

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

Form #3

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AUG 3 4 20 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

CITE AUTHORITY W. Va. Code §§16-5N-3(k), 16-5N-5 and 16-1-7

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

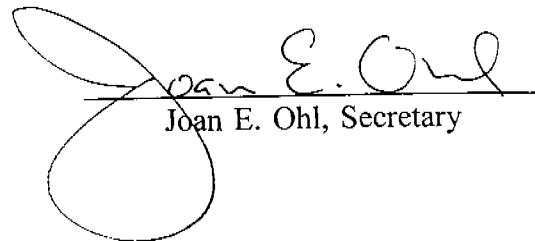
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 75

TITLE OF RULE BEING PROPOSED: Residential Care Communities

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.


Joan E. Ohl, Secretary

\$14.70

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 28, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Division of Health

FROM: (Agency name, Address & Phone No.) Department of Health and Human Resources

State Capitol Complex, Building 3, Room 265, Charleston, WV 25305

Telephone: (304) 558-3223

LEGISLATIVE RULE TITLE: Residential Care Communities, 64 CSR 75.

1. Authorizing statute(s) citation: WV Code Section 16-5N-5 & 16-1-7.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

July 1, 1998

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

Notice was provided to residential care community provider associations and

proposed providers, the Residential Board and Care Association, the

Personal Care Home Association, the West Virginia Health Care Association,

and interested state agencies and advocacy groups.

c. Date of Public Hearing(s) or Public Comment Period ended:

July 31, 1998

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing (be exact):

August 3, 1998

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule (please type):

Marsha Dadisman, Acting Director

Regulatory Development/Department of Health and Human Resources

Building 3, Room 265, Capitol Complex

Charleston, West Virginia 25305

(304) 558-3223 FAX: (304) 558-1130 MDadisman@WVDHHR.ORG

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

Kathy Bauchamp

Residential Program Manager

1900 Kanawha Blvd. East, Building 3 Room 550

Charleston, WV 25305

Phone: (304) 558-0050 Fax: (340) 558-2515

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

- a. Give the date upon which you filed in the State Register a notice of the time and place a hearing for the taking of evidence and a general

description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

Brief Summary of the Rule

The proposed rule, Residential Care Communities, establishes minimum standards for inspection and operation of these facilities in the areas of administrative policies; personnel; safety; sanitation; protective, personal, and health care services; dietary services; activity and social services; record keeping; physical facilities; limited and intermittent nursing and other items or considerations deemed necessary to ensure the health, safety and welfare of the residents, in accordance with West Virginia Code § 16-5N-1 et seq.

Statement of Circumstances Which Require the Proposed Rule

The proposed rule, Residential Care Communities, is required by West Virginia Code § 16-5N-5 to be developed by the first day of July 1998.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Residential Care Communities

Type of Rule: Legislative Interpretive Procedural

Agency Department of Health and Human Resources

Address Building 3, Capitol Complex

Charleston, W. Va. 25305

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$6,700.00	\$
Personal Services				3,125.00	
Current Expense				3,575.00	
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates.

These estimates represent the total cost of performing the inspections within the current budget. There will be no additional general revenue cost to the state government.

3. Objectives of these rules:

The proposed rule, Residential care Communities, establishes minimum standards for inspection and operation of these facilities in the areas of administrative policies; personnel; safety; sanitation; protective, personal, and health care services; dietary services; activity and social services; record keeping; physical facilities; limited and intermittent nursing and other items or considerations deemed necessary to ensure the health, safety and welfare of the residents, in accordance with West Virginia Code § 16-5N-1 et seq.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The staff in Residential Board and Care Division will be performing the inspection. There will be no additional general revenue cost to the state government.

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

The Residential Care Community's rules will benefit health care providers of services and ensure livelihood of citizens. In addition Residential Care Communities will provide more housing for the aging population needing some assistance and care.

The Office of Health Facility Licensure and Certification will provide a written notice of the availability of this proposed rule, to proposed Residential Care Community providers, provider associations who may have an interest in distribution to their members, including Residential Board and Care Association, Personal Care Home Association, West Virginia Health Care Association, interested state agencies and advocacy groups.

