities have a thirty (30) notice requirement.

4. **Comment:** I am proud of the service that I can offer the elderly in my community. I regard myself as a responsible and conscientious administrator and I support the majority of the proposed rules and regulations, as I understand them. I do believe that we, the operators of residential board and care homes, or appointed representatives, should have the opportunity to participate in the rule making process. We, after all, serve the needs of our residents on a daily basis, and feel we could contribute valuable input to protect and preserve the safety and well-being of our elderly population. We appreciate your cooperation and aspire to develop a positive and productive relationship with our governing agencies.

Response: The Department acknowledges the comment. The Office of Health Facility Licensure and Certification has had numerous meetings and conversations with providers in an attempt to be as sensitive as possible to provider concerns while maintaining resident interests.

Comments Related to Specific Items

3.11. **Comment:** The phrase "and the individual's condition is unstable and unpredictable" has been deleted; the concept is covered by the definition of §3.25.

3.17. **Comment:** The definition of "licensed health care practitioner" has been deleted as unnecessary. Appropriate adjustments and clarifications have been made elsewhere in the rule.

3.31(new). **Comment:** A definition of "restorative care" has been added for purposes of clarification.

4.2.2. **Comment:** Most residential board and care homes are private pay, operators do not know the source of the resident's income. It is none of our business if some of their income comes from SSI. We should not have to ask their source of income.

Response: This is a federal requirement related to enforcement of the Keys amendment to the Social Security Act. (See footnote 2 in the rule.)

4.4.2. **Comment:** Should be changed to read: "The secretary shall issue a renewal license no later than the license expiration date when the following conditions are met:" - Renewal procedures should be followed in a timely way so that insurance coverages that protect residents' person and property can be kept current. Some policies will not cover if license is not current. Otherwise, wouldn't the state incur liability since they have required, within these regulations, that the home carry the insurance?

Response: New § 4.1.10 identifies statutorily determined provisions for initial and renewal licensure expiration, and for continuance if the Department is unable to complete inspections and issue renewal licenses prior to the expiration of the current license. (Provisional renewal licensure time constraints are identified in § 4.5.4 of the rule.)

4.6.4. Comment: The word "unannounced" has been deleted. Initial surveys are not required by Code to be unannounced.

4.13. Comment: This section, previously titled "adverse Licensure Actions" has been split into two sections: 4.13, "Non-Issuance of Initial or Renewal License," and 13.2, "Restrictions; Revocation," for purposes of clarification and style.

4.13.1.c, g and h. Comments: Too subjective and vague. Specific criteria, definitions, and documentation are needed.

Response: Agreed. Items deleted. Specifics criteria for the concepts are available elsewhere in the rule.

5.2.4. Comment: I am concerned about the cost factor. Is there a pool available for us through the state for such insurance?

Response: No. Any business entity caring for individuals or having individuals enter their homes on a regular basis should have some liability insurance coverage to prevent the facility from placing its continued existence at risk. This is a requirement in most rental agreements and occurs in most homeowners' policies. This type of coverage is not prohibitively expensive.

5.3.1. Comment: Current administrators should be grand fathered in and not required to obtain a GED certificate.

Response: The Department is opposed to a general grand fathering of all existing administrators. Current administrators could apply for a waiver of this requirement under the general waiver provisions of § 4.3 of the rule.

5.3.5. Comment: Quality assurance plan should be in the definitions.

Response: The Department is providing training on expectations for this requirement. A meaningful definition would require too much detail to allow the flexibility needed for individual provider situations at this time.

5.3.6. Comment: Supervisor-in-charge should be replaced with "responsible party" and also stricken from the definitions.

Response: Agreed in principle. A special term is not necessary.

5.4. Comment: 5.4 is in conflict with the State Fire Code. An individual should retain the right to live where they choose, especially when they are receiving no state funding. The self-

preservation waiver should be recognized and enforced by both the State Fire Marshal's Office and the Office of Health Facility Licensure and Certification. If non-self-preserving residents are allowed to remain in the facility, then additional safeguards need to be established. Is this not a violation of the Code requiring self-preservation?

Response: The portion of 5.4.4 which permitted residents not capable of self-preservation to remain in a residential board and care home has been deleted. It is in conflict with State law and the rules of the State Fire Commission. The rule must comply with State law.

5.4.2. Comment: If the current contract meets the provisions of the law, then a new one should not be needed.

Response: Agreed. Item clarified.

5.6.2. Comment: I think the time period should be reduced to thirty (30) days. Generally, in that time, a provider would know what additional level of care an individual would need.

Response: Some conditions which would require only limited and intermittent nursing care may have a recovery period of more than thirty (30) days.

5.9.5. Comment: This is unreasonable for purchases less than ten (\$10) dollars. What if a facility buys several of an item to be kept "on hand" such as dental adhesives, toothpaste, disposable enemas, lotions and the receipt shows such and may be predated for a period greater than one (1) month. The average person can look at an amount for a small item and know whether or not the price is reasonable or not.

Response: The Department agrees that the one (\$1) dollar requirement could be too limiting and has increased the amount to ten (\$10) dollars. Surveyors can establish if prices do not reflect actual costs but receipts should be kept for a number of months.

5.10 (new). Comment: The Department proposes to add a new section clarifying the responsibilities of a residential board and care home in the event of the death of a resident.

6.5.1.b. Comment: There are probably not more than a dozen individuals in West Virginia that have been convicted of these offenses. The state should maintain a list of those individuals so that potential employers can check. This only adds to resident expenses.

Response: The Department agrees that a criminal check provides only minimal protection but the reality is that if no check is done, the most serious criminal can be employed in this setting with no awareness on the part of the facility. If an abuse registry is begun in West Virginia, this will make such situations more easily checked and documented. The Department has a real concern that residents need such a safeguard and feels that homes can develop a relationship with local law enforcement to assist with this requirement at minimal expense.

7.2.4. Comment: Replace "posted" with the word "located".

Response: The Department agrees that, to encourage a homelike environment, deficiencies can be kept in a notebook in the living room or some other accessible place so that residents know where it is and have access to it. The rule has been so revised.

7.8.5 (new). Comment: The Department has added a provision prohibiting the home from permitting the work of a resident to endanger him or herself or others. This is a reasonable precaution and should not be onerous.

8.2.2. Comment: The amount of time prior to admission for an acceptable resident assessment has been increased from forty-five to sixty days. It is sometimes difficult to obtain physician appointments.

8.2.3. & 8.3.2. Comment: These will greatly add to the cost for those homes who are not managed by a health care professional.

Response: The Department understands the monetary constraints but feels that it is reasonable that a health care professional assess residents within two (2) months prior to entering the facility or shortly thereafter. Most residents would or should have a doctor involved in their care who could fill out any assessment based on their examination. There must be some way to identify the resident's current medical condition to ensure appropriate care is being provided. Many of these residents see their doctors regularly so such information should be available. This does not necessarily increase expenses to the facility itself.

8.4.8.c. & d. Comment: These requirements are excessive for a home environment. Small residential board and care homes should be able to allow for spontaneous activities and happenings, as well as planned activities. Discussion of current events at meal time, as occurs in many families, was given as an example.

Response: Spontaneous activity and happenings can be included in a plan or schedule. Some documentation of what activity occurs will be required. The intent of these requirements is to provide variety and prevent the use of television as the sole source of activity available for residents, an all too frequent approach. Many facilities post church activities or elderly program calendars so that residents can participate if they choose. This does not require extensive planning but some consideration of the residents interests. Boredom has an extremely negative impact on level of functioning.

8.5.5. Comment: This provision unfairly discriminates against those with disabilities, i.e. dominant side hemiplegia, vision impairment, or benign tremor and who would otherwise meet criteria for residential board and care home residency when a nurse is not present. Trained individuals should be able to administer insulin, especially if using the new pre-loaded syringes. See Sec. 504 of the Rehabilitation Act of 1973 and exclusion because of handicap, Wagner v. Fair Acres Geriatric Center (3rd Cir. 1995). The administration of medication by unlicensed personnel is currently unacceptable to the Board of Nursing.

Response: All items dealing with the administration of medication have been modified to clarify that medication must be administered according to State law. The Department does not have

the authority to act counter to State laws related to administering medication, such as the registered nurse practice act, W. Va. Code § 30-7-1 *et seq.* Efforts are being made to allow unlicensed personnel to receive the needed training to provide this service.

8.6.1. Comment: First sentence unclear. Is there a grammatical error?

Response: The item has been clarified.

10.1.4 & 10.1.7. Comment: Commenters suggested that these items exceed requirements of the State Fire Commission and should therefore be deleted.

Response: Agreed. Other items replicated State and national standards. The Department has reduced § 10.1 to a single item requiring compliance with the applicable rules of the State Fire Commission (enforced by the State Fire Marshal).

10.2.3. Comment: I am not sure how feasible it would be for us to get a written agreement for water or shelter, although I'm sure our Volunteer Fire Department would assist us.

Response: The Department agrees that such agreements could be difficult to maintain and will therefore eliminate this requirement. In emergency situations, local officials have been responsive to needs and there is no indication that formal agreements would be necessary.

11.1.5. Comment: There have been some recent Supreme Court decisions (article enclosed) challenging some local zoning ordinances. Suggest deleting reference to local zoning laws.

Response: The Department agrees. The reference to zoning laws is unnecessary in that facilities will obviously be expected to comply with zoning requirements. This is a unnecessary statement of assumed fact.

11.2.11.b. Comment: This is not practical for small amounts of laundry (1 to 3 pieces) that have been soiled due to incontinency. The requirement is good in principal but adequate sanitizing would overcome any cross contamination.

Response: Agreed.

11.3.1.b. Comment: Halls in a conventional home are not wide enough to accommodate handrails. Not only would walking space be reduced, it would be difficult to bring a gurney through and move furniture in and out of rooms. This is not a Fire Marshal requirement for residential board and care homes and should be stricken from this rule.

Response: Requirement for handrails in hallways deleted.

11.5.6. Comment: Side rails that facilitate the resident's mobility should be permitted.

Response: Agreed.

11.6.6. Comment: Blow dryers (hands) have been shown by research to be the most unsanitary method of all for hand drying due to air blown toward the floor picks up mold, bacteria, etc. and is breathed by those in close proximity and also deposits same on other surfaces.

Response: Blow dryers deleted.

12.1.6. Comment: An ambulatory, self-preserving resident with Alzheimer's Disease, senile dementia, or any other mental impairment, who would require 24 hour supervision, may or may not be able to recognize danger. Most residents that enter residential board and care homes are unable to care for themselves because they can no longer recognize danger and may potentially jeopardize their own safety and well-being. Residential board and care homes are appropriate for just this type of resident. This rule is in conflict with rule 5.4.5, which states that individuals may be in need of supervision because of mental or physical impairment.

Response: The Department does not agree that this conflicts with 5.4.5 in that this specific requirement only requires that those residents who need a high degree of assistance should be on the first floor. As we all know there is a requirement that all residents are self preserving and this is based on the Fire Code and the type of sprinkler system required in these facilities and the level of care typically available in these facilities. If assistance is required then having the high need individuals on this first floor is valid.

12.1.8.d. The Department has modified 12.1.8.d to insure consistency with State law.

12.1.10 has been deleted. It duplicated 8.5.3.

12.1.11 has been deleted. It duplicated 8.5.9, in part. The one (1) exception has been inserted in 8.5.9.

12.1.12. Comment: Over-the-counter medications such as commonly used analgesics should be an exception to this rule.

Response: The Department disagrees. The possibility of adverse medication interactions exists with over-the-counter medications. In instances where the individual is not making his or her own treatment decisions, administrators or staff who are not licensed should not make decisions regarding medications.

SUMMARY - PROPOSED RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
DIVISION OF HEALTH
RESIDENTIAL BOARD AND CARE HOME
64 CSR 65

Summary: This legislative rule prescribes specific standards and procedures to assure the health, safety, and protection of the rights and dignity of residents of residential board and care homes. The Department of Health and Human Resources proposes to amend the present rule, which became effective in October, 1993, to correspond with changes in the licensure law enacted by the 1994 and 1995 Legislatures; to respond to a Court Order; and to make needed changes to further ensure the protection of the residents of such facilities based on actual field observation of needs and problems. The proposed amendments add requirements in the following new topic areas: the licensee, other uses of the home, resident work, volunteers, personnel records, services, functional assessments, comprehensive service plans and additional requirements related to the provision of limited and intermittent nursing or maximum personal assistance services. All sections of the rule have been revised and/or reorganized.

For further information contact: The Office of Health Facility Licensure and Certification, telephone (304) 558-0050, Bureau for Public Health, Department of Health and Human Resources, State Capitol Complex, Building 3, Room 518, Charleston, West Virginia, 25305 ; or the Office of Regulatory Development, telephone 1-304-558-3223, Bureau of Operations, Department of Health and Human Resources, State Capitol Complex, Building 3, Room 265, Charleston, West Virginia, 25305, telephone (304) 558-3223.

11/13/95

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Residential Board and Care Homes, 64 CSR 65

Type of Rule: X Legislative Interpretive Procedural

Agency Department of Health and Human Resources

Address Building 3, Capitol Complex

Charleston, W. Va. 25305

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 323,118	\$ 313,549	\$ 313,549
Personal Services			174,564	183,292	183,292
Current Expense			124,054	130,257	130,257
Repairs and Alterations			0	0	0
Equipment			24,500	0	0
Other			0	0	0

2. Explanation of above estimates.

* See attachment for details.

3. Objectives of these rules:

This proposed legislative rule redefines the general standards and procedures for regulating residential board and care homes. The proposed rule provides for the health, safety and welfare of resident of such residential board and care homes.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The additional cost of administering this rule will require an increase in general revenue funding for the Department of Health and Human Resources.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

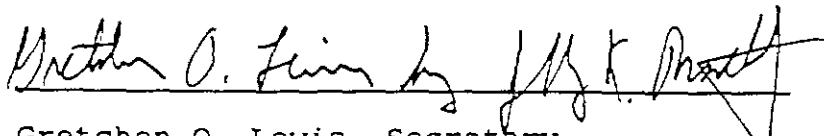
W. Va. Code § 16-5C-6(e) mandates that residential board and care homes are responsible for the direct costs of inspection for initial licensure. The average cost of a first inspection is estimated at \$838; however, initial inspection costs for some facilities may be less than the \$838, while costs to inspect other facilities may very well exceed the estimated \$838. Additionally, any additional cost for compliance with the regulations will also be borne by the residential board and care homes.

C. Economic Impact on Citizens/Public at Large.

Possible impact - increased costs in providing residential board and care.

Date June 30, 1995

Signature of Agency Head or Authorized Representative



Gretchen O. Lewis, Secretary
Department of Health and Human Resources

PROPOSED RULE FISCAL NOTE ATTACHMENT
Residential Board and Care Homes, 64 CSR 65

The present fiscal note assumes a full year of operation during Fiscal Year 1996, although the Department of Health and Human Resources will need a supplemental budget package to cover the costs resulting from implementation of this rule since no funds have been allocated by the legislature for this new program. Other assumptions are detailed below.

Number of Homes

Precise information regarding the number of residential board and care homes is not available. The Department is currently aware of approximately 116 potential residential board and care homes which have submitted an application for licensure.

Historically, the Department discovers approximately eighty (80) unlicensed locations providing varying levels of 24-hour residential care per year. Of these 80 locations, the Department estimates that: approximately 20 will be licensable as residential board and care homes; 20 or more will reduce their census voluntarily; and the remainder will require some type of administrative action.

The Department believes that after an initial period of adjustment the number of new residential board and care homes licensed per year will level off and that there will be approximately 200 such licensed facilities. Also, the number of unlicensed facilities discovered should decrease. Although there will not be a full complement of 200 licensed facilities in the first and second years, the extra work required for the initially large number of known un-licensable facilities and other start-up activities will require full staffing from the program's inception.

Estimated Time Required for Inspections and Administration

The following assumptions were made concerning staff time requirements per facility:

1. Time required per facility for inspection and administrative costs for homes meeting the licensure requirements: 27 hours.
2. Time required per facility for inspection and administrative costs for homes voluntarily choosing to reduce their census: 32 hours (an additional 5 hours for administrative process).
3. Time required per facility for inspection, administrative review and legal costs for non-complying, non-cooperative facilities: 52 hours (an additional 20 hours for legal action).

Cost Estimates

1. Fiscal Year 1996

PERSONAL SERVICES:

0.50 FTEs	Program Administrator	\$ 16,500
1.00 FTEs	Attorney	31,000
1.00 FTEs	Para-Legal	23,000
1.00 FTEs	Clerical Staff	15,900
2.00 FTEs	Nurse III/IV @ \$33,082	66,164
1.00 FTEs	Social Worker	22,000
		=====
6.50 FTEs	TOTAL PERSONAL SERVICES	\$ 174,564

CURRENT EXPENSE:

Fringe Benefits (Personal Services @ 22.1%)	\$ 56,779
PLUS: (Insurance @ 4 x \$4,550)	
Travel Expense (4 Surveyors @ \$8,200)	32,800
Vehicle Expense (2 Leased Vehicles)	12,480
Other Current Expense	21,995
(Includes Rent & Telephone Costs)	=====
TOTAL CURRENT EXPENSE	\$ 124,054

EQUIPMENT:

Office Furniture for 4 Charleston Based Staff	\$ 3,500
Computer Equipment:	21,000
4 Laptop Computers	=====
2 Desktop PCs for Office Staff	
TOTAL EQUIPMENT	\$ 24,500
TOTAL ESTIMATED COST	\$ 323,118
	=====

2. The estimated cost for Fiscal Year 1997 and each year thereafter is reduced by the equipment costs; however, FY-97 and thereafter reflect a 5% increase over Fiscal Year 1996 for both Personal Services and Current Expense.

Revenue Estimates

Fiscal Year 1996

The revisions to the rule have no impact on fees or revenue. The licensure program generates some revenue, but it is not a self-supporting program. The renewal licensure fee was raised by Order from \$5.00 to \$5.25 per bed on April 1, 1994. West Virginia Code \$16-5B-6 permits fee adjustments based on the consumer price index (CPI-U).

Revenues for Fiscal Year 1996 are based upon an estimated 116 residential board and care home inspections and each of those facilities paying an estimated initial inspection cost of \$600.00. Additionally, revenues would be generated by an initial licensure fee of \$63.00 per facility application.

Initial Inspection Costs	\$600.00	x	116 Homes	\$	69,600
Licensure Application Fees	\$ 63.00	x	116 Homes		7,308
					=====
TOTAL ESTIMATED REVENUE				\$	76,908

Revenues for subsequent fiscal years are based upon a leveling off of new residential board and care homes with 200 facilities applying for re-licensure and an additional five (5) new facilities applying for licensure each year thereafter.

TOTAL ESTIMATED REVENUE for FISCAL YEARS 1997 & THEREAFTER

Initial Inspection Costs	\$600.00	x	5 Homes	\$	3,000
Licensure Application Fees	\$ 63.00	x	5 Homes		315
Renewal Licensure Fees ¹	\$5.25	x	5 Beds x 200 Homes		5,200
					=====
TOTAL ESTIMATED REVENUE				\$	8,515

¹ Estimated average bed census per home.

**PROPOSED RULE - TITLE 64
WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH**

SERIES 65

RESIDENTIAL BOARD AND CARE HOMES

For Submission to the

Legislative Rule-Making Review Committee

November 27, 1995

**PROPOSED RULE
WEST VIRGINIA DIVISION OF HEALTH
ADMINISTRATIVE RULES
RESIDENTIAL BOARD AND CARE HOMES
64 CSR 65**

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**PROPOSED RULE - TITLE 64
WEST VIRGINIA DIVISION OF HEALTH
ADMINISTRATIVE RULES
SERIES 65
RESIDENTIAL BOARD AND CARE HOMES**

§64-65-1. General.

1.1. **Scope** - This legislative rule prescribes specific standards and procedures to provide for the health, safety, and protection of the rights and dignity of residents of residential board and care homes. This rule must be read in conjunction with W. Va. Code § 16-5C-1 et seq. and § 16-5H-1 et seq. to determine the complete requirements for licensing, regulation, and complaint investigations of residential board and care homes.

1.2. **Authority** - W. Va. Code § 16-5C-5. Related W. Va. Code § 16-5C-1 et seq. and § 16-5H-1 et seq.

