

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Department of Health and Human Resources TITLE NUMBER: 64

RULE TYPE: Legislative; CITE AUTHORITY §§16-5C-5 and 16-5H-2

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

TITLE OF RULE BEING PROPOSED: Residential Board and Care Homes

DATE OF PUBLIC HEARING: December 30, 1991 TIME: 10:00 a.m.

LOCATION OF PUBLIC HEARING: Conference Room C

Conference Center - Building 7

Capitol Complex

Charleston, W. Va. 25305

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Regulatory Development
Room 204, Building 3
Capitol Complex

Comments sent by mail must be postmarked no later than

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

Charleston, W. Va. 25305
Attn: Kay Howard

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Taunja Willis Miller
Taunja Willis Miller
Secretary

6-20

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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FILED
1990 SEP 28 2 12
DEPT. OF HEALTH AND HUMAN RESOURCES
CHARLESTON, WV

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Board of Health TITLE NUMBER: 64

RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code §16-5C-5 and §16-5H-2

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

TITLE OF RULE BEING PROPOSED: Residential Board and Care Homes

DATE OF PUBLIC HEARING: October 29, 1990 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: Conference Room B

Conference Center, Building 6

Charleston, WV 25305

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Kay Howard

Regulatory Development Section

Room 204, Bldg. 3, Capitol Complex

Charleston, WV 25305

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Taunja Willis Miller
Taunja Willis Miller, Secretary
Dept. of Health and Human Resources

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: Legislative Interpretive Procedural

Agency Division of Health Address Building 3, Capitol Complex
Charleston, W. Va. 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	FY92*	FY93	Thereafter
Estimated Total Cost	\$	\$	\$171,163	\$236,275	\$248,254
Personal Services			105,075	152,025	158,106
Current Expense			52,588	84,250	90,148
Repairs and Alterations			0	0	0
Equipment			13,500	0	0
Other			0	0	0
Revenue			86,500		

2. Explanation of above estimates.

*FY '92 estimate is for 6 months. See attachment for details.

3. Objectives of these rules:

This proposed new legislative rule establishes general standards and procedures for regulating residential board and care homes which are places which provide accommodations and personal assistance to three to eight adults who are dependent upon the services of others by reason of physical or mental impairment but who are capable of self-preservation in emergency situations involving imminent danger and do not require nursing care. The proposed rule provides for the health, safety and welfare of residents of such residential board and care homes.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

According to State Code, residential board and care homes bear the direct cost of initial inspections; thus the first-year costs to state government are balanced to some extent by the estimated revenues. Each year thereafter, all cost for inspection will be borne by the State. However, if additional funds are not available, the residential board and care homes will not be inspected for licensure.

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

The residential board and care homes will bear all identifiable direct costs of inspection during the first year of enforcement or upon initial licensure inspection. The average cost of a first inspection is estimated at \$450.


Any cost of compliance with the regulations will also be borne by the board and care homes.

C. Economic Impact on Citizens/Public at Large.

The impact on citizens or the public at large is not immediately identifiable; however, it is reasonable to assume the cost of first year inspections will be reflected in increased charges to residents.

Date November 1, 1991

Signature of Agency Head or Authorized Representative


Taunja Willis Miller, Secretary
Department of Health and Human Resources

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

Explanation of cost estimates.

One hundred and seventy-four applications have been submitted for licensure as residential board and care homes. An additional 332 homes have failed to respond to requests for applications. Based on the historical discovery rate, it is estimated that over the next two years an additional 160 residential board and care homes will become known.

Approximately 654 adult family care homes are not included in these estimates; for these homes, the rule allows approval by the Division of Human Services to serve as licensure.

Inspection costs were estimated based on personal care home inspection time and the following assumptions:

1. An estimated total of 666 homes should be reviewed under the residential board and care regulations during the current and succeeding fiscal year.
2. Seventy-five percent of these homes will not meet the requirements to be licensed as a residential board and care home -- an estimated 500 homes.

Of the homes not meeting licensure requirements, approximately 25%, or 120 homes, may choose to reduce their population to 2 beds or less to qualify as a legally unlicensed facility. The estimated time required for administrative review and determination is 5 hours per home.

For the remaining 380 homes not meeting licensure requirements, the estimated time for administrative review and determination is 5 hours. An additional 20 hours of legal and administrative time will be needed for enforcement actions per home.

3. For each of the remaining 166 homes able to come into compliance with the rule, it is estimated that 15 hours of travel and inspection time will be required for licensure.

The amount of time required for travel, inspection, administrative review, and enforcement will require an additional 1.50 administrative staff, 3.75 legal staff and 1.50 inspection staff. In addition to personal service costs, funds will be needed for fringe benefits, travel and general office expenses.

RULE ABSTRACT

Agency: Department of Health and Human Resources

Rule Title: Residential Board and Care Homes

CSR Title and Series: 64 CSR 65

Type: Legislative

Summary: This proposed new legislative rule establishes general standards and procedures for regulating residential board and care homes, which are places which provide accommodations and personal assistance for a period of more than twenty-four hours to three to eight adults who are dependent upon the services of others by reason of physical or mental impairment but who are capable of self-preservation in emergency situations involving imminent danger and who do not require nursing care. The proposed rule provides for the health, safety and welfare of residents of such residential board and care homes. It includes standards for administration of the home, resident-care employees, resident rights, general health and safety, services and recreational activities, food service, and physical requirements for the home. Penalties for violation are provided by this proposed rule and by W. Va. Code §§16-5C-1 et seq. and 16-5H-1 et seq. The rule has been developed to comply with W. Va. Code §§16-5C-1 et seq. and 16-5H-1 et seq.

For further information contact: Sandra Daubman, Office of Health Facility Licensure and Certification, telephone 348-0050 or Regulatory Development Section, telephone 348-3223, Department of Health and Human Resources, Capitol Complex, Charleston, West Virginia 25305.