C. Economic Impact on Citizens/Public at Large.

Refer to first paragraph of B.

The proposed rule, Residential Care Communities, is required by West Virginia Code § 16-5N-5 to be developed by the first day of July 1998.

Date

7/1/98

Signature of Agency Head or Authorized Representative

By Virginia Tashur

Joan E. OHL, Secretary
Department of Health and Human Resources

Joan E OHL

**TITLE 64
LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 75
RESIDENTIAL CARE COMMUNITIES**

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

64CSR75

**TITLE 64
LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 75
RESIDENTIAL CARE COMMUNITIES**

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FILED

TITLE 64
LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

AUG 3 4 10 PM '98

SERIES 75
RESIDENTIAL CARE COMMUNITIES

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

§64-75-1. 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 care communities. This rule must be read in conjunction with W. Va. Code § 16-5N-1 et seq. to determine the complete requirements for licensing, regulation, and complaint investigations of residential care communities.

1.2. Authority. -- W. Va. Code §§ 16-5N-3(k), 16-5N-5 and 16-1-7.

1.3. Filing Date. --

1.4. Effective Date. --

§64-75-2. 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 care community as defined in W. Va. Code § 16-5N-1 and this rule: Provided, That this rule does not apply to homes or asylums operated by fraternal orders pursuant to W. Va. Code § 35-3-1 et seq.

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

§64-75-3. Definitions.

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

3.2. Activities of daily living. -- The activities that individuals generally perform regularly in the course of maintaining their physical selves, such as eating, dressing, oral hygiene, toileting, personal grooming, and moving themselves from one location to another, as for example, in moving from a bed to a chair, or from one room to another.

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

eye drops.

3.4. Administrator. -- The owner or individual selected by the licensee to be responsible for the day-to-day operation of the residential care community.

3.5. Adult day care. -- An alternative to twenty-four (24) hour institutional care to elderly or disabled adults who need care and supervision not to exceed fourteen (14) hours a day.

3.6. Apartment and resident capacity. -- The number of apartments and residents for which a residential care community is licensed to provide care.

3.7. Bedfast. -- The condition of individuals who are restricted to a bed or chair for a prolonged or indefinite period of time and have limited ability to move or turn themselves while in bed or remove themselves from a chair. These individuals are therefore susceptible to physical and psychological complications of immobilization and are incapable of self-preservation. An individual for whom a physician has prescribed bed rest because of a short term illness (e.g., cold, flu, viruses, etc.) is not considered bedfast.

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

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

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

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

3.12. Disability. -- Any limitation of physical, mental, or social activity of an individual as compared with other individuals of similar age, sex, and occupation. Frequently refers to limitation of the usual or major activities, most commonly vocational. There are varying types (functional, vocational, learning), degrees (partial, total), and durations (temporary, permanent) of disability.

3.13. Exploitation. -- The act or process of taking unjust advantage of another for one's own benefit.

3.14. Extensive nursing care. -- The nursing care required when there is a major deviation from normal in a body system or multiple body systems, of such magnitude that the deviations are life threatening, and the individual's condition is unstable and unpredictable.

3.15. Functional needs assessment. -- Any measurement tool that identifies for the resident and the licensee those services that will need to be obtained or provided for the resident in order to promote the resident's health, wellness, comfort, dignity and independence.

3.16. Immediate and serious threat. -- A situation that presents a high probability of serious harm or injury to one or more residents. An immediate or serious threat need not result in actual harm to any resident.

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

3.18. Legal representative¹. --

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

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

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

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

3.18.e. A representative payee under the U.S. Social Security Act, Title 42 U.S.C. §301 et seq., within the limits of the payee's legal authority; or

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

3.18.g. An attorney in fact appointed with power of attorney under common law or

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

pursuant to Uniform Durable Power of Attorney, W. Va. Code §39-4-1et seq., within the limits set by the appointment; or

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

3.18.i. An individual who has no financial ties to the residential care community.

