WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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

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

CITE AUTHORITY W. Va. Code §§16-5C-5 and 16-5H-2

AMENDMENT TO AN EXISTING RULE: YES____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

TITLE OF RULE BEING PROPOSED: Residential Board and Care Homes

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

W. Donald Weston, M.D.
Acting Secretary

[PROPOSED]

TITLE 64

WEST VIRGINIA ADMINISTRATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

RESIDENTIAL BOARD AND CARE HOMES

Series 65

199_

For Submission to the Legislative
Rule-Making Review Committee

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

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§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 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, 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. **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.

3.8. **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.

3.9. **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.

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

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

3.12. **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.

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

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

3.15. **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.

3.16. **Supervision of Self-Administered Medications** - A personal service which includes reminding the 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 the 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 the residential board and care home without a license until the secretary grants or denies the license.

4.1.2. A separate license is 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 require separate licenses, unless the secretary determines otherwise.

4.1.3. A license is 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 the 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 (1) 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 West Virginia 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 facility 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, and 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, and 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 relevant for the provision of care in a health care facility or for 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 or has had revoked a license to operate a health care facility in West Virginia or any other jurisdiction during the previous five (5) years;

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 capability 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 (3) 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 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, 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 inspections by duly authorized representatives as necessary to carry out the intent of this rule and W. Va. Code §§16-5C-1 et seq. and 16-5H-1 et seq.

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 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 (1) unannounced inspection in order to assign a rating for all categories of standards prior to issuance of an initial license. Inspections shall be conducted after:

4.6.4.1. 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 W. Va. Code §§16-5C-1 et seq. or 16-5H-1 et seq. 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. 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 shall 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 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 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 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. 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 over-

all 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)

5.1.1. 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.

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

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

5.1.4. The residential board and care home shall have written house rules governing resident behavior and responsibilities including: smoking; alcohol consumption; visitation; recreational activities (including television); personal laundry; 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.

5.1.5. 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.

5.1.6. The residential board and care home shall inform

residents how to gain access to copies of current government inspection reports and plans of correction.

5.1.7. 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 the 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 relevant for the provision of care 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, age, or sex: Provided, however, That a home may apply to the department for a waiver regarding denial of an admission based on the sex of the applicant. The department may grant a limited waiver if there is a compelling circumstance for denying admission based on sex.

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 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 regarding self-preservation.)

Individuals admitted to or residing in a residential board

and care home shall not require care to manage needs resulting from medical complications, neglect, deterioration of physical or mental body systems, or other causes which require the use by others of intrusive devices or special treatments involving technical knowledge and skills not possessed by individuals who are not trained, licensed health care professionals. Such care includes, but is not limited to: rehabilitative therapies; dressings; catheters; tracheostomies; injections other than insulin; the use of physical restraints to manage behavior or to limit movement; decubitus care for skin breakdown in excess of a Stage I level; tube feedings of any type; the use of intravenous fluids or medications; tube feeding; sterile procedures; the use of traction; or the provision of more than minimal assistance to aid the resident in getting out of bed or moving from the bed to a chair.

Individuals admitted to or residing in a residential board and care home shall not have care needs beyond those related to a temporary illness or other condition requiring health care with a prognosis for full recovery to the individual's maximum level of physical and mental status prior to the onset of the illness. Such temporary illnesses include, but are not necessarily limited to: pneumonia, common cold or flu; minor muscle sprains or strains, abrasions, lacerations; fractures of an extremity requiring casting or splint immobilization for an expected six to eight (6-8) week recovery; prescribed bed rest for promotion of healing related to a temporary illness or postoperative recovery with limited activity up to three (3) months.

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 sex;

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)**

The administrator shall assure that all staff are:

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

6.1.2. Of good character;

6.1.3. Clean and well-groomed;

6.1.4. At least eighteen (18) years of age;

6.1.5. Able and willing to accept supervision and training;

6.1.6. Licensed in accordance with any applicable State law; and

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

6.1.8. Screened for tuberculosis and other contagious diseases if indicated by exposure, prevalence or currently accepted medical practice in congregate living situations as indicated by the director.

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 physical 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. The application of soft restraints;

6.3.2.6. Emergency care of residents;

6.3.2.7. Instruction in the policies and procedures of the home;

6.3.2.8. Resident rights;

6.3.2.9. Complaint procedures of the home;

6.3.2.10. Nutrition;

6.3.2.11. The activities program;

6.3.2.12. Emergency plans for the home, including fire safety and evacuation plans;

6.3.2.13. Protection of resident privacy and confidentiality; and

6.3.2.14. 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.

6.3.3. Orientation and training may be modified for individual employees if there is proof on file of the completion of a nursing assistant training program. Completion of such a course shall satisfy the requirement for training in the areas of personal grooming, hygiene, assistance in feeding and activities of daily living. All other topics required by Section 6.3.2 of this rule shall be addressed in orientation to the home's policies and procedures.

§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 privi-

lege 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 sex.

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. Resident rights and responsibilities can only be exercised by the resident, except to the extent those rights have been granted to a legal representative.

7.1.5. 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 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.

7.3.3. A resident shall be permitted to refuse any medical treatment. A resident may be informed, however, that failure to follow his or her treatment plan may result in behavior or a medical condition which requires services which are not available in a residential board and care home (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 professional help arrives on the premises. Restraints utilized during emergencies shall be limited to cloth vest or soft belt restraints only and their use shall not exceed four (4) hours.

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 treatment and 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 a resident's personal funds in excess of two hundred dollars ($200) in an interest bearing account that is separate from any of the home's operating accounts. All interest earned by the resident's funds shall be credited to the resident. All personal funds of residents shall be kept separate from the home's operating funds;

7.6.4.2. The home shall assure a full and complete separate annual accounting of each 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 the 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 the 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 these 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 writ-

ten statement setting forth the rules of conduct and the resident responsibilities for the home as required by Section 5.1.4 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 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 forty-five (45) 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 contagious diseases if indicated by exposure, prevalence or risk according to current medical practice in congregate living situations as indicated by the director.

8.2.5. The written assessment required by Section 8.2.4 of this rule 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. This certification is not required of an individual who is a resident at the time of the initial licensure survey, which resident is not capable of self-preservation but who has been informed that the home does not meet fire safety standards for non-self-preserving residents and has accepted in writing that risk.

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 ill-

ness, 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 the 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 shall be licensed in accordance with State and local laws. The license or other 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.

10.2. **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. A continental breakfast, consisting of at least cereal, milk, juice, toast and beverage, shall be readily available for residents who choose to sleep beyond the regular breakfast meal time. The total nutrients of meals and snacks provided to residents participating in a continental breakfast shall meet the requirements of Sections 10.2.8 of this rule and three (3) meals shall be available as required by Section 10.2.1 of this rule.

10.2.3. 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.

10.2.4. 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.

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

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

10.2.6.1. Fruit or juice;

10.2.6.2. Cereal, whole grain or enriched bread product; and

10.2.6.3. Grade A vitamin D milk;

10.2.7. Noon and evening meals shall consist of at least one (1) item from each of the following categories:

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

10.2.7.2. Vegetable or fruit;

10.2.7.3. Whole grain or enriched grain food products; and

10.2.7.4. Grade A vitamin D milk.

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

10.2.8.1. 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;

10.2.8.2. 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.

10.2.8.3. 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;

10.2.8.4. 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;

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

10.2.8.6. Fiber: at least one (1) fiber-rich food (fruit,

vegetable, legume or whole grain product) at each meal;

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

10.2.8.8. 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 from dishes, utensils and equipment used in food storage, preparation and service.

10.3.7. If a dishwasher is not used, dishes, equipment and utensils shall first be washed, next rinsed, and then sanitized as described below:

10.3.8. The food contact surfaces of all dishes, equipment and utensils not washed in a dishwasher shall be sanitized by one (1) of the following methods:

10.3.8.1. 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);

10.3.8.2. 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);

10.3.8.3. Any other method that will provide the equivalent bactericidal effect.

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

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

10.3.11. 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 of this rule.

10.4.3. The current week's menu shall be available for review upon request.

10.4.4. Menu content shall be varied.

10.4.5. All menus, menu changes, and grocery receipts shall be kept on file for at least thirty (30) days.

10.4.6. Modified diets, as recommended by the physician, shall be prepared according to written instructions obtained from the resident's physician or hospital dietitian.

§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 rules of the State fire commission.

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. The 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 3.11 of this rule.

11.5.3. In single occupancy bedrooms, there shall be at least eight (8) square feet of window area, and in multiple occupancy bedrooms, there shall be at lease 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 suit-

able 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 3.11 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 3.11 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 these facility doors and the doors to rooms housing these facilities shall be easily opened or removed from the outside in the event of an emergency.

11.6.6. Toilet-washrooms shall be supplied with soap, toilet tissue, and towels 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., 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 (1) or more of Sections five (§64-65-5) through eleven (§64-65-11) 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 West Virginia 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 severable. If any portion of this rule is held invalid, the remaining provisions remain in effect.

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 Residential Board and Care Home				≤20	21-27	23-28	29-34
6	Resident Care Employees				≤12	13-16	17-21	22-26
7	Resident 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.

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

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. The rule was developed by the Department in conjunction with a Department-created task force organized to study the need for the revision of State laws concerning residential board and care and other forms of long-term care.

Two public hearings were held, one on December 30, 1991, in Charleston and one on January 24, 1992, in Morgantown. Sixteen people attended the first hearing, and nineteen, the second. Nine written (attached) comments were received. The following discussion summarizes all comments received. Numbering changes, necessitated by revisions or as technical corrections, are not specifically identified; section numbers used in this discussion are the new numbers unless indicated otherwise.

1. Comment: A major concern of commenters was the potential financial impact of the proposed rule on providers and directly and indirectly on residents. Most of the comments were very general. Approximately two hundred and forty persons from the Morgantown-Clarksburg area signed copies of a petition or letters with similar statements. The petition stated that:

> "Bill 16-5C-5 and 16-5H-2 coming before the legislation [sic] this session for Residential Board and Care Homes, is going to have impact on YOU or someone in your family. If this Bill passes as written it is going to cause another economic disaster for this state and take your freedom of choice away from you concerning where you can live when the time comes that you need to leave your own home. We're asking our Legislators to stop and think about this 'Bill' and give us the time to see if there isn't some alternative to this Bill."

Commenters stated that the proposed rule is restrictive; that many small residential board and care homes will be forced to close because of inability to comply with the standards. Some commenters cited the Department's fiscal note estimate that perhaps as many as seventy-five percent of the estimated 666 existing homes would not be able or willing to comply with the rule. Some commenters expressed concerns that the closure of homes

forced by the rule would force many private pay consumers into more expensive institutional environments, perhaps as Medicaid recipients, and that the rule would decrease available alternatives. Some expressed opinions that smaller personal care homes provide better care and are more cost effective than larger institutions or nursing homes.

A few commenters specifically mentioned the $450 initial inspection fee as unreasonable. They stated that with state-supported residents, there would be no possibility of passing the inspection fee to residents, or that their residents were persons with very low incomes who would be unable to afford increased charges. One commenter also noted that the provision that there would be no inspection if money was not appropriated by the Legislature would be unfair to those who had spent money to comply.

Some commenters expressed concerns about the expected cost of the fire safety requirements, specifically the sprinkler system required by the rule. One person stated that she had spent $40,000 in order to be in compliance with the fire code and found that her insurance was five times higher than before, even with a sprinkler. It was also suggested that low interest loans should be available to providers to pay for sprinkler systems and other modifications because the costs are too expensive for some home owners.

Response: Since most of the comments expressing fears about costs of this new rule were very general, it is difficult, for the most part, to identify exactly which elements of the rule are causing the most concern. Specifics which were identified, inspection fees and fire safety, are discussed separately below. Since licensure is new for the providers of this type of service, understandably, they are uneasy about the effect of the bureaucracy on their livelihood and on the residents of these homes. Both the estimates of 500 existing homes and that 75% of these existing homes will not be able or willing to comply with the requirements of the home are just that -- estimates. The 75% estimate, which leans heavily on the assumption that many homes will have difficulty meeting the physical requirements related to fire safety, may be too high.