1.3. **Filing Date** -

1.4. **Effective Date** -

1.5. **Repeal of Former Rule** - This legislative rule repeals West Virginia Administrative Rules, WV 64 CSR 65, Residential Board and Care Homes, 1993.

§64-65-2. Application and Enforcement.

2.1. **Application** - This rule applies to any person, and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of this State establishing, maintaining or operating a residential board and care home as defined in W. Va. Code § 16-5C-2 and § 16-5H-1 and this rule: Provided, That participation by a home in the adult family care home program of the department of health and human resources shall be accepted as a residential board and care home license; and Provided further, That this rule does not apply to homes or asylums operated by fraternal orders pursuant to W. Va. Code § 35-3-1 et seq.

2.2. **Enforcement** - This rule is enforced by the secretary of the West Virginia department of health and human resources.

§64-65-3. Definitions.

3.1. **Abuse** - Mistreatment of residents, including physical bodily harm, misuse of physical or chemical restraints, verbal abuse, and infliction of emotional suffering.

3.2. **Activities of Daily Living** - The activities that individuals generally perform regularly in the course of maintaining their physical selves, such as eating, dressing, oral hygiene, toileting, personal grooming, and moving themselves from one location to another, as for example, in

moving from a bed to a chair, or from one (1) room to another.

3.3. **Administrator** - The owner or individual selected by the licensee to be responsible for the day-to-day operation of the residential board and care home.

3.4. **Bed Capacity** - The number of residents for which a residential board and care home is licensed to provide care.

3.5. **Bedfast** - The condition of individuals who are confined or restricted to a bed or chair for a prolonged or indefinite period of time with limited mobility and ability to turn themselves while in bed or remove themselves from a chair, making them susceptible to physiological, physical and psychological complications of immobilization and incapable of self-preservation. An individual for whom a physician has prescribed bed rest because of a short term illness (i.g. cold, flu, virus, etc.) is not considered bedfast.

3.6. **Behavioral Health Services** - Those services intended to help individuals with emotional or mental disorders, alcohol or drug abuse problems, or mental retardation or other developmental disabilities to gain or regain the capacity to function adaptively in their environment, to care for themselves and their families, and to be accepted by society.

3.7. **Chemical Restraint** - a psychoactive drug that is used for discipline or convenience and is not required to treat medical symptoms.

3.8. **Certified Long Term Care Nursing Assistant** - Any individual who has met the requirements for entry in the long term care nursing assistant registry.

3.9. **Communicable Disease** - An illness due to an infectious agent or its toxic products which is transmitted, directly or indirectly, to a susceptible host from an infected person, animal, or arthropod, or through the agency of an intermediate host or a vector or through the inanimate environment.

3.10. **Developmental Disorder** - A group of disorders in which the predominant disturbance is in the acquisition of cognitive, language, motor, or social skills. The disturbance may involve a general delay, as in mental retardation, or a delay or failure to progress in a specific area of skill acquisition or multiple areas in which there are qualitative distortions of normal development. The course of developmental disorders tends to be chronic, with some of the signs of the disorder persisting in a stable form (without periods of remission or exacerbation) into adult life.

3.11. **Exploitation** - Illegal or improper use of a resident or a resident's property.

3.12. **Extensive Nursing Care** - The nursing care required when there is a major deviation from normal in a body system or multiple body systems of such magnitude that the deviations are life threatening.

3.13. **Functional Needs Assessment** - Any assessment tool that identifies for the resident

and the home those services that the home will need to obtain or provide for the resident in order to promote the resident's health, wellness, comfort, dignity and independence.

An assessment may include but need not be limited to questions such as the following:

Does the proposed resident have an alternative decision-maker or living will?; Does the proposed resident have the ability to self-manage funds or property?; Does the proposed resident require assistance in bathing, dressing, eating, toileting, or ambulating?;

Does the proposed resident take any prescribed medication?; Does the proposed resident have a regular physician, if so who?; Does the proposed resident require a special diet or monitoring of a special diet?;

Does the proposed resident regularly attend activities in the community, if so, what and where?;

Does the proposed resident require special assistive devices to maintain his or her independence?.

3.14. **Household Member** - A member of a family operating a residential board and care home who lives in the home and who is not receiving services as a resident of the residential board and care home.

3.15. **Immediate and Serious Threat** - A situation which may present a high probability of serious harm or injury to one or more residents. An immediate or serious threat need not result in actual harm to any resident. The threat of probable harm is perceived as being as serious or significant.

3.16. **Imminent Danger** - As applied to a violation of this rule, a danger which could reasonably be expected to immediately cause or contribute to death, serious physical harm or illness to residents, household members or staff before the threat can be eliminated through the plan of correction process of this rule.

3.17. **Legal Representative**¹ -

3.17.1. A conservator, temporary conservator or limited conservator appointed pursuant to the West Virginia Guardianship and Conservatorship Act, W. Va. Code, §44-1-1-et seq., within the limits set by the order;

3.17.2. A guardian, temporary guardian or limited guardian appointed pursuant to the West Virginia Guardianship and Conservatorship Act, W. Va. Code, §44-1-1-et seq., within the

¹ Owners and administrators should note that the various types of legal representatives do not necessarily have the lawful authority to act on behalf of the resident in all matters which may require action by a legal representative. For example, a conservator may have responsibility for financial affairs, but not personal affairs, such as medical care.

limits set by the order:

3.17.3. An individual appointed as committee or guardian prior to June 9, 1994, within the limits set by the appointing order and W. Va. Code 44A-1-2(d):

3.17.4. A person having a medical power of attorney pursuant to the West Virginia Medical Power of Attorney Act, W. Va. Code §§16-30A-1 et seq., within the limits set by the law and the appointment;

3.17.5. A representative payee under the U.S. Social Security Act, Title 42 US Code §301 et seq., within the limits of the payee's legal authority;

3.17.6. A surrogate decision-maker appointed pursuant to the West Virginia Health Care Surrogate Act, W. Va. Code §§16-30B-1 et seq., or the West Virginia Do Not Resuscitate Act, §§16-30C-1 et seq., within the limits set by the appointment;

3.17.7. An individual having a durable power of attorney pursuant to W. Va. Code §39-4-1, or a power of attorney under common law, within the limits of the appointment; or

3.17.8. An individual lawfully appointed in a similar or like relationship of responsibility for a resident under the laws of this State, or another State or legal jurisdiction, within the limits of the applicable statute and appointing authority.

3.18. **Licensed Health Care Professional** - Any health care professional currently licensed in West Virginia such as, but not limited to a: social worker, dentist, practical nurse, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, registered professional nurse, or speech-language pathologist.

3.19. **Life Care Contract** - A contract between the residential board and care home and an individual in which the residential board and care home agrees to provide long-term residential care for the individual, for the remainder of the individual's life, regardless of the level of care needed by the individual.

3.20. **Limited and Intermittent Nursing Care** - Direct hands-on nursing care of individuals who need no more than two (2) hours of nursing care per day for a period of time no longer than ninety (90) consecutive days per episode, with a period of at least thirty (30) days between episodes.

3.21. **Major Incident** - An event or occurrence, the outcome of which places one (1) or more residents' health and well-being in jeopardy or imminent danger, as for example: a fall, accident or other event which seriously injures or threatens the life of the resident; a resident death occurring from other than natural causes; a missing resident who is likely to injure him or herself or who needs medication or treatment on a regular basis and who is likely to have difficulty returning to the home on his or her own; assaults on a resident resulting in injury; or events which cause the disruption of normal residential board and care home activity, such as threats or occurrences of extreme violence, explosions, fire or natural disasters.

3.22. **Neglect** - Failure to provide for the necessities of daily living or the lack of care for significant medical problems.

3.23. **Nursing Care (Services)** - Those procedures commonly employed in providing for the physical, emotional and rehabilitation needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: irrigations, decubitus care, catheterizations, special procedures contributing to rehabilitation and administration of medication by any method which involves a level of complexity and skill in administration not possessed by the untrained person.

3.24. **Nursing Support Staff** - Registered professional nurses, practical nurses, and nursing assistants employed by the residential board and care home to provide direct hands-on nursing services to residents.

3.25. **On-going Nursing Care** - The nursing care required when a deviation in health is expected to continue over a lengthy period of time (i.e. in excess of ninety (90) days) with minimal or no improvement.

3.26. **Personal Assistance** - Personal services, including, but not limited to the following: help in walking, bathing, dressing, feeding, or getting in or out of bed, or supervision required because of the age or mental impairment of the resident.

3.27. **Physical Restraint** - A device which physically limits, restricts, or deprives an individual of movement or mobility.

3.28. **Resident** - An individual living in a residential board and care home for the purpose of receiving residential board and care services from the home.

3.29. **Residential Board and Care Home** - Any residence or any part or unit thereof, however named, in this State which is advertised, offered, maintained, or operated by the owners or management, whether for consideration or not, for the express or implied purpose of providing accommodations, personal assistance and supervision, for a period of more than twenty-four (24) hours, to four (4) to ten (10) persons who are not related to the owner or manager by blood or marriage within the degree of consanguinity of second cousin and are dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care but are capable of self-preservation and are not bedfast, including those individuals who qualify for and are receiving services coordinated by a licensed hospice.

3.30. **Restorative Care** - Care directed toward assisting a resident to achieve and maintain an optimal level of self-care and independence and providing assistance to residents in learning or relearning skills needed in everyday activities.

3.31. **Secretary** - The secretary of the State department of health and human resources or his or her lawful designee.

3.32. **Self-preservation** - The capability of, at least, removing one's physical self from

situations involving imminent danger, such as fire.

3.33. **Service Plan** - A written description of the services being provided to the resident to meet all of the needs identified in his or her functional needs assessment.

3.34. **Supervision** - The assumption of varying degrees of responsibility for the safety and well-being of residents including, but not limited to: being aware of the resident's location to the extent identified as a need by the resident functional needs assessment; monitoring through observation the activities of the resident while on the premises of the home to ensure his or her health, safety and well-being; reminding the resident of any important activities of daily living and prescribed medication; purchasing of food and other supplies; meeting nutritional needs; arranging for or providing transportation as necessary; and other similar activities.

§64-65-4. State Administrative Procedures.

4.1. General Licensing Provisions.

4.1.1. No person may establish, maintain, offer, operate or advertise a residential board and care home without first obtaining from the secretary a license authorizing the operation: Provided, however, That any person who filed an application for a residential board and care home license with the secretary prior to October 1, 1993 may continue to operate the residential board and care home without a license until the secretary grants or denies the license.

4.1.2. A license is valid only for the licensee and for the structure named in the application and identified on the license. Separate buildings on the same premises operated as residential board and care homes require separate licenses. The license is not transferable or assignable, and shall be surrendered to the secretary upon written demand, or immediately, when the residential board and care home ceases provision of services.

4.1.3. The words "clinic", "hospital", "nursing home", "personal care home" or any other words which suggest a type of facility other than a residential board and care home shall not be used in the name of the home or in any of the home's advertising. If the licensee owns more than one (1) residential board and care home, each home shall have a separate identification. The licensee shall notify the secretary of any change in the name of the home.

4.1.4. Residential board and care homes which have residents who need limited and intermittent nursing care shall comply with all requirements of this rule.

4.1.5. Residential board and care homes which do not have residents who need limited or intermittent nursing care are not required to comply with Section 12 of this rule.

4.1.6. The licensee is responsible for compliance with: this rule; the terms of the home's license; W. Va. Code § 16-5C-1 et seq., titled Nursing and Personal Care Homes and Residential Board and Care Homes; other relevant federal, State or local laws and regulations; and with the home's policies.

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4.1.7. A residential board and care home is prohibited from renting, leasing or using its premises for any purpose that disrupts the activities of the residents.

4.1.8. Residence in a residential board and care home is restricted to residents, owners, household members, the administrator, and employees, unless otherwise approved in writing by the secretary.

4.1.9. A residential board and care home is prohibited from advertising, asserting, representing or otherwise implying in any manner that it may render care or services other than those specifically identified within the scope of its license.

4.1.10. The secretary may issue an initial or a renewal license for a period not to exceed one (1) year: **Provided**, That if an applicant timely submits, in conformance with this rule and W. Va. Code § 16-5C-1 *et seq.*, an application for renewal of a license currently in effect, together with payment of the proper fee, the license shall continue in effect until: (a) one (1) year following the expiration date of the license; (b) the date of the revocation or suspension of the license pursuant to this rule and W. Va. Code § 16-5C-1 *et seq.*, or (c) the date of issuance of a new license, whichever date occurs first.

4.2. Initial License.

4.2.1. Applications for initial licensure as a residential board and care home shall be submitted to the West Virginia office of health facility licensure and certification of the department of health and human resources, and shall include:

4.2.1.a. The following information, (see W. Va. Code § 16-5C-6(a)):

4.2.1.a.A. The name and address of the applicant;

4.2.1.a.B. The name, address and principal occupation:

4.2.1.a.B.(a) Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent (10%) or more in the applicant;

4.2.1.a.B.(b) Of each officer and director of a corporate applicant;

4.2.1.a.B.(c) Of each trustee and beneficiary of an applicant which is a trust; and where a corporation has a proprietary interest of fifty percent (50%) or more in an applicant, the name, address and principal occupation of each officer and director of the corporation;

4.2.1.a.C. The name and address of the owner of the premises of the residential board and care home or proposed residential board and care home, if he or she is a different person from the applicant, and in such case, the name and address:

4.2.1.a.C.(a) Of each person who, as a stockholder or otherwise, has a

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proprietary interest of ten percent (10%) or more in the owner of the premises of the residential board and care home or proposed residential board and care home:

4.2.1.a.C.(b) Of each officer and director of a corporate applicant:

4.2.1.a.C.(c) Of each trustee and beneficiary of the owner of the premises of the residential board and care home or proposed residential board and care home if he or she is a trust; and, where a corporation has a proprietary interest of fifty percent (50%) or more in the owner of the premises of the residential board and care home or proposed residential board and care home, the name and address of each officer and director of the corporation:

4.2.1.a.D. Where the applicant is the lessee or the assignee of the residential board and care home or the premises of the proposed residential board and care home, a signed copy of the lease and any assignment thereof;

4.2.1.a.E. The name and address of the residential board and care home or the premises of the proposed residential board and care home;

4.2.1.a.F. The proposed bed quota of the residential board and care home and the proposed bed quota of each unit thereof;

4.2.1.a.G. A list of the residential board and care home's employee positions and the duties of each position;

4.2.1.a.H. The name and address of the individual who is to serve as administrator;

4.2.1.a.I. Evidence of compliance with applicable laws and regulations governing zoning, buildings, safety, fire prevention and sanitation as required by this rule;

4.2.1.a.J. Documentation that the home has made provisions to ensure the continuing care of all residents for the thirty (30) day period after notification of pending closure. The provisions may be in the form of a bond, a property lien, or other form of guaranty acceptable to the secretary. The guaranty shall be in the amount of three hundred dollars (\$300) per resident or ten thousand dollars (\$10,000), whichever is greater; and

4.2.1.a.K. Such additional information as the secretary may require.

4.2.2. The application shall be on forms provided by the secretary, and shall bear the notarized signature of the applicant. The signature on the application and accompanying forms serves as a release for obtaining references, credit and other background information. The application shall be accompanied by a non-refundable license fee in the amount shown on the form as established pursuant to W. Va. Code § 16-5C-6(e), titled "License required; application; fees; duration; renewal," in the form of a check or money order payable to the West Virginia office of health facility licensure and certification. The secretary will not review incomplete forms and will return them to the applicant. The applicant shall provide to the secretary a

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balance sheet showing all expenses and all income on forms provided by the secretary, including but not limited to, reimbursement of the owners, lease payment, number of residents, number of SSI recipients, monthly rates charged and resident census form. As mandated by W. Va. Code § 16-5C-6(e), the cost of the initial licensure inspections or inspections for changes in licensed bed capacity shall be borne by the applicant and must be received by the department prior to the issuance of an initial or amended license.

4.2.3. Homes applying for licensure that have not previously served individuals in a legally unlicensed location shall provide to the secretary a preliminary operating plan which shall include a proposed budget that projects monthly income, lease payment and reimbursement of the owners.

4.2.4. The applicant shall submit the application and fee at least ninety (90) days prior to the date proposed for commencement of operations.

4.2.5. Except as specified in § 4.13 of this rule, the secretary shall, after inspection, issue an initial license, if the applicant complies with this rule.

4.2.6. If any residents of a residential board and care home are to be moved to another location owned or operated by the same licensee, the licensee shall apply for a license for the new location at least ninety (90) days in advance of the move.

4.3. Waivers.

4.3.1. The secretary may waive the requirements of this rule if after a thorough investigation, the secretary determines that the request for waiver will not adversely affect the health, safety, welfare or rights of the residents.

4.3.2. In order to request a waiver, the licensee or resident shall submit a written request for the waiver at least thirty (30) days in advance of the date on which the waiver is requested to begin. The request shall:

4.3.2.a. Specify the specific requirement in this rule for which the waiver is requested;

4.3.2.b. Specify the time period for which the waiver is requested;

4.3.2.c. Include specific and detailed reasons for the request;

4.3.2.d. Explain why the specific requirement cannot be complied with; and

4.3.2.e. Document that there will be no adverse effect on resident health, safety, welfare, or rights if the waiver is granted.

4.3.3. The individual making the request shall send a copy of the request to the residents of the home, the ombudsman representing the residents of the home, and the legal representative

or next of kin for each of the residents, and shall send a list of the names and addresses of these persons to the secretary within fifteen (15) days of making the request. The person receiving a copy of the request or any other person shall have the right to oppose the request by stating the reasons therefor within twenty (20) days of the receipt of notice of the request. If there is opposition to the request, a hearing shall be afforded all parties. All of the provisions of W. Va. Administrative Rules, Department of Health and Human Resources, Rules of Procedure for Contested Case Hearings, 64 CSR 1, apply.

4.4. License Renewal.

4.4.1. Applications for renewal of a license shall be postmarked or hand delivered to the secretary a minimum of ninety (90) days prior to the expiration date appearing on the currently held license.

4.4.2. Except as specified in § 4.13 of this rule, the secretary shall issue a renewal license when the following conditions are met:

4.4.2.a. The home is found to be in compliance with this rule;

4.4.2.b. The applicant has submitted a complete application and all requested documentation regarding financial capability and management of the home; and

4.4.2.c. The home has met all Class I standards and has attained at least a "C" rating according to this rule.

4.5. Provisional License.

4.5.1. The secretary may issue a provisional license when:

4.5.1.a. The home has received an "F" rating; or

4.5.1.b. All requirements for renewal of a license are not met prior to the expiration of the previously issued license.

4.5.2. The secretary shall not issue a provisional license when the home:

4.5.2.a. Is in violation of any Class I standard;

4.5.2.b. Is assigned a rating of "F" in three (3) or more licensure categories;

4.5.2.c. Has a record of noncompliance with this rule; or

4.5.2.d. Does not demonstrate potential for at least an overall "C" rating within the expiration date of the currently issued license.

4.5.3. The secretary shall not renew a provisional license.

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4.5.4. The secretary shall determine the period of time for which a provisional license is issued. However, in no instance shall this period exceed one (1) year.

4.5.5. If the owner of a home is denied a provisional license or a provisional license expires, the secretary shall treat a subsequent application for a license as an initial license and the owner shall meet the requirements for an initial license including the cost of an initial application fee and inspections as determined by the secretary.

4.6. Inspections.

4.6.1. The secretary shall make or cause to be made inspections by duly authorized representatives necessary to carry out the intent of W. Va. Code §§ 16-5C-1 et seq., 16-5H-1 et seq., and this rule.

4.6.2. The secretary has the right to enter upon the premises of a residential board and care home without prior notice to conduct inspections. If the owner or person in charge of the home refuses entry, the secretary may apply to the circuit court in which the home is located or the circuit court of Kanawha County for a warrant authorizing an inspection.

4.6.3. The secretary has the right to enter upon the premises of any building for which probable cause exists that it is being operated or maintained as a residential board and care home without a license. If the owner or person in charge of the home refuses entry, the secretary may apply to the circuit court in which the building is located or the circuit court of Kanawha County for a warrant authorizing an inspection.

4.6.4. The secretary shall conduct at least one (1) unannounced inspection of a residential board and care home in order to assign a rating for all categories of standards prior to issuance of an initial license. Inspections shall be conducted after:

4.6.4.a. The application and fee have been received and been determined to be complete;

4.6.4.b. All requested documentation verifies the readiness of the home for an inspection;

4.6.4.c. Fees for the cost of inspections have been received by the secretary; and

4.6.4.d. Necessary inspections can be scheduled.