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

3.20. Life care contract. -- A contract between the licensee and an individual in which the licensee 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.

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

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

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

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

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

3.26. Nursing support staff. -- Registered professional nurses, practical nurses, and nursing assistants employed by the licensee to provide direct hands-on nursing services to residents.

3.27. Ongoing nursing care. -- The nursing care required when a deviation in health is expected to continue over a lengthy period of time, i.e., in excess of ninety (90) days, with minimal or no improvement.

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

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

3.30. Registered long term care nursing assistant. -- Any individual who has met the requirements for entry in the long term care nursing assistant registry, established under the requirements of 42 CFR §§ 483.150, 483.152 through 483.154, related to nurse aide training.

3.31. Resident. -- An individual living in a residential care community for the purpose of receiving personal assistance and services.

3.32. Residential care community or community --

3.32.a. Any group of seventeen (17) or more residential apartments, however named, which are part of a larger independent living community and which are advertised, offered, maintained or operated by an owner or manager, regardless of consideration or the absence thereof, for the express or implied purpose of providing residential accommodations, personal assistance and supervision on a monthly basis to seventeen (17) or more persons who are or may be dependent upon the services or others by reason of physical or mental impairment or who may require limited and intermittent nursing care but who are capable of self-preservation and are not bedfast. Individuals may not be disqualified for residency solely because they qualify for or receive services coordinated by a licensed hospice. Each apartment in a residential care community shall be at least three hundred square feet in size, have doors capable of being locked and contain at least:

3.32.a.1. One (1) bedroom;

3.32.a.2. One (1) kitchenette that includes a sink and refrigerator; and

3.32.a.3. One (1) full bathroom that includes a bathing area, toilet and sink;

3.32.b. Services utilizing equipment which requires auxiliary electrical power in the event of a power failure may not be used unless the residential care community has a backup power generator; and

3.32.c. Nothing contained in this article applies to hospitals, as defined under W. Va.

Code § 16-5B-1, state institutions, as defined under W. Va. Code §§ 25-1-3 or 27-1-6, residential care communities operated as continuing care retirement communities or housing programs operated under rules of the federal department of housing and urban development and/or the office of rural economic development, residential care communities operated by the federal government or the state government, institutions operated for the treatment and care of alcoholic patients, offices of physicians, hotels, boarding homes or other similar places that furnish only room and board, or to homes or asylums operated by fraternal orders pursuant to W. Va. Code § 35-3-1 et seq.

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

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

3.35. Self-administration of medications. -- The act of a resident, who is independently capable of reading and understanding the labels of drugs ordered by a physician, in opening and accessing prepackaged drug containers, accurately identifying and taking the correct dosage of the drugs as ordered by the physician, at the correct time and under the correct circumstances.

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

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

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

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

§64-75-4. State Administrative Procedures.

4.1. General licensing provisions.

4.1.a. No person may establish, maintain, offer, operate or advertise a residential care community without first obtaining from the secretary a license authorizing the operation, which license remains unsuspended, unrevoked and unexpired.

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

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

4.1.d. Residential care communities which have residents who need limited and intermittent nursing care shall comply with Section 12 of this rule in addition to all other requirements of this rule.

4.1.e. The licensee is responsible for compliance with this rule, the terms of the community's license; W. Va. Code § 16-5N-1 *et seq.*, titled Residential Care Communities; other relevant federal, state or local laws and regulations; and with the community's policies.

4.1.f. A licensee is prohibited from renting, leasing or using the premises for any purpose that disrupts the activities of the residents.

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

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

4.1.i. The secretary may issue an initial or a renewal license for a period not to exceed one (1) year. Provided, That if an applicant timely submits, in conformance with this rule and W. Va. Code § 16-5N-1 *et seq.*, an application for renewal of a license currently in effect, together with payment of the proper fee, the license shall continue in effect until;

4.1.i.1. One (1) year following the expiration date of the license;

4.1.i.2. The date of the revocation or suspension of the license pursuant to this rule and W. Va. Code § 16-5N-1 *et seq.*, or

4.1.i.3. The date of issuance of a new license, whichever date occurs first.