11/5/91

[PROPOSED]

TITLE 64

WEST VIRGINIA ADMINISTRATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Residential Board and Care Homes

Series 65

199_

For Public Hearing
December 30, 1991

[PROPOSED]
WEST VIRGINIA ADMINISTRATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
RESIDENTIAL BOARD AND CARE HOMES
64 CSR 65

TABLE OF CONTENTS

	Page
\$64-65-1. General	1
1.1. Scope	1
1.2. Authority	1
1.3. Filing Date	1
1.4. Effective Date	1
1.5. Repeal of Former Rule	1
\$64-65-2. Application and Enforcement	1
2.1. Application	1
2.2. Enforcement	1
\$64-65-3. Definitions	1
3.1. Abuse	1
3.2. Activities of Daily Living	1
3.3. Administration of Medication	2
3.4. Boarding Home	2
3.5. Capacity	2
3.6. Legal Representative	2
3.7. Nursing Care (Services)	2
3.8. Personal Assistance	2
3.9. Physical Restraint	2
3.10. Resident	2
3.11. Residential Board and Care Home	2
3.12. Secretary	3
3.13. Self-preservation	3
3.14. Supervision	3
3.15. Supervision of Self-Administered Medications	3
\$64-65-4. State Administrative Procedures	3
4.1. General Licensing Provisions	3
4.2. Licensure Application Procedure	4
4.3. Application for License	5
4.4. License Renewal	5
4.5. Provisional License	6
4.6. Inspections	6
4.7. Complaint Investigation	7
4.8. Plans of Correction	8
4.9. Release of Reports and Records	9
4.10. Classification of Standards	9
4.11. Point System	10
4.12. Residential Board and Care Home Rating	11
\$64-65-5. Administration of the Residential Board and Care Home	12
5.1. General Administrative Requirements	12
5.2. Administrator	13

64 CSR 65

5.3.	Admission, Discharge and Transfer	13
5.4.	Records	14
\$64-65-6.	Resident Care Employees	16
6.1.	Employee Qualifications	16
6.2.	Staffing Requirements	16
6.3.	Employee Orientation	17
\$64-65-7.	Resident Rights	17
7.1.	General Rights	17
7.2.	Rights to Communication and Personal Property	18
7.3.	Rights with Regard to Treatment	19
7.4.	Rights With Regard to Abuse and Restraint	19
7.5.	Confidentiality, Privacy and Record Access	19
7.6.	Financial Rights	20
7.7.	Access	21
7.8.	Notice of Rights and Responsibilities	21
\$64-65-8.	General Health and Safety	21
8.1.	Operational Standards	22
8.2.	Personal Care, Health Care and Medication	22
8.3.	Accident and Illness Procedure	23
\$64-65-9.	Resident Services and Recreational Activities	23
9.1.	Resident Services	23
9.2.	Recreational Activities	24
9.3.	Pets and Other Animals	24
\$64-65-10.	Food Service	24
10.1.	General	24
10.2.	Nutrition	25
10.3.	Food Service Sanitation	26
10.4.	Reports, Menus, and Diet Manual	27
\$64-65-11.	Physical Requirements for the Residential Board and Care Home	27
11.1.	Life Safety and Construction	27
11.2.	General Requirements	28
11.3.	Environmental Requirements	28
11.4.	Interior Comfort and Safety	29
11.5.	Bedrooms	30
11.6.	Toilet and Bathing Facilities	31
11.7.	Laundry	32
\$64-65-12.	Penalties	32
\$64-65-13.	Administrative Due Process	33
\$64-65-14.	Severability	33

[PROPOSED]
TITLE 64
WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH

SERIES 65
RESIDENTIAL BOARD AND CARE HOMES

§64-65-1. General.

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

1.2. Authority - W. Va. Code §§16-5C-5 and 16-5H-2.

1.3. Filing Date -

1.4. Effective Date -

1.5. Repeal of Former Rule - This legislative rule repeals WV 64 CSR 49, Adult Group Home Licensure, 1986.

§64-65-2. Application and Enforcement.

2.1. Application - This rule shall apply 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, however, That approval of a residential board and care home as an adult family care home by the department shall be accepted as a residential board and care home license issued under this rule.

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

§64-65-3. Definitions.

3.1. Abuse - Mistreatment or neglect of residents, including physical bodily harm, misuse of physical or chemical restraints, infliction of verbal or emotional suffering, disregard for necessities of daily living, lack of care for medical problems, verbal or emotional neglect and illegal or improper use of a resident's personal property.

3.2. Activities of Daily Living - The activities that individuals generally perform regularly in the course of maintaining their existence, such as eating, dressing, walking, personal grooming, getting in and out of bed, and other similar activities or doing laundry, managing money, cleaning their rooms, shopping,

using public transportation, writing letters, making telephone calls, participating in recreational and leisure activities, and other similar activities.

3.3. Administration of Medication - Opening a container of medication, removing a prescribed dosage and giving the medication to the person for whom it is prescribed, including giving injections and administering eyedrops.

3.4. Boarding Home - An establishment which is held forth to the public as providing, or which is operated to provide, only room and board to persons not in need of medical or nursing services, personal supervision or assistance in performing activities of daily living.

3.5. Capacity - The number of residents for which a home has been licensed to provide care.

3.6. Legal Representative - For purposes of this rule:

3.6.1. a committee appointed pursuant to W. Va. Code §27-11-1 et seq.;

3.6.2. a guardian appointed pursuant to W. Va. Code §44-10A-1 et seq.;

3.6.3. a person, power of attorney, or any other entity lawfully appointed or designated to act on behalf of a resident.

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

3.8. 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.

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

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

3.11. 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 ownership 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 three (3) to eight (8) persons who are not related to the owner or manager by blood or marriage, within the degree of consanguinity of second cousin, and who are dependent upon the services of others by reason of physical or mental impairment but who do not require nursing services and who are capable of self-preservation.

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

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

3.14. Supervision - The assumption of varying degrees of responsibility for the safety and well-being of residents including, but not limited to, monitoring the activities of the resident while on or off 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 other similar activities.

3.15. 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 dosage against the label of 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 such operation: Provided, however, That any person who filed an application for a residential board and care home license with the secretary prior to the effective date of this rule may continue to operate such residential board and care home without a license until such time as the secretary grants or denies the license.

4.1.2. A separate license shall be required for homes maintained or operated on separate premises even though maintained or operated by the same licensee. Separate buildings on the same premise operated as residential board and care homes shall require separate licenses, unless the secretary determines otherwise.