4.6.5. Periodic unannounced inspections shall be conducted to determine the residential board and care home's continued compliance with applicable statutes and regulations.

4.6.6. The secretary shall prepare a written report of any inspection made pursuant to this rule within fifteen (15) days of the completion of the inspection and shall mail a copy to the licensee or administrator, as applicable, specifically listing any violation of this rule.

4.7. Complaint Investigation.

4.7.1. Any person may register a complaint with the secretary alleging a violation or violations of this rule by a residential board and care home or a facility alleged to be operating unlawfully as a residential board and care home. The complainant shall state the substance of the complaint and identify the home or building by name or address.

4.7.2. The secretary has the authority to conduct investigations as necessary to determine the validity of the complaint and shall notify the residential board and care home or a facility alleged to be operating unlawfully as a residential board and care home of the substance of the complaint at the time of the completion of any investigation.

4.7.3. The secretary shall send a description of any corrective action that a home will be required to take within a specified time frame and any disciplinary action to be taken by the secretary to the complainant, to the licensee, and to the administrator.

4.7.4. The names of a complainant and of any resident named in the complaint shall be kept confidential and shall not be disclosed to the public without written permission of the complainant and the resident or the resident's legal representative.

4.7.5. Any type of discriminatory treatment of a resident by whom, or upon whose behalf, a complaint has been submitted to the secretary, within one hundred twenty (120) days of the filing of the complaint or the institution of such action, shall raise a rebuttable presumption that such action was taken by the residential board and care home in retaliation for such complaint or action.

4.7.6. If, after an investigation, the secretary determines that the complaint has merit, he or she shall advise any injured party of the possibility of a civil remedy. In addition, residents, residents' families or legal representatives or ombudsmen may also pursue independently in court remedies for violations of this rule.

4.7.7. If a residential board and care home which is found to have violated one (1) or more requirements of this rule during a routine inspection, or a complaint or other investigation fails to correct the violations within one hundred twenty (120) days of the completion of the inspection or investigation, the secretary shall give written notice of the uncorrected violations and of the amount of time until the secretary will report² the residential board and care home's

² Under the provisions of 42 U.S.C. 1616(e) and 45 CFR, Part 1397--Standard Setting Requirements for Medical and Nonmedical Facilities Where SSI Recipients Reside, all states are required to "establish, maintain, and ensure the enforcement of standards for any **category** [emphasis added] of institutions, foster homes, or group living arrangements, in which, as determined by the State, a significant number of recipients of Supplemental Social Security Income (SSI) benefits resides or is likely to reside. SSI residents who live in relevant facilities which violate any of the standards will be subject to a reduction in their SSI payments ... in an amount equal to any State supplementary benefit or other payment made by the State for any medical or remedial care provided them by the facility." As part of their responsibilities under the federal regulations, States are required to make certain reports to the residents of deficient facilities and to the appropriate regional office of the United States Social Security Administration.

lack of compliance with the rule to the Social Security Administration to all residents, their families and any legal representatives. The secretary shall also provide all residents with a list³ of approved facilities and agencies to assist them in moving.

4.7.8. If a residential board and care home which is found to have violated one (1) or more requirements of this rule during a routine inspection or a complaint or other investigation fails to correct the violations within two hundred ten (210) days of the completion of the inspection or investigation, the secretary shall report⁴ the residential board and care home's lack of compliance with this rule to the Social Security Administration. The secretary shall also provide all residents with a list⁵ of approved facilities and agencies to assist them with moving.

4.8. Plans of Correction.

4.8.1. The licensee of a home found on the basis of inspection or other investigation to have violations of requirements in this rule shall develop a plan of correction which shall be signed and dated by the licensee and submitted to the secretary within fifteen (15) working days of receipt of the report of the inspection or other investigation.

4.8.2. The secretary may require immediate correction in the case of a violation constituting immediate and serious threats to the health or safety of a resident or employee.

4.8.3. The plan of correction shall specify:

4.8.3.a. The violations to be corrected;

4.8.3.b. Action taken or proposed to correct the violations and procedures to prevent their recurrence; and

4.8.3.c. A calendar date by which the violations will be corrected, which date shall allow the shortest possible time in which the residential board and care home may reasonably be expected to correct the violation. A home shall ordinarily be expected to comply with the rule within sixty (60) days of the inspection; however, the secretary may allow more time for certain types of deficiencies.

4.8.4. The plan of correction shall be approved, modified or rejected in whole or in part by the secretary in writing.

³ See also footnote #2. The purpose of the notification is to inform residents that they do not have the protection of the violated requirement; the list is intended to provide assistance to residents in moving if the lack of compliance by the residential board and care home endangers them or causes a reduction in their benefits.

⁴ See footnote #2.

⁵ See footnote #3.

4.8.5. In modifying or rejecting a proposed plan of correction, the secretary shall state the reasons for the modification or rejection.

4.8.6. When the secretary rejects a plan of correction, the residential board and care home has a reasonable amount of time, but no more than fifteen (15) working days, to submit a revised plan.

4.8.7. The secretary may conduct reasonable and necessary procedures, including a follow-up on-site inspection, to verify the correction of any violations identified during an inspection or any other investigation.

4.9. Release of Reports and Records.

4.9.1. The secretary, from the time of receipt, shall make available for public inspection, and upon request, provide copies of the following at a reasonable cost:

4.9.1.a. Information concerning and actual applications and exhibits:

4.9.1.b. Inspection reports:

4.9.1.c. Reports of investigations conducted in response to complaints;

4.9.1.d. A current list of the names and addresses of residential board and care homes found to be in violation of this rule, including the detail of each violations; and

4.9.1.e. Any other reports filed with or issued by the secretary pertaining to the compliance of a residential board and care home with applicable laws and rules.

4.9.2. The names of residents shall be kept confidential and shall not be disclosed without the resident's written permission or by order of court of record. Nothing contained in this rule shall be construed to require or permit the public disclosure of confidential medical, social, personal or financial records of any resident. Before releasing a report or record judged public information, the secretary shall delete any confidential information regarding a resident which would reasonably permit identification of the resident.

4.10. Classification of Standards.

In accordance with W. Va. Code § 16-5C-5(c), a classification for each standard in this rule is established according to the following:

4.10.1. Class I standards are those the violation of which would present either an imminent danger to the health, safety or welfare of any resident or substantial probability that death or serious physical harm would result;

4.10.2. Class II standards are those the violation of which would have a direct or immediate relationship to the health, safety or welfare of any resident but which would not create

imminent danger; and

4.10.3. Class III standards are those the violation of which would have an indirect or potential impact on the health, safety or welfare of any resident.

4.11. Point System.

4.11.1. The secretary shall assign a Class I standard a value of ten (10) points if the home fully complies with the standard. If the home fails to comply fully with the Class I standard and the secretary determines that the lack of compliance presents either an imminent danger to any resident or a substantial probability that death or serious harm to any resident may result, the score assigned to the Class I standard shall be zero (0). If the home fails to comply fully with the standard but does demonstrate substantial compliance a score of seven (7) points may be assigned to the standard. If the home fails to demonstrate full or substantial compliance with the standard but partial compliance is in evidence, a score of five (5) points may be assigned to the standard. If the home fails to demonstrate partial compliance or if the violation is a repeat of a deficiency cited during the previous licensure inspection, a partial score shall not be assigned and the standard shall be scored as zero (0).

4.11.2. The secretary shall assign a Class II standard a value of nine (9) points if the home fully complies with the standard. If the home fails to comply fully with the Class II standard and the secretary determines that the lack of compliance may result in substantial probability that serious harm to the health, safety, or welfare of any resident may result, the score assigned to the Class II standard shall be zero (0). If the home fails to comply fully with the standard but does demonstrate substantial compliance a score of six (6) points may be assigned to the standard. If the home fails to demonstrate full or substantial compliance with the standard but partial compliance is in evidence a score of four (4) points may be assigned to the standard. If the home fails to demonstrate partial compliance or if the violation is a repeat of a deficiency cited during the previous licensure inspection, a partial score shall not be assigned and the standard shall be scored as a zero (0).

4.11.3. The secretary shall assign a Class III standard a value of eight (8) points if the home fully complies with the standard. If the home fails to comply fully with the standard but does demonstrate substantial compliance a score of five (5) points may be assigned to the standard. If the home fails to demonstrate full or substantial compliance with the standard but partial compliance is in evidence, a score of four (4) points may be assigned to the standard. If the home fails to demonstrate partial compliance or if the violation is a repeat of a deficiency cited during the previous licensure inspection, a partial score shall not be assigned and the standard shall be scored as a zero (0).

4.11.4. The secretary shall determine substantial, partial, or lack of compliance with a standard based on the severity or scope, or both, of the noncompliance rather than the quantity of components out of compliance under a specific standard.

4.11.5. If a standard is not applicable for a particular residential board and care home, a full compliance value shall be assigned for that item for scoring and rating purposes.

4.12. Residential Board and Care Home Rating.

4.12.1. The secretary shall assign a rating to each residential board and care home based on the result of the licensure inspection.

4.12.2. The rating shall be assigned and included on the license issued to the residential board and care home based on the results of the licensure inspection.

4.12.3. Scores and ratings for individual categories are shown in Table 64-3A found at the end of this rule.

4.12.4. The secretary shall not permit points scored in any individual category to offset deficiencies within another category. Therefore, the secretary will not compute a total of value points. An overall rating for the residential board and care home cannot be determined solely on the basis of total points earned.

4.12.5. For purposes of assigning an overall rating, a category rating of "A" shall be assigned a score of four (4); a category of "B" shall be assigned a score of three (3); a category rating of "C" shall be assigned a score two (2); and a category rating of "F" shall be assigned a score of zero. Category rating scores shall be totaled and an average category rating score shall be computed. An overall residential board and care home rating shall be assigned based on considerations of both the average category rating score and the number of categories rated "F" as follows:

4.12.5.a. If a home is given a rating of "F" on one (1) category or has an average category rating score of less than 2.0, an overall rating of "F" shall be assigned;

4.12.5.b. For an average score of 2.0 through 2.59, an overall rating of "C" shall be assigned;

4.12.5.c. For an average score of 2.6 through 3.59, an overall rating of "B" shall be assigned; and

4.12.5.d. For an average score of 3.6 through 4.0, an overall rating of "A" shall be assigned.

4.12.6. The secretary may issue a provisional license to a home with an overall rating of "F" as described in Section 4.5 of this rule. However, any home demonstrating an "F" in three (3) or more licensure categories shall not be issued a license and shall be ordered to close or be subject to other actions by the secretary as described in W. Va. Code § 16-5C-11, License limitation, suspension, revocation; continuation of disciplinary proceedings; closure, transfer of patients, appointment of temporary management; assessment of interest; collection of assessments; promulgation of regulations to conform with federal requirements; hearings; in W. Va. Code § 16-5C-15, Unlawful acts; penalties; injunctions; private right of action, and in W. Va. Code § 16-5H-3, Enforcement; criminal penalties; injunction.

4.12.7. Any residential board and care home which has been determined by the secretary to be noncompliant with any Class I standard shall not be assigned a rating and shall not be issued a provisional license as specified in Section 4.5.2 of this rule.

4.12.8. The secretary shall assign a rating no greater than a "B" to a home which has been denied a provisional license based on violation of a Class I standard and is subsequently reapplying for an initial license as specified in Section 4.5.5 of this rule.

4.13. Non-Issuance of Initial or Renewal License.

4.13.1. The secretary may refuse to issue either an initial or a renewal license if he or she finds evidence of the following:

4.13.1.a. Lack of financial stability to operate, such as insufficient capital, delinquent accounts, checks returned because of insufficient funds, and nonpayment of taxes, utility expenses and other essential services;

4.13.1.b. Either the applicant or the administrator has been arrested for, adjudicated, and convicted of any felony or of a misdemeanor relevant for the provision of care in a health care facility or for operating a health care facility;

4.13.1.c. The applicant has been denied or has had a license to operate a health care facility revoked in West Virginia or any other jurisdiction during the previous five (5) years;

4.13.1.d. The applicant has a record of noncompliance with lawful orders of the department or other licensing or certification agency for any jurisdiction in which the applicant has operated, directed or participated in the operation of a health care facility;

4.13.1.e. The owner or person in charge of the home has refused entry to the secretary's duly authorized representative for an inspection or survey;

4.13.1.f. The home has inappropriately converted for its own use the property of a resident;

4.13.1.g. The home has secured property, or a bequest of property, from a resident by undue influence;

4.13.1.h. The home has submitted false information either on the licensure or renewal application forms or during the course of an inspection or survey of the home; or

4.13.1.i. In the instance of an application for a renewal license, the home has received an F rating in one (1) or more of Sections five (§ 64-65-5) through twelve (§ 64-65-12), as applicable, of this rule.

4.13.2. The secretary shall consider all available evidence at the time of the determination, including the history of the residential board and care home and the applicant in

complying with this rule, notices of violations which have been issued to the home and the applicant, findings of surveys and inspections, and any evidence provided by the home, residents, law enforcement officials, and other interested individuals.

§64-65-5. Administration of the Residential Board and Care Home.

5.1. General Administrative Requirements. (Class III)

5.1.1. The residential board and care home shall adopt policies and procedures governing the care and safety of residents, the protection of residents' personal property (i.e. periodic inventories of each resident's personal possessions) and rights, the operation of the home, the services provided by the home, emergency procedures and disaster plan, admission, discharge and transfer of residents, complaint procedures, infection control and all other policies and procedures required by this rule.

5.1.2. Policies and procedures shall be in writing and kept current with changes indicated by a dated signature of the administrator.

5.1.3. A copy of each policy and procedure shall be available for inspection on request by employees, residents, and resident's representatives.

5.1.4. The residential board and care home shall have written house rules governing resident behavior and responsibilities including: smoking; alcohol consumption; visitation; recreational activities (including television); personal laundry; and the use and storage of personal belongings such as furnishings and clothing. House rules may not be inconsistent with this rule.

5.1.5. The residential board and care home shall comply with any applicable State and local laws and regulations.

5.2. The Licensee. (Class II)

5.2.1. The licensee is responsible for compliance with this rule; the terms of the home's license; W. Va. Code §§ 16-5C-1 et seq.; other relevant federal, State or local laws and regulations; and with the home's policies.

5.2.2. The licensee shall:

5.2.2.a. Give evidence of financial responsibility;

5.2.2.b. Protect the physical and mental well-being of the residents;

5.2.2.c. Keep the records and make the reports required by this rule; and

5.2.2.d. Meet the qualifications of the administrator if he or she assumes those duties.

5.2.3. The licensee is responsible for maintaining fiscal records which accurately identify, summarize, and classify funds received and disbursed for the operation of the home. A recognized system of accounting shall be used to accurately reflect details of the business, including residents' trust funds and other property. The home shall be administered on a sound financial basis consistent with good business practices. Evidence of issuance of bad checks or accumulation of delinquent bills shall constitute prima facie evidence that the ownership lacks satisfactory proof of financial ability to operate the home in accordance with the requirements of W. Va. Code § 16-5C-6.

5.2.4. The licensee shall maintain a liability insurance policy in an amount that will cover all injuries to any residents.

5.3. Administrator. (Class II)

5.3.1. A residential board and care home shall have an administrator who is at least twenty-one (21) years of age and has completed high school or a general education development (GED) certificate: Provided, That individuals who are home administrators at the time this rule becomes effective may complete this requirement within twenty-four (24) months following the effective date of this rule.

5.3.2. The administrator of a residential board and care home shall have a personal history which is free of: evidence of abuse, fraud, or substantial and repeated violations of applicable laws and rules in the operation of any health or social care facility or service organization, or in the care of dependent persons; and conviction of crimes relevant for the provision of care to a dependent population as evidenced by a criminal investigative background check.

5.3.3. The administrator shall participate in ten (10) hours of training related to the administration and operation of a residential board and care home annually. Attendance records shall be maintained on file at the home.

5.3.4. The administrator is responsible and accountable for the development and execution of all policies and procedures required by this rule and shall be able to conform to applicable statutes, rules and regulations; know the requirements of the rule for residential board and care homes; and ensure the adequacy and appropriateness of services delivered to the residents.

5.3.5. The administrator shall ensure that resident care is carried out by appropriately licensed health care professionals when required by State law and rules, and that medications and treatments given to residents are prescribed and administered as required by State and federal law, rules and regulations.

5.3.6. Beginning two (2) years after the effective date of this rule, the administrator shall develop and implement a quality assurance plan.

5.3.7. The administrator or a responsible employee, designated in writing, shall be

available and in charge of the home at all times. Residents may not be designated as the person in charge of the home.

5.3.8. The licensee shall notify the secretary in writing within ten (10) days of any permanent change in the administrator of a residential board and care home. A licensee shall not operate a home more than thirty (30) days without a qualified administrator unless the secretary grants an extension, based on a determination that a reasonable attempt has been made to find a suitable replacement.

5.4. Admission Procedures. (Class III)

5.4.1. The residential board and care home shall not deny admission to a prospective resident on the grounds of race, national origin, religion, age, sex or disability.

5.4.2. The relationship of a resident to the residential board and care home shall be covered by a contract entered into at the time of or prior to the individual's admission which provides written assurance of the services that the home will provide to meet the individual's needs. Current residents shall be provided with new or updated contracts within fourteen (14) days of the effective date of this rule, if the existing contract does not meet the requirements of this rule. The contract shall specify: the home's admission, retention and discharge criteria; services to be offered with a full disclosure of fees for services, including the home's policy regarding annual contract price and refunds; an explanation of how personal finances will be managed, how health care will be provided or arranged for, how activities are accessed; and the process of lodging complaints. Each party to the contract shall have a copy of the contract.

5.4.3. The home shall provide the individual with the following information separately at the time of the agreement:

5.4.3.a. Information and referral services to be provided by the home with respect to assisting the resident's utilization of social, recreational, and vocational activities within the community;

5.4.3.b. How the home will protect the resident's personal property from loss and theft;

5.4.3.c. How the home will assist the resident in making appointments for appropriate medical, dental, nursing or mental health services as needed by the resident and how the home will arrange for transportation to and from these services;

5.4.3.d. How the home will address and prepare for emergency situations that affect the well-being of residents, including, but not limited to: life-threatening medical emergencies (including whether the home will provide CPR), fires, natural disasters, severely inclement weather, industrial accidents, major incidents, a missing resident and immediate or serious threats;

5.4.3.e. The resident's and home's responsibility for the procurement and payment for prescribed medications, and for the storage, administration and disposition of medications;

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5.4.3.f. The responsibility of the resident's physician for required medical examinations and treatment orders:

5.4.3.g. The home's policy regarding room changes, retention during temporary illness or a significant change in resident status, transfers and discharges and the resident's and the home's transfer and discharge notification responsibilities.

5.4.3.h. The house rules governing resident behavior and responsibilities; and

5.4.3.i. A resident's bill of rights which is consistent with this rule.

5.4.4. Individuals admitted shall be capable of self-preservation. The resident record shall include documented certification by a physician or psychologist that the resident is capable of self-preservation by virtue of his or her ability to follow directions and, with prompting if necessary, to take appropriate action for self-preservation under emergency conditions, except as provided in this section. The certification shall be updated as indicated by changes in the resident's physical or mental condition.

5.4.5. Individuals admitted may be in need of personal assistance in activities of daily living, in need of supervision because of mental or physical impairment, or have limited and intermittent nursing care needs.

5.4.6. Individuals with identified mental or developmental disabilities may be admitted if the home can provide evidence of continued professional follow-up to address the individual's mental health needs or the individual is a client of a licensed behavioral health agency.

5.4.7. Individuals who qualify for and are receiving services coordinated by a licensed hospice may receive these services in a residential board and care home, except that services utilizing equipment which requires auxiliary electrical power in the event of a power failure, such as ventilators, suction apparatus, and intravenous or tube feeding pumps, shall not be used unless the residential board and care home has a backup power generator. In the event that a resident is receiving limited or intermittent nursing care or hospice services, the residential board and care home shall assure that the resident has privacy in care and the ability to evacuate in an emergency. The provision of services to the resident receiving limited or intermittent nursing care or hospice care shall not interfere with the provision of services to other residents.

