

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

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code § 16-5C-5

AMENDMENT TO AN EXISTING RULE: YES X NO

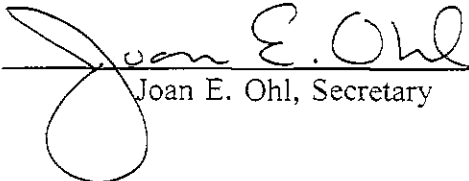
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 65

TITLE OF RULE BEING AMENDED: Residential Board and Care Homes

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Joan E. Ohl, Secretary

**PROPOSED MODIFIED RULE - TITLE 64
WEST VIRGINIA LEGISLATIVE RULE
DIVISION OF HEALTH**

SERIES 65

RESIDENTIAL BOARD AND CARE HOMES

**Modified Rule
As Approved by the
Legislative Rule-Making Review Committee**

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

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WEST VIRGINIA DIVISION OF HEALTH
PROPOSED MODIFIED LEGISLATIVE RULE
SERIES 65
RESIDENTIAL BOARD AND CARE HOMES

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 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 and replaces West Virginia Division of Health Legislative Rules, WV 64 CSR 65, Residential Board and Care Homes, effective October 1, 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 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. Adult Day Care - An alternative to twenty-four (24) hour institutional care to elderly or disabled adults who need care and supervision not to exceed fourteen (14) hours a day.

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

3.3. 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.

3.4. Administration of Medications - Opening a container of medication and giving the medication to the person for whom it is prescribed, including giving injections and administering eye drops.

3.5. 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.

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

3.7. 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.

3.8. 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.

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

3.10. Certified Long Term Care Nursing Assistant - Any individual who has met the requirements for entry in the long term care nursing assistant registry, established under the requirements of 42 CFR §§ 483.150, 483.152 through 483.154, related to nurse aide training.

3.11. 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.

3.12. 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.

3.13. Disability - Any limitation of physical, mental, or social activity of an individual as

compared with other individuals of similar age, sex, and occupation. Frequently refers to limitation of the usual or major activities, most commonly vocational. There are varying types (functional, vocational, learning), degrees (partial, total), and durations (temporary, permanent) of disability.

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

3.15. 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, and the individual's condition is unstable and unpredictable.

3.16. 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.

3.17. 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.

3.18. 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 as serious or significant as actual harm.

3.19. 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.

3.20. Legal Representative¹ -

3.20.1. 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;

3.20.2. 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 limits set by the order;

3.20.3. 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);

3.20.4. A person having a medical power of attorney pursuant to the West Virginia

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.

Medical Power of Attorney Act, W. Va. Code §§16-30A-1 et seq., within the limits set by the law and the appointment;

3.20.5. 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;

3.20.6. 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;

3.20.7. 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

3.20.8. 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.

3.21. 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.

3.22. 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.

3.23. 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.

3.24. 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.

3.25. Mental Disorder - A mental illness that affects the well-being or behavior of an individual to such an extent that for his or her own welfare or the welfare of others, he or she requires treatment.

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

3.27. Nursing Care (Nursing 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.

3.28. 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.

3.29. 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.

3.30. 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.

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

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

3.33. 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.

3.34. 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.

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

3.36. Self-preservation - The capability of, at least, removing one's physical self from situations involving imminent danger, such as fire.

3.37. 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.

3.38. 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.

3.39. Supervision of Self-Administered Medications - A personal service which includes reminding residents to take medication, opening bottle caps for residents, reading the medication label to residents, observing residents while they take medication, checking the self-administered dose against the label on the container, and reassuring residents that they have obtained and are taking the dosage as prescribed.

§ 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.

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. A facility that intends to provide day care shall notify the secretary of the number of individuals it plans to serve in addition to the residential board and care home census. The secretary shall approve the provision of day care for the number of individuals identified based on space, accommodations and staffing before day care residents are accepted. Individuals being provided this service must have health screening as required for residential board and care home residents and must be capable of self-preservation.

4.1.9. 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.

4.1.10. 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.

4.1.11. 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 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 in policy to ensure the continuing care of all residents for the thirty (30) day period after notification of a pending closure. Any expenses incurred by the department to provide continuing resident care (i.e., food, staff, etc.) during this thirty (30) day period, are the responsibility of the owner; 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 filed with the Secretary of State, 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 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, and monthly rates charged. 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. New applicants for licensure 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 subsection 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 ten (10) 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 to the director within ten (10) 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 subsection 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 as set forth in subsection 4.10 of this rule 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 overall "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.

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 to compel admittance to the home.

4.6.3. The secretary has the right to enter upon the premises of any building for which there is reason to believe 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) 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 notify the home of any corrective action it will be required to take, the time frame for completion of the corrective action and any disciplinary action to be taken by the secretary to the complainant, to the licensee, and to the administrator.

4.7.4. The secretary shall keep the names of a complainant and of any resident named in the complaint confidential and shall not disclose the names to the public without written permission of the complainant and the resident and his or her legal representative, if any. The secretary shall delete the name of a complainant or resident named in a complaint or information contained in the report of an investigation which could reasonably identify the complainant or any resident, unless the resident gives written permission for the disclosure or there is clear and convincing evidence in a particular instance which requires disclosure of names.

4.7.5. If a complaint becomes the subject of a judicial proceeding, nothing in this rule shall be construed to prohibit the disclosure of information which would otherwise be disclosed in judicial proceedings.

4.7.6. 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 the discriminatory treatment action was taken by the residential board and care home in retaliation for the complaint or action.

4.7.7. 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 independently pursue civil remedies for violations of this rule.

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 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 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.

4.7.9. 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, their families and any legal representatives 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

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.

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.

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.

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 subsection 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, 16-5C-15, and 16-5H-3.

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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 subdivision 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 subdivision 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.

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. (Class III)

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

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

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. (Class III)

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

5.2. The Licensee.

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. (Class II)

5.2.2. The licensee shall:

5.2.2.a. Give evidence of financial responsibility; (Class II)

5.2.2.b. Protect the physical and mental well-being of the residents; (Class II)

5.2.2.c. Keep the records and make the reports required by this rule (Class III); and

5.2.2.d. Meet the qualifications of the administrator if he or she assumes those duties. (Class III)

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. (Class III)

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

5.3. Administrator.

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. (Class III)

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. (Class II)

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. (Class III)

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. (Class II)

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. (Class II)

5.3.6. 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. (Class II)

5.3.7. 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. (Class II)

5.4. Admission Procedures.

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. (Class III)

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. (Class III)

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; (Class III)

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

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; (Class III)

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; (Class III)

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; (Class III)

5.4.3.f. The responsibility of the resident's physician for required medical examinations and treatment orders; (Class III)

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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. (Class III)

5.4.3.h. The house rules governing resident behavior and responsibilities (Class III); and

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

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. (Class II)

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. (Class II)

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. (Class II)

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 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. (Class I)

5.4.8. When an individual is accepted for respite care or on an intermittent basis, the individual's admission and annual health assessment is valid for one (1) year. (Class III)

5.5. Restricted Admissions to Residential Board and Care Homes.

5.5.1. Individuals admitted shall not require the use of routine physical or chemical restraints. (Class II)

5.5.2. Individuals admitted shall not require ongoing or extensive nursing services. (Class II)

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

5.6. Retention of Residents Whose Condition and Functional Ability Declines After Admission.

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 resident 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 resident to a licensed behavioral health agency: Provided, 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 resident 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. (Class I)

5.6.2. Residents who become incapable of self-preservation 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 incapable of self-preservation for more than ninety (90) days, and the following criteria are substantiated through resident interview: (Class II)

5.6.2.a. The resident requests to remain in the home; (Class II)

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

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

5.6.2.d. The home can maintain the residents' safety and continue to meet the residents' needs. (Class I)

5.7. Discharge Procedures.

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. (Class III)

5.7.1.a. The home shall assist the resident and his or her legal representative to attempt on a monthly basis to secure placement in alternative care facilities. (Class III)

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 alternative care facilities and refusals from the facilities in the event that the resident is unable to secure alternative placement and remains in the home. (Class III)

5.7.2. The residential board and care home shall give a thirty-day notice prior to 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. (Class II)

5.8. Records.

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. (Class III)

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. (Class III)

5.8.3. The residential board and care home shall begin at admission, maintain, and keep current, a record for each resident. (Class II) 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; (Class III)

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; (Class III)

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; (Class III)

5.8.3.d. Initial and subsequent health assessments as required by this rule, physician's orders, a list of medications, and/or medication administration records (if appropriate); resident admission and monthly 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; (Class I)

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; (Class III)

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5.8.3.f. The resident's functional needs assessment, service plan, and updates as annually, and as indicated by significant changes in the resident's condition; (Class III)

5.8.3.g. A list of clothing and personal possessions of the resident; (Class III)

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

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; (Class III)

5.8.3.j. Other information required by this rule. (Class III)

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. (Class III)

5.8.5. Each home shall maintain a permanent resident register in a bound notebook in chronological order according to the date of the resident's admission. The register shall include the date of the resident's admission, his or her name, the date of his or her last day in the residential board and care home and the name and address of the residence, health care facility or other place to which the resident (if living) has been discharged. (Class III)

5.9. Management and Control of Resident Funds.

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. (Class III)

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. (Class III)

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. (Class III)

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. (Class III)

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. (Class III)

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. (Class III)

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

5.10. Resident Death.

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. (Class II)

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; (Class II)

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; (Class II)

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. (Class II)

5.10.3. In the event of the death of a resident, a licensee shall deliver all funds, and property held in trust to the resident's estate administrator or executor (Class II)

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

6.1. Employment Standards.

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

6.1.2. The administrator shall assure that all staff of the home meet the age requirements of applicable State and federal law, rules and regulations; are licensed (as applicable) in accordance with State law; care only for residents with needs that are within the scope of his or her practice and training; and are free from communicable disease in an infectious stage. (Class I)

6.2. Staffing Requirements.

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. (Class I)

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. (Class I)

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: (Class I)

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; (Class I)

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

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

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

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. (Class I)

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. (Class III)