4.1.3. A license shall be valid only for the licensee and for the structure named in the application, 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.

4.1.4. If there is to be a change of licensee of a residential board and care home, the person proposing to be the new licensee shall immediately submit an application for a license, and such application shall have the effect of a valid license for ninety (90) days from the date the application is received by the secretary or until a site visit is conducted and a decision regarding licensure status is issued.

4.1.5. The residential board and care home shall notify the secretary of any change in the name of the home.

4.1.6. If a person owns more than one residential board and care home, each home shall have a separate identification.

4.1.7. 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.

4.1.8. If any residents of a residential board and care home are to be moved to an unlicensed location, the licensee shall apply for a license for the new location at least ninety (90) days in advance of the move.

4.2. Licensure Application Procedure.

4.2.1. An application shall be filed with the secretary through the office of health facility licensure and certification.

4.2.2. The application shall be submitted on forms provided by the secretary and shall be accompanied by a license fee in the form of a check or money order payable to the West Virginia Office of Health Facilities Licensure and Certification.

4.2.3. Incomplete forms shall not be reviewed, and shall be returned to the applicant.

4.2.4. The application fee is non-refundable and the amount is established in accordance with §16-5C-6.

4.2.5. The application and fee for application shall be submitted at least ninety (90) days prior to the date proposed for commencement of operations.

4.2.6. The application and accompanying forms shall be complete and shall bear the notarized signature of the applicant.

4.3. Application for License.

4.3.1. The signature on the application and accompanying forms shall serve as a release for obtaining references, credit and other background information.

4.3.2. The secretary may deny a license if an applicant is found to be irresponsible or unsuitable to operate, direct, or participate in the operation of a residential board and care home as evidenced by the following reasons:

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

4.3.2.2. if an applicant, and, if applicable, operator is found to have been arrested for, adjudicated, or convicted of any felony or of a misdemeanor related to providing care in a health care facility or in operating a health care facility, in which case the secretary shall, on a case by case basis, assess the seriousness of the offense, as well as the type and frequency of the offense;

4.3.2.3. when the secretary determines, based on the applicant's or operator's history, that there is reason to believe that abuse, incompetent care, or exploitation of residents may occur;

4.3.2.4. the applicant has been denied a license to operate a health care facility in West Virginia or any other jurisdiction during the previous five (5) years or a revocation of such applicant's license;

4.3.2.5. there has been 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.

4.3.3. The secretary, after inspection, shall issue an initial license if the applicant complies with this rule and the requirements of W. Va. Code §§16-5C-1 et seq. and 16-5H-1 et seq.

4.4. License Renewal.

4.4.1. Applications for renewal of a license shall be post-marked 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. The secretary shall issue a renewal license when the following conditions are met:

4.4.2.1. the home is found to be in compliance with the provisions of W. Va. Code §§16-5C-1 et seq. and 16-5H-1 et seq. and this rule;

4.4.2.2. the applicant has submitted a complete application and all requested documentation regarding financial capacity and management of the home; and

4.4.2.3. the home has met all class I standards and has attained at least a "C" rating according to this rule.

4.5. Provisional License.

4.5.1. A provisional license may be issued when:

4.5.1.1. the home has received an "F" rating; or

4.5.1.2. all requirements for renewal of a license are not met prior to the expiration of the previously issued license.

4.5.2. A provisional license shall not be issued when the home:

4.5.2.1. is in violation of any Class I standards;

4.5.2.2. is assigned a rating of "F" in three or more licensure categories; or

4.5.2.3. has a record of noncompliance with this rule;

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

4.5.3. A provisional license shall not be renewed.

4.5.4. The secretary shall determine the period of time for which a provisional license shall be 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, a subsequent application for a license shall be treated as an initial license and 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 such inspections by duly authorized representatives as deemed necessary to carry out the intent of the §§16-5C-1 et seq. and 16-5H-1 et seq. of the West Virginia Code and of this rule.

4.6.2. The secretary shall have 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 such a home refuses entry, the secretary may apply to the circuit court in which the home is located or the circuit court of Kanawha County for a warrant authorizing an inspection.

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

4.6.4. The secretary's authorized representative shall conduct at least one unannounced inspection in order to assign a rating for all categories of standards prior to issuance of an initial license. Inspections will be conducted after:

4.6.4.1. the application and fee have been received and been determined to be complete;

4.6.4.2. all requested documentation verifies the readiness of the home for an inspection;

4.6.4.3. fees for the cost of inspections have been received by the secretary; and

4.6.4.4. 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. An inspection may be limited to determination of compliance of Class I standards for a home when this home has demonstrated no previous assigned rating lower than "B" and which has had no substantiated allegations concerning lack of safety, quality of care or infractions of resident rights registered against it.

4.6.6. The secretary shall prepare a written report of any inspection made pursuant to this rule and a copy shall be mailed to the licensee or operator, 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 or of §16-5C-1 et seq. or §16-5H-1 et seq. of the West Virginia Code 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 shall have the authority to conduct investigations as necessary to determine the validity of the complaint and will 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. A description of any corrective action that a home will be required to take within a specified time frame and any disciplinary action to be taken by the secretary shall be sent to the complainant and to the licensee.

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

4.7.5. Instances of actual or suspected neglect or abuse or other situations which are required to be reported under W. Va. Code §9-6-9 which are discovered or observed as a result of any complaint investigation, any inspection, or investigation of a licensed or unlicensed residential board and care home shall be reported as required by law.

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:

4.8.3.1. the violations to be corrected;

4.8.3.2. action taken or proposed to correct the violations and procedures to prevent their recurrence; and

4.8.3.3. a calendar date by which the violations will be corrected, which date shall allow the shortest possible time in which the residential board and care home may reasonably be expected to correct the violation. A home will ordinarily be expected to achieve compliance within sixty (60) days of the inspection, however, more time may be permissible 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, a reasonable amount of time, but no more than fifteen (15) working days, shall be allowed for submission of a revised plan.

4.8.7. The secretary may conduct such procedures as are reasonable and necessary 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 shall make available for public inspection information concerning applications, inspections, investigations and other reports. Copies shall be provided at a reasonable cost upon request.

