

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

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

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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


TITLE OF RULE BEING PROPOSED: Residential Board and Care Homes

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 100

SECTION §64-5-1(d), PASSED ON May 26, 1993

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: October 1, 1993


Ruth Ann Panepinto, Ph.D.
Secretary

[PROPOSED]

TITLE 64

WEST VIRGINIA ADMINISTRATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

RESIDENTIAL BOARD AND CARE HOMES

Series 65

199_

Modifications Requested by 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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[PROPOSED]
TITLE 64
WEST VIRGINIA ADMINISTRATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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SERIES 65
RESIDENTIAL BOARD AND CARE HOMES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§64-65-1. General.

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

1.2. **Authority** - W. Va. Code §§16-5C-5 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, except that participation by a home in the adult family care home program of the department of health and human resources shall be accepted as a residential board and care home license.

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, verbal abuse, infliction of emotional suffering, disregard for necessities of daily living, lack of care for medical problems, 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 residential board and care 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 owners or management, whether for consideration or not, for the express or implied purpose of providing accommodations, personal assistance and supervision, for a period of more than twenty-four (24) hours, to 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 residential board and care 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 residential board and care 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 has 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", "personality care home" or any other words which suggest a type of facility other than a residential board and care home shall not be used in the name of the home or in any of the home's advertising.

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

4.2.2. The applicant shall submit the application on forms provided by the secretary and the application 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. The secretary will not review incomplete forms and will return them to the applicant.

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

4.2.5. The applicant shall submit the application and fee 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 serves 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. The secretary may issue a provisional license 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. The secretary shall not issue a provisional license 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;

4.5.2.3. Has a record of noncompliance with this rule; or

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. The secretary shall not renew a provisional license.

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

4.5.5. If the owner of a home is denied a provisional license or a provisional license expires, the secretary shall treat a subsequent application for a license as an initial license and

the owner shall meet the requirements for an initial license including the cost of an initial application fee and inspections as determined by the secretary.

4.6. Inspections.

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

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

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

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

4.7.5. 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 comply with the rule within sixty (60) days of the inspection; however, the secretary may allow more time for certain types of deficiencies.

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

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

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

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

4.9. Release of Reports and Records.

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

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

4.11.3. The secretary shall assign a Class III standard a value of eight (8) points if the home fully complies with the

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

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

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

4.12. Residential Board and Care Home Rating.

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

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

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

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

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

4.12.5.1. If a home is given a rating of "F" on one (1) category or has an average category rating score of less than

2.0, an overall rating of "F" shall be assigned;

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

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

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

4.12.6. The secretary may issue a provisional license to a home with an overall rating of "F" as described in Section 4.5 of this rule 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. The secretary shall assign a rating of no greater than a "B" to a home which has been denied a provisional license based on violation of a Class I standard and is subsequently reapplying for an initial license as specified in Section 4.5.5 of this rule.

§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 residents' 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 con-

cerns about the home known to the administrator; and the use and storage of personal belongings such as furnishings and clothing. House rules may not be inconsistent with this rule.

5.1.5. The residential board and care home shall 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 the residential board and care home shall apply for a license 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.)

Except as authorized by this rule, 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; tracheostomies; suctioning; 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; 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.

Catheters used for management of chronic incontinence are not permissible. Catheters used on a temporary basis to manage a short-term acute medical problem are permissible, if the care is overseen by a registered nurse under physician orders. Care givers shall be able to demonstrate the knowledge and performance of effective infection control measures. Instruction and supervision shall be provided by a registered nurse at least every thirty (30) days or as needed. Appliances or devices related to the management of bowel or bladder conditions, such as colostomies, urostomies, or supra-pubic catheters, designed for self-management are permissible.

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

Visits to residents by health care providers for professional purposes shall be documented in the resident's record.

Except as authorized by this rule, 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.

Restorative activities which are used to maintain a resident's ability to perform activities of daily living are permissible and shall be encouraged in order to prevent a decline in mental and physical status. Examples of such activities include but are not limited to assistance in walking to maintain mobility, reality orientation to reduce confusion, prompting and directing in the performance of grooming or dressing activities, and assisting the individual by activities such as opening milk cartons, cutting food or prompting eating behaviors.

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 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; and

5.4.4.3. Other information required by this rule.

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 the date of admission, the name of the resident, the date of the last day of residency in the home, and the address to which the resident was discharged.

5.4.6. The residential board and care home shall retain resident care records 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 of the division of health of the department of health and human resources.

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. The residential board and care home shall employ qualified personnel 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. The residential board and care home may modify orientation and training for individual employees if there is proof on file of the completion of a nursing assistant training program. Completion of such a course satisfies the requirement for training in the areas of personal grooming, hygiene, assistance in feeding and activities of daily living. All other topics required by 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. The residential board and care home shall not segregate residents, give separate treatment, restrict the enjoyment of any advantage or privilege enjoyed by others in the home, or provide 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. The residential board and care home shall encourage and assist residents to exercise their rights as residents and citizens.

7.1.3. The residential board and care home shall not interfere with, shall not coerce, or discriminate against any resident and the residential board and care home shall not make any reprisals against any resident as a result of the resident's exercise of his or her 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 the 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. The residential board and care home shall permit residents to express grievances to the home and to communicate the need for changes in the home to employees and outside representatives of the resident's choice.

7.2.2. The residential board and care home shall allow residents to visit with and communicate privately with individuals of their choice.

7.2.3. The residential board and care home shall allow residents 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. The residential board and care home shall give residents the opportunity to meet with and participate in the activi-

ties of social, religious and community groups at their discretion.

7.2.6. The residential board and care home shall permit residents 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 home shall give the resident a copy of the inventory.