4.2. Initial License.

4.2.a. Applications for initial licensure as a residential care community shall be submitted to the West Virginia office of health facility licensure and certification of the department of health and human resources, and pursuant to W. Va. Code § 16-5N-6(a) shall include the following information:

4.2.a.1. The name and address of the applicant;

4.2.a.2. The name, address and principal occupation:

4.2.a.2.A. Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent (10%) or more in the applicant;

4.2.a.2.B. Of each officer and director of a corporate applicant;

4.2.a.2.C. Of each trustee and beneficiary of an applicant which is a trust; and where a corporation has a proprietary interest of twenty-five percent (25%) or more in an applicant, the name, address and principal occupation of each officer and director of the corporation;

4.2.a.3. The name and address of the owner of the premises of the residential care community or proposed residential care community, if he or she is a different person from the applicant, and in such case, the name and address:

4.2.a.3.A. Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent (10%) or more in the owner of the premises of the residential care community or proposed residential care community;

4.2.a.3.B. Of each officer and director of a corporate applicant;

4.2.a.3.C. Of each trustee and beneficiary of the owner of the premises of the residential care community or proposed residential care community if he or she is a trust; and, where a corporation has a proprietary interest of twenty-five percent (25%) or more in the owner of the premises of the residential care community or proposed residential care community, the name and address of each officer and director of the corporation;

4.2.a.4. Where the applicant is the lessee or the assignee of the residential care community or the premises of the proposed residential care community, a signed copy of the lease and any assignment thereof;

4.2.a.5. The name and address of the residential care community or the premises of the proposed residential care community;

4.2.a.6. The proposed bed quota of the residential care community and the proposed bed quota of each unit thereof;

4.2.a.7. A list of the residential care community's employee positions and the duties of each position;

4.2.a.8. The name and address of the individual who is to serve as administrator;

4.2.a.9. Evidence of compliance with applicable laws and regulations governing zoning, buildings, safety, fire prevention and sanitation as required by this rule;

4.2.a.10. Documentation that the licensee has made provisions in policy to ensure the continuing care of all residents for the thirty (30) day period after notification of a pending closure. Any expenses incurred by the department to provide continuing resident care (i.e., food, staff, etc.) during this thirty (30) day period, are the responsibility of the owner; and

4.2.b. The application shall be on forms provided by the secretary, and shall bear the notarized signature of the applicant. The signature on the application and accompanying forms serves as a release for obtaining references, credit and other background information. The application shall be accompanied by a non-refundable license fee in the amount shown on the form, as filed with the Secretary of State, as established pursuant to W. Va. Code § 16-5N-6(e), titled "License required; application; fees; duration; renewal," in the form of a check or money order payable to the West Virginia office of health facility licensure and certification. The secretary will not review incomplete forms and will return them to the applicant. The applicant shall provide to the secretary a balance sheet showing all expenses and all income on forms provided by the secretary, including but not limited to, reimbursement of the owners, lease payment, and monthly rates charged. As mandated by W. Va. Code § 16-5N-6(e), the applicant shall bear the cost of the initial licensure inspections or inspections for changes in licensed bed capacity and the fee for these inspections shall be received by the department prior to the issuance of an initial or amended license.

4.2.c. New applicants for licensure shall provide to the secretary a preliminary operating plan which shall include a proposed budget that projects monthly income, lease payment and reimbursement of the owners.

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

4.2.e. Except as specified in subsection 4.11 of this rule, the secretary shall, after inspection, issue an initial license, if the applicant complies with this rule.

4.2.f. If any residents of a residential care community are to be moved to another location owned or operated by the same licensee, the licensee shall apply for a license for the

new location at least ninety (90) days in advance of the move.

4.3 Waivers.

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

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

4.3.b.1. Specify the specific requirement in this rule for which the waiver is requested;

4.3.b.2. Specify the time period for which the waiver is requested;

4.3.b.3. Include specific and detailed reasons for the request;

4.3.b.4. Explain why the specific requirement cannot be complied with; and

4.3.b.5. Document that there will be no adverse effect on resident health, safety, welfare, or rights if the waiver is granted.