4.9.2. The names of residents shall be kept confidential and shall not be disclosed without the written permission of the resident or his or her legal representative. 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 deemed 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. A Class I standard shall be assigned 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 would 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. A Class II standard shall be assigned 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 would 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. A Class III standard shall be assigned 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. Points scored in any individual category shall not be permitted to offset deficiencies within another category. Therefore, no total of value points is to be computed. 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:

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

4.12.5.2. for an average score of 2.0 through 2.59, an overall rating of "C" shall be assigned;

4.12.5.3. for an average score of 2.6 through 3.59, an overall rating of "B" shall be assigned; and

4.12.5.4. for an average score of 3.6 through 4.0, an overall rating of "A" shall be assigned.

4.12.6. A home with an overall rating of "F" may be issued a provisional license as described in Section 4.5 of this rule and in W. Va. Code §16-5C-6(d). 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.

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

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

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

5.1. General Administrative Requirements. (Class III)

5.1.2. The residential board and care home shall adopt policies and procedures governing the personal care and safety of residents, the protection of resident personal and property rights, the operation of the home, the services provided and all other policies and procedures required by this rule.

5.1.3. All policies and procedures shall be in writing and kept current with changes indicated by a dated signature of the administrator.

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

5.1.5. 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; the process for residents and others to make complaints and raise concerns about the home known to the administrator; and the use and storage of personal belongings such as furnishing and clothing. House rules may not be inconsistent with this rule.

5.1.6. The residential board and care home shall make copies of this rule readily available to residents without the residents having to ask for the rule.

5.1.7. The residential board and care home shall inform residents how to gain access to copies of current government inspection reports and plans of correction.

5.1.8. The residential board and care home shall comply on a timely basis with the requirements of this rule regarding the submission of plans of correction and the correction of deficiencies identified in such plans of correction.

5.2. Administrator. (Class II)

5.2.1. A residential board and care home shall have an administrator who is at least twenty-one (21) years of age.

5.2.2. The administrator shall have completed high school or shall have a general education development (GED) certificate, except that individuals who have demonstrated the ability to read and write and to follow written instructions may be approved as residential board and care home administrators: Provided, That application shall be made during the twelve (12) month period following the effective date of this rule.

5.2.3. The administrator of a residential board and care home shall be of good moral character. In assessing moral character, the secretary may consider: 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, or conviction within the previous five (5) years of a crime substantially related to a dependent population.

5.2.4. The administrator shall participate in formal continuing education relevant to the provision of residential board and care services.

5.3. Admission, Discharge and Transfer. (Class II)

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

5.3.2. Individuals admitted to a residential board and care home may be in need of personal assistance in activities of daily living or in need of supervision because of mental or physical impairment but shall not be in need of extensive, on-going nursing care. Individuals admitted to a residential board and care home shall be capable of self-preservation. (See also Section 8.2.5 of this rule.)

5.3.3. 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. The contract shall specify:

5.3.3.1. admission criteria in conformance with definitions and conditions given in this rule;

5.3.3.2. services to be offered and a full disclosure of fees for services, including the home's policy regarding refunds;

5.3.3.3. a statement of non-discrimination against residents on the basis of race, national origin, religion, age, or

gender;

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

5.3.3.5. how the home will protect the resident's personal property from loss and theft;

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

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

5.3.3.8. the responsibility of the resident's physician for required medical examinations and treatment orders; and

5.3.3.9. the home's policy regarding transfers and discharges and the resident's and the home's transfer and discharge notification responsibilities.

5.3.4. Each party to the contract shall have a copy of the contract.

5.3.5. Residential board and care homes shall not offer life care contracts.

5.4. Records. (Class III)

5.4.1. The following records and documents shall be available at the home to appropriate State and federal agencies upon request:

5.4.1.1. documentation of visits by any professional consultants employed by the home related to resident care;

5.4.1.2. a copy of all current policies and procedures;

5.4.1.3. documentation of control and ownership of the home; and

5.4.1.4. all other records required by State or federal laws and regulations, except those for which maintenance elsewhere is permitted by the secretary.

5.4.2. The residential board and care home shall initiate upon admission and maintain a resident care record for each resident of the home. The record shall contain the following basic

information:

- 5.4.2.1. name;
 - 5.4.2.2. social security number;
 - 5.4.2.3. birth date;
 - 5.4.2.4. sex;
 - 5.4.2.5. marital status; and
 - 5.4.2.6. religious preference and affiliation, if any.
- 5.4.3. The resident's record shall contain names, addresses and telephone numbers for the following relevant persons:
- 5.4.3.1. physician;
 - 5.4.3.2. dentist;
 - 5.4.3.3. legal representative, if applicable;
 - 5.4.3.4. person, organization or agency responsible for payments for an support of the resident, if applicable;
 - 5.4.3.5. next of kin or other interested relatives;
 - 5.4.3.6. persons to be notified in case of an emergency or death;
 - 5.4.3.7. any case management agency or organization; and
 - 5.4.3.8. any day care or other programs in which the resident regularly participates.
- 5.4.4. The record shall contain the following information relevant to the personal supervision and assistance to be provided to the resident by the home:
- 5.4.4.1. initial physician assessment and social history; and
 - 5.4.4.2. 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.
- 5.4.5. The residential board and care home shall maintain a permanent resident register in chronological order according to date of admission. The register shall include date of admission, name of resident, date of last day of residency in the home, and address to which discharged.

5.4.6. Resident care records shall be retained for at least three (3) years past the death or discharge of a resident, or the closure of the residential board and care home, except that records shall not be required to pre-date the effective date of this rule. At the time of closure, the home shall notify the secretary of the storage location of the records. In the event of change of ownership of the home, resident care records shall be transferred to the new owner.

§64-65-6. Resident Care Employees.

6.1. Employee Qualifications. (Class II)

6.1.1. The administrator shall assure that all staff are:

6.1.1.1. assigned duties in accordance with their level of education, and preparation for their responsibilities and experience;

6.1.1.2. of good character;

6.1.1.3. clean and well-groomed;

6.1.1.4. at least eighteen (18) years of age;

6.1.1.5. able and willing to accept supervision and training;

6.1.1.6. licensed in accordance with any applicable State law; and

6.1.1.7. not known to him or her as indicated by reference checks as an employee who has abused or neglected dependent persons.