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

7.3.1. The residential board and care home shall give residents the opportunity to participate in the planning of their care and supervision.

7.3.2. The residential board and care home shall permit residents to select their own personal physician.

7.3.3. The residential board and care home shall permit a resident to refuse any medical treatment. The home may inform a resident, 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. The residential board and care home shall not require residents 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)

The residential board and care home shall assure that each resident is 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. The home shall not use physical restraints except in an emergency for the safety of the resident and others in the home until professional help arrives. Restraints utilized during emergencies are 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. The residential board and care home shall assure

residents 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 home, except as required by law or third-party payment contracts.

7.5.3. The residential board and care home shall permit residents 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. The residential board and care home shall treat residents 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 is liable only for charges which have been included in the admission contract between the resident and the home, 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 home 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. The residential board and care home shall retain resident financial records at least three (3) years past the death or discharge of a resident, or the closure of the 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 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 home, of the resident's legal rights during the stay at the home; 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 home, or non-compliance with this rule. The written statement

shall include addresses and telephone numbers (toll-free, if available) for these agencies and organizations.

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

7.8.4. The residential board and care home shall make available in the same manner as the list of legal rights a written statement setting forth the rules of conduct and the resident responsibilities for the home as required by Section 5.1.4 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 comply 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. The residential board and care home shall encourage and assist all residents in developing and maintaining independence and self-determination.

8.2.4. The residential board and care home shall provide each resident 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 of the division of health of the department of health and human resources.

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, the residential board and care home shall assist the resident as needed in making arrangements with the appropriate agency or professional care-giver 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. The residential board and care home shall take reasonable precautions 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. The residential board and care home shall store all medications in a way as to be inaccessible to those residents for whom they are not prescribed.

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

8.3. Accident and Illness Procedure. (Class I)

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

8.3.2. The residential board and care home shall document monitoring of the resident's condition for a period of twenty-four (24) hours following the accident or the onset of the illness or as specified by the 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. The residential board and care home shall encourage but not require residents to participate in activities which may be scheduled.

9.2.2. The residential board and care home shall not restrict a resident's participation in an activity except upon a physician's order. The physician's order shall specify the type of activity and the duration of the 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 according to Section 10.3.8 of this rule.

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. The secretary shall not license trailers (mobile homes) as residential board and care homes.

11.2. General Requirements. (Class I)

11.2.1. The residential board and care home shall 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 safe-

ty 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 least six (6) square feet of window per bed.

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

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

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

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

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

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

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

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

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

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

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

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

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

11.6. Toilet and Bathing Facilities. (Class II)

11.6.1. Each resident shall have access to a toilet-washroom without entering another bedroom. No more than six (6) residents shall share a single toilet-washroom. Toilet-washrooms used by residents may be shared by the administrator, staff and persons residing in the home who do not meet the definition of resident found in Section 3.11 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 hous-

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

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 has 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. are as provided in this rule, in said articles of the West Virginia Code, and in Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

§64-65-14. Severability.

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

64 CSR 65

TABLE 64-65A. 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.

SENATE BILL NO. 193

(By Senator Manchin)

[Introduced March 1, 1993; referred to the
Committee on Health and Human Resources; and
then to the Committee on the Judiciary.]

8

9

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

16 Be it enacted by the Legislature of West Virginia:

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

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

22 §64-5-1. Department of health and human resources.

23 (a) The legislative rules filed in the state register on the
24 twenty-second day of January, one thousand nine hundred ninety,

1 modified by the secretary of the department of health and human
2 resources to meet the objections of the legislative rule-making
3 review committee and refiled in the state register on the
4 twenty-fifth day of January, one thousand nine hundred ninety,
5 relating to the secretary of the department of health and human
6 resources (implementation of omnibus health care act), are
7 authorized.

8 (b) The legislative rules filed in the state register on the
9 twenty-second day of January, one thousand nine hundred ninety,
10 modified by the secretary of the department of health and human
11 resources to meet the objections of the legislative rule-making
12 review committee and refiled in the state register on the
13 twenty-fifth day of January, one thousand nine hundred ninety,
14 relating to the secretary of the department of health and human
15 resources (implementation of omnibus health care act payment
16 provisions), are authorized.

17 (c) The legislative rules filed in the state register on the
18 third day of September, one thousand nine hundred ninety-two,
19 modified by the department of health and human resources to meet
20 the objections of the legislative rule-making review committee
21 and refiled in the state register on the twenty-seventh day of
22 January one thousand nine hundred ninety-three, relating to the
23 department of health and human resources (residential board and
24 care homes), are authorized.

25

1 NOTE: The purpose of this bill is to authorize the
2 Department of Health and Human Resources to promulgate
3 legislative rules relating to residential board and care homes.

4
5 Strike-throughs indicate language that would be stricken from
6 the present law, and underscoring indicates new language that
7 would be added.



RECEIVED

MAR 28 1994

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

STATE OF WEST VIRGINIA

REGULATORY DEVELOPMENT
SECTION

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Executive Assistant

Telephone: (304) 558-6000
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TO: Kay Howard

AGENCY: Health

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: March 25, 1994

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 65 TITLE: 64 Health

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Kay Howard

TITLE OF PERSON SIGNING: Director, Regulatory Development

DATE: 5/13/94

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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FAX: (304) 558-0900

May 28, 1993

Kay Howard
Health, Div. of
Building 3, Room 204
State Capitol
Charleston, WV 25305

HB 100 authorizing, Title 64, Series 65, Residential Board and Care Homes, passed the Legislature on **May 26, 1993**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs HB 100, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office. Authorization for your legislative rule is cited in **HB 100** section 64-5-1(d). The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, PLEASE SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division