The Department believes that the most costly provision in the rule is the requirement for a National Fire Code Standard thirteen-d sprinkler system. This requirement is set by State law. Generally speaking, standards related to fire safety, be they procedural, or sprinklers, or other physical requirements, are under the control of the State Fire Marshal, not the Department. The State Fire Commission is permitted by the law to establish alternative standards and not require a sprinkler in residential board and care homes of less than four beds, if all residents are capable of self-preservation. Although the State Fire Commission has not established an alternative standard, the Department does not believe that it is practical to enforce the sprinkler system in homes with less than four beds. The State Fire Marshal does not inspect homes with less than four resi-

dents.

The Department believes that there is some confusion about the type and cost of system required. In some instances specific estimates which have been used are apparently for a more expensive system than the one actually required. It has been estimated by the State Fire Marshal's Office that the cost of the type of system required might range from $3,000 to $4,000. The Department has no mechanism for regulating the amount of interest on loans.

The purpose of the proposed rule is to encourage quality care, not to close homes. There are, however, homes which are providing care for residents who do not meet the statutory criterion for care in a residential board and care home, i.e., capability of removing one's self from situations involving imminent danger, such as fire. The Legislature and the State Fire Commission have set State policy which judges this type of situation to be undesirable. There are also some homes which are providing good care for their residents, but which may not be able to meet the physical standards set by statute and rules. This may be an unavoidable outcome of instituting the licensure program.

On the positive side, individuals residing in licensed residential board and care homes who are eligible for social security insurance will be able to obtain food stamps. The availability of food stamps will provide additional resources in this type of setting. The availability of this level of licensure will provide alternate "approved" placements for clients affected by the down-sizing of state institutions. It is altogether possible that the long-range outcome of the program will be to increase the number of homes available through increased respectability and therefore funding sources for the support of such programs. Finally, this rule will provide a much needed tool for the Department to use in closing residential board and care homes which are truly severely substandard and will be an asset in promoting better quality care at all levels.

With respect to the cost of inspections, W. Va. Code §16-5C-6(e) states that direct costs for initial licenses shall be borne by providers (as well as inspections for changes in bed capacity, which would be more likely for nursing or personal care homes). The Department has conservatively estimated this cost at $450 for initial surveys. There is also a $50 license application fee set by law which has already been paid by some providers. A small fee of $2 per bed for renewal licenses would generate a minimal amount of revenue for the State, for example, $2,000 annually for 200 homes with an average of five residents per home. The Department has also established a few fees in another rule, **Fees for Services, 64 CSR 51**, promulgated in 1991. These are: $150 for site inspections for new construction or major renovations; $150 for review of plans by an architect; and $150 for inspection of new projects prior to opening. Since only rarely is a new building constructed for use as a residential board and care home, it is not expected that these fees will be applicable to

many homes or that they will generate any more than a negligible amount of revenue for the State. The Department notes that without revenue generated by the licensure program or appropriated by the Legislature out of the general revenue fund that it will not be able to carry out inspection subsequent to the initial visit except on a complaint basis. The Department has revised the fiscal note filed in November 1991 somewhat, and believes it to be a more accurate estimate of the cost of implementing the rule.

2. Comment: One commenter suggested that if people are abusing laws governing residential board and care homes, laws should be redefined to require persons directing the homes to live in the residence with the clients.

Response: There are numerous well-run residential board and care homes which are not occupied by the owner. The Department does not believe that requiring owners to live with the residents would deter them from abusing the laws or rules governing residential board and care homes.

3. Comment: One commenter suggested that implementation of the rule should be phased in, which would allow for education and cooperation between the public and private sector. It was also suggested that it would help if the Department could suggest a packet of paperwork (forms) to assist with record keeping.

Response: The Department anticipates working with provider groups which have been or are currently being organized. Initial surveys will focus on educating operators. The Department also plans to conduct a series of regional training sessions to assist providers to implement the requirements and to provide guidelines for forms to be used by residential board and care home owners and operators. The Department believes these efforts will promote education of providers and cooperation between the public and private sector.

4. Comment: One commenter suggested that positive examples of homes should be showcased, perhaps through a Governor's "Award of Excellence" each year.

Response: Such awards may be appropriate, but the Department does not believe that such a program should be part of a rule to regulate residential board and care homes.

5. Comment: A few commenters indicated that the rule was "too institutional" and that it should make allowances for the provision of a home-like environment, particularly for residential board and care homes which are also the operator's home. One commenter requested a separate set of rules for live-in owners. A few others stated that the rule is more suited to large personal care homes or businesses that own several residential board and care homes with managers rather than owners in the homes.

Response: The Department believes that a separate rule for owner-occupied residential board and care homes is unnecessary.

This rule facilitates a home-like atmosphere while maintaining reasonable standards of resident care. Contrary to the impression of some commenters, this rule does not apply to personal care homes, either small or large. Personal care homes are required to meet more restrictive fire safety and other standards. The Department has, however, made a few minor modifications to the food service requirements to accommodate these considerations. References to self-help feeding devices and diet manuals have been deleted as inappropriate. Provisions have been made for a continental breakfast (Section 10.2.2). The requirement for keeping food purchase records for thirty days has been changed to keeping grocery receipts for thirty days (Section 10.4.5).

6. Comment: Sections 3.2, 3.12, 3.15. One commenter stated that residential board and care homes should not be required to be responsible for clients who use public transportation and that supervision of residents while they are off the premises would not always be possible.

Response: The Department believes that the provision of appropriate levels of supervision or monitoring of residents at all times is a necessary service of a residential board and care home. The amount of supervision required will vary depending on the condition and circumstances of the particular resident as is recognized in the definition of supervision found in Section 3.15 of the rule. For example, transportation provided by the residential board and care home would be regarded differently from a situation in which a capable resident used some form of public transportation. Residential board and care home operators may want to secure appropriate liability coverage for various types of out-of-facility activities of residents.

7. Comment: Section 3.12. One commenter stated that not being able to care for your own relatives seems unreasonable.

Response: The statutory definition of a residential board and care home, repeated verbatim in the rule for informational purposes, does not prohibit the operator of a residential board and care home from providing care to his or her own relatives, but rather permits the care, without a license, of relatives to the degree of second cousin. If care is provided for family members, there does, however, need to be documentation available in the home of the specific family relationship of the individual to the owner or operator.

8. Comment: Sections 5.3.1 and 5.3.3.3. One commenter noted that these sections seemed to indicate that a home could not deny admission based on the sex of the individual applying for admission.

Response: Section 5.3.1 has been modified to include a general prohibition on sex-based discrimination in admissions. According to an interpretation by the Human Rights Commission, a residential board and care home meets the definition of "place of

public accommodation" (W. Va. Code §5-11-3); as such, sex-based discrimination in admissions is generally prohibited. Although the Department does not condone or encourage discrimination based on sex, it recognizes that there are special circumstances inherent in the case of residential board and care homes, which may in some instances make it impractical for a home to provide appropriate care and privacy for residents of both sexes at the same time. This would be most likely in smaller homes. Consider for example, a vacancy occurring in a home licensed to provide care for four individuals which has only two resident bedrooms. In this situation, it would most likely be impractical to fill the vacancy with a resident of a sex opposite to that of the other occupant of the vacant room. Therefore, Section 5.3.1 has also been revised to permit an appeal and waiver of the general rule with respect to admissions when there are compelling circumstances for such a waiver. Section 5.3.3.3 and also Section 7.1.1, however, relate to prohibiting discrimination among individuals once they have been accepted as residents.

9. Section 6.3.3: The Department has modified the requirement for employee training by adding a section to recognize the equivalence of nursing assistant training through a nursing home or vocational/technical training school for certain areas of required training.

10. Comment: Sections 7.1.4, 7.3.2 and 7.3.3. Three commenters stated that language in Section 7.3.3 could be interpreted to mean that a client could be discharged for refusing treatment and that the sections referenced (Sections 5.1.4 and 5.3.3.9) do not deal specifically with a resident's rights, but rather with house rules and discharge policies.

Response: Section 7.3.3 clearly states that a resident has the right to refuse treatment, a right which has been well-established far beyond the scope of this rule. The intent of Section 7.3.3 is to clarify that providers may explain to a resident that if the resident fails to take his or her medication(s) or otherwise follow his or her treatment plan, he or she may develop behaviors which are beyond the scope of the home to manage. In such instances, the home will have to transfer or discharge the resident until such time as the resident's behavior again falls within the scope of services provided by the residential board and care home. This item represents an effort to deal with a problem most likely to occur with individuals with behavioral health problems who fail to take psycho-active medication. The reference to house rules has been deleted as it appeared to produce confusion and the text of Section 7.3.3 has been revised to refer to services available in the residential board and care home. Language has also been added to Section 7.3.3 to clarify that failure on the part of an individual to follow his or her treatment plan might result in a medical condition (new), as well as behavior, which would require services not available in the residential board and care home.

Additionally, although correct, both Sections 7.3.2 and

7.3.3 identified adjudication of incompetency, but not other mechanisms by which another individual might exercise certain rights on the resident's behalf. Therefore, a more general statement regarding the transfer of rights has been added to the rule, Section 7.1.4, and the language regarding adjudication has been deleted from Sections 7.3.2 and 7.3.3.

11. Comment: Section 7.4. One commenter suggested that this section should be more specific regarding the use of restraints in emergencies, including requirements for staff training, time frames, involvement of a physician, release, skin care, "etc."

Response: The Department has added a requirement (Section 6.3.2.5) for training staff in the application and monitoring of soft restraints acceptable for use in a residential board and care home. Additionally, a time limit has been added to Section 7.4 to clarify that the use of restraints is restricted to emergency situations which must be resolved promptly either in the home or by transferring the resident to a more appropriate care situation, if necessary. Professional help might appropriately consist of persons other than physicians, for example, emergency medical services personnel, or behavioral health center professional staff members.

12. Comment: Section 7.5.4. One person recommended that privacy in treatment as well as in daily living should be assured.

Response: The word "treatment" has been added.

13. Comment: Section 7.6. One commenter opposed allowing small homes to have access to personal finances for private pay clients.

Response: Residential board and care homes do not have access to a resident's funds unless authorized, in writing, by the resident, a court-appointed committee or other lawful representative. The intent of this item is to allow the residential board and care home to manage personal funds for residents who may not wish to keep money in their rooms or otherwise manage their money. There may be situations in which a resident will not have anyone else to assume this responsibility. The Department believes that requirements for written authorization, interest-bearing accounts separate from the home's operating accounts, and annual accounting requirements provide reasonable protection for residents who wish to have this service provided. Note also that Section 7.1.5 prohibits residential board and care home owners, operators and employees from being named as guardian, committee or power of attorney for a resident unless the individual is a close relative.

14. Comment: Section 7.7.1. One person felt that visitation should be limited to evenings or times agreed upon between the home and families because of meals, bathing, and similar activities.

Response: The focus of a residential board and care home is to provide a home-like atmosphere for residents. Limitation of visiting hours in such settings would be counter to the philosophy of this type of care setting. If individual problems arise, personal bathing time could be arranged on an individual basis with notice to family and friends. Meal times are social occasions. Special arrangements for a meal taken with the resident could be made in advance in order to prepare if necessary. Providers should arrange to be flexible.

15. Comment: One commenter noted that there was a reference to Administration of Personal Care Homes in the table on page 34 of the rule.

Response: This was a typographical error and has been corrected to "Residential Board and Care Homes."

16. Comment: Section 10.1.3. One commenter asked whether the provision requiring that not more than fourteen hours elapse between the evening meal and breakfast the next morning included snacks, for example dinner at 3:00 p.m. and snacks at 7:00 p.m.

Response: Presumably breakfast would be served sometime between 7:00 a.m. and 9:00 a.m., although the commenter did not specify. If a sufficiently substantial evening snack is provided, a lapse of more than fourteen hours between the evening meal and breakfast could be approved. Also, the rule has been modified to permit a continental-type breakfast to allow for individuals who like to sleep late.