5.5. Restricted Admissions to Residential Board and Care Homes. (Class II)

5.5.1. Individuals admitted shall not require the use of routine physical or chemical restraints.

5.5.2. Individuals admitted shall not require ongoing or extensive nursing services.

5.5.3. Individuals admitted shall not require a level of service for which the home is not licensed or does not provide.

5.6. Retention of Residents whose Condition and Functional Ability Declines after Admission. (Class II)

5.6.1. If a resident exhibits symptoms of a mental or developmental disorder, and the resident is not receiving services to meet his or her current needs, is not a client of a behavioral health center, or does not have a case manager, the home shall advise the individual or his or her legal representative of his or her behavioral health service options within the community. The resident shall have thirty (30) days to obtain necessary services. If the resident or his or her legal representative fails to meet the resident's needs in this area in a timely manner, then the residential board and care home shall refer the individual to a licensed behavioral health agency: Provided, however, That the home shall seek immediate treatment for a resident or refuse to admit a prospective resident if the home has reason to believe that the individual may suffer serious harm or is likely to cause serious harm to himself or herself or to others if appropriate interventions are not provided in a timely manner.

5.6.2. Individuals who become bedfast subsequent to admission may remain in the home for ninety (90) days during a temporary illness or recovery from surgery if the resident's care does not require nursing care in excess of limited and intermittent nursing care and the resident is not bedfast for more than ninety (90) days, and the following criteria are substantiated through resident interview:

5.6.2.a. The resident requests to remain in the home;

5.6.2.b. The resident is advised of the availability of other specialized health care facilities to treat his or her condition;

5.6.2.c. The need for such care is the result of a medical pathology or a result of the normal aging process;

5.6.2.d. The home can maintain the resident's safety and continue to meet the resident's needs.

5.7. Discharge Procedures. (Class II)

5.7.1. Homes with individuals in residence who need more than limited and intermittent nursing care shall inform the resident or his or her legal representative of the need to move the resident to a health care facility with the capability of providing the needed level of nursing care, except that residents receiving services from a licensed hospice program may remain in the home.

5.7.1.a. The home shall assist the resident and his or her legal representative to attempt on a monthly basis to secure an alternative care facility.

5.7.1.b. The home shall thoroughly document in the resident's record efforts made by the home and the resident or his or her legal representative to obtain placement in an alternative care facility and refusals from the facilities in the event that the resident is unable to secure alternative placement and remains in the home.

5.7.2. The residential board and care home shall notify the resident and the resident's legal representative or interested family member within seventy-two (72) hours whenever there is a change in room or roommate assignment or when discharge is considered.

5.7.3. The residential board and care home shall give a thirty-day notice of discharge unless an emergency situation which requires transfer to a hospital or other higher level of care exists or if the resident is a danger to his or herself or others. A copy of the written discharge notice shall be filed in the resident's record.

5.8. Records. (Class III)

5.8.1. All records which contain the information required by this rule for residents shall be retained at the home in a secure area and shall be made available for inspection by the secretary's duly authorized representative.

5.8.2. The licensee shall ensure that all records are treated confidentially by staff and shall establish a policy and procedure for release of information from resident records.

5.8.3. The residential board and care home shall begin at admission, maintain, and keep current, a record for each resident. The record shall include:

5.8.3.a. Resident's name; social security number; birth date; sex; marital status; religious preference and affiliation, if any;

5.8.3.b. Names, addresses and telephone numbers for the following relevant persons: physician; dentist; legal representative, if applicable; person, organization or agency responsible for payments for support of the resident, if applicable; next of kin or other interested relatives; persons to be notified in case of an emergency or death; any case management agency or organization; and any day care or other programs in which the resident regularly participates;

5.8.3.c. All agreements or contracts entered into between the resident and the home; initial health assessment and social history; admission, transfer and discharge data;

5.8.3.d. Physician's orders, a list of medications, and/or medication administration records (if appropriate); resident admission weight; the dates of physician, dentist and other health and behavioral health care providers and other professional appointments and visits (including those for accidents and illness requiring medical attention, coordinated by the home); all contact with the resident's physician by the home staff; observations by personnel, licensed nurses, physician, or others authorized to care for the resident;

5.8.3.e. Documentation of incidents and accidents involving the resident, including, at a minimum, the time, place, the action taken in response to the incident and the notification of the resident's physician (if applicable), family or legal representative;

5.8.3.f. The resident's functional needs assessment, service plan, and updates as appropriate;

5.8.3.g. A list of clothing and personal possessions of the resident;

5.8.3.h. Documentation of resident account activities if the home is managing funds at the resident's request;

5.8.3.i. Documentation of death, including cause and disposition of the resident's personal effects and money or valuables deposited with the home;

5.8.3.j. Other information required by this rule.

5.8.4. The home shall keep resident records in safe storage for at least five (5) years from the date of the discharge or transfer of the resident. If the home ceases to operate, the licensee shall procure a holding area for the resident records that will ensure the confidentiality and safety of the records from loss, destruction or unauthorized use.

5.9. Management and Control of Resident Funds. (Class III)

5.9.1. If the licensee agrees to manage a resident's funds, it shall be by written request, in the manner directed by the depositor and in accordance with this rule, utilizing generally acceptable accounting principles to manage the funds in the resident's best interests.

5.9.2. The system shall not commingle resident funds with the home's funds or with the funds of any person other than another resident.

5.9.3. A resident's personal funds exceeding two-hundred dollars (\$200) shall be deposited in an interest bearing account at a local bank.

5.9.4. The home shall, if it handles resident monies in excess of twenty-five dollars (\$25) per resident and in excess of five-hundred dollars (\$500) for all residents in any month, give a bond in an amount and with such surety as the secretary shall approve sufficient to cover all resident accounts at all times. The licensee shall file a bond in the sum to be fixed by the secretary based upon the magnitude of the operations of the applicant but which sum may not be less than two-thousand five-hundred dollars (\$2,500) as shown in Table 64-65.2 found at the end of this rule. Whenever the amount of any bond which is filed pursuant to this subsection is insufficient to adequately protect the money of residents being handled, or whenever the amount of such bond is impaired, the licensee shall file an additional bond in such amount as necessary to adequately protect the money of residents being handled.

5.9.5. The resident account record shall show in detail with supporting documentation all monies received on behalf of the resident and the disposition of all funds received. Persons shopping for residents shall provide a list showing a description and price of items purchased if the purchase exceeds ten (\$10) dollars, along with payment receipts for these items.

5.9.6. The home shall render a true and complete accounting of the management and disposition of resident funds upon request to the depositor and the secretary and at least quarterly to the resident. Information shall be given to the resident upon request.

5.9.7. Upon termination of the deposit, the home shall account to the depositor for all funds received, expended and held on hand.

5.10. Resident Death (Class II)

5.10.1. The death of a resident shall be reported immediately to the attending physician and to the resident's family or legal representative, as applicable.

5.10.2. Upon the death of a resident, the following information shall be entered in the resident's record:

5.10.2.a. A record of the notification of the resident's physician, the designated individual for emergencies, and legal representative, if any;

5.10.2.b. The date, time and circumstance of death, including the name of person to whom the body was released and any other details specific to the death;

5.10.2.c. A record of the disposition of the resident's personal belongings that were released, including funds. The resident's legal representative or next of kin shall sign a detailed receipt for these items.

5.10.3. In the event of the death of a resident, a licensee shall return all funds, and property held in trust to the resident's legal representative. In the event the resident has no spouse or adult next of kin or other legal representative or the spouse or adult next of kin or other legal representative can not be located, funds due the resident shall be placed in a separate interest bearing account, and all property held in trust by the licensee shall be safeguarded until such time as the funds and property are required for distribution under state laws governing the administration of estates and trusts.

§64-65-6. Residential Board and Care Personnel.

6.1. Employment Standards. (Class III)

6.1.1. The residential board and care home shall have written personnel policies and procedures which appropriately meet the needs of the home.

6.1.2. The administrator shall assure that all staff are at least eighteen (18) years of age; licensed (as applicable) in accordance with State law; caring for residents with needs that are within the scope of his or her practice and training; and free from communicable disease in an infectious stage.

6.2. Staffing Requirements. (Class II)

6.2.1. Each residential board and care home shall maintain a minimum of one (1) residential staff twenty-four (24) hours per day (i.e. one per eight (8) hour shift) and shall have a sufficient number of employees on duty to provide the residents with all of the services

identified in their individualized service plans.

6.2.2. Awake staff shall be present in the home during normal resident sleeping hours when residents require supervision during sleeping hours or are in need of limited and intermittent nursing services. Awake staff are optional if all residents are certified by a physician or psychologist as not being in need of sleep time supervision and they are not in need of limited and intermittent nursing services.

6.2.3. A multi-story home shall maintain at least one (1) awake staff per story while residents are sleeping, except that the secretary shall permit one (1) awake staff in a multi-story home if:

6.2.3.a. The residents of the home are certified by a physician or psychologist as not being in need of supervision during sleeping hours;

6.2.3.b. The home has no residents who are in need of limited and intermittent nursing services; and

6.2.3.c. The home has an immediate emergency call system from the residents to the awake staff person.

6.2.4. The home shall have the staff needed to meet the laundry, food service, housekeeping, and maintenance requirements of this rule.

6.2.5. When regular staff and supervisory staff are absent due to illness and vacations, there shall be coverage by substitute personnel with comparable qualifications.

6.2.6. Each residential board and care home shall maintain and furnish to the secretary upon request information from personnel records setting forth the number (in full-time equivalents) and types of employees on duty in the home at any given time.

6.3. Employee Orientation and Training. (Class III)

6.3.1. All employees and household members shall be made aware of the purpose of the facility; the services provided; the daily routines and the requirements established by the State rules for licensure of a residential board and care home.

6.3.2. Training shall be provided to new employees and new admissions within the first twenty-four (24) hours of association with the home in emergency procedures and disaster plans, including: evacuation of the home, procedures to report a missing resident, medical emergencies, accidents, fire, natural disasters or other emergencies.

6.3.3. The home shall maintain a written plan of orientation and training for employees. Such training will be provided within the first fifteen (15) days of employment inclusive of the following:

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6.3.3.a. Policies and procedures of the home;

6.3.3.b. The rights and responsibilities of residents including protection of resident privacy and confidentiality;

6.3.3.c. Complaint procedures of the home;

6.3.3.d. Procedures and agencies available in instances of abuse, neglect, and mistreatment: the State adult protective services agency, including its toll-free hot line number; the State licensure and certification agency, including its telephone number; the State commission on aging, including its telephone number; and various other concerned advocacy and protection organizations;

6.3.3.e. The care of aged, infirm or disabled adults with consideration for individual capabilities and needs;

6.3.3.f. Personal assistance procedures as needed for resident care, including at a minimum, personal grooming care, personal hygiene care, nutritional services, and signs and symptoms of alteration in skin integrity;

6.3.3.g. Specific duties and responsibilities of the residential staff for assisting current residents of the home (i.e. a review of individualized service plans, the activities program and/or professionally-designed intervention strategies to help a resident with behavioral health needs to manage his or her behavior);

6.3.3.h. Cardiopulmonary resuscitation (CPR), as applicable, and first aid; and

6.3.3.i. Infection control.

6.3.4. The home may modify the initial orientation and training for individual employees if the individual is certified as a nursing assistant and maintained as such on the nursing assistant registry maintained by the secretary. Completion of such a course satisfies the requirement for training in the areas of personal grooming, hygiene, assistance in feeding and activities of daily living. All other topics required by this rule shall be addressed in the employee's initial orientation and training program. This provision does not exclude individuals certified as nursing assistants from participation in annual on-going in-service training.

6.3.5. The residential board and care home shall provide ongoing in-service training annually in the areas of:

6.3.5.a. Resident rights and confidentiality;

6.3.5.b. Abuse, neglect, mistreatment, and procedures to prevent the occurrence of such incidents;

6.3.5.c. Emergency care of residents (first aid and as applicable, CPR); emergency

plans for the home, including fire safety and evacuation plans;

6.3.5.d. The responsibilities of the residential staff for assisting residents (i.e., individualized service plans, activity programs, etc.) and;

6.3.5.e. Infection control.

6.4. Volunteers. (Class III)

Volunteers rendering services in the home shall adhere to the laws and regulations governing confidential treatment of residents' personal information and provide evidence of freedom from communicable disease in an infectious stage.

6.5. Personnel Records. (Class III)

6.5.1. The residential board and care home shall maintain a confidential personnel record on each employee, including the administrator, and household members who provide services to residents. Each record shall contain at least the following:

6.5.1.a. An employment application which includes at least the individual's current home address and telephone number, emergency contacts, and social security number; and

6.5.1.b. Documentation of the results of a criminal record investigation regarding previous convictions involving abuse, mistreatment or neglect of dependent populations or theft of the property of such populations and the documented verification of past employment or personal references, or upon employment, a check of any abuse registry established by the State.

6.5.1.c. A record of orientation, annual and/or additional training, education and credentials;

6.5.1.d. The date of employment and a position title and description;

6.5.1.e. A health record containing the results of a pre-employment physical examination, annual screenings for tuberculosis (tine test not acceptable) and other communicable diseases as indicated by exposure, prevalence or currently accepted medical practice in congregate living situations as indicated by the commissioner of the bureau of public health of the State department of health and human resources. The employment physical and tuberculosis screening shall be obtained in the first week of employment.

6.5.2. Personnel records shall be maintained on file at the residential board and care home for at least three (3) years following termination of employment. The record shall have documentation of the date and reason for termination of employment.

§64-65-7. Resident Rights.

7.1. Posting of Information and General Rights. (Class III)

7.1.1. The residential board and care home shall post in a conspicuous place the following:

7.1.1.a. Residents' rights;

7.1.1.b. Phone numbers of the abuse hotline; the office of the licensing agency; the state ombudsman; and the regional ombudsman; and

7.1.1.c. Information about the ombudsman program including: (1) the name, address and telephone number of the designated long-term care ombudsman program serving the region in which the residential board and care home is located; (2) a brief description of the services provided by the long-term care ombudsman program; and (3) a statement as to the penalties for willful interference and retaliation.

7.1.2. The home shall promptly notify the resident's legal representative or interested family member whenever there is a change in resident's rights.

7.1.3. If a legal representative has been appointed for or designated by any resident as having the authority to exercise on behalf of the resident one (1) or more of the resident's rights under this rule, the home shall afford the legal representative full opportunity to exercise the authority. If a legal representative so appointed or designated exercises this authority, he or she shall exercise his or her authority in a manner consistent with all applicable state and federal laws and regulations.

7.1.4. Nothing in this rule shall in any way be construed to diminish or deprive any individual of rights recognized and established under other laws of the State of West Virginia or of the United States.

7.1.5. The home shall encourage and assist a resident throughout the duration of his or her stay to exercise his or her rights as a resident and as a citizen, such as voting in governmental elections.

7.1.6. A resident has the right to be free from restraint, interference, coercion, discrimination, or reprisal from the residential board and care home in exercising his or her rights.

7.2. Notice of Rights. (Class III)

7.2.1. The home shall provide a copy of the residents' rights to the resident with duplicates on request. The date the rights are distributed shall be recorded.

7.2.2. The home shall post resident's rights and its current license in a conspicuous location at eye level in the home. The statement shall be easily readable with at least ten (10) point type.

7.2.3. The resident has the right to inspect all records pertaining to him or her and to

purchase photocopies at a reasonable cost.

7.2.4. Residents have the right, if they so choose, to view the results of inspections and complaint investigations conducted by the licensing agency. Deficiencies cited during the most recent survey and any complaint investigations conducted within the preceding twelve (12) months, and the residential board and care home's plan of correction shall be located in a place accessible to residents.

7.3. Treatment. (Class I)

7.3.1. The resident has the right to participate in planning his or her overall care, to utilize the physician or pharmacist of his or her choice, and to be fully informed in advance about care and treatment that may affect him or herself.

7.3.2. No resident shall be abused, neglected, mistreated, or restrained by physical or chemical means. Restraints shall not be used except as allowed under Subsection 8.5 of this rule.

7.3.3. The resident has the right to refuse to participate in experimental research. A resident shall participate in experimental research only on the basis of prior written informed consent. Any informed consent procedures shall be in conformance with applicable state and federal laws, rules and regulations.

7.4. Protection of Resident Funds. (Class III)

7.4.1. The resident has the right to manage his or her financial affairs, and the home may not require residents to deposit their personal funds with the home.

7.4.2. If the home manages funds for a resident, it shall be in accordance with this rule.

7.5. Self Determination. (Class III)

7.5.1. A resident has the right to meet with and participate in the activities of social, religious, and community groups, at his or her discretion.

7.5.2. Residents have the right to assemble and organize themselves as a group to solicit and recommend improvements in the home's services and to resolve problems that may arise between the residents and the home.

7.5.3. A resident shall not be compelled to retire at night or arise in the morning at the same set time.

7.5.4. Residents have the right to be free to leave the residential board and care home.

7.6. Privacy and Confidentiality. (Class II)

7.6.1. The resident has the right to personal privacy and confidentiality of his or her

personal and permanent resident record. Personal privacy includes accommodations, medical treatment, written and telephone communications, personal assistance, visits and meetings of family and resident groups, but does not require the home to provide a private room.

7.6.2. The resident has the right to associate and communicate privately with persons of his or her choice.

7.6.3. The resident has the right to request that no person shall enter his or her room without identifying him or herself to the resident and receiving the resident's permission to enter.

7.6.4. The resident has the right to privacy and it shall be maintained when personal assistance is being provided. Resident bedrooms shall not be used as passageways.

7.6.5. The resident has the right to share the same bedroom with his or her spouse.

7.7. Complaints. (Class II)

7.7.1. The resident has the right to voice grievances with respect to treatment or care furnished without discrimination or reprisal for voicing the grievance.

7.7.2. The resident has the right to prompt action by the home to resolve grievances the residents might have, including those with respect to the behavior of other residents. The home shall assess the validity of all complaints and shall respond to the complainant in writing as to actions to be taken or not taken with reasons therefor, within twenty-four (24) hours of receipt of the complaint.

7.7.3. The resident has the right to express grievances and to communicate to the home staff and outside representatives of the his or her choice the need for changes in the residential board and care home policies or practices.

7.7.4. Nothing in this rule shall be construed to limit in any way the lawful authority of the State department of health and human resources to administer and implement W. Va. Code § 9-6-1 et seq. relating to adult protective services.

7.8. Work. (Class III)

7.8.1. The resident has the right to be employed outside of the home.

7.8.2. The resident has the right to refuse to perform services for the home.

7.8.3. The resident has the right to perform services for the home when:

7.8.3.a. The home has documented the resident's need or desire for work in the service plan in the resident's record;

7.8.3.b. The agreement specifies duties, hours of work and compensation;

7.8.3.c. The agreement is not a condition for admission or continued residence; and

7.8.3.d. The resident enters into the agreement voluntarily.

7.8.4. Any resident who performs any staff duties shall meet the personnel and health requirements for that position.

7.8.5. A residential board and care home shall not permit a resident to perform work which creates conditions or in a manner potentially hazardous for themselves or others.

7.9. Mail and Communication. (Class II)

7.9.1. The resident has the right to send and promptly receive unopened mail. A resident may request a staff member to open and read correspondence.

7.9.2.—The resident has the right to have access to stationary, postage and writing implements at the resident's own expense.

7.9.3. The resident has the right to have access to regular telephones for local calls at no cost. Coin-operated telephones may be provided for long distance calls. The use of "collect only" telephones as the primary telephones for resident use is prohibited. Appropriate privacy shall be afforded to the resident during telephone use.

7.10. Access and Visitation Rights. (Class II)

7.10.1. The resident has the right to receive visitors. Relatives and members of the clergy shall be permitted to visit at any time. Any entity or individual that provides health, social, legal, or other services to a resident, shall be permitted access to the resident subject to the resident's right to deny or withdraw consent at any time.

7.10.2. The resident has the right to collaborate with other residents and the administrator to reach a mutually agreed upon schedule of visiting hours. Visiting hours shall be posted conspicuously in a public place and shall consist of no less than ten (10) hours per day, seven (7) days per week.

7.10.3. The resident has the right to receive information from agencies acting as client advocates such as the State's long term care ombudsman program, and to be afforded the opportunity to contact these agencies.