6.2. Staffing Requirements. (Class II)

6.2.1. The residential board and care home shall provide for qualified relief personnel to substitute for staff during vacation, illness, or other absences from the home.

6.2.2. Qualified personnel shall be sufficient in number and competence to provide a quality of service which will meet the needs of the residents on a twenty-four (24) hour basis. The number and kind of employees required shall be dependent upon the physician plant, the number of residents served and the services provided.

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

6.3. Employee Orientation. (Class III)

6.3.1. The residential board and care home shall implement a written plan for orientation and in-service training.

6.3.2. Orientation and training for employees with resident care responsibilities shall include:

6.3.2.1. personal grooming care;

6.3.2.2. personal hygiene care;

6.3.2.3. feeding assistance;

6.3.2.4. providing assistance in other activities of daily living;

6.3.2.5. emergency care of residents;

6.3.2.6. instruction in the policies and procedures of the home;

6.3.2.7. resident rights;

6.3.2.8. complaint procedures of the home;

6.3.2.9. nutrition;

6.3.2.10. the activities program;

6.3.2.11. emergency plans for the home, including fire safety and evacuation plans;

6.3.2.12. protection of resident privacy and confidentiality; and

6.3.2.13. information on: the State adult protective services agency and the toll-free hot line number (1-800-352-6513); the State licensure and certification agency (1-304-348-0050); the State commission on aging (1-304-348-3317); and various other concerned advocacy and protection organizations.

§64-65-7. Resident Rights.

7.1. General Rights. (Class II)

7.1.1. No resident shall be segregated, given separate treatment, restricted in the enjoyment of any advantage or privilege enjoyed by others in the home, or provided with aid, care services, or other benefits which are different or are provided in a different manner from those provided to others in the home on the grounds of race, national origin, religion, age, or gender.

7.1.2. Residents shall be encouraged and assisted to exercise their rights as residents and citizens.

7.1.3. Residents shall be free from interference, coercion, discrimination or reprisal as a result of exercising any of their rights.

7.1.4. An administrator or employee of a residential board and care home or a person having a financial interest in the home shall not accept appointment as a guardian or committee or as any type of power of attorney for a resident, except in instances when said resident is a spouse, child, sibling or parent of the administrator, employee or person with a financial interest in the home.

7.2. Rights to Communication and Personal Property. (Class II)

7.2.1. A resident shall be permitted to express grievances to the home and to communicate to employees and outside representatives of the resident's choice the need for changes in the residential board and care home.

7.2.2. Residents shall be allowed to visit with and communicate privately with individuals of their choice.

7.2.3. Residents shall be allowed unimpeded, private and uncensored communications with others by mail and by telephone. If the residential board and care home regularly opens mail for or reads mail to a resident or both, there shall be a written signed consent on file in the resident's record.

7.2.4. The residential board and care home shall make telephones reasonably accessible and shall ensure that correspondence can be conveniently received and mailed. Reasonable times and places for telephone use may be established and, if established, shall be in writing.

7.2.5. Residents shall be given the opportunity to meet with and participate in the activities of social, religious and community groups at their discretion.

7.2.6. Residents shall be permitted to retain and use personal clothing and possessions subject to limitations of space, sanitation, safety and the potential for infringing upon the rights of other residents. The home may specify in the admission contract conditions limiting the liability accepted by the home for such clothing and possessions.

7.2.7. The residential board and care home shall maintain on file a current inventory of all possessions of the resident in use in the home which shall be signed by the resident and by a representative of the home. The resident shall be given a copy

of the inventory.

7.3. Rights with Regard to Treatment. (Class II)

7.3.1. Residents shall be given opportunity to participate in the planning of their care and supervision.

7.3.2. Residents shall be permitted to select their own personal physician, except where the resident has been adjudicated incompetent.

7.3.3. A resident shall be permitted to refuse any medical treatment, except when the resident has been adjudicated incompetent in accordance with State law. A resident may be informed, however, that failure to follow his or her treatment plan may result in behavior which is not consistent with the resident's responsibilities as specified in house rules (see Section 5.1.5 of this rule) and in the contract between the home and the resident (see Section 5.3.3.9 of this rule).

7.3.4. Residents shall not be required to perform services for the home, nor be required to participate in any social, recreational or religious activity.

7.4. Rights With Regard to Abuse and Restraint. (Class I)

Each resident shall be free from physical or mental abuse, neglect, corporal punishment, involuntary seclusion, and any other physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Physical restraints shall not be used except in an emergency for the safety of the resident and others in the home until such a time that professional help arrives on the premises. Restraints utilized during emergencies shall be limited to cloth vest or soft belt restraints only.

7.5. Confidentiality, Privacy and Record Access. (Class III)

7.5.1. Residents shall be assured confidential treatment of their personal care records and condition, which shall not be discussed without the residents' consent with or in the hearing range of persons not treating or caring for the residents.

7.5.2. A resident may refuse the release of his or her personal care records to any individual outside the facility, except as required by law or third-party payment contracts.

7.5.3. Residents shall be permitted to inspect their own records during ordinary business hours or at other reasonable times subject to any relevant State or federal laws.

7.5.4. Residents shall be treated in a manner which assures

privacy in their daily living.

7.6. Financial Rights. (Class III)

7.6.1. A resident may manage his or her personal financial affairs, except when the resident has been adjudicated incompetent or has a legal representative.

7.6.2. A resident shall be liable only for charges which have been included in the admission contract between the resident and the facility, including any written modification of the contract, except for charges for emergency services which could not have been reasonably anticipated when the contract was signed or amended.

7.6.3. A residential board and care home may manage a resident's personal funds only on the written prior authorization of the resident or his or her legal representative.