6.2.7. If residents experience poor outcomes related to a lack of supervision or unmet care needs, the secretary may require the home to add staff. (Class II)

6.3. Employee Orientation and Training.

6.3.1. Training shall be provided to new employees 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. (Class II)

6.3.2. 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: (Class III)

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6.3.2.a. Policies and procedures of the home; (Class III)

6.3.2.b. The rights and responsibilities of residents including protection of resident privacy and confidentiality; (Class III)

6.3.2.c. Complaint procedures of the home; (Class III)

6.3.2.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; (Class III)

6.3.2.e. The care of aged, infirm or disabled adults with consideration for individual capabilities and needs; (Class III)

6.3.2.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; (Class III)

6.3.2.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); (Class III)

6.3.2.h. Cardiopulmonary resuscitation (CPR), as applicable, and first aid (Class II);
and

6.3.2.i. Infection control. (Class III)

6.3.3. 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. (Class III)

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

6.3.4.a. Resident rights and confidentiality; (Class III)

6.3.4.b. Abuse, neglect, mistreatment, and procedures to prevent the occurrence of such incidents; (Class III)

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6.3.4.c. Emergency care of residents (first aid and as applicable, CPR); emergency plans for the home, including fire safety and evacuation plans; (Class III)

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

6.3.4.e. Infection control. (Class III)

6.4. Volunteers.

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. (Class II)

6.5. Personnel Records.

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: (Class III)

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 (Class III); 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. (Class III)

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

6.5.1.d. The date of employment and a position title and description; (Class III)

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 and annually thereafter. (Class III)

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. (Class III)

§ 64-65-7. Resident Rights.

7.1. Posting of Information and General Rights.

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

7.1.1.a. Residents' rights; (Class III)

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

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

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. (Class III)

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. (Class III)

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. (Class III)

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. (Class III)

7.2. Notice of Rights.

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. (Class III)

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. (Class III)

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. (Class III)

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. (Class III)

7.2.5. The residential board and care home shall notify the resident and the resident's legal representative or interested family member at least seventy-two (72) hours prior to a change in room or roommate assignment unless an emergency situation occurs. (Class III)

7.3. Treatment.

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. (Class I)

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 8.6.5 of this rule. (Class I)

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. (Class I)

7.4. Protection of Resident Funds.

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. (Class III)

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

7.5. Self Determination.

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. (Class II)

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. (Class II)

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

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

however, this does not absolve the home of the responsibility to supervise residents. (Class II)

7.6. Privacy and Confidentiality.

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. (Class II)

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

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. (Class II)

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. (Class II)

7.6.5. The resident has the right to share the same bedroom with his or her spouse, depending on the availability of space in the home. (Class II)

7.7. Complaints.

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. (Class II)

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 respond to the complainant within twenty-four (24) hours for serious complaints, such as abuse, neglect, or injuries of unknown origin. For complaints of a less serious nature, the home shall respond to the complainant no later than four (4) days after the complaint is filed. (Class II)

7.7.3. 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. (Class II)

7.8. Work

7.8.1. The resident has the right to be employed outside the home. (Class III)

7.8.2. The resident has the right to refuse to perform services for the home. (Class III)

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; (Class III)

7.8.3.b. The agreement specifies duties, hours of work and compensation; (Class III)

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

7.8.3.d. The resident enters into the agreement voluntarily. (Class II)

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

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

7.9. Mail and Communication.

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. (Class II)

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

7.9.3. The resident has the right to have access to a telephone. Privacy shall be afforded the resident during telephone use. (Class II)

7.10. Access and Visitation Rights.

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. (Class II)

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. (Class II)

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. (Class II)

7.11. Personal Property.

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

7.12. Civil Rights

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. (Class II)

7.12.2. 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. (Class II)

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

8.1. Operational Standards.

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

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

8.1.3. If the home has a house physician, and the resident elects to use the house physician, the facility shall ensure that the resident is aware of the physician's name, specialty, means of contact, and if physician's duties are being provided by a nurse practitioner and/or a physician's assistant. (Class III)

8.1.4. The home shall take reasonable precautions to comply with recommendations by the local public health authority should an epidemic occur. (Class I)

8.1.5. 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. (Class II)

8.2. Assessment.

8.2.1. 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. (Class II)

8.2.2. 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. (Class II)

8.3. Planning.

8.3.1. Each resident shall have a service plan, based upon his or her assessment, developed within forty-five (45) days of admission and updated as indicated by a significant change in the resident's condition. The service plan shall be developed and implemented in response to individual resident needs. (Class II)

8.3.2. 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. (Class II)

8.4. Services.

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. (Class II)

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. (Class II)

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

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. (Class II)

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. (Class II)

8.4.6. The home shall provide a planned and meaningful activity program to meet the needs of the residents. (Class III) The program shall:

8.4.6.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; (Class III)

8.4.6.b. Provide information and referral services and opportunities for utilization of social, recreational, vocational activities within the community; (Class III)

of social, recreational, vocational activities within the community; (Class III)

8.4.6.c. Provide a monthly calendar of varied events which lists all social and recreational activities for the residents; (Class III)

8.4.6.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 (Class III); and

8.4.6.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. (Class III)

8.5. Medications

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 professional 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. (Class I)

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. (Class I)

8.5.2.a. Copies of the prescriptions or written orders for drugs shall be retained in the resident's record. (Class I)

8.5.2.b. Verbal orders shall be reviewed and signed by the individual responsible for the order within ten (10) working days from the original order date. (Class III)

8.5.2.c. The ability of a resident to self-administer medication shall be documented in the resident's record. (Class II)

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. (Class II)

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. (Class I)

8.5.5. 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. (Class I)

8.5.6. When oxygen therapy is provided in a residential board and care home, it shall only be administered by using oxygen concentrators except that the home shall have a portable source available for resident use for out-of-room activities and in the event of power failure. The home shall maintain the equipment electrically safe and shall arrange for service as needed; store the oxygen tubing in a sanitary manner when not in use and replace it as indicated by accepted infection control measures; prohibit smoking in any location when oxygen is in use; post no smoking signs conspicuously; and enforce the smoking prohibition. (Class I)

8.5.7. 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. (Class I)

8.5.8. 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. (Class I)

8.5.9. If refrigeration of medication 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 is required in a refrigerator storing medications. The temperature within the refrigerator storing medications shall be maintained within the recommended temperature range on the medication package. (Class I)

8.5.10. Centrally stored medications shall be kept in a locked cabinet or other storage receptacle and accessible only to the staff responsible for medications. (Class I)

8.5.11. If Schedule II drugs of the Uniform Controlled Substances Act W. Va. Code § 60 A -1-101 et seq. 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. (Class I)

8.5.12. The disposition of unused medications due to situations such as a change in drug

therapy, the death of the resident, the resident leaving the facility, or the resident's inability to take the medication, shall be in accordance with the following:

8.5.12.a. Individual resident drugs supplied in unit dose or the manufacturer's originally sealed container shall be returned, if unopened, unless otherwise prohibited under applicable federal or State laws, to the issuing pharmacy (Class III): Provided, That:

8.5.12.a.A. No drug covered under the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 21 U.S.C. § 801 et seq. shall be returned (Schedule II, III, IV, V) (Class III);

8.5.12.a.B. All returned drugs shall be identified as to lot or control number (Class III); and

8.5.12.a.C. The signatures of the receiving pharmacist and the administrator shall be recorded in a separate log which lists the name of the patient, the name and strength of the drug with National Drug Code, the prescription number (if applicable), the amount of the drug returned and the date of return. The log must be retained for at least two (2) years (Class III); and

8.5.12.b. Patient drugs which are outdated, adulterated, deteriorated, or non-returnable shall be destroyed in the following manner:

8.5.12.b.A. Drugs listed in Schedules II, III, IV or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 21 U.S.C. § 801 et seq. shall be destroyed by the facility in the presence of a pharmacist and the administrator. The name of the resident, the name and strength of the drug, the prescription number, the amount destroyed, the date of destruction and the signatures of the witnesses required above shall be retained for at least two (2) years (Class III); and

8.5.12.b.B. All other non-scheduled legend drugs not in unit dose packaging or not in the manufacturer's originally sealed container shall be destroyed by the facility in the presence of a pharmacist or licensed nurse. The name of the patient, the name and strength of the drug, the prescription number, if applicable, the amount destroyed, the date of destruction and the signatures of the person named above and one (1) other person shall be recorded in the patient's health record or in a separate log. The log shall be retained for at least two (2) years. (Class III)

8.6. Accident, Illness and Major Incident Procedures.

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: (Class I)

8.6.1.a. Assess the severity and cause of the accident or illness; (Class I)

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 (Class I); 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. (Class I)

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. (Class I)

8.6.3. Major incidents shall be reported to the licensing agency by the facility as soon as possible. (Class III)

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. (Class I)

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 or others in the home until 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. (Class II)

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, W. Va. Code § 9-6-9 to report 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. (Class I)

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 on receipt of the allegation. Measures shall be taken to ensure that further abuse does not occur while the investigation is in progress. (Class I)

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.

(Class I)

8.6.9. The home shall assure that the licensing agency has been notified within seventy-two (72) hours of the date of the allegation of 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. (Class III)

§ 64-65-9. Dietetic Services.

9.1. General.

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. (Class II)

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. (Class I)

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

9.1.3.a. At breakfast: fruit or juice; cereal, whole grain or enriched bread product; and Grade A vitamin D milk (Class III); and

9.1.3.b. At 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. (Class III)

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

9.1.5. 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 individual resident preferences. (Class III)

9.1.6. 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. (Class II)

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. (Class III)

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. (Class III)

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

10.1. Fire Safety.

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. (Class I)

10.2. Disaster and Emergency Preparedness.

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. (Class I)

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. (Class I)

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. (Class I)

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. (Class II)

10.2.5. Emergency call information shall be conspicuously posted near each telephone in the home, exclusive of telephones in resident rooms. (Class I) 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; (Class I)

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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); (Class I) and

10.2.5.c. The names and telephone numbers of all other personnel to be called in case of fire or emergency. (Class I)

10.2.6. Within twenty-four (24) 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. (Class I)

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

11.1. Life Safety and Construction.

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 (Class I)

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. (Class II)

11.1.3. Trailers and mobile homes shall not be licensed as residential board and care homes. (Class I)

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. (Class I)

11.2. Sanitation.

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

11.2.2. Sewage disposal shall be in accordance with applicable State rules. (Class I)

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.