7.11. Personal Property. (Class III)

The resident has the right to retain and use personal possessions including furnishings, and appropriate clothing as space permits, unless to do so would infringe upon the rights, health or safety of other residents.

7.12. Civil Rights. (Class II)

7.12.1. Individuals have the right to be free from discriminatory practices related to admission or services on the grounds of race, religion, national origin, age, gender, or disability.

7.12.2. The resident has the right to reside in a home that shall not segregate any resident, give separate treatment, restrict in the enjoyment of any advantage or privilege enjoyed by others in the residential board and care home, or provide with any aid, care services, or other benefits which are different or are provided in a different manner from those provided to others in the residential board and care home on the grounds of race, religion, national origin, age, gender, or disability.

7.12.3. The resident has the right to reside in a smoke-free environment. Homes shall have non-smoking areas and may adopt no-smoking policies. Current residents who smoke (as of the effective date of this rule) shall not have smoking privileges terminated through a no-smoking policy.

§64-65-8. Health Care and Social Standards.

8.1. Operational Standards. (Class I)

8.1.1. The residential board and care home shall encourage and assist all residents in developing and maintaining independence and self-determination.

8.1.2. The home shall allow the resident to choose his or her own physician and pharmacist in lieu of the home's physician and pharmacist.

8.1.3. The home shall inform each resident of the names, specialties, and means of contact with the physician responsible for his or her care, if the home utilizes one (1) or more physicians to provide care oversight for all residents of the home.

8.1.4. This rule permits responsibilities of physicians contained within this rule to be implemented by nurse practitioners or physicians' assistants as assigned by the supervising physician and within the parameters of the individual's professional license.

8.1.5. The home shall take reasonable precautions to comply with standard precautions as recommended by the local public health authority should an epidemic occur.

8.1.6. The home shall be acquainted with the local emergency service system should emergency transport and care of residents in a medical emergency be required.

8.1.7. The home shall provide emergency aid for commonly occurring household injuries. A standard American Red Cross first-aid kit, or the equivalent, shall be readily available at all times in the home.

8.2. Assessment. (Class II)

8.2.1. The residential board and care home shall evaluate the continued appropriateness

of residence of an individual in the home.

8.2.2. The home shall assure that each resident has a written, signed and dated health assessment by a licensed physician or other licensed health care professional authorized to perform such assessments by applicable State laws and rules not more than sixty (60) days prior to the resident's admission, or no more than five (5) working days following admission, and at least annually thereafter. The admission and annual health assessment shall include screening for tuberculosis and other communicable diseases if indicated by exposure, prevalence or risk according to current medical practice in congregate living situations as indicated by the commissioner of the bureau of public health of the department of health and human resources.

8.2.3. Within thirty (30) days of admission, every resident shall have an individualized functional needs assessment completed in writing by a licensed health care professional. The resident's assessment shall include a review of at a minimum; health status, functional, psychosocial, activity and dietary needs.

8.2.4. Formal reassessment shall be documented in the resident's record at least annually based upon the month of the resident's admission.

8.3. Planning. (Class II)

8.3.1. The home shall encourage residents to actively participate in the planning of their care and supervision.

8.3.2. Each resident shall have a service plan, based upon his or her assessment, developed within forty-five (45) days of admission and updated at least once every six (6) months. The service plan shall be developed and implemented in response to individual resident needs.

8.3.3. The service plan shall support the principles of individuality, personal dignity, freedom of choice and homelike environment.

8.3.4. The home shall review, monitor, implement and make appropriate modifications to each resident's service plan as appropriate. Formal service plan review shall be documented in the resident's record at least annually based upon the month of the resident's admission. If upon completion of the review, a determination has been made that changes in resident status have occurred, a new service plan shall be completed.

8.3.5. The home shall permit a resident to refuse any treatment. The home may inform a resident, however, that failure to follow his or her service plan may result in a behavioral or medical condition which requires services which are not available in a residential board and care home.

8.4. Services. (Class I)

8.4.1. The home shall provide treatment and care in accordance with the functional

needs assessment and service plan to assist each resident to maintain the highest level of functioning possible.

8.4.2. The home shall assist the resident in making appointments for appropriate medical, dental, nursing or mental health services as needed by the resident.

8.4.3. The home shall provide or arrange for appropriate transportation of the resident to receive medical and social services.

8.4.4. The home shall provide assistance to the resident and the resident's family in the adjustment to the residential board and care home setting and in the adjustment to transfer when other levels of care become necessary.

8.4.5. The home shall provide the resident with personal assistance to meet the needs identified on his or her functional needs assessment. Resident needs may include, but are not limited to, assistance from staff: to self-administer medically prescribed drugs and treatment; to follow any planned diet, rest or activity regimen; to utilize functional equipment (i.e. hearing aides, glasses, canes, etc.); and to perform activities of daily living.

8.4.6. The home shall provide supervision by designated staff for daily awareness of the general health, safety, and physical and emotional well-being of the resident.

8.4.7. The home shall provide dietary and general household services essential for the health and comfort of residents such as daily meals and snacks, laundry, floor cleaning, dusting, and bed-making.

8.4.8. The home shall provide a planned and meaningful activity program to meet the needs of the residents. Volunteers may assist but not replace home employees in carrying out the activities program. The home's program shall:

8.4.8.a. Encourage, guide, or assist residents with arrangements to participate in social, recreational, diversional, vocational, religious, or other activities within the home in accordance with individual interests, tolerance and abilities;

8.4.8.b. Provide information and referral services and opportunities for utilization of social, recreational, vocational activities within the community;

8.4.8.c. Provide a monthly calendar of varied events which lists all social and recreational activities for the residents;

8.4.8.d. Provide at least eleven (11) hours of scheduled activities available to the residents each week for no less than one (1) hour each day; and

8.4.8.e. Encourage but not require residents to participate in activities or restrict a resident's participation in an activity except upon a physician's order.

8.5. Medications. (Class I)

8.5.1. The residential board and care home shall make provision for the administration or self-administration of medicines and drugs according to physician orders in compliance with applicable State laws. The home shall, in consultation with a licensed health care or licensed registered professional nurse, establish written policies and procedures, which are consistent with this rule, for assisting residents in obtaining individually prescribed medication and for disposing of outdated prescription medications in accordance with applicable State and federal laws.

8.5.2. Prescription drugs shall be obtained, administered or self-administered only on the written order or prescription of an individual authorized by law to prescribe drugs in this State. The home shall ensure notification of the licensed health care professional managing the resident's health care regarding the resident's use of over-the-counter medications and the health care professional shall determine whether or not the resident can self-administer such medications in a safe manner.

8.5.2.a. Copies of the prescriptions or written orders for drugs shall be retained in the resident's record. Verbal orders shall be reviewed and signed by the individual responsible for the order within ten (10) working days from the original order date.

8.5.2.b. The ability of a resident to self-administer medication shall be documented in the resident's record.

8.5.3. The attending physician, or other health care professional, or a consulting pharmacist shall review the medication regimen of each resident as needed, but at least annually. Documentation of this review must be entered into the resident's record.

8.5.4. The home shall keep a record of all drugs given to each resident indicating each dose given. The record shall include: the resident's name; the name, strength, and quantity of the drug; instructions for giving the drug; the date and time drug is administered; and the name or initials of persons giving the drug. If initials are used, a signature equivalent to those initials shall be entered on the record.

8.5.5. Self-administration of insulin or injectables for which the individual has been trained to self-administer is permitted.

8.5.6. The use of PRN (as needed) controlled or prescription drugs such as narcotics, tranquilizers or psychotropic medications requiring judgment capabilities beyond the expertise of unlicensed staff or a fluctuating medication regimen is prohibited unless the self-administering resident is capable of determining when the medication is needed or the medication administration and management is otherwise in accordance with State and federal law, rules and regulations.

8.5.7. When oxygen therapy is provided, it shall only be administered by using oxygen concentrators except that a portable source shall be available for resident use for out-of-room activities and in the event of power failure: the equipment shall be maintained electrically safe and service shall be available as needed; the oxygen tubing shall be stored in a sanitary manner

when not in use and replaced as indicated by accepted infection control measures; and smoking shall be prohibited in any location when oxygen is in use and no smoking signs shall be posted conspicuously and enforced.

8.5.8. The residential board and care home shall store all medications in a way as to be inaccessible to all residents unless residents are determined to be capable of self-medication. In such cases, the home shall provide the self-medicating resident with resources to have the medications stored in a safe manner.

8.5.9. The container label of each prescription drug shall be legible, legally dispensed and labeled for the resident for whom it has been prescribed. When the prescriber's directions change, the container shall be relabeled by a licensed pharmacist or there shall be a written document signed and dated by the physician to verify the change in a medication prescription which is stored in the resident record. All medications shall be kept in their original labeled containers and shall be labeled in accordance with the rules of the West Virginia board of pharmacy and in a manner that the name and strength of medication, manufacturer name, lot number, and expiration date can be readily identified by the home.

8.5.10. Medication shall be centrally stored if the preservation of medicine requires refrigeration; when medication is determined, and documented by the home to be hazardous if kept in the personal possession of the person for whom it was prescribed; if the resident is not capable of self-administering medications as prescribed; or when, because of physical arrangements and conditions or habits of other persons in the home, the medications are determined to be a safety hazard to others.

8.5.11. Centrally stored medications shall be kept in a locked cabinet or other storage receptacle and accessible only to the staff responsible for medications.

8.5.12. If Schedule II drugs of the controlled substances act are administered, a copy of the written prescription signed by the physician shall be in the resident's record and a proof of use record shall be maintained. Schedule II drugs shall be stored in a manner so that they are securely protected by two (2) locks. The key to the separately locked Schedule II drugs shall not be the same key that is used to gain access to non-scheduled drugs. If refrigeration is required, the home shall provide: a refrigerator in a locked room, a locked refrigerator or a locked box within the refrigerator for storage. A thermometer shall be required in a refrigerator storing medications. The temperature within the refrigerator storing medications shall not exceed forty degrees Fahrenheit (40° F).

8.5.13. All medications for deceased residents shall be removed from the medication cart, cabinet, and refrigerator and separated from all other medications.

8.5.14. All controlled drugs shall be disposed of in accordance with state and federally approved practices.

8.5.15. Unit dose medication and medications in sealed original manufacturer's containers which can be credited by the vendor shall be returned to the vendor for credit or

disposed of in the manner directed by the resident.

8.5.16. All medications not returned for credit to the vendor shall be destroyed within the home by two (2) members of the home's staff or the home shall release the medication to the resident's legal representative and maintain a signed receipt in the home as documentation of the release of the medication.

8.5.17. The home shall maintain a record of the destruction of controlled drugs for a period of two (2) years. All medication destruction records shall be signed and dated by the individuals destroying the medications. The medication destruction record shall clearly state the following information: the name of the resident for whom the drug was prescribed; the prescription number; the name of the dispensing pharmacy; the name and dosage of the drug; the amount of the drug destroyed; and the date the drug was destroyed.

8.6. Accident, Illness and Major Incident Procedures. (Class I)

8.6.1. When a resident experiences an illness or an incident that results in injury or resident complaint, the home shall arrange for an appropriately licensed health care professional to:

8.6.1.a. Assess the severity and cause of the accident or illness;

8.6.1.b. Advise the residential board and care home as to the need to seek emergency assistance related to the accident or illness; and

8.6.1.c. Record actions taken in the resident's record, and, shall recommend to the home in writing actions, if any, to take to avoid similar accidents or illnesses. The home shall keep a written documentation of the recommendations. If the resident has an obvious need for emergency assistance, the person on duty should first obtain emergency assistance, and then call the licensed health care professional.

8.6.2. The residential board and care home shall document monitoring of the resident's condition for a period of twenty-four (24) hours following the accident or the onset of the illness or as specified by the licensed health care professional.

8.6.3. Major incidents shall be reported to the licensing agency by the licensee.

8.6.4. Written policies and procedures shall be established and enforced for contacting a resident's family, legal representative, physician or designated health service professional to communicate any apparent significant deviations from the resident's normal appearance, state of health or well-being. The home shall promptly notify the resident's physician when there is a major incident or any significant change in the resident's condition.

8.6.5. Physical restraints shall not be used except in an emergency under physician's order not to exceed twenty-four (24) hours for the safety of the resident and others in the home until a time that professional help arrives on the premises. Restraints utilized during emergencies

shall be limited to cloth vest or soft belt restraints only and their application shall be by trained staff only. Restraints shall be released every two (2) hours for at least ten (10) minutes. These procedures shall be documented and available for review by the secretary.

8.6.6. Any medical, dental or mental health professional, ordained minister, christian science practitioner, religious healer, social service worker, peace officer, or law enforcement officer is required under the adult protective services law to report (W. Va. Code §9-6-9) any incident in which an incapacitated adult is neglected, abused, or in an emergency situation, subject to conditions likely to result in neglect, abuse or emergency, or has died as a result of abuse or neglect. Reports of neglect, abuse or emergency situations shall be made immediately to the local adult protective services office of the department of health and human resources or by calling the adult protective services hotline number, as required by law and to the home's licensing agency. The secretary may report alleged failures by a licensed health care professional to report alleged incidents of neglect or abuse or emergency situations to the individual's licensing board.

8.6.7. The home shall assure that all alleged violations involving abuse, exploitation or neglect are immediately and thoroughly investigated and documented by the licensee or his or her designee within twenty-four (24^o) hours of the incident.

8.6.8. If the allegation is substantiated, the home shall assure that appropriate sanctions are invoked or actions are taken to prevent a recurrence of alleged abuse, exploitation or neglect.

8.6.9. The home shall assure that the licensing agency has been notified within seventy-two hours (72^o) of the date of the occurrence of alleged abuse, exploitation, or neglect. Concurrently, documentation of the investigation, the results of the investigation and the response to the investigation shall be forwarded to the licensing agency.

§64-65-9. Dietetic Services.

9.1. General. (Class I)

9.1.1. The residential board and care home shall ensure that each resident is offered at least three (3) meals daily, seven (7) days a week and special diets and snacks which meet resident needs and choices, as identified in his or her needs assessment, which are freshly prepared each day. Meals shall provide nutrients and calories for each resident based upon substantial compliance with current recommended dietary allowances of the Food and Nutrition Board of National Academy of Sciences, National Research Council, or as specified in this rule, except as ordered by a physician.

9.1.2. When therapeutic or modified diet services are provided by the home, a physician's order for each diet and the meal pattern, including types and amounts of food to be served, shall be on file. Therapeutic or modified diets, as recommended by the physician, shall be prepared according to written instructions obtained from the resident's physician or dietitian. At no time shall a resident be offered less than one thousand four hundred (1,400) calories daily, unless specifically ordered by a physician.

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9.1.3. The home shall offer residents a variety of foods at meals as follows:

9.1.3.a. Breakfast: fruit or juice; cereal, whole grain or enriched bread product; and Grade A vitamin D milk.

9.1.3.b. Noon and evening meals: protein sources, such as meat, poultry, fish, eggs, cooked dried legumes, cheese or peanut butter; vegetable or fruit; whole grain or enriched grain food products; and Grade A vitamin D milk.

9.1.4. Each resident shall be weighed upon admission and provided with the amount of food and fluid on a daily basis necessary to maintain his or her appropriate minimum average weight.

9.1.5. The home shall assure that residents are receiving meals that are planned and developed with regard to individual preferences.

9.1.6. The home shall encourage resident participation in menu planning and shall serve meals at times mutually agreed upon by residents in the home with consideration of resident past practice prior to admission to the home.

9.1.7. The home shall accommodate residents who are unable to eat at the planned mealtime and provide for a meal substitution if the resident does not tolerate the foods planned for the meal.

9.2. Administrative Requirements. (Class III)

9.2.1. Every resident shall be encouraged to eat in designated dining areas. The home shall not routinely designate private living areas and hallways as dining areas. A supply of appropriate and customary tableware in good condition shall be available for each resident.

9.2.2. The home shall maintain a daily record of actual foods served for each meal. Menu content shall be varied. Grocery receipts and records of actual food served shall be kept on file for at least thirty (30) days.

§64-65-10. Fire Safety, Disaster and Emergency Preparedness.

10.1. Fire Safety. (Class I)

The residential board and care home shall provide evidence of compliance with applicable rules of the State fire commission. Any variation to compliance with the fire code must be coordinated with the department and approved in writing by the state fire marshal.

10.2. Disaster and Emergency Preparedness. (Class I)

10.2.1. The home shall have a written disaster and emergency preparedness plan which states procedures to be followed in the event of an internal or external disaster or emergency

which could severely affect the operation of the home.

10.2.2. The disaster and emergency preparedness plan shall have procedures for at least the following situations and shall identify specific tasks and responsibilities for all employees in the event of any of the following events: missing residents; high winds; tornadoes; floods; bomb threats; utility failure; severe winter weather; and an emergency food supply and menu which will provide nutrition for all persons residing in the home for a minimum of seventy-two (72) hours.

10.2.3. There shall be copies of the disaster and emergency preparedness plan at all staff stations or emergency control stations. The disaster and emergency preparedness plan shall be located in an area that allows visual contact at all times. Staff shall know the location at all times.

10.2.4. The disaster and emergency preparedness plan shall be reviewed and updated by the administrator or his or her designee on an annual basis and signed and dated to verify review.

10.2.5. Emergency call information shall be conspicuously posted near each telephone in the home, exclusive of resident telephones. This information shall include at least the following:

10.2.5.a. Telephone numbers of the fire department, the police, an ambulance service and other appropriate emergency services;

10.2.5.b. Key personnel telephone numbers, including at least the following: the administrator; physician (if applicable); or the nurse on call (if applicable); and

10.2.5.c. Names and telephone numbers of all other personnel to be called in case of fire or emergency.

10.2.6. Within seventy-two (72) hours of admission, the disaster and emergency preparedness plan procedures shall be clearly communicated by the staff to the resident.

10.2.7. The disaster and emergency preparedness plan shall be rehearsed by all personnel from all shifts once yearly.

§64-65-11. Physical Plant and Sanitation Requirements.

11.1. Life Safety and Construction. (Class I)

11.1.1. The residential board and care home shall comply with the State building code

promulgated in W. Va. Administrative Rules, 87 CSR 4, Building Code.⁶

11.1.2. All residential board and care homes shall provide for accessibility for individuals with a physical disability. This shall include at least the entirety of the main floor, including the living rooms, kitchen and dining areas and at least a portion of bedroom and bathroom space. The home shall reasonably attempt to ensure that most barriers to daily tasks have been overcome and that all necessary ramps, railings, and curb cuts are in place. Existing facilities have until the first day of January, one thousand nine hundred and ninety-seven (January 1, 1997), to comply with this requirement.

11.1.3. Trailers shall not be licensed as residential board and care homes.

11.1.4. The residential board and care home shall have electric power and have hot and cold running water adequate to meet the needs of the residents and employees.

11.1.5. Residential board and care homes shall be located in residential areas or partially residential areas.

11.2. Sanitation. (Class I)

11.2.1. The home shall have a water supply which complies with applicable State and federal rules and regulations.

11.2.2. Sewage disposal shall be in accordance with applicable State rules.

11.2.3. The home shall be kept substantially free of insects, rodents and vermin. Pesticides shall be applied in a manner to prevent contamination of food and hazards to residents.

11.2.4. Pets are permitted, provided that all residents are advised prior to admission that pets are kept on the premises. If pets are added after the admission of residents, all residents shall agree to having pets. However, pets are not permitted in a resident's bedroom without the resident's consent and are not permitted in food preparation areas.

11.2.4.a. Dogs and cats kept in the home or on the grounds of the home shall be properly licensed (if applicable) and vaccinated (for dogs this includes rabies, leptospirosis, distemper, and parvo and for cats this includes rabies). Documentation of the licensing, vaccination and prevention measures shall be available on the premises. Animals and their quarters shall be kept in a clean condition at all times.

⁶ Available from the State Fire Commission or the Secretary of State. Section 4 of the above referenced Building Code rule incorporates by reference the BOCA National Building Code; BOCA National Plumbing Code; BOCA National Mechanical Code; BOCA National Existing Structures Code; BOCA National Energy Conservation and CABO One- and Two-Family Dwelling Code. You may purchase these books, collectively or separately, from Building Officials and Code Administrators International, 4051 West Flossmoor Road, Contra Club Hills, Illinois 60477-5795, 1-312-700-2300 or BOCA International Regional Offices, 3592 Corporate Drive, Suite 107, Columbus, Ohio 43229, 1-614-890-1064 or view a set at the Secretary of State's Office.