17. In conjunction with the task force, the department has determined that a number of provisions of the rule require clarification and/or technical revision as discussed below:

3.8 It was felt that the addition of a definition to clarify the meaning of the term "life care contract" as used in Section 5.3.5 would be helpful to residential board and care home operators.

4.3.2.2 and 5.2.3. Sections 4.3.2.2 and 5.2.3, relating to issuance of a license, were revised to clarify that a felony or misdemeanor need not be actually committed in a health care facility or in the operation of a health care facility in order for it to be considered by the director in a decision as to whether or not to issue a license.

5.3.2. Section 5.3.2 as proposed for public hearing stated that individuals admitted to a residential board and care home are not to be in need of extensive, on-going nursing care. The words "extensive" "on-going" have been deleted and specific language has been inserted in place of the general terms in order to clarify this item.

6.1. A requirement for tuberculosis and other serious communicable disease screening has been added. This addition is

warranted because of recent increases in the incidence of tuberculosis and the appearance of strains of tuberculosis which are resistant to conventional treatment methods.

8.2.4. Section 8.2.4 relating to assessment of an individual's condition by a physician has been expanded to reflect recent changes in West Virginia laws and regulations regarding the expansion of the roles of certain licensed health care professionals such as physician assistants and nurse practitioners. This item has also been expanded to include a specific requirement for tuberculosis and communicable disease screening in resident personal care homes because of recent increases in the incidence of tuberculosis and the appearance of strains of tuberculosis which are resistent to conventional treatment methods.

10.3.7 (new) and 10.3.8 (new). Items 10.3.7 and 10.3.8 have been added to clarify appropriate methods of sanitation of dishes, utensils and equipment used in food preparation and service in the absence of the use of a dishwasher.

Residential Board and Care Homes

December 30, 1991

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
ROGER TRUSLER	PO Box 24 MARLINTON	BUCKHANNON BD & CARE, INC	
BRENDA DEAN	PO BOX 474 BUCKHANNON, WV	BUCKHANNON BD & CARE INC	No
Pat Ahwash	Rt. 7 Box 198 So. Charleston, WV 25309		Yes
Karen Glazier	107 Georges Drive, Malden WV 25306		Yes
T.M Smith	2301 6th AVE	Aliff's Board CARE	NO
Roberta Saunders	Richard, WV 25555	HFC	NO
Dorothy A Goff	Rt 2 Box 20 Enterprise		
Delmar J. Goff	Rt 2 Box 22 Enterprise		
Kenna Chambers	1008 Stephens AVE, Charleston 25302	Hampshire House	NO

PUBLIC HEARING-PROPOSED RULE

Residential Board and Care Homes

December 30, 1991

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
Willie Stephens	111 McKinney St. Fairmont, WV.	Summit Center (Clarksburg)	?
John H. Gore	704 3rd Ave Marlinton, WV 24954	Seneca MH/MR Council Inc.	
JOHN RUSSELL	8 CAPITOL ST. SUITE 600 CHARLESTON	ASSOC OF CMH/MC WV Mental Health Consumer's Assn.	
DAVID GETTYS	184 Summers St. Box 301 Charleston WV 25301		YES
Rick Miller	511 Morris St Charleston, WV	Shawnee Hills MH/MR Center	
L. Bailey Lofstead	Box 9 Looneyville WV. 25259	Board Care Home.	
Susan Henline	Rt 2 Box 53 Cowen WV 26206	Ombudsprogram	?

PUBLIC HEARING– PROPOSED RULE

Residential Board and Care Homes

January 24, 1992

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
Nat Hughes	R#2 Box 502	AMI – / Board + Care	yes. ✓
B. J. Weber	Rt #1, Box 230	Board & Care	yes ✓
Doris [illegible]		Box 1 – Osage WV 26543	yes [illegible]
Frank P. [illegible]	415 Kingwood Street	—	NO.
[illegible]	WVHCA Charleston, WV.	WVHCA	
Karen Decker	R9 Box 181		yes [illegible]
Jennifer Craddock	Mon. Co. Home Health	~~Mon. Co. Health Dept.~~	yes ✓
[illegible] Meehan	Chestnut Ridge Hosp., Morgantown		yes ✓
Jane Sadie	Chestnut Ridge Hosp Morgantown		no
Edward [illegible]	P.O. Box 166 [illegible]		—
Mary Dalton	Cassville WV		No
Aaron Dalton	" "		No
Gary Dalton	" "		No

PUBLIC HEARING- PROPOSED RULE

Residential Board and Care Homes

January 24, 1992

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
Barbara Morris	1273 Denver Ave	Same Provider Assn.	Yes ✓
James Gifford	7069 Claybeck Dr.	River City Fire AWD Board AWD Care Homes	yes ✓
Don Dandrea	Reedsville	Valley Medical Eqpt.	No
Melvin + Wanda Nida	120 Water St., Salem	"Evergreen"	No
Bob Musick	301 Scott Ave	Valley	yes ✓
Lou Peterson	1540 Spring Valley Rd Huntington WV		No

To Whom It May Concern:

It has recently been brought to my attention that new restrictive regulations are being placed on small private residential boarding care homes that would be disadvantageous to both the care provider and clientele. I feel this should be reconsidered and every effort made to keep these small homes operative and cost effective.

I have a friend in a nursing home and recently was forced to place my aunt in a private residential boarding care home under the direction of Betty Weber. Of the two situations, I am most pleased with the care my aunt is receiving in the smaller home. In the larger institution, my friend is merely a number and very little attention is given to her individual needs. Her food portions are measured and often she is not clean. In contrast to this, Ms. Weber's home is spotless and odorless. My aunt has always been clean even when I drop in unexpectedly. She is well supervised and is made to feel "at home." The same person cares for her daily which gives her a sense of security. The tables are always decorated for each season and set with place mats. Holidays are observed with special treats for each client. She is also exposed to a home setting because Ms. Weber's family also resides there.

In light of the country's economic crisis, I would also remind you that my aunt is receiving this wonderful care for about one-half the cost of a certified nursing home. I feel it is both economically and humanely unreasonable to force these smaller homes into using "big business" tactics. Perhaps if people are taking advantage of laws governing the private residential boarding care homes, you should redefine them and insist that the person(s) directing them live in the residence with the clients. This would eliminate conglomerates of homes trying to title themselves as private residential boarding care homes.

Thank you for your consideration of this matter.

Sincerely,
Carol Coffman

Carol Coffman
214 Florida Ave.
Westover, WV
26505

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To Whom It May Concern:

I am in favor of smaller personal care residential boarding homes as opposed to the larger nursing home institutions because I feel people receive better care at a more cost effective rate. As a taxpayer of WV, I am also opposed to any small care home having access to my personal finances as long as I am a private paying client.

Signature

Date

Ray C. Coffman

12/2/91

214 Florida Ave
Westover, WV
26505

EASTERN PANHANDLE MENTAL HEALTH CENTER, INC.
SERVING BERKELEY, JEFFERSON AND MORGAN COUNTIES
205 SOUTH WATER STREET
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE
(304) 263-8954

TO: Regulatory Development Section, Office of Health Facility Licensure and Certification, DHHR

FROM: Don Griffin, Housing Specialist, Eastern Panhandle Mental Health Center

RE: Legislative Rules Establishing Standards and Procedures for Residential Board and Care Homes.

Date: January 21, 1992

Thank you for the opportunity to comment on the proposed rules governing Board and Care Homes.

Upon review of the proposed rules it is clear that extensive efforts were involved in their preparation. Virtually every aspect of daily living is covered in significant detail.

From the elaborate nature of the rules and standards, it would appear that the reason such high standards are proposed is in response to violations or extreme substandard care provided those in existing homes which will now come under the board and care classification.

While I definitely believe in and want quality care, regulated through licensing, for all individuals housed in such homes, I also believe that there is great need for a variety of settings (living arrangements) in every community. The high standards proposed will have a dramatic, escalating effect on the costs associated with meeting these standards. Rising costs, then, will restrict the number and nature of homes available.

The overall effect of these restrictive standards, followed by rising costs of care, will be to make it ever more difficult for the low or moderate income individuals (or their families) to secure this type of placement. Without a corresponding increase in housing opportunities offered by public agencies or more established non-profits, such as mental health centers, many mentally ill residents will find it harder to locate affordable housing. This will cause increased stress in their lives and may lead to crisis situations and decompensation events where more intense, costly, and restrictive services are required.

Therefore, my primary comment is that these standards, as proposed, will have an adverse affect on the avaliability of decent care for the mentally ill (and other populations living in this type of setting) and should be revised prior to enforcement.

I look forward to the results of the review process and final implementation in the months to come.

Public Hearing
December 30, 1991

RE: Residential Board and Care Homes
Proposed Legislative Rule 64 CSR 65

Thank you for this opportunity to share some comments concerning the proposed legislative ruling.

In 1987, the WV Legislature passed a law mandating the creation and implementation of regulations for residential board and care homes. Since that time, I have experienced or witnessed numerous positive developments which are a direct result of that initiative.

Recognizing the need for group communication, identification, cooperation and education, the providers of residential board and care formed the WV Residential Board and Care Home Association. What began as little more than a support group and loose coalition, has developed into an established and respected membership, representative of small business owners from around our state. As we emphasized in the very earliest hearings, our greatest concern has always been for the provision of training programs to enhance the direct care skills of our constituency.

This past year, on our own initiative, and at no cost to the state, our small but growing Association offered its first training conference to residential board and care home owners, staff and even concerned family members. We plan to continue in this endeavor which serves to upgrade the quality of care to the consumer, as well as to instill pride in those who provide this much needed service.

The Association has also encouraged an informal network of sharing by the strong and by the not so strong among our membership. The impending implementation of these rules has been exceedingly intimidating to many individuals who are trying to provide community-based care to our rapidly expanding older population. Many have had little or no prior contact with the labyrinth of state regulatory agencies. We offer an opportunity to allay those fears through our ongoing relationship with the Department of Health and Human Resources.

Finally, the creation of our Association has offered us an opportunity to participate directly in the formulation of these regulations. We are appreciative of the willingness of the Office of Health Facilities Licensure and Certification, with special thanks to Sandra Daubman and her staff, to involve us from the earliest stages, requesting input as each new draft was developed. I think this illustrates a rare but successful joint venture between the public and private sector.

I balance these accolades now with a few concerns. I believe that we, as small business owners, have exhibited commitment to better care provision, as evidenced above. From the beginning, however, a major practical issue has been the cost factor for implementing the provisions of these regulations. In these fragile economic times, my concerns have escalated. The big unknown lies in Section 64-65-11, which requires, but does not spell out requirements to meet applicable state fire code ruls. We know sprinkler systems are required, but undoubtedly there are numerous other construction and electrical expenses that will need to be borne in order to come into compliance. The costs will be devastating to many. The proposed rule estimates that approximately 75% of the homes due for inspection will not meet specification. My guess is that this figure will be higher, due in large part to the expense.

In addition to driving many small business owners out of the state's economy, hundreds of older adults will be displaced. Where will they go? It is likely that many, who are now private pay consumers may end up as state Medicaid recipients in institutional environments. I can't accept that as a positive outcome of this legislation.

I would like to close with a few suggestions for your consideration:

1. I believe there should be phased-in implementation of these regulations. This would allow for education and cooperation between the public and private sectors. Perhaps this process could be handled through the state's teleconference capabilities.
2. Low interest loans should be available to the residential board and care home provider to pay for sprinkler system installation and other construction and electrical modifications.

3. Positive examples of residential board and care homes should be showcased -- perhaps offer a Governor's Award of Excellence each year.

The challenge of providing decent and affordable housing options to older adults in West Virginia will continue to mushroom. Let's build on our cooperative working relationship to meet that challenge in a creative and productive way.

Thank you.