11.2.3. 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. (Class I)

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. (Class II)

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. (Class I)

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. (Class II)

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. (Class II)

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. (Class I)

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; (Class I)

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; (Class I)

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; (Class I)

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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; (Class II)

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

11.2.8.f. Effective procedures for maintaining the food service environment in a clean, safe and sanitary manner. (Class I)

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. (Class II)

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. (Class III)

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: (Class III)

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; (Class I)

11.2.11.b. Soiled and clean laundry are not stored together at any time; (Class II) 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. (Class II)

11.3. General Living Environment.

11.3.1. Traffic paths in the home and yard shall be maintained free of obstacles. (Class II)

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. (Class I)

11.3.3. Electrical outlets shall have proper number of plugs and cords shall be maintained away from walking areas. (Class II)

11.3.4. Tools and equipment shall be kept on shelves or in closets; sharp knives shall be kept in drawers or knife holders. (Class II)

11.3.5. Locked storage facilities shall be provided for all toxic materials separate from any food and drug storage. (Class I)

11.3.6. Each door to the outside shall have at least one (1) lock that permits keyless

egress to residents of the home. (Class I)

11.3.7. All windows shall have functioning locks for security which can be easily opened for quick escape. (Class I)

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. (Class I)

11.3.9. Doors and windows used for ventilation shall be screened. (Class III)

11.3.10. Outdoor lighting shall be provided at doorways, on decks or patios and near garages. (Class II)

11.4. Interior Comfort.

11.4.1. Temperature shall be maintained at a level comfortable to the residents. (Class II)

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. Heat shall be supplied to all rooms used by residents. (Class II)

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. (Class II)

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. (Class III)

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

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

11.4.5. The home shall provide comfortable and adequate lighting throughout the interior environment. (Class II)

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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). (Class III)

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

11.5. Bedrooms.

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. (Class III)

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. (Class III)

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

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

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. (Class II)

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. (Class III)

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. (Class III)

11.5.8. Clean and freshly laundered bed linens in good repair shall be provided for each resident at least once each week and more often, if needed. (Class II)

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. (Class II)

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; (Class III)

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

11.5.10.c. A comfortable chair of sturdy construction suitable for resident use. (Class II)

11.5.10.d. An adequate dresser for storage of clothing, etc. (Class III); and

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

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

11.6. Toilet and Bathing Facilities.

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. (Class II)

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. (Class III)

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. Grab-bars shall be provided for each shower or tub. (Class II)

11.6.4. Each toilet-washroom shall have:

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

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

11.6.4.c. Grab-bars for each toilet. (Class II)

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. (Class II)

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

11.6.7. Clean towels and wash cloths shall be provided to the resident at least twice

weekly, and more often if needed. (Class II)

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

§ 64-65-12. Requirements Related to the Provision of Limited and Intermittent Nursing.⁷

12.1. Standard Requirements.

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. (Class I)

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. (Class I)

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

12.1.4. 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. (Class III)

12.1.5. 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. (Class I)

12.1.6. 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. (Class I)

12.1.6.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.

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.

(Class I)

12.1.6.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. (Class II)

12.1.7. The home shall assure that:

12.1.7.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; (Class III)

12.1.7.b. All physician's orders specify the type, frequency, duration, and dosage for each medication, treatment or special feeding; (Class II)

12.1.7.c. Treatment measures are performed only by qualified staff (Class I); and

12.1.7.d. Nursing procedures and treatments are performed only by a licensed registered or practical nurse, in accordance with applicable State law. (Class I)

12.1.8. The home shall measure and record the resident's height in his or her record upon admission and annually thereafter. (Class III)

12.1.8.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. (Class III)

12.1.8.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. (Class II)

12.1.9. 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. (Class III)

12.1.10. The use of PRN (as needed) medications is prohibited, unless (i) the resident is capable of determining when the medication is needed; (ii) licensed health care professionals are responsible for medication management; or (iii) 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. (Class I)

12.1.11. 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: (Class I)

12.1.11.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); (Class I)

12.1.11.b. A list of duties performed by the registered nurse during each visit; and (Class I)

12.1.11.c. A brief statement regarding identified concerns and recommended actions taken to resolve them. (Class I)

12.1.12. 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. (Class I)

12.2. Nursing Services.

12.2.1. A registered professional 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: (Class I)

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; (Class I)

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

12.2.4. Any verbal or written orders received from a licensed health care professional. (Class I)

12.2.5. The registered professional nurse shall:

12.2.5.a. Provide oversight of the care and services through contact with the home as necessary to ensure appropriate resident care. Visits to the home shall occur at least weekly and be of sufficient duration to perform all required duties; (Class I)

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; (Class I)

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 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. (Class I)

12.2.5.d. On an ongoing basis, the nurse shall evaluate each resident's functional

capabilities to assure that an optimal range of motion is maintained for each joint; 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; (Class I)

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. 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; (Class I)

12.2.5.f. Review training needs of residential board and care home staff members; (Class I)

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

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; (Class I)

12.2.5.i. Provide overall supervision of medication storage, dispensing systems and disposition (Class I); and

12.2.5.j. Coordinate admission and discharge planning as it relates to the medical component of resident care. (Class I)

12.3. Personnel and Staffing.

Residential care and residential support staff shall attend at least eight (8) additional hours of training annually specific to the population at the residential board and care home in addition to the training required by subsection 6.3 of this rule. 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. (Class III)

12.4. Resident Care and Related Services.

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. (Class III)

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

12.4.3. Copies of the progress reports shall be retained in the resident's record. (Class III)

§ 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 one thousand dollars (\$1,000). 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 hundred dollars (100). 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 fifty dollars (\$50).

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.

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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.

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-1 et seq. shall have monthly 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: (a) has not been contested under W. Va. Code §16-5C-12 within thirty (30) days of receipt of notice of such assessment; (b) has been affirmed under the provisions of W. Va. Code §16-5C-12 and not appealed within thirty (30) days of receipt of the secretary's final order; or (c) has been affirmed on judicial review, as provided in W. Va. Code §16-5C-13. All money collected by assessments of civil penalties or interest 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; or

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.

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

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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, 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 the division of health procedural rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

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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				≤447	448-511	512-575	576-641
6	Personnel				≤220	221-252	253-284	285-317
7	Resident Rights				≤277	278-317	318-357	358-398
8	Health Care and Social Standards				≤322	323-373	374-422	423-472
9	Dietetic Services				≤52	53-59	60-68	68-76
10	Fire Safety, Disaster & Emergency Preparedness				≤66	67-77	78-88	89-99
11	Physical Plant & Sanitation				≤425	426-486	487-547	548-609
12	Limited & Intermittent Nursing				≤263	264-271	272-339	340-378

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

Modified Rule: 2/26/97

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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

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

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$4,701 to \$4,800	\$6,000
\$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

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

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$7,501 to \$7,600	\$9,500
\$7,601 to \$7,700	\$9,625
\$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

Senate Bill No. 179

(By Senator(s) Ross, Anderson, Macnaughtan,
Boley and Buckalew)

[Introduced March 3, 1997; referred to the
Committee on Health and Human Resources; and
then to the Committee on the Judiciary.]

A BILL to amend and reenact section one, article five,
chapter sixty-four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to authorizing the division of health to promulgate a
legislative rule relating to residential board and
care homes.

Be it enacted by the Legislature of West Virginia:

That section one, article five, chapter sixty-four of
the code of West Virginia, one thousand nine hundred
thirty-one, as amended, be amended and reenacted, to read
as follows:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND
HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. State board of health; division of health.

1 (a) The legislative ~~rules~~ rule filed in the state
2 register on the thirty-first day of July, one thousand nine
3 hundred ninety-five, authorized under the authority of
4 section two-a, article five-a, chapter sixteen of this
5 code, relating to the division of health (cancer registry,
6 64 CSR 68), ~~are~~ is authorized.

7 (b) The legislative ~~rules~~ rule filed in the state
8 register on the thirty-first day of July, one thousand nine
9 hundred ninety-five, authorized under the authority of
10 section seven, article one, chapter sixteen of this code,
11 modified by the division of health to meet the objections
12 of the legislative rule-making review committee and refiled
13 in the state register on the sixth day of December, one
14 thousand nine hundred ninety-five, relating to the division
15 of health (standards for local boards of health, 64 CSR
16 73), ~~are~~ is authorized.

17 (c) The legislative ~~rules~~ rule filed in the state
18 register on the fourth day of August, one thousand nine
19 hundred ninety-five, authorized under the authority of
20 section eight, article three-c, chapter sixteen of this
21 code, modified by the division of health to meet the
22 objections of the legislative rule-making review committee
23 and refiled in the state register on the twenty-third day

1 of January; one thousand nine hundred ninety-six, relating
2 to the division of health (AIDS-related medical testing and
3 confidentiality, 64 CSR 64), ~~are~~ is authorized.