11.2.5. Solid waste, including garbage and refuse, shall be removed from the building daily and the premises weekly, or more often if necessary in accordance with the applicable provisions of State law and regulations.

11.2.6. The home shall have sufficient supplies and equipment to permit frequent cleaning of floors, walls, woodwork, windows, and screens, and to facilitate all building and ground maintenance.

11.2.7. The home shall ensure that rooms are painted and undamaged; carpets, furniture and linoleum are in minimal need of replacement; the interior of the house is maintained in a clean, safe and sanitary condition and is in good repair overall.

11.2.8. The home shall provide the following facilities if food for resident consumption is prepared by staff within the home:

11.2.8.a. Sufficient space to carry out proper food preparation and serving operations with a system to protect food from contamination during preparation and service;

11.2.8.b. Dish washing facilities and methods to effectively remove food soil and sanitize dishes, utensils and equipment used in food storage, preparation and service. If a dishwasher is not used, dishes, equipment and utensils shall first be washed, next rinsed, and then sanitized by immersion for at least one-half (1/2) minute in clean, hot water of a temperature of at least one hundred seventy degrees Fahrenheit (170° F); or immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite (household bleach or the equivalent) and having a temperature of at least seventy-five degrees Fahrenheit (75° F); or any other method that will provide the equivalent bactericidal effect;

11.2.8.c. Refrigeration storage equipment to assure the maintenance of potentially hazardous food at or below forty-five degrees Fahrenheit (45° F), medium temperature storage, freezer units and dry food storage areas;

11.2.8.d. A system to store and prevent the contamination of utensils and equipment and ensure that they are kept in good repair;

11.2.8.e. A waste disposal system and can washing facilities;

11.2.8.f. Procedures to handle utensils and equipment used by residents affected with communicable diseases (disposable equipment is acceptable in this situation); and

11.2.8.g. Effective procedures for maintaining the food service environment in a clean, safe and sanitary manner.

11.2.9. The home shall ensure that dietary areas and equipment are designed to accommodate the requirements for sanitary storage, processing and handling of food if food is regularly brought into the facility by an outside food service provider.

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11.2.10. The home shall provide laundry facilities or services for residents' personal laundry. Laundry services may be provided by an outside laundry service.

11.2.11. Homes which do their own laundry shall have a separate area or room designed for use as a laundry, including space for sorting soiled and clean linen and clothing. In addition, the home shall ensure that:

11.2.11.a. Washing machines are installed so that no back-siphonage possibility exists, and electric or gas clothes dryers shall be vented to the outside;

11.2.11.b. Soiled and clean laundry are not stored together at any time; and

11.2.11.c. Table and kitchen linens are laundered separately from other washable goods. Sanitizing agents shall be used when laundering kitchen, bath, and bed linens.

11.3. General Living Environment. (Class I)

11.3.1. Traffic paths in the home and yard shall be maintained free of obstacles;

11.3.2. All stairways used by residents shall have sturdy handrails on one (1) side of the corridor to provide for safety with ambulation;

11.3.3. Electrical outlets shall have proper number of plugs and cords are maintained away from walking areas;

11.3.4. Tools and equipment shall be kept on shelves or in closets; sharp knives are kept in drawers or knife holders;

11.3.5. Locked storage facilities shall be provided for all toxic materials separate from any food and drug storage;

11.3.6. Each door to the outside shall have at least one (1) lock that permits keyless egress to residents of the home;

11.3.7. All windows shall have functioning locks for security which can be easily opened for quick escape; and

11.3.8. Hot water temperature shall be minimally maintained at one hundred five degrees Fahrenheit (105° F) at bathing fixtures used by residents. Hot water temperature shall not exceed one hundred ten degrees Fahrenheit (110° F) in tubs and showers and one hundred twenty degrees Fahrenheit (120° F) at hand washing sinks or other non-bathing plumbing fixtures used by residents.

11.3.9. Doors and windows used for ventilation shall be screened.

11.3.10. Outdoor lighting shall be provided at doorways, on decks or patios and near

garages.

11.4. Interior Comfort. (Class II)

11.4.1. Temperature shall be maintained at a level comfortable to the residents.

11.4.1.a. The home shall have a central heating system or incremental units capable of maintaining a temperature in rooms used by residents of at least seventy-two degrees Fahrenheit (72° F) during cold weather. Individual room units known as "through the wall heating/cooling units" which are approved by U.L. Inc. may be acceptable. Heat shall be supplied to all rooms used by residents.

11.4.1.b. Cooling devices or systems shall be provided for the use of residents when inside temperatures exceed eighty degrees Fahrenheit (80° F). Acceptable cooling devices include, but are not limited to: air conditioners, heat pumps and electric fans. Portable and mounted electric fans shall be screened, constructed and placed in a manner which maximizes resident safety and minimizes drafts.

11.4.2. There shall be at least fifteen (15) square feet per resident of common living area for social, leisure and recreation activities other than bedrooms, bathrooms, hallways and closets. Common areas shall not be used in ways which infringe on the rights of access of others, and shall not be used as sleeping areas. There shall be enough seating to accommodate all residents.

11.4.3. A minimum of fifteen (15) square feet per resident shall be provided for dining. Activity and dining areas must be separate.

11.4.4. The home shall provide furniture that is well-crafted, reasonably designed and functional for the people who live in the home.

11.4.5. The home shall provide comfortable and adequate lighting throughout the interior environment.

11.4.6. Window coverings (i.e. curtains, drapes, blinds, shades, screens) shall be used to keep rooms comfortable (i.e. screen glare from the sun, keep out insects, and/or reduce heat from the sun).

11.4.7. All home appliances (stove, refrigerator/freezer, washer, dryer, television, stereo) shall be in good working order.

11.5. Bedrooms. (Class II)

11.5.1. Bedrooms shall provide no less than eighty (80) square feet of space for single occupancy rooms and no less than sixty (60) square feet for each resident of a multiple occupancy room. This shall not include closet or bathroom space.

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11.5.2. No bedroom shall be occupied by more than three (3) residents. Residents shall not share bedrooms with the administrator, staff or persons residing in the home who are not residents as defined in this rule.

11.5.3. Bedrooms shall have an adequate amount of window area to provide for comfort, ventilation and emergency escape.

11.5.4. Each bedroom shall have at least one (1) light controlled by a switch at the door to the room.

11.5.5. Basements shall not be used as bedrooms for residents and beds shall be placed only in areas commonly used as a bedroom.

11.5.6. Each resident shall be provided with a bed that is at least thirty-six inches (36") in width, equipped with a substantial, clean and comfortable mattress which fits the bed, and a clean, comfortable pillow of at least average size. A resident may use a hospital bed for a specific condition. Side rails are permissible, if used to assist the resident in turning or getting out of bed.

11.5.7. Bed coverings shall be available to keep residents comfortable. This shall include at a minimum a pillowcase, a protective mattress cover, a top and bottom sheet and a quilt, comforter or blanket.

11.5.8. Clean and freshly laundered bed linens shall be provided for each resident at least once each week and more often, if needed.

11.5.9. Windows shall have curtains, shades or blinds which can be operated by the resident and can function to provide privacy for the resident.

11.5.10. Each resident of each bedroom shall be provided with the following bedroom setting type furniture:

11.5.10.a. A bedside table, chest or its equivalent accessible to the bed, with drawers for the storage of personal items;

11.5.10.b. A bed lamp or bedside light suitable for reading and accessible to the bed; and

11.5.10.c. A comfortable chair of sturdy construction suitable for resident use.

11.5.10.d. An adequate personalized dresser for storage of clothing, etc.; and

11.5.10.e. A closet which may be shared by no more than one (1) other person.

11.5.11. A mirror suitable for full-length viewing shall be accessible to all residents.

11.6. Toilet and Bathing Facilities. (Class II)

11.6.1. Each resident shall have access to a toilet and washroom without entering another bedroom. No more than six (6) individuals (i.e. any combination of residents, administrator, staff and persons residing in the home who do not meet the definition of resident found in this rule) shall share a single toilet-washroom.

11.6.2. There shall be at least one (1) bathing facility for each ten (10) individuals residing in the home and at least one (1) per floor on which resident rooms are located. No more than ten (10) individuals (i.e. any combination of residents, administrator, staff and persons residing in the home who do not meet the definition of resident found in this rule) shall share a single bathing facility.

11.6.3. Bathing facilities shall have at least one (1) combination shower and bathtub or one (1) bathtub or one (1) shower. Showers or bathtubs shall be equipped with non-slip surfaces or mats and grab-bars for each shower or tub provided.

11.6.4. Each toilet-washroom shall have:

11.6.4.a. At least one (1) hand washing sink;

11.6.4.b. At least one (1) toilet; and

11.6.4.c. Grab-bars for each toilet.

11.6.5. Locks on bath and toilet facility doors and the doors to rooms housing these facilities shall be easily opened or removed from the outside in the event of an emergency.

11.6.6. Toilet-washrooms shall be supplied with soap, toilet tissue, and towels. The shared use of towels is prohibited.

11.6.7. Clean towels and wash cloths shall be provided to the resident at least twice weekly, and more often if needed.

11.6.8. Bathtubs, shower stalls and hand washing facilities shall not be used for storage or for laundering soiled linens.

§64-65-12. Additional Requirements Related to the Provision of Limited and Intermittent Nursing.

12.1. Standard Requirements. (Class I)

⁷ The provisions of this section apply only to residential board and care homes providing limited and intermittent nursing. See Paragraph 4.1.4 of this rule.

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12.1.1. A residential board and care home which provides limited and intermittent nursing care shall arrange for a registered professional nurse to assume responsibility for the oversight of nursing care and services. The home shall enter into a written agreement with the registered professional nurse which specifies the responsibilities of the registered professional nurse and the home. Arrangements for nursing services may be made by contract with an individual or a nursing service with a management entity; or the residential board and care home may employ a registered nurse; or the administrator of the home may act in this capacity, if he or she is a licensed registered professional nurse. Arrangements with a home care agency providing only direct care does not satisfy the requirements for nursing management oversight of all residents.

12.1.2. The home shall provide adequate nursing support staff to ensure appropriate nursing care outcomes. Nursing support staff shall be under the supervision of the registered professional nurse who has assumed the overall responsibility for the oversight and care provided to the residents.

12.1.3. Homes whose administrator or supervisor-in-charge is a registered professional nurse are not required to employ another individual to meet the responsibilities of the registered professional nurse if there are sufficient numbers of nursing support staff to meet the needs of residents.

12.1.4. The home shall implement, within reasonable expectation, the recommendations of the registered nurse regarding care, services and staff training intended to protect the residents.

12.1.5. The home shall provide written notice to each resident regarding the availability of nursing services at the time of admission, or, for current residents, within thirty (30) days of the effective date of this rule.

12.1.6. The home shall not house residents who are unable to recognize danger or walk independently on any floor other than the first floor of a multi-level residential board and care home.

12.1.7. The home shall assure that treatment involving medical management of a resident is carried out only in accordance with an order from a physician or other lawfully authorized licensed health care professional, and that the order with the physician's or other licensed health care professional's signature is placed in the resident's care record.

12.1.7.a. No medication, diet, medical procedure or treatment shall be started, changed or discontinued by the home without an order by a licensed health care professional.

12.1.7.b. All physician orders shall be reviewed every thirty (30) days for accuracy by the registered professional nurse or other lawfully authorized professional, unless there is a medical condition requiring a more frequent review as determined by the resident's physician.

12.1.8. The home shall assure that:

12.1.8.a. All verbal orders are recorded in the resident's care record, signed by a licensed nurse, and countersigned by the physician or other licensed health care professional who issued the order within ten (10) working days from the original order date;

12.1.8.b. All physician's orders specify the type, frequency, duration, and dosage for each medication, treatment or special feeding;

12.1.8.c. Treatment measures are performed only by qualified staff; and

12.1.8.d. Nursing procedures and treatments are performed only by a licensed registered or practical nurse, in accordance with applicable State law.

12.1.9. The home shall measure and record the resident's height in his or her record upon admission and annually thereafter.

12.1.9.a. The home shall weigh and record each resident's weight in his or her record upon admission and at least monthly or as ordered by the physician.

12.1.9.b. The home shall report undesirable changes in body weight of five percent (5%) or more to the resident's physician within seventy-two (72) hours of the identification of the weight change.

12.1.10. The home shall retain a physician or a consultant pharmacist who shall conduct quarterly pharmacy reviews on all residents receiving limited or intermittent nursing services.

12.1.11. The use of PRN (as needed) medications is prohibited, unless one (1) or more of the following conditions exist:

12.1.11.a. The resident is capable of determining when the medication is needed;

12.1.11.b. Licensed health care professionals are responsible for medication management; or

12.1.11.c. The resident's physician has provided detailed instructions or home staff have telephoned the doctor, explained the symptoms and received a documented oral order to assist the resident in self-administration of the medication. The physician's instructions shall include symptoms that might indicate the use of the medication, the dosage, the route of administration, the frequency with which the medication may be administered, and directions for follow-up care if the symptoms persist in excess of twenty-four (24) hours.

12.1.12. The home shall assure that the registered professional nurse maintains a general record with a complete signature for each entry which shall include at least:

12.1.12.a. The date, time in and time out for each visit (unless the registered professional nurse is employed by the residential board and care home at least thirty-five (35) hours per week);

12.1.12.b. A list of duties performed by the registered nurse during each visit; and

12.1.12.c. A brief statement regarding identified concerns and recommended actions taken to resolve them.

12.1.13. The home shall develop a system that provides for twenty-four (24) hour accessibility between the home, the registered professional nurse, and/or other emergency personnel.

12.1.14. The home secure an emergency transfer agreement with a local hospital and establish agreements with outside service providers as applicable (i.e. laboratories, physical therapy, occupational therapy, speech therapy, disposal of medical waste, ambulance services, etc.). Copies of all agreements shall be maintained on file in the home and available for review by the secretary.

12.2. Nursing Services. (Class I)

12.2.1. A licensed nurse shall document the following in each resident's individual case record using a complete signature or initials with a complete signature on each page of the record:

12.2.2. A monthly progress note in the resident's record as indicated by the needs of the resident to document the status of the resident and any changes in his or her health or welfare;

12.2.3. Any significant temporary or permanent changes in condition including changes resulting from incidents or accidents; and

12.2.4. Any verbal or written orders received from a licensed health care professional.

12.2.5. The registered professional nurse shall:

12.2.5.a. Provide oversight of the care and services through daily contact with the home and visits to the residents at least eight (8) hours a week. Visits shall be of sufficient duration to perform all required duties;

12.2.5.b. Provide overall supervision of the provision of nursing services to residents by ensuring that the services established within the resident's service plan are met and that the resident's physical, mental and social well-being are not compromised;

12.2.5.c. Complete a written nursing assessment for each resident with nursing needs within twenty-four (24) hours following admission, and which shall be rewritten quarterly thereafter, or at the time of any significant temporary or permanent change in the resident's condition. In the absence of a significant temporary or permanent change in condition, the assessment shall be reviewed every thirty (30) days.

12.2.5.d. On an ongoing basis, the nurse shall evaluate each resident's functional capabilities to assure that each joint is maintained with an optimal range of motion; and evaluate each resident's medication administration in accordance with the physician's orders, and report adverse signs or symptoms related to medications to the physician immediately;

12.2.5.e. Coordinate the development of a component of the service plan to meet any identified nursing and medical needs of the resident with the resident and the attending physician or other licensed health care professional, which shall be signed and dated by the attending physician or other licensed health care professional. This component shall be completed within seven (7) days after admission and shall be reviewed by the registered nurse at least every thirty (30) days or at the time of a significant temporary or permanent change in condition.

12.2.5.f. Review training needs of residential board and care home staff members;

12.2.5.g. Provide needed training or recommend to the residential board and care home appropriate training for staff; and

12.2.5.h. Provide to the residential board and care home a written record of training provided by the registered nurse to individuals or groups with an outline of the items discussed, the date and time of the session, and signatures of individuals involved in the training.

12.2.5.i. Provide overall supervision of medication storage, dispensing systems and disposition;

12.2.5.j. Coordinate admission and discharge planning as it relates to the medical component of resident care; and

12.2.5.k. Serve as the liaison between the resident, the resident's physician, and the administrator (if applicable) on an as needed basis.

12.3. Personnel and Staffing. (Class III)

12.3.1. The administrator shall have at least one (1) year of experience in caring for adults with mental or physical impairments.

12.3.2. Any individual designated as the assistant administrator shall meet the requirements established by this rule for administrators.

12.3.3. The administrator shall demonstrate knowledge, skills and abilities in the administration and management of a residential board and care home, including:

12.3.3.a. Knowledge and understanding of mentally impaired or physically impaired individuals; and

12.3.3.b. The ability to plan and implement the overall services needed by residents.

12.3.4. The administrator and assistant administrator shall annually attend at least ten (10) additional hours of training related to management or operation of a residential board and care home specific to the population in care. Documentation of training attendance and content shall be maintained in their personnel files.

12.3.5. Residential care and residential support staff shall attend at least eight (8) additional hours of training annually specific to the population in care at the residential board and care home. Documentation of the training shall be maintained in the employee's personnel file. Acceptable training topics include, but are not limited to: medications and side effects; signs and symptoms of substance abuse; mental illness and developmental disability; crisis intervention; aging processes; behavior management; resident care techniques; interpersonal skills; promoting socialization and independence; death and dying; nutrition and therapeutic diets; restorative care; habilitation and/or rehabilitation; the use of assistive or prosthetic devices; range of motion, transfer and positioning; and emergency interventions when the residents are out of the residential board and care home.

12.4. Resident Care and Related Services. (Class III)

12.4.1. The residential board and care home shall assure that all of the resident's needs are identified within a service plan. The resident's service plan shall be maintained in one (1) document that clearly identifies the interventions to be provided, the frequency of each intervention, and the level of staff necessary to carry out the intervention.

12.4.2. The residential board and care home shall obtain progress reports from professional outside service providers at least every sixty (60) days until it is stated in a report that services are no longer needed.

12.4.3. The progress reports shall contain at a minimum:

12.4.3.a. A statement that continued services are/are not needed;

12.4.3.b. Recommendations, if any, for continued services;

12.4.3.c. The individual's response to the service being provided.

12.4.4. Copies of the progress reports shall be retained in the resident's record.

§64-65-13. Penalties.

13.1. Civil Penalties.

13.1.1. The secretary shall administer penalties for violations of this rule and of W. Va. Code §§16-5C-1 et seq. and 16-5H-1 et seq. as specified in W. Va. Code §§16-5C-1 et seq., 16-5H-1 et seq., and this rule.

13.1.2. Upon completion of a report of inspection, the secretary shall determine what, if any,

civil penalties are to be imposed pursuant to the West Virginia Code and this rule, and issue citations. Supplemental penalties shall be assessed for a facility's failure to correct continuing violations: Provided, That where supplemental penalties have been assessed for continued failure to correct a violation of a non-life threatening nature, the secretary shall, prior to issuing a written citation, notify the licensee or non-licensed operator by registered or certified mail, return receipt requested, that civil penalties will be imposed on a date to be specified by the secretary unless the corrective actions specified by the secretary are implemented in an acceptable manner.

13.1.3. All citations shall be in writing and shall include at least the following:

13.1.3.a. The penalty;

13.1.3.b. A description of the nature of the violation fully stating the manner in which the licensee or non-licensed operator violated a specific statutory provision or provision of the rule; and

13.1.3.c. The basis upon which the secretary assessed the penalty and selected the amount of civil penalty.

13.1.4. The name of any resident jeopardized by the violation shall not be specified in the citation.

13.1.5. For each violation of a Class I standard, a civil penalty shall be assessed of not less than one hundred dollars (\$100) or more than ten thousand dollars (\$10,000). For each violation of a Class II standard, a civil penalty shall be assessed of not less than fifty dollars (\$50) and not more than one thousand dollars (\$1,000). For each violation of a Class III standard, a civil penalty shall be assessed of not less than twenty-five dollars (\$25) and not more than two hundred fifty dollars (\$250).

13.1.6. Each day a violation continues after the date by which correction was required by an approved plan of correction, or if an approved plan of correction was not submitted, the date on which the plan was due shall constitute a separate violation.