Respectfully submitted,

Karen J. Glazier

Karen J. Glazier

107 Georges Dr.

Malden, WV 25306

cc: Governor Caperton
Speaker of the House
Senate President

Home Providers, Inc.
Denver Ave.
Morgantown, WV 26505

In running the final draft Title 64 - 55A - 5C - 5 and 16 - 5H - 2 Residential Board & Care Home. We feel this draft just pertains to business type homes not your small home environment run homes We feel to close these homes is going to cause a economic disaster in W. Va. Because the small homes people can't afford to pay money they don't have. Lets get down to reality some folks have money & some don't. To close the small homes is not the answer in solving living problems in W. Va. We feel more home work should have been done by the Regulatory Development & the secretary of our state including the different types of clients their everyday & money involved. There a conflict between Bureau Health & the Health Dept that need to be worked out before any draft can pass so the public to go by & live under safe.

Home Providers Inc

LEGAL AID SOCIETY OF CHARLESTON

1033 Quarrier St., Suite 600 Charleston, WV 25301
(304) 343-4481 FAX (304) 345-5934

SUSAN HENLINE, OMBUDSPERSON RT.2, BOX 53, COWEN, WV 26206

WV Department of Health
and Human Resources
Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305
ATTN: Kay Howard

re: Proposed regulations for Board and Care Homes

Dear Ms. Howard:

Having reviewed the proposed regulations for registered board and care homes scheduled for public hearing on December 30, 1991, I wish to submit comments regarding certain areas of the regulations.

5.3.1 (Admission, Discharge and Transfer)'A residential board and care home shall not deny ...' Will a board and care home be allowed to deny admission to a resident based upon their gender? Under 5.3.3.3. a facility must not discriminate against an individual on the basis of gender.

7.3.3. (Rights with regard to treatment) The second sentence in this paragraph, 'A resident may be informed however, that failure to follow his or her treatment plan may result...' Including this language within the same statement that a resident has the **right to refuse medical treatment** could be interpreted that a facility may force a resident in complying with a medical treatment as the refusal may result in a possible discharge or other negative action. Also, the referenced sections, Section 5.1.5 and Section 5.3.3.9 does not deal specifically with a resident's rights, but rather house rules and discharge policy.

7.4. (Rights with regard to abuse and restraint) The last paragraph, 'Physical restraints shall not be used except in an emergency ...until such a time that professional help arrives..., does not address a time frame for use of restraints, nor define professional help. Also, should a physican not be involved in such a drastic measure as restraints? There should be very specific language regarding the use of restraints

Barbara Morris
1273 Denver Ave
Morgantown, WV 26505
Phone: 292-4713

January 8,1992

TO WHOM IT MAY CONCERN:

My comments about the rules and regulations for Residential Board and Care Homes are that everything that I can find to read about these homes, past and present state that the Residential Board have at least 3 and not more then 8 clients. I'm finding it very hard to understand how someone that has 20,30 or 140 clients can be regulated under the same rules! The economic impact between the 3 to 8 and the 20 to 140 can't even be compared. The way I read these rules and regs they are for the providers in the 20 to 140 category, I don't feel the providers with 3 to 8 had much input to these rules.

The estimated $450 fee I feel is unfair to the 3 to 8 provider because we don't generate enough income to ever be able to bring our older homes into compliance with the state code or fire marshall. I cannot pass on the cost these fees to my clients because they are state pay or on pensions they don't get increases so that means I don't either.I don't think it is fair for the state to ask me to pay $450 or more for an inspection when we both know that my home is not in compliance and with an income $1800 per month I can't come into compliance so I pay at least $450 just to be told I'm closed. While providers of 20 to 100 can afford to pay the fees a bring their homes into compliance considering their monthly income is in the neighborhood of $20,000 to $100,000 plus. The state is asking me to pay $450 to generate an income for inspectors to close me and assist the large homes. I resent it.

I wish to speak at the public hearing in Morgantown on the 24th.

Thank You

Barbara Morris
1273 Denver Ave
Morgantown, WV 26505

including but not limited to policy regarding use in emergencies, proper use of restraints including staff training regarding use of restraints, release, skin care, etc.

7.5.4. (Confidentiality, Privacy and Record Access) I would recommend that this sentence, ' Residents shall be treated in a manner which assures privacy..! include the word **treatment.**

Thank you for the opportunity to comment on these much needed regulations.

Sincerely,

Susan Henline
Regional Ombudsperson

cc: Jill McDaniel, Lead Ombudsperson
Carolyn Riffle, State Ombudsperson

Kay Howard,

First of all I feel very strongly against these rules & regs. being applied to the small homes that are only registered for up to eight people. This would throw the small homes into a financial uproar.

There are poor people in need of homes, that have very little income. I am talking about 407.00 a month. We have already had our state assistance cut when we took the 4th person in & became residential loading care. Where are we going to go when we get older, I can't afford to pay private rates.

Page 2) Using public transportation, I don't feel we should be responsible for this, because of injuries.

Page 3) Not being able to care for your own relatives seems unreasonable.

Page 3) ~~Age~~ Supervision while off premises would not always be possible.

Page 2) 7 I feel the visitation should be limited to evenings, or a time that could be worked out between the home & families because of meals, bathing etc.

Page 215) 10.1.3,
Does this exclude snacks?
Dinner at 3:00 ? + breakfast 7:00 ?

Ed & Mary Sims
P.O. Box 166
Pursglove, WV 26546

Recd. on
1-14-92
Reg. Dev.

No address on envelope
except Post Office stamps
showing Core, WV 26529

Comment on proposed Rule
Title 64
Residential Board and Care Homes

I would like to comment at hearing
Jan 24th Morgantown W.V.A.

I feel this draft is good for business venture business people. Although I feel there needs to be a different set of rules for personal Care Homes these rules can't be used for R+B+C. Homes. Personal Care Homes because there is a differen In this draft personal Care is mentioned Pg 34 Administration of personal Care Home. I feel family Homes sharing part of there home to help the elderly or disabled should be able to keep a family type home not change it to institution living. Rules should be wrote 3 to 8 family owner occupi I feel family owner occupied homes have that one on one relationship with there peopl & we save the state & goverment money I feel to close the homes that are trying will cause a economic disaster in W.V.A. Some homes take in just state clients & we can't raise our prices. How can we comply with this draft if we can't make money. I feel training is a must + it

should be sent to the Health Dept to every county in W.Va. I feel the Health Dept should come up with packet of paperwork for what is needed & what we should have for Admission's Discharge's & Transfer's & Record Keeping. I don't think all homes will have the same packet. I feel homes that have done this type of work from there own privat homes should be under the grandfather clause & be given time to comply. We were told not to do anything until this draft is passed but yet inspectors are going to come in & no one is ready. Maybe business type homes will be but not family type homes & since we don't take private pay clients in it would be wrong to close homes that have state clients where will these people go & RCA Care Homes get no where pay from the state just a few food stamps. I the homes that the Health Dept feel shouldn't be operating should send someone out to check these places. In our area these homes work closing with S. Workers & Case Managers. I wish

To:
The Regulatory Development
Room 204
Building 3 - Capitol Complex
Charleston, W. Va. 25305
Attn: Kay Howard

Subject:
Final Draft - Title 64

In reference to Residential Board & Care Homes - We (the providers of these homes) feel this draft will cause an economic disaster in West Virginia if small community homes are closed.

If this draft is passed - then there will be no homes in the community for the clients recieved through Dep. of Human Services, Valley Mental Health, Chestnut Ridge Hospital & other facilities that place people in the "home environment."

What are your people going to do when we are no

longer here to give you the help to help these people?

What are you going to do when you need us & we aren't here? How many Congressmen (or women) or lawyers, Senators, Judges, or even Case Manager as far as that goes, are going to take even one of the people home with them? Besides feeding - Clothing - taking to doctors appointments - going to get them when they run off - let alone sit at the Emergency Room for 6 hours (at least) only for them to keep them?

Final Draft - Title 64??

Toss it in the Garbage for your own sake as well as these Clients we Care for & Love Ours!!

Dana Barrett
50 Eastmill St. Apt
Westover, Mass. 365

Kent Bice
8 Lane St.
Westover, W.Va.
26505

Title 64

To close small Homes will cause a economic disaster in W.VA. for the poor. Small Homes should have rules but we don't get the money that other Homes get. So people who take S.S.I. clients can't pass these rules. And some clients can't afford to pay alot.

Signatures

[illegible]
Margaret Dewall
Monica M Gibson
Earnest D Gibson
Kent A Bise
Eva Shearer
Linda Shaffer
[illegible] Manuel
Franklin R Wears
Kim Wears
Kimberly A Johnson
Don [illegible]
Scott Rissleman
Roberta Riggleman
Edwin A. Riggleman
Thom E. Riggleman
Brian Ayers
Sharon [illegible]

Tonya Webber
Elaina Webber
Karen David
Dave [illegible]
[illegible]
Lucille Jamison

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[illegible] 26 1991
REGULATORY DEVELOPMENT SECTION

More people against your Title 64

James Barnett
Dina (Aunt) Reynolds
Chas Reynolds
Mr. & Mrs. Roger E. Olive
James & Norma Barnett
Kim Reynolds
Steve Barnett

Mrs. Karen Decker
Rt. 9, Box 181
Fairmont, WV 26554

Sent to
Health Dept
Regulatory Dept
Room 204 Building 3
Capital Complex
Charleston WV
25305

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JAN 02 1992

REGULATORY DEVELOPMENT SECTION

Bill 16-5C-5 and 16-5H-2 coming before the legislation this session for Residental Board and Care Homes, is going to have impact on YOU or someone in your family. If this Bill passes as written it is going to cause another economic disaster for this state and take your freedom of choice away from you concerning where you can live when the time comes that you need to leave your own home. We're asking our Legislators to stop and think about this "Bill" and give us the time to see if there isn't some alternative to this Bill.

	NAME	ADRESS	PHONE
1.	Holly Pander	Rt 4 Fmt WV	363-0314
2.	Jason Pander	Rt. 4 Box 537 Fairmont	366 5563
3.	Jo Ann Thompson	Rt. 9 Box 208 Fairmont	366-7082
4.	Patricia A Kroff	Rt Box 81B Fairmont	366-7210
5.	Arthur Shinko	Rt Box 81B Fairmont	366-7210
6.	Debbie Mays	RT 9 Box 181-A Fairmont	366-9403
7.	Jim Mays	RT 9 Box 181-A Fairmont	366-9403
8.	Eugene Bunny Decker	RT 9 Box 181 Fairmont	366-1025
9.	Karen L Decker	Rt 9 Box 181 Fairmont	366-1025
10.	Laura J. Decker	Rt. 9 Box 181 Fairmont	366-1025
11.	Jerry L [illegible]	P.O. Box 130 Kingmont	363-3170
12.	Virginia Woodley	Box 181 Fairmont	366-1025
13.	Ruth Marie Storey	Box 181	366-1025
14.	Robert B. Love	Box 181 Fairmont	366-1025
15.	Virginia L Kasmar	216 Maplewood Dr. Fairmont	363-3094
16.	Brenda A Downing	Rt. 1 Box 382 Fairmont	534-5308
17.	Michelle Jackson	Rt. 9 Box 181 Fairmont	366-1025
18.	Grace Mallamo	24 Hollen Cir. Fairmont	366-4239
19.	O E Thompson	Fairmont Rt-9	202-355-2075
20.	Charles J. Pander	Rt 4 Box 537 Fairmont	363-0314