4 (d) The legislative ~~rules~~ rule filed in the state
5 register on the fourth day of January, one thousand nine
6 hundred ninety-six, authorized under the authority of
7 section five, article five-c, chapter sixteen of this code,
8 modified by the division of health to meet the objections
9 of the legislative rule-making review committee and refiled
10 in the state register on the twenty-third day of January,
11 one thousand nine hundred ninety-six, relating to the
12 division of health (personal care home licensure, 64 CSR
13 14), ~~are~~ is authorized with the amendments set forth below:

14 "On page nine, section 4.3.1.d, after the word
15 'provisions' by inserting the words 'in policy';

16 On page nine, section 4.3.1.d, by striking out the
17 following: 'The provisions may be in the form of a bond, a
18 property lien, or other form of guaranty acceptable to the
19 secretary. The guaranty shall be in the amount of three
20 hundred dollars (\$300) per resident or ten thousand dollars
21 (\$10,000), whichever is greater.' and inserting in lieu
22 thereof the following: 'If the owner does not provide
23 continuing care to all residents during this thirty (30)

1 day period, any expenses incurred by the Department to
2 provide continuing resident care (i.e., food, staff, etc.)
3 during this thirty (30) day period, is the responsibility
4 of the owner.';

5 On page seventeen, section 4.10.4, by striking out the
6 word 'State' and inserting in lieu thereof the word
7 'Secretary';

8 On page seventeen, section 4.10.4, after the words
9 'for each of the residents' by inserting the words
10 'affected by the waiver request,';

11 On page twenty-four, section 5.8.2, after the words
12 'an additional' by striking out the words 'direct care' and
13 inserting in lieu thereof the words 'personal care';

14 On page twenty-four, section 5.8.2, after the word
15 'day' by striking out the words 'and evening shifts' and
16 inserting in lieu thereof the word 'shift';

17 On page twenty-four in section 5.8.2, after the words
18 'to have' by striking out the words 'no more than';

19 On page twenty-four in section 5.8.2, after the words
20 'two (2)' by inserting the words 'or more';

21 On page twenty-four, line sixty-seven, by striking out
22 the words 'no more than';

23 On page twenty-four, section 5.8.2, after

1 'residents.' by inserting the following sentence: 'At a
2 minimum, an additional personal care staff will be
3 available on the evening shift for each fifteen (15)
4 residents identified on their functional needs assessment
5 to have no more than two (2) or more of the above care
6 needs.';

7 On page twenty-four, section 5.8.2, after the words
8 'An additional' by striking out the word 'employee' and
9 inserting in lieu thereof the words 'personal care staff';

10 On page twenty-four, section 5.8.2, after the word
11 'with' by striking out the words 'one (1)' and inserting in
12 lieu thereof the words 'two (2)';

13 On page twenty-seven, section 6.1.7, after the words
14 'valid for' by striking out the words 'six (6) months' and
15 inserting in lieu thereof the words 'one (1) year';

16 On page thirty-five, section 7.3.9, after the words
17 'personal care home' by striking out the words 'in need of
18 nursing services as specified in this rule' and inserting
19 the following: 'The frequency with which a registered
20 professional nurse shall provide services to the personal
21 care home not providing limited and intermittent nursing
22 services shall be based upon the needs of the residents,
23 but not less than weekly.';

1 On page thirty-five, subsection 7.3.9, after the word
2 'Section' by striking out the number '13' and inserting in
3 lieu thereof the number '12';

4 On page thirty-five, section 7.3.9, after the words
5 'professional registered nurse.' by striking out the
6 following: 'The frequency with which a registered
7 professional nurse shall provide services to the personal
8 care home not providing limited and intermittent nursing
9 services shall be based upon the needs of the residents.'

10 On page fifty-four, section 11.3.1, by striking out
11 the sentence 'Existing and newly constructed buildings to
12 be offered, maintained, and operated as personal care homes
13 shall provide for accessibility in their entirety to
14 individuals with a physical disability.' and inserting in
15 lieu thereof the sentence 'Those personal care homes
16 housing any resident with a physical disability shall
17 provide access to areas used in common by all residents as
18 well as to the resident's personal area.';

19 On page fifty-five, section 11.3.8, in the second
20 sentence, after the word 'widths' by inserting the words
21 'for new construction';

22 On page fifty-five, section 11.3.10, after the words
23 'shall have a' by striking out the word 'central';

1 On page fifty-five, section 11.3.10, after the word
2 'weather' by striking out the following: 'Individual room
3 units known as 'through the wall heating and cooling units'
4 are acceptable.';

5 On page fifty-five, section 11.3.17, after the word
6 'residents.' by adding the following: 'However, if
7 existing facilities cannot comply with the janitor closet
8 requirement on each floor, the facility must demonstrate a
9 sanitary means of disposal of wastewater in an area that is
10 not a resident sleeping area.';

11 On page fifty-seven, section 11.4.10, at the beginning
12 of the first sentence, by striking out the word 'The' and
13 inserting in lieu thereof the words 'In new facilities
14 the';

15 On page fifty-seven, section 11.4.10, after the word
16 'area.' at the end of subsection ten by adding the
17 following sentence: 'In existing facilities residents'
18 rooms shall have an outside exposure through a vertical
19 transparent window. In existing facilities rooms extending
20 below ground level shall be allowed only if approved by the
21 Secretary.';

22 On page fifty-eight, section 11.5.2, after the word
23 'every' by striking out the words 'four (4)' and inserting

1 in lieu thereof the words 'five (5)';

2 On page fifty-eight, section 11.5.3, after the word
3 'per' by striking out the words 'five (5)' and inserting in
4 lieu thereof the words 'ten (10)';

5 On page fifty-eight, section 11.5.3, after the word
6 'residents.' by striking out the following sentence: 'If
7 the facility can show a process that functions well for
8 residents, upon application, the secretary will grant a
9 waiver of this requirement.'

10 On page sixty-one, section 11.13.3.a, at the beginning
11 of the first sentence, by striking out the word 'Outlets'
12 and inserting in lieu thereof the words 'In new facilities
13 electrical outlets';

14 On page sixty-one, section 11.13.3.a, after the word
15 'walls;' by inserting a period and the words 'In existing
16 facilities electrical outlets to meet the needs of the
17 residents shall be provided;';

18 On page sixty-six, section 12.2.5.a, after the word
19 'services' by striking out the words 'through daily contact
20 with the home and visits to the residents at least eight
21 (8) hours a week'; and inserting in lieu thereof the words
22 'to residents';

23 On page sixty-six, by striking out section 12.2.5.d;

1 And,

2 By relettering the remaining subdivisions."

3 (e) The legislative rule filed in the state register
4 on the twenty-seventh day of November, one thousand nine
5 hundred ninety-five, authorized under the authority of
6 section five, article five-c, chapter sixteen, of this
7 code, modified by the division of health to meet the
8 objections of the legislative rule-making review committee
9 and refiled in the state register on the \ day of February,
10 one thousand nine hundred ninety-seven, relating to the
11 division of health (residential board and care homes, 64
12 CSR 21), is authorized.

13 65

14 NOTE: The purpose of this bill is to authorize the
15 Division of Health to promulgate a legislative rule
16 relating to Residential Board and Care Homes.

17
18 Strike-throughs indicate language that would be
19 stricken from the present law, and underscoring indicates
20 new language that would be added.

1 Bill-Health, Residential

(By Delegate(s) Douglas, Hunt, Compton,
Faircloth, Linch and Riggs)

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10 A BILL to amend and reenact section one, article five,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of health to promulgate a
14 legislative rule relating to residential board and
15 care homes.

16 Be it enacted by the Legislature of West Virginia:

17 That section one, article five, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND
22 HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

23 §64-5-1. State board of health; division of health.

1 (a) The legislative ~~rules~~ rule filed in the state
2 register on the thirty-first day of July, one thousand nine
3 hundred ninety-five, authorized under the authority of
4 section two-a, article five-a, chapter sixteen of this
5 code, relating to the division of health (cancer registry,
6 64 CSR 68), ~~are~~ is authorized.

7 (b) The legislative ~~rules~~ rule filed in the state
8 register on the thirty-first day of July, one thousand nine
9 hundred ninety-five, authorized under the authority of
10 section seven, article one, chapter sixteen of this code,
11 modified by the division of health to meet the objections
12 of the legislative rule-making review committee and refiled
13 in the state register on the sixth day of December, one
14 thousand nine hundred ninety-five, relating to the division
15 of health (standards for local boards of health, 64 CSR
16 73), ~~are~~ is authorized.

17 (c) The legislative ~~rules~~ rule filed in the state
18 register on the fourth day of August, one thousand nine
19 hundred ninety-five, authorized under the authority of
20 section eight, article three-c, chapter sixteen of this
21 code, modified by the division of health to meet the
22 objections of the legislative rule-making review committee
23 and refiled in the state register on the twenty-third day

1 of January, one thousand nine hundred ninety-six, relating
2 to the division of health (AIDS-related medical testing and
3 confidentiality, 64 CSR 64), ~~are~~ is authorized.

4 (d) The legislative ~~rules~~ rule filed in the state
5 register on the fourth day of January, one thousand nine
6 hundred ninety-six, authorized under the authority of
7 section five, article five-c, chapter sixteen of this code,
8 modified by the division of health to meet the objections
9 of the legislative rule-making review committee and refiled
10 in the state register on the twenty-third day of January,
11 one thousand nine hundred ninety-six, relating to the
12 division of health (personal care home licensure, 64 CSR
13 14), ~~are~~ is authorized with the amendments set forth below:

14 "On page nine, section 4.3.1.d, after the word
15 'provisions' by inserting the words 'in policy';

16 On page nine, section 4.3.1.d, by striking out the
17 following: 'The provisions may be in the form of a bond, a
18 property lien, or other form of guaranty acceptable to the
19 secretary. The guaranty shall be in the amount of three
20 hundred dollars (\$300) per resident or ten thousand dollars
21 (\$10,000); whichever is greater.' and inserting in lieu
22 thereof the following: 'If the owner does not provide
23 continuing care to all residents during this thirty (30)

1 day period, any expenses incurred by the Department to
2 provide continuing resident care (i.e., food, staff, etc.)
3 during this thirty (30) day period, is the responsibility
4 of the owner.';

5 On page seventeen, section 4.10.4, by striking out the
6 word 'State' and inserting in lieu thereof the word
7 'Secretary';

8 On page seventeen, section 4.10.4, after the words
9 'for each of the residents' by inserting the words
10 'affected by the waiver request,';

11 On page twenty-four, section 5.8.2, after the words
12 'an additional' by striking out the words 'direct care' and
13 inserting in lieu thereof the words 'personal care';

14 On page twenty-four, section 5.8.2, after the word
15 'day' by striking out the words 'and evening shifts' and
16 inserting in lieu thereof the word 'shift';