7.6.4. Upon a home's acceptance of written authorization of a resident to handle his or her personal funds, the home shall manage and account for the personal funds under a system established and maintained in accordance with the following:

7.6.4.1. The home shall deposit any amount of personal funds in excess of two hundred dollars (\$200) with respect to a resident in an interest bearing account (or accounts) that is separate from any of the home's operating accounts and credit all interest earned on such separate account to such account. All personal funds of residents shall be kept separate from the home's operating account;

7.6.4.2. The home shall assure a full and complete separate annual accounting of each such resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident, and afford the resident (or a legal representative of the resident) reasonable access to such record; and

7.6.4.3. Upon the death of a resident with such an account, the facility shall convey promptly the resident's personal funds and a final accounting of such funds to the individual administering the resident's estate.

7.6.5. Resident financial records shall be retained at least three (3) years past the death or discharge of a resident, or the closure of the facility, except that records shall not be required to pre-date the effective date of this rule. At the time of closure, the home shall notify the secretary of the storage location of the records. In the event of change of ownership of the home, resident financial records shall be transferred to the new owner.

7.6.6. The residential board and care home shall make locked storage for small valuables available to residents.

7.7. Access. (Class II)

7.7.1. A residential board and care home shall be open for general visitation for at least ten (10) hours per day, seven (7) days per week.

7.7.2. The residential board and care home shall permit lawful access to the home by representatives of various State and other advocacy and protection organizations in the execution of their responsibilities under applicable State and federal laws and regulations.

7.7.3. A residential board and care home shall permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

7.8. Notice of Rights and Responsibilities. (Class III)

7.8.1. Each residential board and care home shall:

7.8.1.1. inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility; and

7.8.1.2. make available to each resident, upon reasonable request, a written statement of such rights.

7.8.2. The written description of legal rights shall include a statement that a resident may file a complaint with the State licensure and certification agency, the State commission on aging, the State adult protective services agency and other concerned advocacy and protection organizations regarding resident abuse and neglect, misappropriation of resident property by the facility, or non-compliance with this rule. The written statement shall include addresses and telephone numbers (toll-free, if available) for these agencies and organizations.

7.8.3. A copy of the list of resident rights shall be conspicuously posted in the home at all times.

7.8.4. The residential board and care home shall make available in the same manner as the list of legal rights a written statement setting forth the rules of conduct and the resident responsibilities for the home as required by Section 5.1.5 of this rule. These shall be conspicuously posted in the home at all times.

§64-65-8. General Health and Safety.

8.1. Operational Standards. (Class II)

8.1.1. The residential board and care home shall have a written disaster plan.

8.1.2. Brief instructions and guidelines regarding emergency procedures shall be available at strategic locations and evacuation routes shall be posted as appropriate.

8.1.3. The residential board and care home shall have a standing arrangement for emergency transport and care of residents in a medical emergency.

8.1.4. The residential board and care home shall be in compliance with any applicable State and local laws and regulations.

8.1.5. The routine of the residential board and care home shall be such that emergency aid for commonly occurring household injuries is readily available at all times.

8.2. Personal Care, Health Care and Medication. (Class II)

8.2.1. The routine of the home shall be such that residents may spend the majority of their waking hours outside their bedrooms.

8.2.2. Residents shall be generally up and about during normal waking hours. Individual preference of residents for time of retiring and rising shall be permitted, except as indicated by the resident's physician, and subject to limitations to prevent disturbing other residents.

8.2.3. All residents shall be encouraged and assisted in developing and maintaining independence and self-determination.

8.2.4. Each resident shall have a written, signed and dated assessment by a licensed physician not more than forty-five (45) days prior to the resident's admission, or no more than five working days following admission, and at least annually thereafter.

8.2.5. The written assessment required by Section 8.2.4 of this rules 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 subsection. Such certification shall be updated as indicated by changes in the resident's physical or mental condition. Such certification is not required of an individual who is a resident at the time of the initial licensure survey, which resident is not capable of self-preservation but who has been informed that the home does not meet fire safety standards for non-self-pre-

serving residents and has accepted in writing that risk.

8.2.6. When a resident is in need of specialized professional physical or mental health care, he or she shall be assisted as needed by the residential board and care home in making arrangements with the appropriate agency or professional caregiver for the care needed.

8.2.7. The residential board and care home shall take all necessary precautions to ensure an accident-free environment for the residents.

8.2.8. Reasonable precautions shall be taken to protect residents and employees from communicable diseases. When in doubt of the seriousness of the disease or condition, a physician shall be consulted.

8.2.9. A standard American Red Cross first-aid kit, or the equivalent, shall be readily available at all times in the home.

8.2.10. 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.

8.2.11. No prescription drugs shall be kept in the home unless they have been legally labeled and dispensed by a licensed pharmacist, and all medications and drugs shall be kept in their original labeled containers.

8.2.12. All medications shall be stored in such a way as to be inaccessible to those residents for whom they are not prescribed.

8.2.13. When a resident is in need of daily injections such as insulin, the staff giving the injections shall be trained by a medical professional. This training shall be documented.

8.3. Accident and Illness Procedure. (Class I)

8.3.1. When a resident suffers a serious accident or illness, professional medical attention shall be secured immediately.

8.3.2. There shall be documentation of 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 professional care provider.

§64-65-9. Resident Services and Recreational Activities.

9.1. Resident Services. (Class III)

9.1.1. Services shall include 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.

9.1.2. Services shall include assistance to the resident in identifying and maintaining liaison with community services and activities.

9.2. Recreational Activities. (Class II)

9.2.1. Residents shall be encouraged but not required to participate in activities which may be scheduled.

9.2.2. A resident's participation in an activity shall not be restricted by the home except upon a physician's order. The physician's order shall specify type of activity and duration of restriction.

9.3. Pets and Other Animals. (Class II)

9.3.1. 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.

9.3.2. Wild, dangerous or obviously ill animals are prohibited.

9.3.3. Animals and their quarters shall be kept in a clean condition at all times.

9.3.4. Dogs and cats kept in the home or on the grounds of the home shall be properly vaccinated (for dogs this includes rabies, leptospirosis, distemper, and parvo and for cats this includes rabies). Documentation of such vaccination and prevention measures shall be available on the premises.

9.3.5. Pets are not permitted in a resident's bedroom without the resident's consent and are not permitted in food preparation areas.

9.3.6. Dogs will be licensed in accordance with State and local laws. The license or other such proof shall be available for review on the premise of the home.