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	NAME	ADRESS	PHONE
1.	~~Jo Ann Thompson~~	~~Rt. 9 Box 208 Fairmont~~	~~366-7082~~
2.	Mary J Fogues	Rt 9 Box 242 Fairmont WV	366-9198
3.	Junior Fogues	RT 9 Box 242 Fairmont WV	366-9198
4.	Mary Sullivan	1510 Jefferson Ave Fairmont	363-5704
5.	Larry Sullivan	1510 Jefferson Ave Fairmont	363-5704
6.	Rita Koda	Box 1 Grantown, WV	278-7735
7.	Olga Koda	C/o Grantown WV	278-7735
8.	Harold VanHorn	339 Dorsey Ave. Mgtn WV	292-0310
9.	Carley VanHorn	339 Dorsey Ave. Mgtn.	292-0310
10.	Dorthy Boone	RT 3 Box 67-B Grafton	265-5373
11.	Lucie Jones	223 Sindy Dr	842-4673
12.	Alice Withers	R-1 Box 241 Lewington WV	8425037
13.	Ruth Taylor	18 E Welford St Grafton	265-0132
14.	Deanna Tisenhaver	Rt 2 Box 82C Grafton	265-2720
15.	Mary Newlon	510 Main Ave Grafton	265-3025
16.	Paul Baker	Rt 2 Box 78 F Grafton	
17.	Phyllis Lancaster	1225 W Boyd St. Grafton	265-3189
18.	Joe Wood	1301 W Boyd St Grafton	265-1447
19.	Connie Mayfield	Rt 1 Box 227 Wallace, WV	796-4937
20.	Robert Pauley	163½ Hamill Ave Clarksburg	622-8244

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	NAME	ADRESS	PHONE
1.	Virgil Morris	Rt 1 Box 205 Fairview WVa 26570	
2.	Retha Morris	Rt 1 Box 205 Fairview WV 26570	None
3.	Webb V Morris	R # 3 Box 173 Mannington 26582	986-2478
4.	Mary Bonnett	R # 1 Box 313 Farmington	825-6672
5.	Lorette Howard	Box 281 Idamay WV	287-7389
6.	Alberta Coffman	RFD 1 Box 234 Farmington	825-6145
7.	Mr & Mrs Clarence Smith	Mannington W V.	
8.	Darlene Lilly	604 Division St Fmt WV	
9.	Peggy Farquer	RT 6 Box 724 Fmt WV.	NO Phone
10.	Kim Hammond	Rt. 6 Box 726 Fmt. WV	
11.	Jean Tomkins	Rt 7, Box 45, Fairmont WV	363-4179
12.	Mr & Mrs A W Lemasters	118 Tilton ... Fairmont	366-1626
13.	Hellen B Moore	57 E Park Mobile Home Ct	366-2269
14.	Geraldine M Reed	409 Spring St	363-2219
15.	Rose A Poe	Morgantown Ave.	363-3145
16.	Robert P Clelland	FAIRmont	3630762
17.	Doris L Clelland	Rt. 2 Box 226 Fmt.	363-0762
18.	Cecil H. Jenkins	RT 4 Box 126 GRAFTON	265-5793
19.	Virginia L. Jenkins	Rt 4 Box 126 Grafton	265-5793
20.	Alice L. Depp	1812 Lafayette Ct	366-798

Bill 16-5C-5 and 16-5H-2 coming before the legislation this session for Residental Board and Care Homes, is going to have impact on YOU or someone in your family. If this Bill passes as written it is going to cause another economic disaster for this state and take your freedom of choice away from you concerning where you can live when the time comes that you need to leave your own home. We're asking our Legislators to stop and think about this "Bill" and give us the time to see if there isn't some alternative to this Bill.

	NAME	ADRESS	PHONE
1.	[illegible]	RT 9 Box 243	(304) 366-0331
2.	Patricia Lowe	238 Harvard Ave.	(304) 363-1537
3.	Jim Barnett	Rt 9 Box 185-A	(304) 363-4544
4.	Bryan McClain	Rt 9 Box 1604	366-0383
5.	Ginny Locke	Rt. 9 Box 125	363-4233
6.	[illegible]	Rt 9 Box 181	366-1025
7.	Mary Woodring	Rt 9 - Box 182	367-0391
8.	Ray Wilson	Rt 9 Box 194	363-4534
9.	David Woodring	Rt 9 - Box 182	367-0391
10.	Ryan Channell	Rt 8 - Box 169	363-2098
11.	Sharon Bowman	Rt 9 Box 158A	366-2144
12.	Nellie Yates	333 Marion St	263-3855
13.	Ken Ison	408 Deerfield Drive	366-6775
14.	Rick A. Dymsch	Rt 6 Box 287E Fmt W.Va.	366-2491
15.	[illegible]	24 Hollow Rd Fmt WV.	
16.			
17.			
18.			
19.			
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LEGISLATIVE AUTHORIZATION
OFFICE

Home Providers, Inc.
Denver Ave.
Morgantown, WV
26505

Bill 16-5C-5 and 16-5H-2 coming before the legislation this session for Residental Board and Care Homes, is going to have impact on YOU or someone in your family. If this Bill passes as written it is going to cause another economic disaster for this state and take your freedom of choice away from you concerning where you can live when the time comes that you need to leave your own home. We're asking our Legislators to stop and think about this "Bill" and give us the time to see if there isn't some alternative to this Bill.

	NAME	ADRESS	PHONE
1.	Betty Harris	Rt 1, Box 203H Wlatn, WV	983-8016
2.	Joan Leach	Rt 7 Box 303H Mgtn WV	594-2927
3.		109 Wolfe Run Rd Mgtn WV	291-3471
4.	Mark Beard	Box 377 Cheat Lake WV 26543	599-6015
5.	Louie Shoemaker	PO Box 236 Dellslow WV 26531	296-7700
6.	Don Robinette	Rt 10 Box 627 Mgtn WV 26520	864-5071
7.	Edgar Brookshire	Box 23 Arthurdale WV	864-6658
8.	Eric Pettigrew	Rt 10 Box 503 Mgtn	296-2907 Box
9.	Harold Gibson	Box 344 Masontown WV	864-5376
10.	Emmit Gibson	Rt 1 Masontown WV	864-5145
11.			N/A
12.	Lilla B. Shackelford	Rt 2 Box 112 Reedsville	N/A
13.	Clyde Reed	Rt 4 Box 357 Mgtn	
14.	Darren McQueen	Rt 1 Box 176 D Independence WV	864-3722
15.	Ned Hahn	Buxton WV 26520	662-6274
16.	Lorne Eneix	Brookhaven WV 26330	842-5222
17.	Larry Mallory	Rt 1 Box 124 Masontown	864-5454
18.	Richard Lyles	Rt 1 Box 100 A Independence	864-5023
19.	Robert White	Rt 1 Box 74 A Fairview	477-1302
20.	Grace Flowers	Rt 2 Box 64P	864-5520

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NAME	ADRESS	PHONE
1. Robert Thompson	Rt 1 Box 273 Maidsville WV	599-5069
2. Rick Trentini	P.O. Box 4111 Star City	599-5140
3. [illegible]	18 Monongahela Ave [illegible]	2968331
4. Chuck Meadow	PO Box 586 B Mgtn. WV 26505	291-6932
5. Chuck [illegible]	P.O. Box 472 Arthurdale WV [illegible]	864-3999
6. Raymond Gibson	RT. 7 Box 203B Mgt WVA 26505	594-2973
7. Bradley Fields	P.O. Box 213 Masontown WV	864-6934
8. Ed Cupp	741 Brookhaven Rd Mgt WV	292-4039
9. Mike Haguser	Rt 3 Box 515A Mgtn. WV 26505	296-6057
10. John Shaffer	Rt 1 Box 89 Masontown WVA 26542	864-5867
11. Rick Pittman	P.O. Box 88 Core WVA 26529	979 5780
12. Don Smith	P.O. Box 267 Masontown	864-5127
13. George J Smith	Po Box 173 Masontown	8645981
14. [illegible]	PO Box 631 Masontown	864-5332
15. [illegible]	Rt 1 Box 160 Masontown WV	864-3567
16. [illegible]	911 [illegible] Ave Mgtn WV	291-1351
17. Gerald L. Hun Jr.	RT 3 Box 224BB Morgantown	296-4194
18. [illegible]	233 [illegible] St Morgantown WV	296-4621
19. [illegible]	Rt 12 Box 87 Mgtn. WV.	594-1787
20. Lee A. [illegible]	Rt. 1 Box 454 Farmington WV.	825-6129
[illegible]	[illegible]	[illegible]

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JAN 08 1992

REGULATORY DEVELOPMENT SECTION

Ed Sims
P.O. Box 166
Pursglove, WV
26546

Bill 16-5C-5 and 16-5H-2 coming before the legislation this session for Residental Board and Care Homes, is going to have impact on YOU or someone in your family. If this Bill passes as written it is going to cause another economic disaster for this state and take your freedom of choice away from you concerning where you can live when the time comes that you need to leave your own home. We're asking our Legislators to stop and think about this "Bill" and give us the time to see if there isn't some alternative to this Bill.

	NAME	ADRESS	PHONE
1.	[illegible]	[illegible]	[illegible]
2.	Brian Howell	989 Rawley Ln	599-2806
3.	[illegible]	[illegible]	[illegible]
4.	[illegible]	[illegible]	[illegible]
5.	[illegible]	[illegible]	[illegible]
6.	[illegible]	[illegible]	[illegible]
7.	[illegible]	[illegible]	[illegible]
8.	[illegible]	[illegible]	[illegible]
9.	[illegible]	[illegible]	
10.	[illegible]	[illegible]	
11.	[illegible]	[illegible]	[illegible]
12.	[illegible]	[illegible]	[illegible]
13.	[illegible]	[illegible]	
14.	[illegible]	[illegible]	
15.	[illegible]	[illegible]	
16.	[illegible]	[illegible]	
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	NAME	ADRESS	PHONE
1.	Patricia Shelley	RT 7 Box 308 Matn	594-3336
2.	Guy Shelley	RT 7 Box 308 Matn	594-3336
3.	[illegible]	201 Smith St WD	292-8167
4.	[illegible]	46 Lane St	292-1201
5.	Ellen Poling	RT 1 Box 378	953-2063
6.	Frank H. Brooks	313 Newyork Ave.	292-3708
7.	[illegible]	123 Parkview Apt 2	292-4706
8.	[illegible]	[illegible]	[illegible]
9.	Patricia Parks	Rt 2 Box 24-B	292-4176
10.	[illegible]	Box 233	278-7975
11.	[illegible]	Box 2633 Westover	599-3524
12.	[illegible]	Box 2633 Westover	
13.	Karl H Wenrich	11 Westpark Ave Westover WV	292-2204
14.	[illegible]	Rt. 5 Box 116 E Morgantown, W	292-2477
15.	Celena M. Lemaree	P.O. Box 190 Granville WV	599-0556
16.	[illegible]	Rt 1 Box 121 Mtn. 26505	
17.	Virginia Faulkner	50 Orchard St Ln. WV 26505	292-7140
18.	[illegible]	50 Orchard St Ln WV 26505	292-7140
19.	[illegible]	RT 2 Box 408 Matn WV	594-4[illegible]
20.			

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	NAME	ADRESS	PHONE
1	William Spiker	Lot C-27 LaMesa	291-3927
2	Diane Spiker	Lot C-27 LaMesa	291-3927
3	Mary Patton	Lot D-24 Lamesa	296-2480
4.	Sally Zinn	Lot D-24 Lamesa	291-2480
5	L. Walton	P.O Box 276 Osage WV	328-5966
6	Donald w Sell	Po 170C Morgantown WV	328-5252
7.	Mary e Sell	Po 170C " "	328 5252
8.	Mark Beard	PO Box 377 osage wv	599-6018
9.	Jeff Hall	Lot E2 Lamesa 1944 Mgt	291-1131
10	Jason Hall	Lot E2 lamesa 1944 Mgt	291-1131
11.	Anthony Lewis	453 Ohio ave	292-4368
12.	Hazel Knicely	Box 105 pursglove	599-0144
13	Melynda Galbraith	Box 463 pursglove WV	
14.	Verlon Knicely	Box 105 Pursglove WV	599-0144
15.	James Atkins	P.O 55 Cassville W.Va. Cassville	
16.	Dave Myers	RFD 13 BOX 213	
17.	Gene Cook	RT 3 Box 5428 Mgt	
18.	Ken Dalton	RT 10, Box 78	296-1532
19.	Linda Walton	RT 10 Box 78	296-1532
20.	Patty Dalton	NEW HILL CASSVILLE W.V	

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	NAME	ADRESS	PHONE
1.	[illegible]	PO Box 446 [illegible] Pa 15315	(412) 839-7189
2.	Douglas [illegible]	Po Box 206 Osagewood 26545	599 2806
3.	Harry Mercer	Rt 2, Box 307A Fairview Wv	798-3310
4.	[illegible]	PO Box 434 [illegible] WVA	328-5768
5.	[illegible]	Rt 8 Box 204 Morgantown	594-1062
6.	[illegible]	Rt 1 [illegible] WV	579-5629
7.	[illegible]	Po Box 217 [illegible] WV	864-[illegible]
8.	[illegible]	[illegible]	[illegible]
9.	Sharon Smith	P.O Box 84 Smithfield Pa 15478	569-1158
10.	Robin Singleton	PO Box 77 [illegible]	26[illegible]6219
11.	[illegible]	P.O Box [illegible]	[illegible]5332
12.	[illegible]	Rt 10 Box 78 Morgantown WV	304-[illegible]
13.	[illegible]	Rt 10 Box 78 Morgantown WV	304-[illegible]
14.	[illegible] Dalton	Rt 10 Box 82A [illegible] WV	
15.	[illegible] Dalton	Rt 10 Box 82A [illegible] WV	
16.	Kathy Andrews	Rt 10, Box 81-A Mtgtn WV	304-296-4050
17.	[illegible] Andrews	Rt 10, Box 81-A Mtgtn WV	304-296-4050
18.	Edna Dalton	Rt 10, BX 84 R mgtn	304-[illegible]7906
19.	[illegible]	Rt 10 BX 103 [illegible]	304-[illegible]
20.			