17 On page twenty-four in section 5.8.2, after the words
18 'to have' by striking out the words 'no more than';

19 On page twenty-four in section 5.8.2, after the words
20 'two (2)' by inserting the words 'or more';

21 On page twenty-four, line sixty-seven, by striking out
22 the words 'no more than';

23 On page twenty-four, section 5.8.2, after

1 'residents.' by inserting the following sentence: 'At a
2 minimum, an additional personal care staff will be
3 available on the evening shift for each fifteen (15)
4 residents identified on their functional needs assessment
5 to have no more than two (2) or more of the above care
6 needs.';

7 On page twenty-four, section 5.8.2, after the words
8 'An additional' by striking out the word 'employee' and
9 inserting in lieu thereof the words 'personal care staff';

10 On page twenty-four, section 5.8.2, after the word
11 'with' by striking out the words 'one (1)' and inserting in
12 lieu thereof the words 'two (2)';

13 On page twenty-seven, section 6.1.7, after the words
14 'valid for' by striking out the words 'six (6) months' and
15 inserting in lieu thereof the words 'one (1) year';

16 On page thirty-five, section 7.3.9, after the words
17 'personal care home' by striking out the words 'in need of
18 nursing services as specified in this rule' and inserting
19 the following: 'The frequency with which a registered
20 professional nurse shall provide services to the personal
21 care home not providing limited and intermittent nursing
22 services shall be based upon the needs of the residents,
23 but not less than weekly.';

1 On page thirty-five, subsection 7.3.9, after the word
2 'Section' by striking out the number '13' and inserting in
3 lieu thereof the number '12';

4 On page thirty-five, section 7.3.9, after the words
5 'professional registered nurse.' by striking out the
6 following: 'The frequency with which a registered
7 professional nurse shall provide services to the personal
8 care home not providing limited and intermittent nursing
9 services shall be based upon the needs of the residents.'

10 On page fifty-four, section 11.3.1, by striking out
11 the sentence 'Existing and newly constructed buildings to
12 be offered, maintained, and operated as personal care homes
13 shall provide for accessibility in their entirety to
14 individuals with a physical disability.' and inserting in
15 lieu thereof the sentence 'Those personal care homes
16 housing any resident with a physical disability shall
17 provide access to areas used in common by all residents as
18 well as to the resident's personal area.';

19 On page fifty-five, section 11.3.8, in the second
20 sentence, after the word 'widths' by inserting the words
21 'for new construction';

22 On page fifty-five, section 11.3.10, after the words
23 'shall have a' by striking out the word 'central';

1 On page fifty-five, section 11.3.10, after the word
2 'weather' by striking out the following: 'Individual room
3 units known as 'through the wall heating and cooling units'
4 are acceptable.';

5 On page fifty-five, section 11.3.17, after the word
6 'residents.' by adding the following: 'However, if
7 existing facilities cannot comply with the janitor closet
8 requirement on each floor, the facility must demonstrate a
9 sanitary means of disposal of wastewater in an area that is
10 not a resident sleeping area.';

11 On page fifty-seven, section 11.4.10, at the beginning
12 of the first sentence, by striking out the word 'The' and
13 inserting in lieu thereof the words 'In new facilities
14 the';

15 On page fifty-seven, section 11.4.10, after the word
16 'area.' at the end of subsection ten by adding the
17 following sentence: 'In existing facilities residents'
18 rooms shall have an outside exposure through a vertical
19 transparent window. In existing facilities rooms extending
20 below ground level shall be allowed only if approved by the
21 Secretary.';

22 On page fifty-eight, section 11.5.2, after the word
23 'every' by striking out the words 'four (4)' and inserting

1 in lieu thereof the words 'five (5)';

2 On page fifty-eight, section 11.5.3, after the word
3 'per' by striking out the words 'five (5)' and inserting in
4 lieu thereof the words 'ten (10)';

5 On page fifty-eight, section 11.5.3, after the word
6 'residents.' by striking out the following sentence: 'If
7 the facility can show a process that functions well for
8 residents, upon application, the secretary will grant a
9 waiver of this requirement.'

10 On page sixty-one, section 11.13.3.a, at the beginning
11 of the first sentence, by striking out the word 'Outlets'
12 and inserting in lieu thereof the words 'In new facilities
13 electrical outlets';

14 On page sixty-one, section 11.13.3.a, after the word
15 'walls;' by inserting a period and the words 'In existing
16 facilities electrical outlets to meet the needs of the
17 residents shall be provided;';

18 On page sixty-six, section 12.2.5.a, after the word
19 'services' by striking out the words 'through daily contact
20 with the home and visits to the residents at least eight
21 (8) hours a week'; and inserting in lieu thereof the words
22 'to residents';

23 On page sixty-six, by striking out section 12.2.5.d;

1 And,

2 By relettering the remaining subdivisions."

3 (e) The legislative rule filed in the state register
4 on the twenty-seventh day of November, one thousand nine
5 hundred ninety-five, authorized under the authority of
6 section five, article five-c, chapter sixteen, of this
7 code, modified by the division of health to meet the
8 objections of the legislative rule-making review committee
9 and refiled in the state register on the \ day of February,
10 one thousand nine hundred ninety-seven, relating to the
11 division of health (residential board and care homes, 64
12 CSR 241, is authorized.

13 65

14 NOTE: The purpose of this bill is to authorize the
15 Division of Health to promulgate a legislative rule
16 relating to Residential Board and Care Homes.

17
18 Strike-throughs indicate language that would be
19 stricken from the present law, and underscoring indicates
20 new language that would be added.



FILED

FEB 19 9 31 AM '97

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Senator: Mike Ross, Co-Chairman
Delegate: Mark Hunt, Co-Chairman
Counsel: Debra A. Graham

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Audrey R. Ross, Admin. Assistant

February 10, 1997

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Ms. Kay Howard
Department of Health and Human Resources
Division of Health
WV State Capitol Bldg. 3
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Residential Board and Care Homes 64-65

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency

✓
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Health
Subject: Residential Board and Care Home Licensure Rule, 64CSR65
Counsel: Rita A. Pauley

PERTINENT DATES

Filed for public comment: June 30, 1995
Public comment period ended: July 31, 1995 extended by agency to August 21, 1995
Filed following public comment period: November 27, 1995
Filed LRMRC: November 27, 1995
Filed as emergency: December 15, 1995 went into effect March 21, 1996
amended September 13, 1996

Fiscal Impact: The cost of administering this program is included in the agency's budget.

ABSTRACT

The proposed rule repeals and replaces the 1993 Residential Board and Care Home Licensure Rule, 64 CSR 65. The rule contains standards and procedures for the operation and licensure of residential board and care homes. The new rule and proposed modifications make the rule conform to revisions made by the Legislature in 1994 and 1995 to West Virginia Code §§ 16-5C-1 *et seq.* and 16-5H-1 *et seq.*, the Federal District Court's 1994 Order in *Wolford v. Lewis*, Civil Action No. 2:92-1151 and practical problems discovered in the application of the rule.

The Keys Amendment to the U.S. Social Security Act, 42 U.S.C. §1382e(e), requires States to establish, maintain, and insure the enforcement of standards for any category of group living arrangements where a significant number of SSI recipients are residing or are likely to reside. Residential board and care homes in West Virginia come under this requirement. In addition to the federal requirements, the Code §16-5C-5 requires the agency to promulgate a rule establishing minimum standards for these facilities. The emergency rule filed September 13, 1996 meets the state and federal requirements.

The Committee may recall that this proposed rule was submitted to late last year for the LRMRC to take it up for consideration. The agency was required by the Federal District Court to have the rule in place. Therefore, it was filed as an emergency rule and is currently in effect. The

emergency rule was amended September 13, 1996 to correct problems that were discovered once the agency and providers began working with the rule. The agency would like for the Committee to consider the modifications made in September to the rule currently before the Committee. Most of the proposed changes to the rule are for purposes of clarification; the deletion of duplicative text and for statutory and regulatory consistency. Some of the changes are substantive.

The rule in your packet is the emergency rule filed in September. It contains strike through and underling to reflect the proposed changes to the rule proposed to the LRMRC in November 1995. The November rule repealed and replaced the former rule and is essentially a new rule. A section by section synopsis follows. Where the agency proposes a substantive change of the November rule the proposed modification will also be discussed.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 states, with two exceptions, that the rule applies to any one that establishes, maintains or operates a residential board and care home. It appears that homes approved by DHHR for participation in the adult family care home program are not required to be licensed under this rule. Homes or asylums operated by fraternal orders pursuant to Code §35-3-1 *et seq.* are also exempt from this rule. The Secretary of DHHR is to enforce the rule.

Section 3 is the definition section. Some of the more significant definitions are as follows:

3.1 "Adult Day Care" has been added as a proposed modification. It is an alternative to twenty-four (24) hour a day institutional care for elderly or disabled adults who need care and supervision. An adult may be in a day care program up to fourteen (14) hours a day.

3.2 broadly defines "abuse" to include any mistreatment of residents, including physical harm, misuse of physical or chemical restraints, verbal abuse and infliction of emotional suffering.

3.4 "administration of medications" has been added in the proposed modifications. It means opening a container of medication and giving the medication to the person for whom it was prescribed, including giving injections and administering eye drops.

3.6 limits "bed capacity" to the number of residents for which the home is licensed.

3.9 defines "chemical restraint" as a psychoactive drug that is used for discipline or convenience and is not required to medical symptoms.

3.13 is included in the proposed modifications. It defines "disability" as any limitation of physical, mental, or social activity of an individual as compared with other individuals or similar age, sex, and occupation. Frequently refers to limitation of the usual or major activities, most commonly vocational. There are varying types, degrees and durations of disability.

3.16 defines "functional needs assessment" as 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. The definition goes on to list several questions that may be part of the assessment. It is apparently left up to the home to design an assessment tool and then determine how it will be used.

3.24 defines "major incident" as any event or occurrence that places one or more residents' health and well-being in jeopardy or imminent danger. Some of the examples of major incident are falls or accidents which seriously injure or threaten the life of a resident, the death of a resident from other than natural causes, explosions, fires and natural disasters.

3.25 "mental disorder" has been added as part of the modification requested by the agency. "Mental disorder" is defined as a mental illness that affects the well-being or behavior of an individual to such an extent that for his or her own welfare or the welfare of others, treatment is required.