§64-65-10. Food Service.

10.1. General. (Class II)

10.1.1. When therapeutic 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 diets shall be prepared and served as ordered by the physician.

10.1.2. Foods shall be prepared and seasoned by methods that conserve nutritional value, flavor and appearance and shall be attractively served at safe and palatable temperatures in a form to meet the needs of individual residents.

10.1.3. Not more than fourteen (14) hours shall elapse between the evening meal and breakfast the next morning, which shall not be served before 7:00 a.m.

10.1.4. Every resident shall be encouraged to eat in designated dining areas. The home shall not routinely designate private living areas and hallway as dining areas.

10.1.5. A supply of appropriate and customary tableware in good condition shall be available for each resident.

10.1.6. The use of self-help feeding devices and techniques as needed shall be encouraged.

10.2. Nutrition. (Class I)

10.2.1. The residential board and care home shall ensure that each resident is offered at least three (3) meals daily which shall be freshly prepared each day.

10.2.2. 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 Section 10.2.7 of this rule, except as ordered by a physician.

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

10.2.4. Each meal shall provide one-third (1/3) of the daily nutritional requirements of residents.

10.2.5. Breakfast shall consist of at least one (1) item from each of the following categories:

10.2.5.1. fruit or juice;

10.2.5.2. cereal, whole grain or enriched bread product;
and

10.2.5.3. grade A vitamin D milk;

10.2.6. Noon and evening meals shall consist of at least

one (1) item from each of the following categories:

10.2.6.1. protein sources, such as meat, poultry, fish, eggs, cooked dried legumes, cheese or peanut butter;

10.2.6.2. vegetable or fruit;

10.2.6.3. whole grain or enriched grain food products; and

10.2.6.4. grade A vitamin D milk.

10.2.7. Minimum quantities and types of food necessary to meet minimum daily requirements for nutrients and fluid are as follows:

10.2.7.1. meat group: two (2) two-ounce servings of lean meat, fish, poultry, eggs, or cheese. Cooked dried beans, or other legumes such as peanut butter may be substituted. Eggs shall be served at least two (2) times a week;

10.2.7.2. dairy: two (2) or more eight-ounce cups of milk or its equivalent such as equivalent amounts of cheese, cottage cheese, or yogurt each day.

10.2.7.3. vegetables: two (2) or more servings each day. Orange or dark green colored vegetables or other good sources of vitamin A shall be served at least four (4) times per week;

10.2.7.4. fruit: two (2) or more servings each day, at least one (1) of which shall be a citrus fruit or other good source of vitamin C;

10.2.7.5. whole grain or enriched bread and cereal products: one (1) or more servings each meal with at least four (4) servings each day;

10.2.7.6. fiber: at least one (1) fiber-rich food (fruit, vegetable, legume or whole grain product) at each meal;

10.2.7.7. water and other fluids: at least six (6) eight-ounce cups of fluid shall be offered to residents on a daily basis; and

10.2.7.8. other: other foods to round out meals and snacks to provide additional calories.

10.3. Food Service Sanitation. (Class II)

10.3.1. A residential board and care home may utilize a family-type kitchen.

10.3.2. The kitchen shall provide sufficient space to carry out proper food preparation and dishwashing operations.

10.3.3. Food shall be protected from contamination during storage, preparation and service.

10.3.4. Food contact utensils and equipment shall be of approved material and easily cleanable construction and shall be kept in good repair.

10.3.5. Refrigeration equipment shall be provided to assure the maintenance of potentially hazardous food at or below forty-five degrees Fahrenheit (45° F).

10.3.6. Dishwashing facilities and methods shall be employed to effectively remove food soil and soaps or detergents.

10.3.7. Cleaned dishes, utensils and equipment shall be stored in a clean dry area protected from contamination.

10.3.8. Foods shall be from approved sources. The use of home-canned foods is prohibited.

10.3.9. Dishes for clients affected with communicable diseases shall be cleaned and stored separately.

10.4. Reports, Menus, and Diet Manual. (Class III)

10.4.1. Current inspection reports shall be on file in the residential board and care home.

10.4.2. The residential board and care home shall prepare written menus in compliance with the requirements of Section 10.2.2 of this rule.

10.4.3. The current week's menu shall be posted in the appropriate areas.

10.4.4. Menu content shall be varied.

10.4.5. All menus and menu changes shall be kept on file for at least thirty (30) days and shall be supported by records of food purchase.

10.4.6. A current diet manual shall be available for planning therapeutic diets.

§64-65-11. Physical Requirements for the Residential Board and Care Home.

11.1. Life Safety and Construction. (Class I)

11.1.1. The secretary may waive certain construction requirements for existing residential board and care homes: Provided, That the waiver shall not compromise the health, safety or well-being of the residents.

11.1.2. The residential board and care home is required to comply with the State building code.

11.1.3. The residential board and care home shall provide evidence of compliance with applicable State fire code rules.

11.1.4. Trailers (mobile homes) shall not be licensed as residential board and care homes.

11.2. General Requirements. (Class I)

11.2.1. The residential board and care home is required to have a water supply which:

11.2.1.1. is from a public water supply which complies with applicable State and federal rules and regulations; or

11.2.1.2. meets applicable State standards regarding water quality and the contamination of water for water from any source other than a public utility.

11.2.2. Sewage disposal is required to be in accordance with applicable State rules.

11.2.3. The residential board and care home shall have electric power.

11.3. Environmental Requirements. (Class II)

11.3.1. The exterior of the residential board and care home, including the yards and grounds and any structures, buildings and outside equipment, and the interior of the home, including its furnishings and equipment, shall be maintained in good repair and in a clean, safe, and sanitary condition.

11.3.2. The residential board and care home shall be kept substantially free of insects, rodents and vermin.

11.3.3. Pesticides shall be applied in a manner to prevent contamination of food and hazards to residents.

11.3.4. All garbage and refuse shall be stored in durable, leak-proof, non-absorbent, insect- and rodent-proof containers. Such containers shall be kept clean and free of accumulations of residue. Dumpsters in good repair are acceptable.

11.3.5. Solid waste, including garbage and refuse, shall be removed from the building daily and the premises weekly, or more often if necessary.