13.1.7. In both determining to assess a civil penalty and in fixing the amount of the civil penalty to be imposed for violations, the secretary shall consider the gravity of the violation, which shall include:

13.1.7.a. The degree of substantial probability that death or serious physical harm will result and, if applicable, did result from the violation;

13.1.7.b. The severity of serious physical harm most likely to result, and if applicable, that did result from the violation; and

13.1.7.c. The extent to which the provisions of the applicable statutes or regulations were violated.

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13.1.8. If a licensee or a non-licensed operator does not plan to contest a citation which imposes a penalty, he or she shall submit to the secretary, within ten (10) business days after the issuance of the citation, the total sum of the penalty assessed.

13.1.9. If a licensee or a non-licensed operator desires to contest a citation which imposes a penalty or the date specified for correction of a violation, he or she shall, within four (4) business days after service of the citation or specification of time in which a violation is to be corrected, serve upon the secretary, either personally or by registered or certified mail, the licensee's or non-licensed operator's written notice pursuant to **West Virginia Department of Health and Human Resources Administrative Rules, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.**

13.1.10. The assessments for penalties and for costs of legal action taken under W. Va. Code §16-5C shall have interest assessed at two (2%) percent on the last day of each month in which occurs the thirtieth (30th) day after receipt of notice of such assessment or after the month in which occurs the thirtieth (30th) day after receipt of the secretary's final order following a hearing, whichever is later. All such assessments against a facility that are unpaid shall be added to the facility's licensure fee and may be filed as a lien against the property of the licensee or operator of the facility.

13.1.11. The secretary shall, in a civil judicial proceeding, recover any unpaid assessment which has not been contested under W. Va. Code §16-5C-12 within thirty (30) days of receipt of notice of such assessment, or which has been affirmed under the provisions of that section and not appealed within thirty (30) days of receipt of the secretary's final order, or which has been affirmed on judicial review, as provided in W. Va. Code §16-5C-13. All money collected by assessments of civil penalties or interests shall be paid into a special resident benefit account and shall be applied by the secretary only for the protection of the health or property of residents of facilities operated within the State of West Virginia, including payment for the costs of relocation of residents to other facilities, operation of a home pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

13.2. Restrictions; Revocation.

13.2.1. The secretary may place restrictions upon or revoke the current license of a home, if he or she finds evidence of one (1) or more of the following:

13.2.1.a. Lack of financial stability to operate, such as insufficient capital, delinquent accounts, checks returned because of insufficient funds, and nonpayment of taxes, utility expenses and other essential services;

13.2.1.b. The licensee or the administrator of the home has been arrested for, adjudicated, and convicted of any felony or of a misdemeanor relevant for the provision of care in a health care facility or for operating a health care facility;

13.2.1.c. The licensee has been denied or has had a license to operate a health care facility revoked in West Virginia or any other jurisdiction during the previous five (5) years;

13.2.1.d. The licensee has a record of noncompliance with lawful orders of the department or other licensing or certification agency for any jurisdiction in which the applicant has operated, directed or participated in the operation of a health care facility;

13.2.1.e. The licensee or other person in charge of the home refuses entry to the secretary's duly authorized representative for an inspection or survey;

13.2.1.f. The home has inappropriately converted for its own use the property of a resident;

13.2.1.g. The home has secured property, or a bequest of property, from a resident by undue influence;

13.2.1.h. The home has submitted false information either on the licensure or renewal application forms or during the course of an inspection or survey of the home; or

13.2.2. The secretary shall consider all available evidence at the time of the determination, including the history of the residential board and care home and the applicant in complying with this rule, notices of violations which have been issued to the home and the applicant, findings of surveys and inspections, and any evidence provided by the home, residents, law enforcement officials, and other interested individuals.

13.2.3. In addition to all other actions and penalties specified in this rule, the secretary shall have the authority to ban new admissions by order until further notice by the secretary or reduce the bed capacity of the home or both, when on the basis of inspection he or she determines that:

13.2.3.a. There is an immediate and serious threat to one or more residents; or

13.2.3.b. There are poor care outcomes resulting in an avoidable decline in a resident's condition; or

13.2.3.c. There has been a decline in the functional abilities of one or more residents resulting from neglect or abuse; and

13.2.3.d. An admission ban or reduction in bed capacity or both would place the home in a position to render adequate care.

13.2.4. The secretary shall notify a licensee of an admissions ban or reduction in bed capacity or both, stating the terms of the order, the reasons thereof and the date set for compliance.

13.2.5. In addition to all other actions and penalties specified by law and this rule, the secretary has the authority to revoke a license which has been obtained through the use of fraud or subterfuge.

§64-65-14. Administrative Due Process.

Administrative due process and remedies for actions taken under this rule and W. Va. Code §§16-5C-1 et seq. and 16-5H-1 et seq. are as provided in this rule, in said articles of the West Virginia Code, and in **Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.**

§64-65-15. Severability.

The provisions of this rule are severable. If any portion of this rule is held invalid, the remaining provisions remain in effect.

64 CSR 65

Table 64-65-1. Scores for A, B, C, And F Ratings in Each Category, Average Rating and Overall Rating

Sec. No.	CATEGORY	POINT VALUE SCORE	RATING	RATING SCORE ⁸	RATING			
					F ⁹	C	B	A
5	Administration				≤59	60-68	69-76	77-86
6	Resident Care Employees				≤28	29-32	33-36	37-41
7	Resident Rights				≤71	72-81	82-92	93-103
8	General Health and Safety				≤40	41-45	46-51	52-58
9	Resident Services & Recreational Activ.				≤12	13	14-15	16-18
10	Dietetic Service				≤13	14-15	16-17	18-20
11	Physical Requirements				≤39	40-45	46-50	51-57
12	Additional Requirements ...				≤24	25-28	29-31	32-36

Average Rating Score	Rating
3.6 - 4.0	A
2.6 - 3.59	B
2.0 - 2.59	C
1.99 or less in any category	F

Total Rating Score _____

Average Rating Score _____

Final Rating _____

⁸ Rating score values are:

A = 4

B = 3

C = 2

F = 0

⁹ ≤ = Less than or equal to

64 CSR 65

Table 64.65-2. Surety Bond Schedule

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$ 1 to \$2,000	\$2,500
\$2,001 to \$2,100	\$2,625
\$2,101 to \$2,200	\$2,750
\$2,201 to \$2,300	\$2,875
\$2,301 to \$2,400	\$3,000
\$2,401 to \$2,500	\$3,125
\$2,501 to \$2,600	\$3,250
\$2,601 to \$2,700	\$3,375
\$2,701 to \$2,800	\$3,500
\$2,801 to \$2,900	\$3,625
\$2,901 to \$3,000	\$3,750
\$3,001 to \$3,100	\$3,875
\$3,101 to \$3,200	\$4,000
\$3,201 to \$3,300	\$4,125
\$3,301 to \$3,400	\$4,250
\$3,401 to \$3,500	\$4,375
\$3,501 to \$3,600	\$4,500
\$3,601 to \$3,700	\$4,625
\$3,701 to \$3,800	\$4,750
\$3,801 to \$3,900	\$4,875
\$3,901 to \$4,000	\$5,000
\$4,001 to \$4,100	\$5,125
\$4,101 to \$4,200	\$5,250
\$4,201 to \$4,300	\$5,375
\$4,301 to \$4,400	\$5,500
\$4,401 to \$4,500	\$5,625
\$4,501 to \$4,600	\$5,750
\$4,601 to \$4,700	\$5,875
\$4,701 to \$4,800	\$6,000

64 CSR 65

Table 64.65-2. Surety Bond Schedule (Cont'd)

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$4,801 to \$4,900	\$6,125
\$4,901 to \$5,000	\$6,250
\$5,001 to \$5,100	\$6,375
\$5,101 to \$5,200	\$6,500
\$5,201 to \$5,300	\$6,625
\$5,301 to \$5,400	\$6,750
\$5,401 to \$5,500	\$6,875
\$5,501 to \$5,600	\$7,000
\$5,601 to \$5,700	\$7,125
\$5,701 to \$5,800	\$7,250
\$5,801 to \$5,900	\$7,375
\$5,901 to \$6,000	\$7,500
\$6,001 to \$6,100	\$7,625
\$6,101 to \$6,200	\$7,750
\$6,201 to \$6,300	\$7,875
\$6,301 to \$6,400	\$8,000
\$6,401 to \$6,500	\$8,125
\$6,501 to \$6,600	\$8,250
\$6,601 to \$6,700	\$8,375
\$6,701 to \$6,800	\$8,500
\$6,801 to \$6,900	\$8,625
\$6,901 to \$7,000	\$8,750
\$7,001 to \$7,100	\$8,875
\$7,101 to \$7,200	\$9,000
\$7,201 to \$7,300	\$9,125
\$7,301 to \$7,400	\$9,250
\$7,401 to \$7,500	\$9,375
\$7,501 to \$7,600	\$9,500
\$7,601 to \$7,700	\$9,625

64 CSR 65

Table 64.65-2. Surety Bond Schedule (Cont'd)

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$7,701 to \$7,800	\$9,750
\$7,801 to \$7,900	\$9,875
\$7,901 to \$8,000	\$10,000
\$8,001 to \$8,100	\$10,125
\$8,101 to \$8,200	\$10,250
\$8,201 to \$8,300	\$10,375
\$8,301 to \$8,400	\$10,500
\$8,401 to \$8,500	\$10,625
\$8,501 to \$8,600	\$10,750
\$8,601 to \$8,700	\$10,875
\$8,701 to \$8,800	\$11,000
\$8,801 to \$8,900	\$11,125
\$8,901 to \$9,000	\$11,250
\$9,001 to \$9,100	\$11,375
\$9,101 to \$9,200	\$11,500
\$9,201 to \$9,300	\$11,625
\$9,301 to \$9,400	\$11,750
\$9,401 to \$9,500	\$11,875
\$9,501 to \$9,600	\$12,000
\$9,601 to \$9,700	\$12,125
\$9,701 to \$9,800	\$12,250
\$9,801 to \$9,900	\$12,375
\$9,901 to \$10,000	\$12,500
\$10,001 or more	Calculate ¹⁰

¹⁰ 1.25 times the prior year's average monthly balance of client's funds

Commenters - Residential Board and Care Homes, 64 CSR 65

Pat Ashwash - Administrator, Greenview Residential Board & Care Home (Received late)

Karen Glazier - Director, Good Living Residential Care for Older Adults

Debbie Gombarcik - Director, Golden Circle

Roy Herzbach, Ombudsman Supervisor, Legal Aid Society of Charleston

Laura S. Rhodes, MSN, RN - Assistant Executive Secretary, WV Board of Examiners for
Registered Professional Nurses

The Country Home - Cynthia Ortiz Pelaez, Director

GREENVIEW

Residential Board and Care Home

August 15, 1995

RECEIVED

AUG 24 1995

REGULATORY DEVELOPMENT

Ms. Kay Howard
Regulatory Development
Department of Health & Human Resources
Capitol Complex, Building 3, Room 265
Charleston, WV 25305

Dear Ms. Howard:

This letter presents my comments to the proposed legislative rule Title No. 64 authority WV Code § 16-5C-5 amendment to existing rule Series No. or new rule 65 prepared by the Division of Health filed June 30, 1995 as follows:

§64-65-4.4.2

Should be changed to read: - The secretary shall issue a renewal license no later than the license expiration date when the following conditions are met:

Rationale - Renewal procedures should be followed in a timely way so that insurance coverages that protect residents' person and property can be kept current. Some policies will not cover if license is not current. Otherwise, wouldn't the state incur liability since they have required, within these regulations, that the home carry the insurance?

44.13.1c

Too subjective - specific criteria needed here

4.13.1.g

Criteria needed

4.13.1.h

No definition of administrative responsibilities is given

5.4.2.

If the current contract meets the provisions of the law, then a new one should not be needed.

5.9.5

This is unreasonable for purchases less than \$10.00. What if a facility buys several of an item to be kept "on hand" such as dental adhesives, toothpaste, disposable enemas, lotions and the receipt shows such and may be predated for a period greater than one month. The average person can look at an amount for a small item and know whether or not the price is reasonable or not.

6.5.1.b.

There are probably not more than a dozen individuals in WV that have been convicted of these offences. The state should maintain a list of those individuals so that potential employers can check. This only adds to resident expenses.

8.4.8.d.

This is not advisable for a home situation. At Greenview, for instance, we have current events at meal time just as many families do. This activity is spontaneous and flows with normal house activities. This is an important concept but this rigid approach will not accomplish the intended outcome. Find another approach.

8.5.5

This provision unfairly discriminates against those with disabilities, i.e. dominant side hemiplegia, vision impairment, or benign tremor and who would otherwise meet criteria for residential board and care home residency when a nurse is not present. Trained individuals should be able to administer insulin, especially if using the new pre-loaded syringes. See Sec. 504 of the Rehabilitation Act of 1973 and exclusion because of handicap, Wagner v. Fair Acres Geriatric Center (3rd Cir. 1995)

8.6.1

First sentence unclear. Is this a grammatical error: " in his or her record?"

10.1.4

The life safety code does not require monthly drills. See: NFPA 101 31-7.3 (7-95) Bi-monthly drills are adequate and evacuations should not be required each time, especially at night. Let the WV Fire Marshal oversee this item.

10.1.7

This added expense should not be imposed unless recommended by NFPA and WV Fire Marshal. Why not allow the WV Fire Marshal set the standards for this through the inspection and corrections required through the licence renewal process.

11.2.11.b

This is not practical for small amounts of laundry (1 to 3 pieces) that have been soiled due to incontinency. The requirement is good in principal but adequate sanitizing would overcome any cross contamination.

11.3.1.b

Halls in a conventional home are not wide enough to accommodate handrails. Not only would walking space be reduced, it would be difficult to bring a gurney through and move furniture in and out of rooms.

11.5.6

Side rails should be permitted that facilitate the resident's mobility. See memorandum dated June 4, 1993 from HCFA Director of Office of Survey and Certification, HSQB to Associate Regional Administrator, Division of Health Standards and Quality which states in the last sentence of the third paragraph "If the bed rail is used to assist the resident in turning or to help the resident get out of bed (as is frequently the case with half rails), then the bed rail is not used as a restraint."

11.6.6

Blow dryers (hands) have been shown by research to be the most unsanitary method of all for hand drying due to air blown toward the floor picks up mold, bacteria, etc. and is breathed by those in close proximity and also deposits same on other surfaces.

12.1.12.

Over-the-counter medications such as commonly used analgesics should be an exception to this rule.

GENERAL COMMENTS

The provisions for limited and intermittent nursing care are not appropriate for the home where there may be rare occasions or a single episode whereby a resident needs such care, perhaps for a period of less than 30 days. These provisions provide an either or nor situation which could encourage homes to admit more frail residents. The time 90 days is mentioned. What if a home provided limited and intermittent nursing care and then claimed that for a period of one 24-hour period the person did not need this care. Would he then be able to provide another 90 days of this service? At Greenview, there have been fewer than ten such instances in ten years and these have been short term, i.e., from two weeks to 30 days. More work needs to be done. Home operators should be consulted so that positive and practical results can be expected. Has this concept been tested elsewhere? If so, what are the results?

There are too many Class i categories or inappropriate items placed within a category that should be a Class I. Examples follow:

8.5.9., 8.5.12.a., 8.5.13,11.2.4.,11.2.8.e (for institutional setting), part of 11.2.11.b.,

Pat Ahwash, Adm.



River House • Rose Cottage
Rhododendron Cottage • Dogwood Cottage

Residential Care For Older Adults

107 Georges Drive, Malden, West Virginia 25306 (304) 925-6568

August 19, 1995

RECEIVED

AUG 21 1995

REGULATORY DEVELOPMENT

Ms. Kay Howard
Regulatory Development
Dept. of Health and Human
Resources
Capitol Complex, Building 3, Room 265
Charleston, WV 25305

Dear Ms. Howard:

As I reviewed the current proposed regulations, I made a mental note: I need a computer, fax line, more file cabinets. In general, the proposed regulations are doable, but the cumulative effect of them is more paperwork, more cost passed on to consumers, less one-on-one time I'll have to spend with the residents. Someone upstairs appears to be losing sight of the fact that we are a cottage industry. I have a staff, but that doesn't negate the fact that I must wear many hats. I shop for groceries, I counsel families, I mop floors, I recruit community volunteers, I bake cookies, I provide social activities for our residents. Unless there is some way to streamline all the additional paperwork, I'll strongly have to consider requesting a prescription for Prozac!

In regard to specific concerns, I'll enumerate:

- 4.13.1.c. This seems a bit vague -- shouldn't there be clear documentation of abuse, rather than allowing for innuendo?
- 5.2.4 I am concerned about the cost factor? Is there a pool available for us through the state for such insurance?
- 5.6.2 I think the time period should be reduced to 30 days. Generally, in that time, a provider would know what additional level of care an individual would need.
- 8.2.3 and 8.3.2 These will greatly add to the cost for those homes who are not managed by a health care professional.
- 8.4.8.c and d. Both of these requirements seem a bit excessive to me in what is supposed to be a home environment. I plan a week at a time, but because we are small, I also include many "spontaneous"



River House • Rose Cottage
Rhododendron Cottage • Dogwood Cottage
Residential Care For Older Adults

107 Georges Drive, Malden, West Virginia 25306 (304) 925-6568

happenings.

10.2.3 I am not sure how feasible it would be for us to get a written agreement for water or shelter, although I'm sure our Volunteer Fire Dept. would assist us.

Guess that is it. Thank you for the opportunity to vent!

Truly,

Karen Glazier
Director
4102 Fallam Drive
Malden, WV 25306



*A private care facility dedicated to the
love, care and individual attention of each person.*

Margaret Johns
President
624-6674

207 Second St
Strawwood, WV
623-5006

144 Cimarron Road
Nutter Fort, WV
624-4337

August 21, 1995

Ms. Kay Howard,
Regulatory Development,
Department of Health and
Human Resources,
Capitol Complex,
Building 3, Room 265,
Charleston, WV 25305.

Dear Kay:

After spending much time going over the new rules and regulations, I have come to the conclusion that with MUCH work on the part of the residential board and care home administrator, they can be complied with. There are, however, some changes I would still like to see made. They are as follows:

First of all, I am hoping that all the new requirements involving residents and employees be required for only those residents and employees who join the facility after the effective date of this rule.

Also, I think that the common residential board and care home operator may be confused by some of the language in the rule and may become overwhelmed by it because they do not know exactly what it entails. (i.e. 3.6 - the definition of Developmental Disorder contains such wording as: cognitive, skill acquisition, qualitative distortions and exacerbation.)

4.2.2. Most RB&C homes are private pay, operators do not know the source of the resident's income. It is none of our business if some of their income comes from SSI. We should not have to ask their source of income.

5.3.1. Current administrators should be grandfathered in and not required to obtain a GED certificate.

5.3.5. Quality assurance plan should be in the definitions.

5.3.6. Supervisor-in-charge should be replaced with "responsible party" and also stricken from the definitions.

7.2.4. Replace "posted" with the word "located".

11.3.1.b. This is not a Fire Marshal requirement for residential board and care homes and should be stricken from this rule.

If you would like to discuss any of this with me, feel free to contact me at 623-5006. Thank you.

Sincerely,



Debbie Gombarcik
Administrator

**LEGAL AID
SOCIETY
OF CHARLESTON**

RECEIVED

JUL 25 1995

REGULATORY DEVELOPMENT

922 Quarrier St., Fourth Floor Charleston, WV 25301
(304) 343-4481 FAX (304) 345-5934
Toll Free WV 1-800-834-0598

July 25, 1995

Ms. Kay Howard
Regulatory Development
Dept. of Health and Human Resources
Capitol Complex, Building 3, Room 265
Charleston, WV 25305

Dear Ms. Howard:

Comments on proposed Residential Board and Care Home Regulations follow:

1). Section J.4-4 - Unclear as to implications of language which states that "this certification is not required of an individual who is a resident at the time of the initial licensure survey, which resident is not capable of self-preservation, but who has been informed that the home does not meet five safety standards for non-self-preserving residents and has accepted in writing that risk".

Does this mean such non-self-preserving residents will be allowed to remain in the facility? If that is the case, then either additional safeguards need to be established (i.e., staff ratios, staff skill requirements to meet person's needs, or the resident should be given a discharge with adequate notice and provider assistance to find a more appropriate living arrangement. Is this not in violation of the Code requiring self-preservation?