3.33 "residential board and care home" is defined as any residence or part thereof which is advertised, offered, maintained or operated by or for the owners for the provision of accommodations, personal assistance and supervision for a period of more than twenty-four hours, to four (4) to ten (10) people who are unrelated to the owner or manager and who are dependent upon the services of others to assist them with their daily care but who are capable of self-preservation and are not bedfast, including individuals who may be receiving hospice care.

3.39 "supervision of self-administered medications" has been added by the agency in its proposed modifications. It is a personal service which includes reminding residents to take medications, opening bottle caps, reading labels, observing residents taking medications, checking the dosage taken against the label instructions and reassuring residents that they have obtained and are taking the dosage as prescribed.

Subsection 4.1 covers the general licensing provisions. No one may establish or operate a residential board and care home without a license, except those persons who have filed an application for licensure prior to October 1, 1993 and the application has not been acted upon. Those persons may continue to operate those homes until the secretary grants or denies the license. Licenses issued under this rule are only valid for the licensee and for the structure named in the application. Buildings on the same grounds which are operated as residential care homes must be licensed separately. Licenses are not transferrable and must be surrendered upon demand or when the home ceases to provide services.

Residential board and care homes are prohibited from using in their names or advertising such words as "clinic", "hospital" "nursing home" or other terms which suggest the home is another type of facility. Homes whose residents do not require limited and intermittent nursing care do have to meet the requirements of Section 12 of the rule. The licensee is responsible for complying with all state and federal laws, rules, regulations and policies. A home may not use its premises for any purpose that disrupts the activities of the residents.

A new sub-part 4.1.8 has been proposed as an agency modification. It specifies that a home that intends to provide adult day care in addition the services for its residents must notify the secretary of the number of day care people it plans to serve. The secretary must give prior approval for the provision of day care services. Approval will be based on the number of people to be served, space, accommodations and staffing. Day care people must meet the same health screening requirements as residents and be capable of self-preservation.

The secretary may issue an initial or a renewal license for up to one year. If an applicant submits a timely application for renewal of a current license, with payment of the proper fee, the license shall continue in effect for one year or until it is revoked or suspended or until issuance of a new license, whichever occurs first.

Subsection 4.2 details the information that is requested on the application for licensure as a residential board and care home. Standard information such as the identity of the applicant, stockholders, officers and directors is a corporation is involved or trustees and beneficiaries if a trust is involved is required. In addition, information about the proposed home's bed capacity, employee positions and duties and evidence that the home is in compliance with applicable law and regulations is required.

One of the modifications suggested by the agency is to remove a requirement that the applicant make provisions to ensure continuing care of all residents for thirty days after notification of pending closure. The provision could have been made in the form of a bond, property lien or other form of guaranty approved by the Secretary. The guaranty was required to be the greater of either \$300.00 per resident or \$10,000.00. The modified language now requires the applicant to document that it has policy to ensure the continuing care of all residents for 30 days. The owner is responsible for any expenses incurred by the agency for resident care during the 30 day period.

The completed application along with a non-refundable license fee must be submitted to the Secretary. Applications which are incomplete will be returned to the applicant. The rule does not give the amount of the application fee, rather it refers the reader to the Code. It would be better to say that the application fee is \$50.00 as established by West Virginia Code § 16-5C-6(e).

Applicants are required to complete balance sheets, provided by the agency, showing all expenses and income. It is apparently assumed that the initial applicant will have been operating a home prior to implementation of this rule and will therefore have this information available. Applicants that have not previously operated a "legally unlicensed" home must provide the agency with a preliminary operating plan which includes a proposed budget. The application and fee must be submitted at least 90 days prior to the planned opening of the home.

Subsection 4.3 deals with waivers. The agency may grant a waiver of the requirements of this rule after a thorough investigation if it is determined that the waiver will not adversely affect the health, safety, welfare or rights of the residents. The waiver request must be submitted to the agency in writing at least 30 days prior to the requested effective date of the waiver. Residents as well as

licensees may request a waiver. The person requesting the waiver must send a copy of the request to the residents of the home, the ombudsman representing the residents and the legal representative or next of kin of each resident. A list of all of the above listed people must be sent to the agency within 15 days of making the waiver request. Anyone may oppose the request by stating the reasons for the opposition, presumably in writing to the agency, within 20 days of the receipt of the request. If there is opposition to the request a hearing must be held. The hearing will be conducted in accordance with the agency's procedures for contested cases.

Subsection 4.4 contains the requirements for license renewal. If the application is complete, submitted timely and the home has met all Class I standards with at least a "C" rating, the license will be renewed.

Subsection 4.5 sets forth the circumstances for issuance of a provisional license. The Secretary may issue a provisional license if a home has received an "F" rating or was unable to meet all of the requirements for license renewal prior to the expiration of the previously issued license. It is unclear what the agency intended by saying a provisional license could be issued if an "F" rating was received. Sub-part 4.5.2 forbids the issuance of a provisional license if an "F" rating is received in 3 or more licensure categories. Provisional licenses can not be issued to homes that are in violation of any Class I standard, have a record of noncompliance with this rule or fails to demonstrate the potential for an overall "C" rating prior to the expiration of its current license.

A provisional license can not be renewed. It is within the discretion of the Secretary to determine the time period for a provisional license. However, it may not exceed one year.

Subsection 4.6 contains the provisions for inspections by the agency. The agency must make inspections of residential board and care homes to insure that they are operating properly. No notice is required prior to the inspection. If the home refuses to allow the inspection the agency may apply to circuit court for a warrant authorizing the inspection. The agency also has the authority to conduct inspections upon receipt of a complaint about a home or if the agency has reason to believe that an unlicensed home is being operated. If entrance to the home is denied the agency may apply to circuit court for a warrant authorizing the inspection.

The agency must conduct at least one inspection prior to issuing a license to the home and periodic unannounced inspections to assure that the home continues to comply with this rule. The initial inspection will not be made until the completed application, fees, all documentation verifies the home is ready for inspection and necessary inspections can be scheduled.

The agency must prepare a written report of any inspection of a home within 15 days of the inspection. A copy of the report, specifically listing any violations, must be mailed to the licensee or administrator of the home.

Subsection 4.7 contains the procedures for investigation of complaints. Anyone may file a complaint alleging violation of this rule by a licensed home or that an unlicensed home is operating

illegally. The agency has the authority to conduct investigations into any complaint received. Upon completion of the investigation the agency must notify the home of the substance of the complaint.

The agency must notify the complainant, the licensee and the home administrator of any corrective action that must be taken; the time limit for completion of the corrective action; and any disciplinary action to be taken by the agency.

The names of the complainant and any resident named in the complaint are confidential and can not be released by the agency without the written permission of the complainant and the resident. There are two exceptions to the confidentiality requirement. The first is where, in a particular instance, there is clear and convincing evidence that disclosure of the names is required. The second exception has been added as part of the agency's proposed modifications. If the complaint is part of a judicial proceeding, nothing in this rule prohibits disclosure of any information that would normally be disclosed.

Any discriminatory treatment of a resident within 120 days of a resident filing a complaint or a complaint being filed in his behalf creates a rebuttable presumption that the action was taken in retaliation for filing the complaint.

If the agency determines that a complaint has merit it must advise any injured party, residents their families or legal representatives of the availability of civil remedies.

If the home fails to correct violations it has been properly notified of within 120 days, the agency must notify the home of the uncorrected violations and that the uncorrected violations will be reported to the Social Security Administration, the residents, their families and legal representatives. The agency must also provide the residents with a list of approved facilities and agencies to assist them in moving to a new home. If the violations have not been corrected 210 days after the initial notification to the home of violations the agency will send notification to the Social Security Administration, residents, families and legal representatives.

Subsection 4.8 deals with plans for correcting violations. The Licensee must develop a written plan of correction and submit it to the agency within 15 working days of receipt of the report of the violation. The agency may require immediate correction of violations which are an immediate and serious threat to the health or safety of a resident or employee. The plan must specify what violations are to be corrected, how they will be corrected and prevented in the future; and a date by which the violations will be corrected. Generally, 60 days is considered sufficient time in which to correct violations. However, the agency may allow more time. The agency may approve, modify or reject a plan of correction. If the plan is modified or rejected the agency must provide a written explanation for the action. The licensee must submit a new plan within 15 working days if the original plan is rejected.

Subsection 4.9 deals with the release of reports and records. Generally all of the reports, applications, investigations and records compiled by the agency are available for public inspection

and may be copied at a reasonable cost. However, the identity of residents, information which would identify them, and confidential medical, social, personal or financial records of residents are not to be released as public information.

Subsections 4.10 and 4.11 delineate the classification of standards of operation and the point system for evaluation within the classification. Class I standards are the highest standards. Violation of Class I standards would present either an imminent danger to the health, safety or welfare of a resident or a substantial probability that death or serious physical harm would result. Class II standards are those which would have a direct or immediate relationship to the health, safety or welfare of a resident, but would not create imminent danger if violated. Class III standards have an indirect or potential impact on the health, safety or welfare of a resident if violated.

COMPLIANCE	CLASS I STANDARDS	CLASS II STANDARDS	CLASS II STANDARDS
FULL	10 Points	9 Points	8 Points
SUBSTANTIAL	7 Points	6 Points	5 Points
PARTIAL	5 Points	4 Points	4 Points
FAILURE	0 Points	0 Points	0 Points

In any classification if the agency determines that the violation of a standard may result in the substantial probability that serious harm to the health, safety, or welfare of any resident may result the score will be 0. The score will also be 0 if the violation is a repeat of a deficiency cited during the previous licensure inspection.

The agency shall determine the level 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. A full compliance score will be given for any standard that is not applicable for a home for the purposes of scoring and rating.

Subsection 4.12 explains the rating system. Scores and ratings for individual categories are shown in Table 64-3A on page 59 of the rule. The components of each category are explained in sections 5 through 12 of the rule.