11.3.6. When approved municipal or private solid waste disposal service is not available, the home shall dispose of solid waste in accordance with the applicable provisions of State law

and regulations.

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

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

11.3.9. Walls, ceilings and floors shall be in good repair.

11.4. Interior Comfort and Safety. (Class II)

11.4.1. The home shall have hot and cold running water adequate to meet the needs of the residents and employees.

11.4.2. Hot water temperature shall not be higher than one hundred and ten degrees Fahrenheit (110° F) at plumbing fixtures used by residents.

11.4.3. Kitchen facilities shall be designed and located to permit efficient food preparation, serving, utensil cleaning, and refuse disposal.

11.4.4. Hand washing lavatories shall be provided in the food preparation area for employees.

11.4.5. In addition to the kitchen, 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.

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

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

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

11.4.7. Doors and windows used for ventilation shall be screened. Screen doors and windows shall not swing inward.

11.4.8. All ceilings in habitable areas, including, but not limited to: bedrooms, dining rooms, living rooms, recreation rooms, and dens, shall be at least seven feet ten inches (7'10") in height.

11.5. Bedrooms. (Class II)

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

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 Section 3.9 of this rule.

11.5.3. In single bedrooms, there shall be at least eight (8) square feet of window area per person in the bedroom and in multiple occupancy bedrooms, there shall be at least six (6) square feet of window per bed.

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

11.5.5. Basements shall not be used as bedrooms for residents.

11.5.6. Beds shall be placed only in areas commonly used as a bedroom.

11.5.7. Each resident shall be provided with a bed that is at least thirty-six inches (36") in width.

11.5.8. Each bed shall be provided with a substantial, clean and comfortable mattress which fits the bed. Each bed shall have a clean, comfortable pillow of at least average size, with a pillow case. There shall be a protective cover and a top and bottom sheet on the mattress.

11.5.9. Bed coverings shall be available to keep residents comfortable. This shall include at a minimum a quilt, comforter or blanket.

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

11.5.11. Windows shall have curtains, shades or blinds which may be opened and closed.

11.5.12. Each resident of each bedroom shall be provided with:

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

11.5.12.2. a bed lamp or bedside light suitable for reading and accessible to the bed; and

11.5.12.3. a comfortable chair of sturdy construction suitable for resident use.

11.5.13. A mirror suitable for full-length viewing shall be provided in bedrooms or other suitable area.

11.6. Toilet and Bathing Facilities. (Class II)

11.6.1. Each resident shall have access to a toilet-washroom without entering another bedroom. No more than six (6) residents shall share a single toilet-washroom. Toilet-washrooms used by residents may be shared by the administrator, staff and persons residing in the home who do not meet the definition of resident found in Section 3.9 of this rule: Provided however, That residents shall not be required to share a toilet-washroom with more than a total of six (6) individuals.

11.6.2. There shall be at least one (1) bathing facility for each eight (8) residents and at least one (1) per floor on which resident rooms are located. Bathing facilities used by residents may be shared by the administrator, staff and persons residing in the home who do not meet the definition of resident found in Section 3.9 of this rule: Provided however, That residents shall not be required to share bathing facilities with more than eight (8) individuals.

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

11.6.4. Each toilet-washroom shall have:

11.6.4.1. at least one (1) handwashing sink;

11.6.4.2. at least one (1) toilet; and

11.6.4.3. grab-bars for each toilet.

11.6.5. Bath and toilet facility doors shall swing outward one hundred eighty degrees (180°) or until flush with a permanent wall. Locks on such facility doors and the doors to rooms housing such facilities shall be easily opened or removed from the outside in the event of an emergency.

11.6.6. Toilet-washrooms shall be supplied with soap, toilet tissue, and towels or a blow dryer for hands. The shared use of towels is prohibited.

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

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

11.7. Laundry. (Class II)

11.7.1. Residential board and care 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. No laundry shall be done in a food preparation or dishwashing area.

11.7.2. Washing machines shall be installed so that no back-siphonage possibility exists.

11.7.3. Electric or gas clothes dryers shall be vented to the outside.

11.7.4. The residential board and care home shall provide laundry facilities or services for residents' personal laundry. Laundry services may be provided by an outside laundry service.

11.7.5. Table and kitchen linens shall be laundered separately from other washable goods.

11.7.6. Soiled and clean laundry shall not be stored together at any time.

§64-65-12. Penalties.

12.1. Penalties for violations of this rule and of W. Va. Code §§16-5C-1 et seq. and 16-5H-1 et seq. shall be administered as specified in W. Va. Code §§16-5C-1 et seq. and 16-5H-1 et seq. and this rule.

12.2. In addition to all other actions and penalties specified in law or 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 makes the following findings:

12.2.1. That the licensee has not provided adequate care as indicated by an F rating in one or more of sections five (5) through eleven (11) of this rule; and

12.2.2. That an admission ban or reduction in bed capacity or both would place the home in a position to render adequate

care.

12.2.3. 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.

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

§64-65-13. Administrative Due Process.

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

§64-65-14. Severability.

The provisions of this rule are declared to be severable. If any portion of this rule shall be held invalid, the remaining provisions shall remain in effect.

64 CSR 65

TABLE 64-65A. SCORES FOR A, B, C AND F RATINGS IN EACH CATEGORY.

Sec. No.	CATEGORY	POINT VALUE SCORE	RATING	RATING ¹ SCORE	R A T I N G			
					F ²	C	B	A
5	Administration of the Personal Care Home				≤20	21-27	23-28	29-34
6	Resident Care Employees				≤12	13-16	17-21	22-26
7	Residents Rights				≤40	41-48	49-59	60-70
8	General Health and Safety				≤14	15-18	19-22	23-28
9	Resident Services and Recreational Activities				≤12	13-16	17-21	22-26
10	Food Service				≤19	20-23	24-29	30-36
11	Physical Requirements for the Residential Board and Care Home				≤37	38-44	45-54	55-65

Total Rating Score _____
 Average Rating Score _____
 Final Rating _____

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

1. Rating score values are:

- A = 4
- B = 3
- C = 2
- F = 0

2. ≤ = Less than or equal to.