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	NAME	ADRESS	PHONE
1.	ADA SIMS	P.O. BOX 415 CASSVILLE	598-0466
2.	LINDA BLOSSER	RR#1 Box 1700 Morg.	328-5178
3.	RAYMOND SIMS		598-3195
4.	RONNIE SIMS	P.O. 255 SPRINGLAKE NC	919-436-2557
5.	EDWARD AUSTIN	Dorcy ave	292-0876
6.	ABNER SIMS	Snake Hill Rd.	292-7635
7.	ROSEANN-HENRY		599-4380
8.	DALE SIMS	Pineglove WVa	328-5661
9.	EDNA SIMS	DAVIS WVA	1412-324-5194
10.	[redacted]		599-3569
11.	NANCY. S	R+1 Box 132A Masontown WV 26542	864-6983
12.	JESSIE KNISELL	Morgantown	291-2616
13.			
14.			
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WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Charleston, West Virginia

In re: Public Hearing - Residential Board and Care Proposed Regulations

Transcript of proceedings had at a Public Hearing on January 24, 1992, at 10:13 a.m., in the Demonstration Room, Monongalia County Health Department, Morgantown, Monongalia County, West Virginia, before Ann K. Shockey, Court Reporter and Notary Public in and for the State of West Virginia.

PHYLLIS HAYNES EDENS
CERTIFIED COURT REPORTER
2139 KAY NEVA LANE
CHARLESTON, WEST VIRGINIA 25312
(304) 984-3531

APPEARANCES:

SANDRA L. DAUBMAN, M.S., C.H.E.
Program Administrator
Office of Health Facility Licensure & Certification
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

LYNDA G. KRAMER, RN, BSN, NHA
Director
Office of Health Facility Licensure & Certification
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

I N D E X

MS. KRAMER: Good morning. My name is Lynda Kramer. Today is, I think, Friday, January 24, 1992, and this is the second hearing on the Residential Board and Care proposed regulations, and I am totally pleased that we have as good representation as we do here this morning.

In the front of the room we have some extra copies of the proposed rule, and we also have some instructions that give you some explanation of how the course of activity will be handled this morning.

I'm the Director of the Office of Health Facility Licensure & Certification, and this is Sandra Daubman, who is the Program Administrator for the Residential Board and Care Program, among others. We're both with the Office of Health Facility Licensure & Certification in Charleston, and if I didn't say my name, my name is Lynda Kramer.

We were going to hold off a few minutes in order to give folks time to come in in the event of bad weather, and I'm glad we held off, because we didn't want to have to reschedule the hearing this morning if we didn't have to.

The guidelines for public hearing are

basically to give an opportunity to you to say what you have on your mind, for us to receive any concerns that you have with regard to the proposed regulations. The purpose is not to spend time discussing or debating these issues. So, that if there is a larger group as the morning goes on, and you're sitting next to someone that comes in late, give them a little bit of an elbow, and tell them to please come up and sign in so we'll give them a chance.

At the present we have about seven people who have indicated they would like to make comments, and I'm very pleased about that. Would ask when you come up to limit your comments to approximately five minutes. If you go on and on, I may have to call time on you. If you would like to -- You know, if we have a large enough group, and we wind up going around on a second round, then you can have an opportunity to again get up and respond as long as it remains on the subject.

Some of you have already submitted comments in writing, and this is basically an opportunity to express your concerns orally. We will not be taking time at this point to provide -- You know, to get up here and debate the issue as was already said.

When you come to the podium, please introduce yourself. Say your full name so it can be recorder by the recorder, who is sitting to my left.

I would like to also give you a little bit of a history of the Residential Board and Care regulation. The Rule -- the Code was put in place nearly two plus years ago, and we were supposed to have had regulations prepared to go in July 1, 1990.

July 1 came and went, and finally, in October of 1990, we did have a public hearing on the regulatory draft at that time, and because there were so many comments that were generated at that hearing and such a diversed nature, we felt that we needed to go back to the drawing board and come up with another proposal.

Since the beginning of this year or last year really, a task force was put together to re-work the regulations to come up with as uncomplicated a version that we could come up with. We had a lot of people here, a few of whom are in this room, that participated on that task force. We had the Fire Marshall's Office. We had other social agencies. We had sent the draft out for comments, and what you see is about as what you call a down and dirty

rule as we could possible come without omitting something of main importance.

So, we hope that we're able to collect your comments this morning and render your opinions. We would welcome them. We are hoping that if there are no substantive comments that we could perhaps move towards putting this in place as an emergency rule in the near future. I don't have an exact date on that, because everything is going to depend on the kinds of things that are said today and what goes on in Legislature.

So, at this point in time, I'd like to have Nat Hughes step forward, please.

MR. HUGHES: I'm Nat, N-a-t Hughes, and I've been asked to speak on both behalf of the Personal Board and Care Homes, and I'm also speaking certainly in the ground work for when we get to the mentally ill, and I'm representing AMI. I'm the AMI State Lobbyist, if you will, alliance for mentally ill, and I would just like to make some very broad general comments of some good things and some problems, and how we see it at this point.

We are, in AMI, are very, first of all, very encouraged that in talking with our mental health people,

the Governor himself, the Governor's office representatives, people in the Health Department, that we have over the last couple of years formed some various coalitions, which I think have been very productive in working together to solve problems and get things done, and basically, this is AMI's position now is that we feel that we have -- We know enough of these people, and have talked to them.

The Governor himself has given assurances that he would not tolerate people being thrown in the street or broken up and all this kind of stuff that you may have fears about, and so I -- I take the top official's word that we will work together, and will resolve problems, and resolve any of your fears, and we have them. I'll go over a few of them in a minute.

Let me just state another general position. AMI's national position and state position is that we are absolutely support the mom and pop operations homes, okay? We couldn't -- Our people wouldn't have a place to go. There would be more on the street if we didn't have them. For 30 years, we've been -- We've been encouraging the establishment of the mom and pop homes for those who are

mentally ill, okay? So, we are in favor of that.

We are also in favor of rules and licensure, okay? We want them. What we don't want is where they get so bureaucratic or we get somebody who is not trained out there who goes out there and starts closing down good houses, okay, or we get so bureaucratic that we discourage opening new houses, because Lord knows we need these businesses not just for a human and moral standpoint, but from a business standpoint, we need them, and State wants to encourage it, not discourage it, okay? I can assure you that's true.

So, we're saying what we want to do is work very cautiously with licensure people in ironing out any problems and fears that you have, and that we are -- also some of the concerns I know you have. For instance: On the -- Our also national position on -- on the fire business. First of all, let me tell you, other than last year -- unfortunately last year we lost somebody, but for 30 years my understanding is we've lost no one in the state through fire except last year, okay? We lost, I think, one person in 30 years in these kinds of homes.

However, there's no question about it that

when you talk to the writers of the bill, which is my opinion from what I understand it was Barbara Center Hatfield, Pat White was involved, and somebody else introduced it.

The intent was to protect the aging and those who were aging and happen to also be mentally ill from abuse. That flat out that's what generated the writing of the law, and our national position is on this fire sprinkler thing is we feel that if there's abuse, it should be attacked as abuse rather than having a bureaucratic handle of sprinkler systems. Well, it's passed. Okay. I mean, it's law. And my understanding is -- I may be wrong, but my understanding is that it was a State adoption of Federal. It's not Federally mandated, is it, the sprinkler? It's State adopted.

MS. KRAMER: It's State adopted.

MR. HUGHES: So, it's State adopted. If we have a real serious problem, we can go to Legislature over site and try to do something with that, but I'd rather -- At this point, what we're suggesting is inviting the Personal Care Home Providers, Licensure, AMI, anybody else who is interested, consumers. The Fire Marshall is more

than willing to meet with us to try to work out reasonable alternatives to an expensive sprinkler system for which I've got estimates. My estimates are running $8 to $15 thousand, okay? That's for like a modular home, double-wide. Okay. So, we're concerned about that. We're concerned about the $408 initial fee and so forth.

We think we can certainly work out, because it's been a hot issue all the time, this business about the legal rights of persons who refuse to take medication, okay? And if you have any problem with that, just talk to me, because they get it, okay? If you want -- If you have any problem knowing how, just let me know. They get it, okay?

And that's the one area that I just flat out publicly tell you like Dr. Tory. My daughter will get medicated one way or the other, I guarantee you. So, those problems can be worked out. So, we're trying very hard. We're suggesting very hard to work out these problems. I know you've got a lot of fears, and I just want to go on the record as saying I did too. Lynda is perfectly aware.

I had a Sheriff running around trying to close the place down 6:30 in the morning with a woman with

a heart condition, and he comes in there like with a SWAT team with no warrant and conducts a search. It's illegal, and we have those, but we have to fight them, okay?

But I really feel that in most cases we can work these problems out, and I would encourage the Personal Care Homes, because we need them so bad, to really get organized, and when you have a problem, help each other, and that's what we've done, and I -- and I really think working together in coalition helps.

I feel that your revision is a good -- good beginning. We're trying to work it out. If we have any other problems, we can let Lynda know what kind of problems we're facing, because I know that they don't want either a bureaucratic nightmare or to enforce a rule which, you know, messes homes up and puts them out of business.

On the other hand, let me tell you, and of course, obviously, these people aren't here, but any home that is abusing people, let me tell you, we will go after them as hard as anybody and put them out of business, okay, where there's real abuse, but our national position, are state position is that we feel it should be based on abuse and not hanging enough fire alarms, sprinkler alarm, and

basically, that's our position, and I'm sort of laying the groundwork for when we get together on the mental health -- mental health rule, but I'll be glad to talk to anyone afterward if they have any questions, if I can help them or you can even help me. Thank you very much.

MS. KRAMER: Thank you. The next speaker will be B. J. Weber.

MS. WEBER: Hi. My name is Betty Weber, and I have Weber's Residential Board and Care Home. The last three years have been very very stressful for us trying to run a Residential Board and Care Home. There's been a lot of meetings. A lot of things that we haven't really understood from the Health Department, and we're going to try to work together to come up with some type of communication where we all can continue to operate our homes without feeling scared or to the point we get stressed out, because we definitely don't need that.

I feel this draft is good for business-type homes where there's more than one home. I think for like your family type settings, I have a lot of questions about this draft, because I don't think it would work for us.

I think this draft kind of puts Residential

Board and Care Homes and Personal Care Homes as one. I feel there needs to be some line drawed of whose who; whether you're Personal Care, whether you're Board and Care. I think there needs to be two different sets of a draft made up.

In the draft, Personal Care is mentioned on page 34, Administration of Personal Care Home, which I had the understanding that Personal Care has their own rules and regulations, and Residential Board and Care also would have theirs.