Points scored in any individual category do not offset deficiencies in another category. An overall rating can not be determined solely on the basis of total point earned. For purposes of assigning an overall rating, a category rating of A through F will be assigned. The alphabetical ratings have the following score equivalencies: A equals 4; B equals 3; C equals 2; and F equals 0. Category rating scores will be totaled and an average category rating score assigned based on consideration of both the average category rating score and the number of categories rated F.

Although a home with an overall rating of F may be issued a provisional license, no home with an F in 3 or more licensure categories will be licensed. Rather, they will be ordered to close or have other sanctions imposed upon them. Homes that have not complied with all of the Class I standards will not be assigned a

rating nor will they be issued a provisional license. Under this circumstance, if the home reapplies for an initial license as provided for in Subsection 4.5.5 they may be rated no higher than a B.

Subsection 4.13 deals with non-issuance of initial or renewal licenses. The agency may deny a license for a variety of reasons such as lack of financial stability, conviction of the applicant or the home administrator for a crime relating to the provision of health care, revocation of a license to operate a health care facility in the past 5 years, fraud in the application process, or inappropriate conversion of residence property.

Section 5 discusses the standards for the administration of a residential board and care home. As part of the modifications suggested by the agency the subsections have been given descriptive titles rather than designations by class standard. Subsection 5.1 governs the general requirements for administration of the home. It requires that the home adopt written policies and procedures governing the care and safety of the residents, the protection of residents' personal property and rights, the operation of the home, services provided by the home, emergency procedures, disaster plan, admission, discharge and transfer of residents, complaint procedures, infection control and all other areas governed by this rule. The policies and procedures must be available for inspection upon request by residents and employees. All of these policy items are considered Class III standards.

Subsection 5.2 contains the requirements of the licensee. These are generally Class II standards. The licensee is responsible for compliance with the applicable state, federal and local laws, rules regulations and the home's policies and procedures. The licensee must be financially responsible, protect the physical and mental well-being of the residents, keep required records, maintain a liability insurance policy in an amount that will cover injuries to residents, and meet the requirements of an administrator if he assumes that job.

Subsection 5.3 sets forth the requirements for the home administrator. They must be at least 21 years old and have a high school diploma or its equivalent. Persons who are administrators at the time the rule goes into effect have 24 months to meet the education requirement. The administrator must not have been found guilty of abuse, fraud, or substantial and repeated violations of applicable laws and rules in the operation of any health or social care facility, service organization for the care of dependent persons. The administrator must receive 10 hours of training related to the administration and operation of a residential board and care home annually. The administrator is responsible for the development and execution of the home's policies and procedures, conform to applicable statutes, rules and regulations and ensure the adequacy of services provided to the residents.

Subsection 5.4 contains the admission procedures. Most of these are Class III standards. Admission to a home can not be denied for discriminatory reasons. Prior to admission the

prospective resident must be provided with a contract explaining the nature of services to be provided by the home. Other information must be provided at the time of the agreement such as how the resident will be able to access social, recreational and vocational services in the community, how the residents property will be protected, how the home will assist in making appointments for and transportation to medical and other services as well as how emergencies will be dealt with and how medications will be administered. The home's rules governing resident behavior and responsibilities as well as a resident's bill of rights must be provided to the prospective resident prior to admission.

Individuals admitted to a home must be capable of self-preservation. A physician or psychologist must certify that the person is able to follow directions and, with prompting if necessary, to take appropriate action for self-preservation under emergency conditions. It is appropriate to admit individuals who are in need of personal assistance in activities of daily living, supervision because of mental or physical impairment, or have limited and intermittent nursing care needs. Individuals with identified mental or developmental disabilities may be admitted if the home can show the ability to meet the individual's mental health needs or if the individual is a client of a licensed behavioral health agency.

Persons receiving hospice care may be admitted to a home. If they require services which utilize equipment which requires auxiliary power in the event of power failure they may only be admitted if the home has a backup power generator. Residents who receive limited or intermittent nursing care or hospice services must be assured of privacy for their care and the ability to evacuate in an emergency.

The agency has added as a suggested modification for individuals temporally admitted to the home for respite care on an intermittent basis. The admission and annual health assessment for these individuals is valid for one year.

Subsection 5.5 lists the individuals who may not be admitted to a home. Inappropriate for admission are individuals who require the use of routine physical or chemical restraints, those who require ongoing or extensive nursing services and those who require a level of service the home is not licensed to provide.

Subsection 5.6 deals with the retention of residents whose condition and functional ability declines after admission. Primarily these are Class II standards. If a resident begins to exhibit symptoms of a mental or developmental disorder for which he is not receiving treatment or services, the home must advise the resident or his legal representative of the available service options. If the resident's needs are not met in a timely manner the home must refer the resident to a licensed behavioral health agency. If the home believes that the resident is a danger to himself or others the home must either seek immediate treatment for the resident or refuse to admit a prospective resident.

Residents who become bedfast may remain in the home for 90 days if they are suffering from a temporary illness or recovering from surgery and the following conditions are met: (1) the resident's nursing care does not exceed limited and intermittent; (2) the resident requests to remain

in the home; (3) the need for limited and intermittent nursing care is a result of a medical pathology or the normal aging process; and (4) the home can maintain the resident's safety and continue to meet the needs of the other residents.

Subsection 5.7 sets forth the discharge procedures. These are primarily Class III standards. Residents, except those receiving hospice services, who require more than limited and intermittent nursing care need to be moved to a facility that can provide the appropriate level of care. The home must assist the resident or his representative in locating another facility.

Subsection 5.8 details the requirements for collecting and maintaining records by the home. All records required by the rule must be retained in the home and available for inspection by the agency. Most of the record requirements are Class III standards. The agency has added a new subpart which requires the home to maintain a bound permanent resident register. The register must contain the residents' names, date of admission, last day at the home and address of the place the resident was discharged to.

Subsection 5.9 specifies how to manage and control the residents' funds. If the home manages its residents funds it must be bonded in an amount sufficient to cover all resident accounts. The home must use generally acceptable accounting principles to manage the funds in the residents' best interests.

Subsection 5.10 sets forth the procedures to be followed when a resident dies. The death is to be reported immediately to the attending physician and to the resident's family or legal representative. The home must turn over the resident's funds and property to the resident's estate.

Section 6 sets out the standards for board and care home personnel. The home is required to have written personnel policies and procedures. The home must have at least one staff person on duty 24 hours a day. There must be sufficient staff on duty to meet the service needs of the residents. A proposed added requirement is that if residents experience poor outcomes due to lack of supervision or unmet needs the agency may require the home to hire additional staff.

New employees must be trained on emergency procedures and disaster plans within 24 hours of employment. Within 15 days new employees must undergo more in-depth orientation and training. In addition, the home must provide ongoing in-service training annually.

The home must maintain a confidential personnel record on each employee. This record must include the employee's training and health records. Personnel records must be maintained for at least 3 years following the termination of employment.

Section 7 contains information on the rights of residents and posting of information. The home is required to post in a conspicuous place the residents' rights, phone numbers of the abuse hotline, the agency, the state ombudsman and the regional ombudsman, and information about the ombudsman program. The subsections of section 7 specify the residents rights in the following

areas: treatment (7.3), protection of resident funds (7.4), self determination (7.5), privacy and confidentiality (7.6), complaints (7.7), work (7.8), mail and communication (7.9), access and visitation (7.10), personal property (7.11), and civil rights (7.12).

Section 8 sets forth the health care and social standards. The home is to encourage and assist all residents in developing and maintaining independence and self-determination. The agency has suggested a modification for the operational standard for house physician. If the home has a house physician and the resident elects to use him, the home must ensure that the resident is aware of the physician's name, speciality, means of contact, and if the physician's duties are being provided by a nurse practitioner or a physician's assistant.

The home must ensure that each resident has a written health assessment by a licensed physician or other health care professional not more than 60 days prior to admission nor more than 5 working days after admission. An assessment must be completed each year thereafter. Within 30 days of admission each resident must have a written functional needs assessment completed by a health care professional. Each resident must have a service plan based upon his assessment within 45 days of admission. It must be updated whenever there is a significant change in the resident's condition. The resident may refuse any treatment. However, the home must advise the resident that refusal may result in a condition which requires services which are not available at the home. The home must provide treatment and care based upon the functional needs assessment. The home must provide a planned and meaningful activity program to meet the needs of the residents.

Subsection 8.5 explains how the home is to deal with resident medications. Most of these are Class I standards. The home must provide for the administration or self-administration of medications in accordance with State law. The home must have written policies, developed with a licensed health care professional, for the administration of medications.

This rule prohibits obtaining or administering prescription drugs without a written order or prescription. It further requires the home to notify the health care professional responsible for the resident's care of any over the counter medications the resident may use. The agency has suggested a modification in this area which requires persons who have issued verbal orders to review and sign the order within 10 working days of the original order date. However, there is no indication of who would give such order, who would receive and carry them out or under what circumstances they would be appropriate. The use of PRN controlled or prescription drugs requiring judgment capabilities beyond the expertise of "unlicensed" staff or a fluctuating medication regimen is prohibited unless the resident is capable of determining when the medication is needed or the medication is otherwise administered in accordance with the law.

Additional requirements for medications which require refrigeration have been suggested by the agency. The home must provide either a locked room, a locked refrigerator or a locked box within the refrigerator for medication storage. The refrigerator must have a thermometer and the temperature must be maintained within the recommended temperature range for the medication.

Schedule II controlled substances must be stored so that they are securely protected by two locks. The key to the separately locked Schedule II drugs can not be the same key that is used for securing the non-scheduled drugs.

Subsection 8.5.12 deals with the disposition of unused medications in the event that a resident is no longer taking the medication, leaves the facility or dies. This subsection has been substantially rewritten. Medications that are unopened in the unit dose pack or the manufacturers' originally sealed container are to be returned to the issuing pharmacy unless prohibited by law. No drugs that are Schedule II, III, IV or V controlled substances can be returned to the pharmacy. Any medications that are returned must be recorded in a log. The log must have the signatures of the receiving pharmacist and the sending home's administrator. In addition, the medication must be fully identified in the log. The log must be kept for at least 2 years.