2). Section 11.1.5 - There has been some recent Supreme Court decisions (article enclosed) challenging some local zoning ordinances. Suggest deleting reference to local zoning laws.

3). There needs to be language added related to an administrators responsibility in the case of a home's closing - voluntarily or involuntarily. Examples include notice requirements to residents, responsibility to help residents find another appropriate living situation, return of any unused portion of resident's funds, including deposits.

Putnam Office
Courthouse Annex
P.O. Box 261
Winfield, WV 25213
(304) 586-4239

Boone Office
County Courthouse, Room 202
Madison, WV 25130
(304) 369-4939

Clay Office
Old Courthouse
P.O. Box 561
Clay, WV 25043
(304) 587-4668

4). Suggest that there be a requirement for the administrator to have to purchase a bond which will cover 30 day operating funds to insure proper care if a home closes voluntarily or involuntarily. I think these are well written, thought out regulations.

Very truly yours,



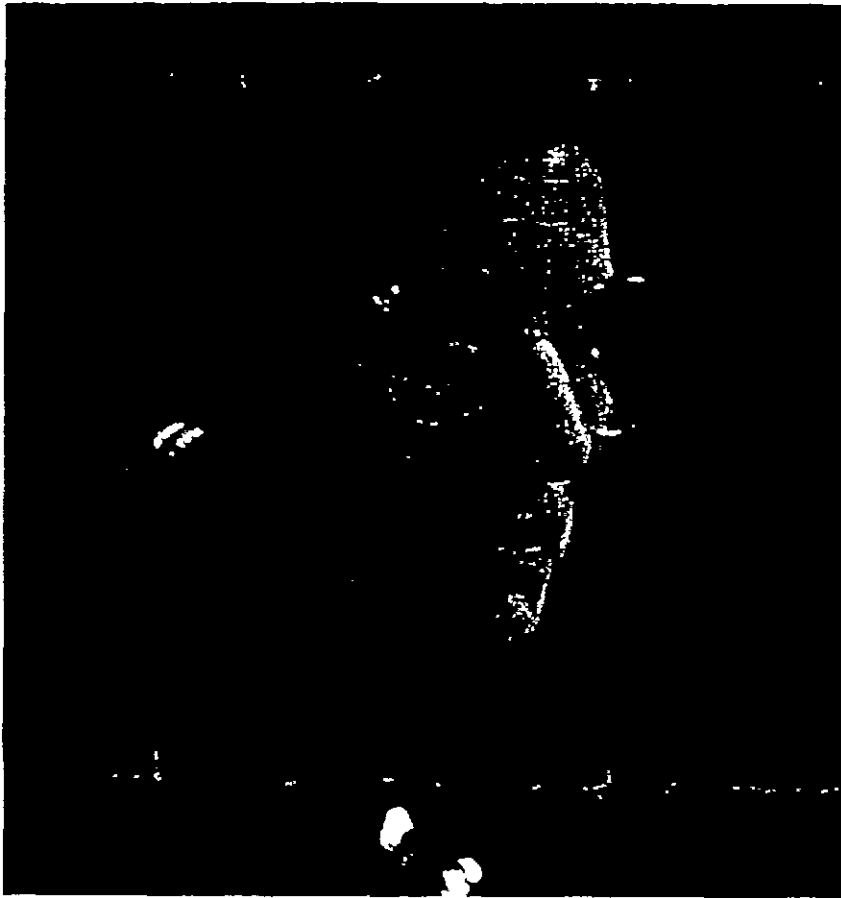
Roy Herzbach
Ombudsman Supervisor

RH:cm

Enclosure

NEWSFRONTS

Supreme Court ruling on Fair Housing Act favors small group living



The FHA must "apply uniformly," wrote Justice Ruth Bader Ginsburg.

A RECENT SUPREME COURT DECISION could open up new venues for small group living facilities—and affect larger ones in the process. In a 6-3 opinion handed down in May, the court ruled that local zoning laws must be applied equally to related and unrelated persons sharing a residence. The ruling dramatically narrows the Fair Housing Act exemp-

tion under which single-family zones could bar group homes from their neighborhoods.

The case pitted Oxford House, a nonprofit organization that planned a group home for substance abusers in Edmonds, Washington, against the city itself. The city filed a federal lawsuit claiming that the facility, which would have housed 10 to 12 people,

would violate a local zoning law stating that no more than five unrelated people could share a single-family dwelling. It argued that the Fair Housing Act (FHA)—which was amended in 1988 to include people with disabilities, including alcoholism and drug abuse—provides for limits on "the number of occupants permitted to occupy a dwelling."

A federal judge agreed, but the U.S. Court of Appeals reversed the decision. It ruled that while limits may be set, they may not apply only to people who are unrelated.

The Supreme Court—in its first opportunity to consider the revised FHA—upheld the reversal. The court insisted that any residency restrictions must "apply uniformly to all residents of all dwelling units," whether they are related or not.

"This is a very positive ruling, particularly for the smaller board-and-care and assisted living facilities," said David Schless, executive director of the American Seniors Housing Association (ASHA). "A number of zoning issues have negatively affected individuals and sponsors interested in increasing the stock of affordable housing for seniors and others."

The decision will probably have the greatest impact on intermediate care facilities for the mentally retarded, as well as smaller homes for the disabled, according to Dave Kylo, a spokesperson for the American Health Care Association. "Since average nursing homes have about 100 beds, they have space and parking needs that most residential areas can't accommodate anyway," he said.

But the growth of smaller, more specialized settings could provide new opportunities for some assisted living clients. That could free up slots in

PHOTOGRAPH BY TERRY ASHENGAMMA LIAISON

ILLUSTRATION BY KERRY MCCOY

larger facilities and allow them to narrow their focus to a particular clientele.

"It could strengthen the elderly housing in particular, by providing another alternative for the non-elderly disabled," said Larry McNichol, director of Housing of Homes and Services for the Aging. "That could broaden the scope of what assisted living for the elderly can do and reinforce its mandate for care."

He added that the language of the Supreme Court decision could also have an impact on the construction and siting of new group homes. Echoing the terminology of the FHA, the court insisted on "reasonable accommodations in rules, policies, practices, or services" for the disabled.

"The term 'reasonable' provides some flexibility for localities to work with," said ASHA's Schless. "Of course, what is reasonable to one group may not seem so for another. So in many instances, the courts end up deciding what is reasonable."

Some state Supreme Courts, including New York's, have already stricken down local ordinances that capped the number of unrelated people who could live in single-family-zoned homes. Others may now face an increasing caseload of zoning issues. And the judicial trend favors the FHA over local zoning codes.

"Locales may no longer be able to hide behind zoning laws, which is very critical," said Steve Gold, attorney for American Disabled for Attendant Programs Today, which promotes independent living. "The Supreme Court ruling will be a great boon to people who need a group setting in order to live economically." BY JANET GRADY SULLIVAN

BLOOD FROM A TURNIP

"Just go look at a nursing home.

There's a limit on what you can do."

—Senator John H. Chafee (R-RI),

commenting on Medicaid cuts as a way to help balance the federal budget

ILLUSTRATION BY KERRY McCOY

LTC group sets goals for electronic MDS

HCFCA'S PLANS TO MANDATE electronic submission of the minimum data set (MDS) could have a positive impact on the long term care industry, provided the federal agency and software vendors are willing to work with the industry to meet providers' needs.

That was the theme of a May conference sponsored by the Long Term Care Executive Forum, a coalition of six national health care associations. Only 15 states now require electronic submission of the data.

"Providers see this [new MDS] as a great tool for them and their patients. They're only against this tool if it becomes another 'have-to' that doesn't provide pay back to facilities," says Tim Webster, executive director of the American Society of Consultant Pharmacists (ASCP).

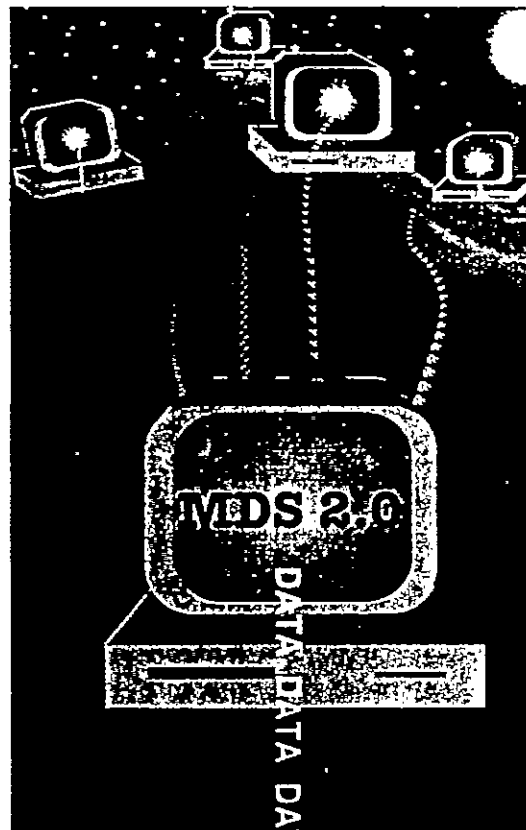
The conference, attended by representatives of HCFA and leading software vendors as well as Coalition members, called for three steps to ensure that electronic data submission benefits the industry.

- Facilities need quick access to their own data and comparative data. "They don't need it a year and a half later when it's published in national or state reports," says Webster. "If HCFA can provide this data on a timely basis, a facility will know if it has a problem compared to other facilities."

- Facilities need to be able to protect the privacy of residents—and to protect themselves from possible lawsuits. To do so, providers suggest that HCFA not collect sensitive data on residents, such as their religious preferences and HIV status. If such data is collected, providers want assurance that the information will be guarded.

- Providers want software vendors to develop programs that will allow facilities in integrated networks to share their assessments.

"We realize it will save facilities money on labor costs if they don't have to ask patients or families the same questions a hospital asked them, then input the same data themselves.



It will also improve patient satisfaction," says Zoe Bolton, vice president of operations for Care Computer Systems of Bellevue, Washington.

It's a sure bet that the software vendors will try to satisfy providers, and HCFA also seems responsive. "This is rich information that facilities wouldn't have in any other way, so we're interested in making sure they get the hang of using it. We're working on being able to give them quick feedback, but it's a complex matter to make happen," says Helene Fredeking, director of HCFA's division of long term care services.

For now, providers are taking a wait-and-see attitude. "We don't know if we will need to have another conference, or perhaps we may need to have meetings with HCFA," Tarnove says.

AMDA and ASCP are joined in the coalition by the Association of Homes and Services for the Aging, American Health Care Association, the American College of Health Care Administrators, and the National Association of Directors of Nursing in Long Term Care. BY DON NICHOLS

Janet H. Fairchild, M.S., R.N.
Executive Secretary



TELEPHONE
(304) 558-3596
(304) 558-3728
FAX (304) 558-3666

STATE OF WEST VIRGINIA
BOARD OF EXAMINERS FOR REGISTERED PROFESSIONAL NURSES
101 Dee Drive
Charleston, WV 25311-1620

August 21, 1995

Kay Howard
Director
Department of Health and Human Resources
Building 3, Room 206
1900 Kanawha Blvd. East
Charleston, WV 25305

Dear Mr. Hechler:

Thank you for the opportunity to comment on the rule regarding residential board and care homes, West Virginia §64 CSR 65.

The board has a concern about 8.5.1 which indicates that "the residential board and care home shall make provision for the administration or self-administration of medicines and drugs according to physician orders in compliance with applicable state laws (emphasis added). Section 8.5.2. indicates that prescription drugs shall be obtained, administered or self-administered only on the written order or prescription of a practitioner authorized by law to prescribe drugs in this state." (emphasis added) The board suggests that the language in 8.5.2. be incorporated into 8.5.1 so that the phrase regarding prescriptions written by the advanced practice nurse with prescriptive privileges is included.

Section 8.5.1 indicates that "The home shall, in consultation with a licensed health care practitioner or licensed registered professional nurse, establish written policies and procedures..." The board supports the role of the licensed registered professional nurse in this area and views the registered nurse as the coordinator of patient care and patient care activities. The concern originates with the definition of "licensed health care practitioner" and the specific professional groups included in the definition.

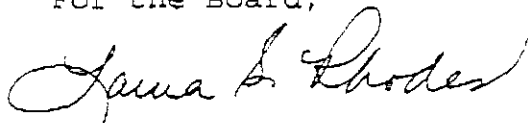
Regarding 8.5.6., the board does not support the administration of medication by unlicensed assistive personnel and supports the statement that licensed health care professionals are responsible for medication administration with a registered professional nurse coordinating the care.

Kay Howard, Director
Department of Health and Human Resources
August 21, 1995
Page 2

A copy of the Board's position statement regarding unlicensed assistive personnel is included.

Again, thank you for this opportunity to comment.

For the Board,



Laura S. Rhodes, MSN, RN
Assistant Executive Secretary

c: Janet H. Fairchild, MS, RN
Executive Secretary

Janet H. Fairchild, M.S., R.N.
Executive Secretary



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STATE OF WEST VIRGINIA
BOARD OF EXAMINERS FOR REGISTERED PROFESSIONAL NURSES
101 Dee Drive
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STATEMENT ON ASSISTIVE PERSONNEL
TO THE REGISTERED PROFESSIONAL NURSE

In an effort to fulfill the mission to protect the public through the regulation of the practice of registered professional nursing, this position statement is offered by the Board to provide an interpretation of the law as it pertains to delegation of nursing care activities to assistive personnel by registered professional nurses.

A license is a mechanism to assure the public of the competence of the licensee to practice safely and effectively. A license to practice as a registered professional nurse brings with it the highest level of nursing accountability. The delegating nurse must keep in mind that the nurse assumes responsibility for determining that the delegatee is indeed competent to perform the delegated act and provides appropriate supervision. And, further, nurses should avoid delegating the practice-pervasive functions of assessment, evaluation, and nursing judgment.

The term "assistive personnel" is used to recognize the trained/unlicensed health care worker who is employed within the continuum of acute hospital care to home health, ambulatory and long term care. Three (3) categories of assistive personnel are generally recognized: the patient care assistant to whom the registered professional nurse delegates or assigns aspects of nursing care and who functions under the supervision of the registered professional nurse, the unit assistant who supports the nursing care system through a variety of nursing activities, and the individual who is trained to do some tasks from both patient support and unit support.

Delegation is the transfer of responsibility for the performance of an activity from one individual to another while retaining accountability for the outcome. Delegation is an appropriate means, and a useful tool, to maximize the contributions of various members of the health care team to the well-being of the patient/client/resident when performed according to well-reasoned principles. Assistive personnel function in roles as delegated by the registered professional nurse. The challenge comes in determining what is appropriate to delegate to assistive personnel.

In determining whether or not it is appropriate to delegate the responsibility for the performance of an activity to another individual there are several considerations to be made.

The legal definition of registered professional nursing:

WV Code §30-7-1(b) . . . The performance for compensation of any service requiring substantial specialized judgment and skill based on knowledge and application of principles of nursing derived from the biological, physical and social sciences, such as responsible supervision of a patient requiring skill in observation of symptoms and reactions and the accurate recording of the facts, or the supervision and teaching of other persons with respect to such principles of nursing, or in the administration of medications and treatments as prescribed by a licensed physician or a licensed dentist, or the application of such nursing procedures as involve understanding of cause and effect in order to safeguard life and health of a patient and others

From Legislative Rule WV 19CSR10: Standards for Professional Nursing Practice:

3.10. The registered professional nurse shall delegate to another only those nursing measures which that person is prepared or qualified to perform.

3.11. The registered professional nurse shall supervise others to whom nursing interventions are delegated.

3.12. The registered professional nurse shall retain professional accountability for nursing care when delegating nursing interventions.

From Legislative Rule WV 19CSR9: Disciplinary Action:

" . . . constitutes professional misconduct subject to disciplinary action pursuant to W.V. Code §30-7-11(f): . . . "

5.1.8. " . . . permitting, aiding, or abetting and unlicensed, or unregistered person to perform activities requiring a license, certificate, or registration:

5.1.9. " . . . delegating professional responsibilities to a person when the registered professional nurse delegating such responsibilities knows or has reason to know that person is not qualified by training, experience or licensure to perform them.

It is clear in the law, that the authority to delegate any nursing intervention originates with the registered professional nurse, and that a decision to delegate nursing interventions to licensed practical nurses or unlicensed assistive personnel (nurses aides, direct care workers, etc) is an act of professional nursing judgment which takes into account many factors associated with patient care, principles of supervision and delegation, and/or other considerations, and the knowledge that the professional nurse retains accountability for the outcome. Neither corporate policy, agency administrators, physicians or health department programs have any authority to direct a registered professional nurse to delegate medication administration or any other nursing activity to unlicensed assistive personnel.

A license is an essential mechanism to assure the delivery of quality nursing care for the consumer. Essential premises of delegation include: (1) that quality nursing care cannot be provided in isolation by unlicensed persons functioning independent of the nurse if the health, safety, and welfare of the public is to be assured; and (2) that a limited [or costly] supply of licensed nurses must not be used as an excuse for inappropriate delegation to unlicensed persons.

The delegating nurse must keep in mind that the nurse assumes responsibility for determining that the delegatee is indeed competent to perform the delegated act and provides appropriate supervision. And, further, nurses should avoid delegating the practice-pervasive functions of assessment, evaluation, and nursing judgment.

References:

National Council of State Boards of Nursing, Inc., 676 North St. Clair Street, Suite 550, Chicago, IL, Letter dated August 24, 1994 by Marcia Rachel, PhD, RN, President.

American Nurses Association, 600 Maryland Ave., S.W., Washington, DC, Position Statement on Registered Nurse Utilization of Unlicensed Assistive Personnel, December 11, 1993.

THE COUNTRY HOME

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304.233.1579
Cynthia Ortiz Pelaez

RECEIVED

JUL 31 1995

REGULATORY DEVELOPMENT

25 July 1995

Department of Health & Human Resources
Regulatory Development
Capitol Complex, Building 3, Room 265
Charleston, WV 25305

Regulatory Development Committee:

In response to the proposed rule, 64 CSR 65, for Residential Board & Care Homes, I am submitting my comments regarding the following proposed rules.

5.4 Admission Procedures

5.4.4 Individuals admitted shall be capable of self-preservation. The resident record shall include documented certification by a physician or psychologist that the resident is capable of self-preservation by virtue of his or her ability to follow directions and, with prompting if necessary, to take appropriate action for self-preservation under emergency conditions, except as provided in this section. The certification shall be updated as indicated by changes in the resident's mental or physical condition. This certification is not required of an individual who is a resident at the time of the initial licensure survey, which resident is not capable of self-preservation but who has been informed that the home does not meet fire safety standards for non-self-preserving residents and has accepted in writing that risk.

This proposed rule is in conflict with the State Fire Code. I am in agreement with this proposed rule, but request the coordination of this regulation with both the State Fire Marshal's Office and the Office of Health Facility Licensure & Certification. I believe that an individual should retain the right to live where they choose, especially when they are receiving no state funding. The self-preservation waiver should be recognized and enforced by both the State Fire Marshal's Office and OHFLAC.

(Continued)

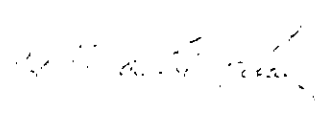
12.1 Standard Requirements

12.1.6 The home shall not house residents who are unable to recognize danger or walk independently on any floor other than the first floor of a multi-level residential board and care home.

An ambulatory, self-preserving resident with Alzheimer's Disease, senile dementia, or any other mental impairment, who would require 24 hour supervision, may or may not be able to recognize danger. Most residents that enter residential board and care homes are unable to care for themselves because they can no longer recognize danger and may potentially jeopardize their own safety and well-being. Residential board and care homes are appropriate for just this type of resident. This rule is in conflict with rule 5.4.5., which states that individuals may be in need of supervision because of mental or physical impairment.

I am proud of the service that I can offer the elderly in my community. I regard myself as a responsible and conscientious administrator and I support the majority of the proposed rules and regulations, as I understand them. I do believe that we, the operators of residential board and care homes, or appointed representatives, should have the opportunity to participate in the rule making process. We, after all, serve the needs of our residents on a daily basis, and feel we could contribute valuable input to protect and preserve the safety and well-being of our elderly population. We appreciate your cooperation and aspire to develop a positive and productive relationship with our governing agencies.

Sincerely,



Cynthia L. O. Pelaez
Director