I feel family homes that share part of their homes to help the elderly or disabled should be able to keep a family type home, not change it to institutional settings. Rules should be wrote three to eight family and owner occupied. I feel family owner occupied homes have that one-on-one relationship that the patient or client that you're working with. I feel this is what they really need, because when you have like certain staff people that come in, sometimes it takes them awhile to get to know these folks, and they just feel more secure, more safe with that one-on-one setting or one-on-one person working with them.

I feel to close the homes that are trying to meet the health requirements would cause a disaster in West Virginia, because I feel there are a lot of people that need homes. People that don't work in this type of situation on an everyday basis maybe really don't understand what it is to be homeless or to work with a homeless person, which they are out there.

I feel that some homes that take in the State clients, you know, we don't make any money. You're lucky if you get $389 a month, and that includes everything. I don't feel that -- that we are in a venture-type setting, because we aren't making any money.

I don't feel that we can raise our client's rent even if they are private pay, and they only pay like $600 a month. You can't raise something if the people don't have it, and that's something that's mentioned in this draft.

I feel that we can -- You know, we will try to comply with this draft with the sprinkling system, the alarm systems, and what they're asking us to do, but another thing is the money. Where is the money coming from? There are homes that make a fairly good bit of money

a month. There are homes that just barely make ends meet.

I feel training is a must. I think all homes, home operators should be trained. I think that should come from the Health Department to every county in West Virginia. I feel the Health Department should come up with some type of pack or packet of paper work for what we need to run our homes on an everyday basis; as far as discharges, transfers, record keeping and so forth.

I feel homes that have done this type of work from their own private homes should be under the Grandfather clause, and be given enough time to comply, and really, we were told not to do anything to our homes until this draft passed, and there are a lot of people who have already re-done their whole house, their whole home to the code requirements; starting their sprinkling system, their alarm system, and that's good if you can afford it, but still, you know, we're kind of like right here in the middle, and really, we don't know what they want of us. We really don't know what to do.

I have had an enormous phone bill from calls to Charleston how many times trying to find out what I'm supposed to do, and it's been three years, and I'm getting

an idea of what they really want from me to operate my home, but I'm still very confused.

I think that if we were given enough time to comply, you know, we will try, because we were told not to do anything.

I feel that -- that there has to be homes who will accept the lower paid clients, and there has to be a home that will take in these State clients, because if -- if there is not, then where will these people go? I mean, you can't turn them out on the streets and turn them out to pasture. They are human beings.

I think we're in a world today where you have to draw the line of who has money and who doesn't have money, because everybody, they're still a human being. Thank you.

MS. KRAMER: Thank you. Doris Ganoe?

MS. GANOE: Can I pass?

MS. KRAMER: Okay. We had a decline. Karen Decker?

MS. DECKER: I think Mrs. Weber hit upon what I wanted to speak about.

MS. KRAMER: Thank you. Kevin Meehan? Oh, I

skipped somebody, but that's all right. Come ahead.

MR. MEEHAN: I'm Kevin Meehan, and I'm the Director of Social Work at Chestnut Ridge Hospital. I'd like to express some of my concerns about over restricting board and care residences, and point out some of the ways we utilize board and care as a psychiatric facility in West Virginia.

I would echo some of Betty Weber's comments that board and care has met a very significant need for low income clients in particular who need supervision and the kind of care that those homes provide.

They particularly seem to have met a very big gap in the service system for the chronically mentally ill and for other people who need supervision. For instance: People with dementias. And we utilize them as a very important resource for those -- for those people with those conditions.

What my concern is that the regulations are oriented to people who can operate a pretty large business. There are some pretty hefty fees in there and some very stringent regulations, and my concern is that we'll lose the small family based operations that we have seen to be

very effective in working with our clients, and there's a kind of a dilemma that you're face with. Okay.

If rules are designed to provide safety, which is very important, and maintain basic health needs people in these facilities, I believe there is a need to regulate them. I mean, maintain basic safety needs, but if we go all the way to the extreme of over regulating, then we're going to create other dilemmas in this system.

Larger facilities are in existence. There is large personal care homes, and the disadvantage to them is that they're very institutional in nature, and we know the institutions have a tendency to -- to make things less individualized for people, and make people very dependent. Where I think smaller facilities can incur more independence and independent living to try to maintain people's quality of living and their self esteem.

So, I would encourage continuing smaller **scale** facilities and more family based operations, because it does mean a very important service need.

I think one of the dilemmas that we are facing is more and more the institutionalization for psychiatric facilities, more stringent nursing home

guidelines presenting many people from entering nursing homes without supervision needs based on some of the restrictive over regulations, and we also do not have enough mental health facilities, group homes who can provide that level of supervision, training, and so what's left? Either people go on the streets, which we're finding more and more of nationally or enter smaller homes or go with families or get continually re-institutionalized over and over again.

I think we're seeing very high rates of commitment hearings in counties for people who are found to be dangerous, who are left in situations that are less than adequate. In other words, with families, with -- not by choice, but by there's no other option, and so sometimes care in those situations is less than optimal or they're just left to their own devices and set-up in apartments or sent to homeless shelters from institutions such as hospitals and psychiatric facilities, and then these people run into difficulties and are re-committed back into the system, back into the large institutions.

So, what I'm saying is this can be a very important part of the continuing of care with group homes,

personal care homes, nursing homes, and board and care homes.

I think it's a real important part of the continuing of services we can offer people. Particularly, low income people, and my fear is that low income people are going to be hurt the most by very stringent regulations, forcing some of these operators out of business. Thank you.

MS. KRAMER: Thank you. Jennifer Craddock?

MS. CRADDOCK: My name is Jennifer Craddock, and I'm a Social Worker with Mon County Home Health, and I don't have anything prepared, but I've been in the field of social work with various agencies for about 15 years now, and these little mom and pops homes as you referred to them are vitally important.

When I first heard, I think about three years ago, that there would be regulations, I was very excited, because I thought for one thing it gave the home owners an opportunity to sell themselves. When families were looking for a home, they could then ask are you certified, and they knew there were basic criteria that was met.

As I read the proposal, I became very scared, because I also foresee the person of the lower economic class being shoved out, because there's no way that I could imagine these homes could afford to do all this with the regulations, and provide that one-on-one, and that one-on-one is so vital. You cannot begin to know unless you deal with populations that utilize these types of homes.

I certainly want to emphasize I think regulation and certification and that type of thing is needed, but I do think that there's too much here. There's too much red tape, and I agree it looks more like personal care home type of regulations than what you get for three to eight people.

I found the regulations a bit ambiguous also, but maybe it's because I've not been, for the past few months, in it intensely.

I would ask that this State in the times of economic whoas would look at putting these people out of business, because that's what I foresee happening, and then I would image that corporations from out of state will come in, because they'll be able to provide this at a higher

level of pay, and then the lower income person will be shut out.

I wonder about the effects of corporations, even nursing homes expanding out into this area to provide the care, and once again, I don't think you're going to get that one-on-one that you get with the residential board and care homes.

I guess in summary I would just like to say, and I certainly agree with all that Kevin said. I'm in favor of regulations, but have grave concerns about the extent of bureaucratic red tape involved in these regulations. I think you're going to put people out of business and people on the streets. Thank you.

MS. KRAMER: Thank you. Barbara Morris?

MS. MORRIS: My name is Barbara Morris, and I'm a home provider. I only have three people in my home at this time. I have asked to have four.

And these rules and regulations to me, is kind of repetitious but, it does not pertain to small three to eight homes. At least -- It states at least three, but not more than eight. These are for the much larger home, and there is no way that I can provide for my people in my

home under these rules -- following these rules and regulations.

If I had to follow them, I mean, it would be -- It -- It doesn't even make sense for me to have to do daily monitoring. I mean, you know, and keep track of all of those records, because we are -- We're a family. It's a family situation.

I don't even make everyone get up at 7:00 and go to bed at 8:00 because someone is coming in. You know, if they want to sleep until 10:00, they sleep until 10:00. That's their privilege of being -- This to me is what makes me different than the institutions. It's a service I can provide them that they can't. I don't have shift changes coming in. This has to be done.

You know, I think that we need something that specifies live-in, you know, rules and regulations for the family living in, because there are so many different types of homes out there.

There are a lot of homes that have only three to eight people, but they're owned by one person, and there may be five homes. So, each of these homes are staff employed homes. The owners -- Excuse me -- The owners are

never there. So, they don't get the one-on-one. It's still run in an institution fashion, but they only have eight people. So, of course, they would qualify under the rules and regulations of care and board, and I think there needs to be a distinction there.

The money that is generated for someone that owns three to five homes compared to the money that's generated in my home, I will never be able to go over maybe $1,800 a month if I'm full. If I have four people, you know. My people are on Social Security. There is no increase.

I mean, I can't say -- I'm getting back to this -- Excuse me, $450 inspection fee. I have to borrow that from my husband to pay, because my clients cannot pay it. I can't generate -- Excuse me -- I can't generate money from them to pay these kind of fees, and not even if we come in under a Grandfather law, three years down the line. I can't build-up, you know, income to -- to -- to come up with these fees and stuff that is expected. Not with four people.

I don't plan on having eight people. I don't plan on having another place. I only want four

little ladies, you know. We get along fine. And it's really not even an income thing. I enjoy it, and they enjoy it, you know, and so, if we --

I -- I would appreciate having some rules and regulations. I have been trying to get some so that I know myself personally how to live and stuff, but I can't -- It can't be as stringent as they are now. I mean, we're -- To me, they've just got to break them down into categories, and I know it's time consuming, and it would be a tough job, but there's no way I can live with what is here today. That's about all I have to say.

MS. KRAMER: Thank you. James Gifford?

MR. GIFFORD: My name is James Gifford. I'm with River City Fire Protection, and I'm not here today to, you know, take sides or push sprinklers or not push sprinklers. I was called on by a group home in Charleston about a year and a half ago, and they asked me to come to Charleston and meet with them to see what I could do for them.

At that time, they was getting estimates in West Virginia that were just way off the board. We had done so many residential homes in the past. In fact, I've

been in the business since '66, and been doing health care since '73. We did it in the early seventies, probably 100 nursing homes, and MRD Homes, we did about 40 of them in '88.

The thing that we was called upon to do was -- was to see what we could do with them to work out a situation where it was feasible.

I basically don't feel that there is, you know, a need to get excited about, you know, a sprinkler law or a fire alarm law.

Upon getting into the context of what was going on, we met with the Fire Marshall's office, and at that time they told us, well, it's not something that is going to be defeated or whatever. This is on the books now.

We, since that time, have probably been in 50, 60 different homes in West Virginia, and some that's sitting here today, we've been in your home.

We are not trying to do anything other than help you what -- The homes that we met with form the West Virginia Board and Care Association. They asked us basically to help represent them and to help them out.

If, you know, if we can be of assistance, that's one thing, but at the same time what I'm concerned with is, and I see this happening in West Virginia, I would like to see, whether it's in West Virginia, Kentucky, Ohio, whatever, whenever these systems are installed, I go into places and I see 3/4 inch systems. People have paid good money for that or whatever.

The head of the West Virginia Board and Care Association, Vallie Huffman, her system down there, which she has a large commercial system. I heard this gentleman quote prices. If that was a 13D system, somebody give you a price of $15 thousand, they had a gun in your back, but at the same time, they had given her a price of $39 thousand for the underground, for the inside system and everything.

Vallie was one of the first homes we did in West Virginia, and we got her a contractor to do her underground, and the inside system was $8,500.

So, what I'm saying is: It's not a thing to run and be scared about. It's on the books. It really is not going to help me one way or the other whether you use sprinkler or not, but it -- My concern is that if the

regulations are here and on the board and not going to be removed, that there is some kind of inspection there to make sure that when you do install one, whether it's a neighbor that installs it or whether someone else, that you have above that ceiling or in that pipe chase what you're supposed to have, because there is fires.