Schedule II, III, IV and V controlled substances are to be destroyed by the facility in the presence of a pharmacist and the administrator. Counsel has provided the agency with the portion of the Board of Pharmacy rule, 15 CSR 1.18 for the proper method of disposing of medications. It is unclear from the Residential Board and Care rule whether a consulting pharmacist is to be retained by the home to develop policy and procedure for medications.

Subsection 8.6 establishes procedures for how the home is to respond to accidents, illness and major incidents. Anytime a resident has an illness or there is an incident that results in injury or a resident complaint the home must have a health care professional assess the situation. It is unclear if the resident complaint means a formal complaint or that a resident says he is ill and needs to see a doctor. If there is an obvious need for emergency assistance the home is to obtain assistance and then contact the health care professional. The professional must assess the severity and cause of the accident or illness; advise the home as to the need to seek emergency assistance; record the actions taken and recommend to the home any actions which may avoid similar accidents or illness.

Major incidents must be reported to the agency as soon as possible. Written policies and procedures must be in place and enforced for contacting residents' family, legal representatives, physician or designated health service professional to advise them of any apparent significant deviations from the resident's normal condition.

Physical restraints can only be used in emergencies, under a doctor's orders and for no longer than 24 hours. Restraints can only be used for the safety of the resident and or others in the home until professional help arrives. Restraints are limited to cloth vests or soft belt restraints. Restraints are required to be released every 2 hours for at least 10 minutes. It is unclear whether the restrained person is supervised or even observed periodically while in restraint. It is not stated in the rule whether restraint in certain positions is prohibited. For example, four point, face down restraint could result in suffocation and should not be used.

Certain persons, including health care professionals, are required by law to report adult abuse, neglect or emergency situations. Such reports are to be made immediately to the local adult protection services hotline number and to the home's licensing agency. The agency may report any failures by health care professionals to report abuse and neglect situations to the professionals licensing board. The licensee must assure that any report of abuse or neglect is immediately and thoroughly investigated and reported to the agency within 72 hours. They must also insure that further abuse does not occur during the course of the investigation.

Section 9 covers dietetic services. The home must offer freshly prepared foods. At a minimum this must be 3 meals a day, seven days a week, special diets and snacks which meet resident needs and choices. Meals must provide the nutrients and calories for each resident based upon substantial compliance with current recommended dietary allowances unless a physician orders otherwise. The home is to encourage resident participation in menu planning, serve meals at mutually agreed upon times and accommodate residents who are unable to eat at the planned meal time. The home must have a designated dinning area, private living areas and hallways may not be routinely designated as dining areas.

Section 10 covers fire safety, disaster and emergency preparedness. The home must provide evidence of compliance with the applicable fire code. The home must have a written disaster and emergency preparedness plan. The plan must cover such events as missing residents, high winds, tornadoes, floods, utility failure, and severe winter weather. Emergency call information must be posted at all staff telephones. The disaster and emergency preparedness plan must be rehearsed by all personnel from all shifts once yearly.

Section 11 sets forth the physical plant and sanitation requirements for the home. The home must comply with the state building code and provided for accessibility for individuals with a physical disability. The home must have electric power and sufficient hot and cold running water to meet the needs of residents. The home must have water and sanitation facilities which comply with state and federal law.

Pets are permitted in the home, they must be properly licensed and vaccinated. Residents must be informed prior to admission that the home has pets. If the home decides to allow pets at a later time all of the residents must agree to allow pets.

The home must be clean and maintained in a safe and sanitary condition and in good overall repair. There must be laundry facilities or use of an outside laundry service. If laundry is done in house there must be sufficient space in a separate area room to do so. Soiled and clean laundry are not to be stored together. Sanitizing agents must be used for kitchen, bath and bed linens. Table and kitchen linens must be laundered separately from other wash.

The general living environment must be maintained in a safe condition. The home and yard are to free of obstacles. Tools and equipment must be kept on shelves or in closets, sharp knives must be kept in drawers or knife holders. The doors and windows must have functioning locks for

security. The outside doors must have at least one lock that permits keyless egress. Hot water temperature at resident bathing fixtures is to be at a minimum 105 degrees. It is to be no more than 120 degrees at non-bathing fixtures and no more than 110 degrees in tubs and showers.

For interior comfort the temperature is to be maintained as a level comfortable to the residents. There must be at least 15 square feet of common living area, excluding bedrooms, bathrooms, hallways and closets, per resident. Single occupancy bedrooms must provide at least 80 square feet of space. Multiple occupancy rooms must contain no less than 60 square feet of space per resident. Each resident must have a table or chest with drawers for storage of personal items. Each resident must be provided with a light suitable for reading which is accessible to the bed; a comfortable chair; an adequate personal dresser for clothing and a closet shared by no more than 2 people.

Each resident must have access to a toilet and washroom without entering another bedroom. No more than 6 people may share a toilet and washroom. There must be at least 1 bathing facility for each 10 residents and at least 1 on each floor where there are resident bedrooms.

Section 12 sets forth the requirements for the provision of limited and intermittent nursing care. If a home provides limited and intermittent nursing care they must contract with a licensed registered nurse to oversee the provision of nursing care. The home administrator may oversee nursing care if he is a licensed registered nurse. Arrangements with a home care agency providing only direct care do not meet this requirement. The home can not house residents who are unable to recognize danger or walk independently on any floor other than the first floor of a multi-level home. The home must assure that verbal orders are recorded in the resident's record, signed by a nurse and countersigned by the physician or other health care professional who issued the order within 10 working days of its issuance. All nursing procedures and medical treatment must be performed by a registered or practical nurse or other qualified staff. The home must record the weight of each resident upon admission and at least monthly thereafter or more frequently if ordered by a physician.

The use of any PRN medications is prohibited unless certain conditions are met. A registered nurse must maintain a general record indicating when the nurse visits the home, unless the nurse is employed full time at the home; the duties performed; and a statement of concerns and recommended actions. A registered nurse must also maintain medical records for the residents and provide overall supervision of the nursing services provided to the residents. One of the agency's suggested modifications is to change the required daily contact with the home and visits to the residents at least 8 hours a week to contact as necessary to ensure appropriate resident care. Visits must be on at least a weekly basis.

The registered nurse must complete a written nursing assessment for each resident within 24 hours of admission. In addition the nurse must evaluate each resident's functional capabilities to assure that an optimal range of motion is maintained in each joint. The nurse must also evaluate the administration of resident's medication.

The registered nurse is also responsible for training or recommending to the home needed training for the staff. The support staff must have at least 8 additional hours of annual training specific to the provision of limited and intermittent nursing care to residents of the home. The home must identify resident's need in a service plan which clearly states the interventions to be provided, frequency to be provided and the level of staff to carry out the intervention. It is unclear how this is different from the required medical assessment, functional assessment and the needs assessment. If a resident is receiving services from an outside provider the home must obtain progress reports from the provider at least once every sixty days until the service is no longer needed.

Section 13 sets forth the penalties for violation of this rule. Once the agency determines that a violation has occurred it is to issue a written citation. The citation must include the following information: (1) the penalty; (2) description of the nature of the violation; and (3) the basis upon which the agency assessed the penalty and selected the amount of civil penalty. For each violation of a Class I standard the penalty is not less than \$100 nor more than \$1,000. (The agency has suggested as a modification that the maximum penalty be reduced from \$10,000 to \$1,000.) For each violation of a Class II standard the penalty is not less than \$50 nor more than \$100. (The agency has suggested as a modification that the maximum penalty be reduced from \$1,000 to \$100.) For each violation of a Class II standard the penalty is not less than \$50 nor more than \$100. (The agency has suggested as a modification that the maximum penalty be reduced from \$1,000 to \$100.) For each violation of a Class III standard the penalty is not less than \$25 nor more than \$50. (The agency has suggested as a modification that the maximum penalty be reduced from \$250 to \$50.) Each day a violation continues after the day by which it was to have been corrected or if no plan of correction was submitted, the date it was due, constitutes a separate violation. In determining whether to assess a civil penalty and the amount of the penalty the agency must consider the gravity of the violation.

If the home wishes to contest a citation or the date specified for corrective action it must serve the secretary with written notice within 4 business days. The rule refers the reader to another DHHR rule for the requirements of the notice. Counsel has suggested that this issue is important enough to warrant put the requirements in this rule. The agency will assess interest at the rate of 2% beginning 30 days after the secretary's final order. the rule fails to state if the interest will be assessed per day, week or year. If the secretary's order is not appealed or if it is appealed and upheld, the agency will seek a judgment in the amount of the penalty, interest and legal costs. All money collected by the assessment of civil penalties and interest will be paid into a special resident benefit account for the protection of the health or property of residents of facilities in West Virginia.

Section 13 explains the conditions under which a home's license may be restricted or revoked. The agency may place restrictions upon or revoke the current license of a home if there is evidence of such things as lack of financial stability, conviction of the applicant or the home administrator for a crime relating to the provision of health care, revocation of a license to operate a health care facility in the past 5 years, fraud in the application process, or inappropriate conversion of residence property. The agency has the authority to ban new admissions or reduce bed capacity of a home or

both if an inspection reveals an immediate and serious threat to one or more residents; there is avoidable decline in a resident's condition; or a decline in the functional abilities of one or more residents due to neglect or abuse. The agency must believe that a ban on admissions or the reduction in bed capacity or both would put the home in a position to deliver adequate care.

Section 14 states that administrative due process and remedies of actions taken under this rule will be provided in accordance with 64 CSR 1.

AUTHORITY

Statutory authority: W.Va. Code, § 16-5C-5, which provides, in part, as follows:

(a) All rules and regulations shall be approved by the board of health and promulgated in the manner provided by the provisions of article three, chapter twenty-nine-a of this code. The board of health shall adopt, amend or repeal such rules and regulations as may be necessary or proper to carry out the purposes and intent of this article and to enable the director to exercise the powers and perform the duties conferred upon the director by this article.

(b) The board of health shall promulgate regulations establishing minimum standards of operation of facilities including, but not limited to, the following: . . ."

ANALYSIS

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

No.

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

Yes.

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

No.

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

Yes.

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

Yes.

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

No.

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

Yes.

VIII. OTHER.

Counsel has suggested technical modifications.