4.4. License Renewal.

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

4.4.b. Except as specified in subsection 4.11 of this rule, the secretary shall issue a renewal license when the following conditions are met:

4.4.b.1. The community is found to be in substantial compliance with this rule;

4.4.b.2. The applicant has submitted a complete application and all requested documentation regarding financial capability and management of the community; and

4.4.b.3. The community has met all Class I standards as set forth in subsection 4.10 of this rule.

4.5. Provisional License.

4.5.a. The secretary may issue a provisional license when:

4.5.a.1. The community has failed to meet all the requirements of § 16-5N,

provided that care given in the residential care community is adequate for the residents' needs and the residential care community has demonstrated improvement and evidences potential for substantial compliance during the term or the provisional license.

4.5.a.2. All requirements for renewal of a license are not met prior to the expiration of the previously issued license.

4.5.b. The secretary shall not issue a provisional license when the community:

4.5.b.1. Is in violation of any Class I standard; or

4.5.b.2. Has a record of noncompliance with this rule.

4.5.c. The secretary shall not renew a provisional license.

4.5.d. 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.e. If the owner of a community 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.a. The secretary shall inspect, or authorize a representative to inspect, necessary to carry out the intent of W. Va. Code §§ 16-5N-1 et seq. and this rule.

4.6.b. The secretary has the right to enter, without prior notice to conduct inspections, the premises of a residential care community or any building for which there is reason to believe is being operated or maintained as a residential care community without license. If the owner or person in charge of the community refuses entry, the secretary may apply to the circuit court in which the community is located or the circuit court of Kanawha County for a warrant to authorize an inspection or to compel admittance to the premises of an unlicensed community.

4.6.c. The secretary shall conduct at least one (1) inspection of a residential care community prior to issuance of an initial license. Inspections shall be conducted after these conditions have been met:

4.6.c.1. The application and fee have been received and been determined to be complete,

4.6.c.2. All requested documentation verifies the readiness of the community for an inspection;

4.6.c.3. Fees for the cost of inspections have been received by the secretary; and

4.6.c.4. Necessary inspections can be scheduled.

4.6.d. Periodic unannounced inspections shall be conducted to determine the residential care community's continued compliance with applicable statutes and regulations.

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

4.7. Complaint Investigation.

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

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

4.7.c. The secretary shall notify the licensee of any corrective action required, the time frame for completion of the corrective action and any disciplinary action to be taken by the secretary.

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

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

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

4.7.g. If, after an investigation, the secretary determines that the complaint has merit, he or she shall advise any injured party of the possibility of a civil remedy. In addition, residents, residents' families or legal representatives or ombudsmen may also independently pursue

civil remedies for violations of this rule.

4.7.h. If a residential care community which is found to have violated one (1) or more requirements of this rule during a routine inspection, or a complaint or other investigation fails to correct the violations within one hundred twenty (120) days of the completion of the inspection or investigation, the secretary shall give written notice of the uncorrected violations and of the amount of time until the secretary will report² the residential care community's lack of compliance with the rule to the Social Security Administration and to all residents, their families and any legal representatives. The secretary shall also provide all residents with a list³ of approved facilities and agencies to assist them in moving.

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

4.8. Plans of Correction.

4.8.a. The licensee of a community 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.b. The secretary shall require immediate correction in the case of a violation constituting immediate and serious threats to the health or safety of a resident or employee.

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

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

⁴See footnote #2.

⁵See footnote #3.

4.8.c. The plan of correction shall specify:

4.8.c.1. The violations to be corrected;

4.8.c.2. Action taken or proposed to correct the violations and procedures to prevent their recurrence; and

4.8.c.3 A calendar date by which the violations will be corrected, which date shall allow the shortest possible time in which the residential care community may reasonably be expected to correct the violation. A community 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.d. The plan of correction shall be approved, modified or rejected in whole or in part by the secretary in writing.

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

4.8.f. When the secretary rejects a plan of correction, the licensee has a reasonable amount of time, but no more than fifteen (15) working days, to submit a revised plan.