Like I've said, I've been in the business many years. So, at the same time, I've seen a lot of situations. When you're working with MRD, you're working with individuals that, you know, will possibly catch a home on fire, but at the same time, it's not -- We're sitting down working with individuals, and working --

The Fire Marshall's office has told us that they would work with you as long as you're progressing toward the end goal.

The other regulations, I don't get involved in. All I'm doing here today is: Vallie Huffman contacted me and asked me to be here at this meeting today representing the Board and Care Association, and that's what I'm doing.

So, what I'm saying is there's a lot of regulations that are involved. I don't know anything about

them. As far as the fire protection, if you do sprinkler, if you do stay in business, what I am saying is -- is I think someone has to inspect those systems to make sure they're what they're supposed to be.

I went into a home, it was all 3/4 inch pipe throughout the home, 3/4 inch supply, and they don't work. They don't work. They just burn the place down.

So, that's all I've got to say, and I'm just responding to what the Board and Care Association asked me to do today. Thank you.

MS. KRAMER: Mr. Nichols, did you want to speak?

MR. NICHOLS: I don't at this time.

MS. KRAMER: Is there anyone else? That concludes the list of the folks who have acknowledged by yes.

MR. MUSICK: I'd like to say --

MS. KRAMER: Would you please step forward, and I'll get to sign the attendance sheet and so forth as you get here, please.

MR. MUSICK: My name is Bob Musick. I work with Valley Community Mental Health Center here in

Morgantown. Primarily, we cover four counties; Preston, Taylor and Marion Counties.

I've been doing this since 1971, and I've been involved with the Adult Family Care Homes, and I read over the law there and was quite concerned. For one is that you heard horror stories about these psychiatric disabled being homeless on the streets prior to this, and I can guarantee you in this county that with very few homes that we have presently, and people coming out of Weston or other psychiatric hospitals, we're having a terrible time finding places for them today. If any of our homes in this county close, we're going to be in a more crisis than what we are right now.

The intent of law I think is outstanding from a professional viewpoint. I think if someone would have sat down and talked to some of our providers and talked to the mental health people, maybe they had, I'm not sure, we would have told you maybe you can condense it somehow, still have your security and still have your fire protection, but yet not put these people out of business.

When these folks go out of business, you're going to hurt a lot of innocent folks who are presently now

living in homeless shelters. I think in Mon County we have approximately 15 to 20 Adult Family Care Homes, and we still don't have enough for our clients coming out of Weston.

I had people coming out of Weston Tuesday, and they had to go live in Bartlett house, at the homeless shelter, because I could not place them in an Adult Family Care Home, because everyone seemed to be filled, and there aren't any new ones in the horizon to be opened up.

So, real quickly I'd like to say that it's scary to me as a professional if these things do occur, and these homes do close. Thank you.

MS. KRAMER: Thank you. Is there anyone else that would like to make a comment?

(No response.)

MS. KRAMER: Hearing that there are no other individuals that wish to make initial comments, are there any that would like to come speak again in a second round?

MR. HUGHES: May I just make one quick comment on what two people said?

MS. KRAMER: Please come forward.

MR. HUGHES: I'd like to make one quick

comment on --

MS. KRAMER: State your name.

MR. HUGHES: Nat Hughes. I'm back. Okay. Nat Hughes. I'd just like to make one quick comment on again the sprinkling systems. The Fire Marshall's office has been very concerned about that, and what we have -- What has been indicated by his office is that when we meet, we will work out reasonable alternatives to the sprinkler system, because that is what's going to put people out of business. You can't make it on writing it off taxes. That takes 30 years to get your money back.

So, we're going to try to work very closely with the Fire Marshall's office so that we can get an alternative. For instance: Most of us don't allow smoking in the house where you have butt kits or one place supervised. So, we want to work very closely with getting a sprinkler system equivalent, okay, or an alternative.

The other thing that was mentioned in one of the providers, and I think is very important, and that is one of the finest pieces of advice that I ever got from a schizophrenic was, who was going to Shephard College by the way, was we can't live in your world. We can hardly live

in ours.

So, I think that you're allowing the person to sleep until 10:00 or by God, if they want oatmeal three times in a week, why not? You know, you have to have them live in their world, not the way we think they should live. That's very important, and the other thing that Bob just mentioned is that we do feel, there's no question about it, that we've got to be very careful in the training when Sandy goes out or anybody else, especially like from the Human Services.

I mean, they scare the pegasus out of these homes. I mean, they get out there, and they say like we've got these regulations, and if you don't shape up -- I'm not saying about Licensure, okay? They were very good. They were very good when they came over, but we do have some horror stories out there, and I don't want to scare any more. We're really shorthanded.

I lost one home out of four, and my God, I mean, it's causing us a problem. We can't lose any more. We've got to create more not lose them, and that's all I have to say.

MS. KRAMER: Thank you. Does anyone else wish

to come on second round?

(No response.)

MS. KRAMER: Okay. Hearing that there are no other comments, then I call the Residential Board and Care hearing for today closed. Thank you all for attending.

(WHEREUPON, the hearing was concluded at 10:55 a.m.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,

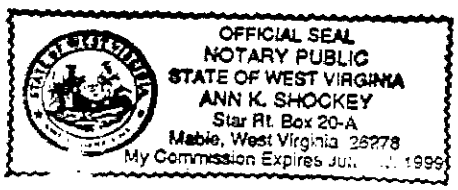
COUNTY OF MONONGALIA, to wit:

I, the undersigned, Ann K. Shockey, Court Reporter and Notary Public in and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the testimony adduced or proceedings had in the aforementioned case, as set forth in the caption hereof.

Given under my hand this 30th day of January, 1992.

My commission expires June 28, 1999.

Court Reporter
Notary Public



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 accomodations 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.

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.

September 25, 1991

AMENDED
FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: X Legislative _____ Interpretive _____ Procedural

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

[REVISE - SEE ATTACHMENT]

1. Effect of Proposed Rule	ANNUAL Increase	ANNUAL Decrease	FISCAL YEAR FY93	FISCAL YEAR FY94	FISCAL YEAR Thereafter
Estimated Total Cost	$	$	$275,439	$275,036	$275,036
Personal Services			162,700	170,835	70,835
Current Expense			99,239	104,201	104,201
Repairs and Alterations			0	0	0
Equipment			13,500	0	0
Other			0	0	0
Revenue			* 80,500	4,250	4,250

2. Explanation of above estimates.

* 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. The additional cost of administering this rule will require an increase in general revenue funding for the Department.

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; however, initial inspection costs for some facilities may be less than the $450 while costs to inspect other facilities may very well exceed the estimated $450. Additionally, any costs to comply with the regulations will also be borne by the residential board and care homes.

C. Economic Impact on Citizens/Public at Large.

No direct impact.

Date August 14, 1992

Signature of Agency Head or Authorized Representative

W. Donald Weston, M.D.
Acting Secretary
Department of Health and Human Resources

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

The Department has reexamined the fiscal implications of this proposed rule because of concerns raised at the public hearings and other developments regarding the availability of State funds to administer this rule. This reexamination has generated a revision of figures submitted in November, 1991. The Department believes the present figures to be a more realistic estimate of the cost of implementation of this rule. The Department also notes that the 1991 estimate assumed only six (6) months of implementation in the first year. The present fiscal note assumes a full year of operation in 1993, based on an anticipated approval by the Secretary of State of an emergency filing of the rule. Other assumptions are detailed below.

Number of Homes

Precise information regarding the number of residential board and care homes is not available. Some estimates have ranged as high as 1,000. The Department is currently aware of approximately 500[1] potential residential board and care homes, 175 of which have submitted an application for licensure.

The Department estimates that: 1) no more than 25% (125) of the known facilities will meet the requirements for residential board and care home licensure; 2) 25% (125) will voluntarily reduce their population to one or two residents which will enable them to operate as legally unlicensed facilities; 3) the remaining 250 facilities will require some type of enforcement action to compel either compliance with the provisions of the rule or a reduction in census. The more stringent of these actions may involve the application of civil penalties or legal action.[2]

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

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[1] Approximately six hundred and sixty (660) adult family care homes are not included in these estimates. Adult family care homes are limited to three (3) residents, and approval by the Bureau of Human Resources, based on specific standards for this type of facility, is accepted as a residential board and care license.

[2] Some of this latter group of 250 facilities will be found to be operating as illegal personal care or nursing homes, and technically speaking, the cost of legal or other administrative actions against these facilities cannot be said to be part of the cost of the new residential board and care home rule.

The Department believes that after an initial period of adjustment the number of new residential board and care homes licensed per year will level off and that there will be approximately 200 such licensed facilities. Also, the number of unlicensed facilities discovered should decrease. It is not likely to be feasible to complete administrative actions against 250 facilities in the first year. Although there will not be a full complement of 200 licensed facilities in the first and second years, the extra work required for the initially large number of known un-licensable facilities and other start-up activities will require full staffing from the program's inception.

Summary

1st Year

Total known unlicensed residential care facilities	500
Estimated licenses	125
Estimated voluntary census reduction	125
Estimated administrative action required	250

Subsequent Years

Total licensed residential board and care homes	200
Unlicensed - Voluntary reduction	20
Unlicensed - Administrative enforcement action	20

Time Required for Inspections and Administration

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

1. Time required per facility for inspection and administrative costs for homes meeting the licensure requirements: 13 hours.

2. Time required per facility for inspection and administrative costs for homes voluntarily choosing to reduce their census: 18 hours (an additional 5 hours for administrative process).

3. Time required per facility for inspection, administrative review and legal costs for non-complying non-cooperative facilities: 38 hours (an additional 20 hours for legal action).

Cost Estimates

1. Fiscal Year 1993

PERSONAL SERVICES:

0.50 FTEs	Program Administrator	$ 16,500
1.00 FTEs	Attorney	$ 31,000
1.00 FTEs	Para-Legal	17,000
1.00 FTEs	Clerical Staff	15,000
2.00 FTEs	Nurse III @ $ 30,600	61,200
1.00 FTEs	Social Worker	22,000
6.50 FTEs	TOTAL PERSONAL SERVICES	$ 162,700

CURRENT EXPENSE:

Fringe Benefits (Personal Service @ 22.1%)	$ 54,157
PLUS: (4 Positions x $4,550)	
Travel Expense (3 Surveyors x $8,200)	24,600
Vehicle Expense	9,840
Other Current Expense	10,642
TOTAL CURRENT EXPENSE	$ 99,239

EQUIPMENT:

Office Furniture	$ 2,500
Computer Equipment	11,000
TOTAL EQUIPMENT	$ 13,500
TOTAL ESTIMATED COST	$ 275,439

2. The estimated cost for Fiscal Year 1994 and each year thereafter is reduced by the equipment costs; however, FY-94 and thereafter reflect a 5% increase over Fiscal Year 1993 for Personal Services and Current Expense.

Revenue Estimates

Fiscal Year 1993

Revenues for Fiscal Year 1993 are based upon an estimated 175 residential board and care home inspections and each of those facilities paying an average initial inspection fee of $450.00. Additionally, revenues would be generated by a licensure fee of $2.00 per bed. Estimates were based upon an average of five (5) beds per facility.

Initial Inspection Fee[3]	$450 x 175 Homes	$ 78,750
License Fees[4]	$2.00 x 5 Beds x 175 Homes	1,750
	TOTAL ESTIMATED REVENUE	$ 80,500

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

TOTAL ESTIMATED REVENUE for FISCAL YEARS 1994 & THEREAFER

Initial Inspection Fee	$450 x 5 Homes	$ 2,250
License Fees	$2.00 x 5 Beds x 200 Homes	$ 2,000
	TOTAL ESTIMATED REVENUE	$ 4,250

Revenues resulting from penalties and assessments are not included in this estimate because these revenues are specifically reserved for other purposes by W. Va. Code §16-5C-10.

[3] W. Va. Code §16-5C-6 states that all direct costs of an initial residential board and care home licensure inspection are to be borne by the applicant. Initial licensure costs may vary depending upon travel (mileage, lodging, and meal allowances) and personal service costs (costs based on the number of hours required to perform the initial inspection).

[4] It is estimated that the average bed census per home will be five (5) residents.