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

4.9.a.1. Information concerning and actual applications and exhibits;

4.9.a.2. Inspection reports;

4.9.a.3. Reports of the results of investigations conducted in response to complaints;

4.9.a.4. A current list of the names and addresses of residential care communities found to be in violation of this rule, including the details of each violation; and

4.9.a.5. Any other reports filed with or issued by the secretary pertaining to the compliance of a residential care community with applicable laws and rules.

4.9.b. The names of residents shall be kept confidential and shall not be disclosed without the resident's written permission or by order of court of record. Nothing contained in

this rule shall be construed to require or permit the public disclosure of confidential medical, social, personal or financial records of any resident. Before releasing a report or record judged public information, the secretary shall delete any confidential information regarding a resident which would reasonably permit identification of the resident.

4.10. Classification of Standards.

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

4.10.a.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.a.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.a.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. Non-Issuance of Initial or Renewal License.

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

4.11.a.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;

4.11.a.2. Either the applicant or the administrator has been arrested for, adjudicated, and convicted of any felony or misdemeanor relevant to the provision of care in a health care facility or operating a health care facility;

4.11.a.3. The applicant has been denied or has had a license to operate a health care facility revoked in West Virginia or any other jurisdiction during the previous five (5) years;

4.11.a.4. The applicant has a record of noncompliance with lawful orders of the department or other licensing or certification agency for any jurisdiction in which the applicant has operated, directed or participated in the operation of a health care facility;

4.11.a.5. The owner or person in charge of the community has refused entry to the secretary's duly authorized representative for an inspection or survey;

4.11.a.6. The licensee has inappropriately converted for its own use the property

of a resident;

4.11.a.7. The licensee has secured property, or a bequest of property, from a resident by undue influence;

4.11.a.8. The licensee has submitted false information either on the licensure or renewal application forms or during the course of an inspection or survey of the community; or

4.11.a.9. In the instance of an application for a renewal license, the licensee has failed to correct any Class I standard or has failed to be in substantial compliance with the requirements of this rule.

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

§64-75-5. Administrative, Staffing and Personnel Requirements.

5.1. General Administrative Requirements.

5.1.a. The licensee shall, in consultation with a licensed health care professional, establish and adopt written policies and procedures, which are consistent with this rule and specific to the facility, governing the care and safety of residents (i.e., notification of a resident's family, legal representative and physician regarding any apparent significant deviations from the resident's normal condition; administration of medications and treatments, disposal of outdated or discontinued medications in accordance with applicable State and federal laws, assistance with activities of daily living, the provision of limited and intermittent nursing care if applicable, infection control, admission, discharge and transfer of residents, and release of information from resident records). Policies and procedures shall be developed by the facility governing the protection of residents' personal property (i.e., periodic inventories of each resident's personal possessions) and rights, the operation of the community, the services provided by the community, emergency procedures and disaster plan, complaint procedures, and all other policies and procedures required by this rule. (Class III)

5.1.b. Policies and procedures shall be in writing, signed and dated by the administrator at the time of adoption and kept current with changes indicated by a dated signature of the administrator. (Class III)

5.1.c. A copy of each policy and procedure shall be available for inspection on request by employees, residents and the general public. (Class III)

5.1.d. The residential care community shall have written rules governing resident behavior and responsibilities as follows: smoking; alcohol consumption; visitation; recreational activities (including television); laundry; and the use and storage of personal belongings such as

furnishings and clothing. House rules may not be inconsistent with this rule. (Class III)

5.1.e. Those residential care communities that provide limited and intermittent nursing care shall comply with the requirements established in Section 12 of this rule. (Class I)

5.1.f. The licensee shall not manage the personal finances or funds of its residents. The licensee shall not serve as a resident's legal representative. (Class III)

5.2. The Licensee.

5.2.a. The licensee is responsible for compliance with this rule; the terms of the community's license; W. Va. Code §§ 16-5N-1 et seq.; other relevant federal, State or local laws and regulations; and with the community's policies. (Class II)

5.2.b. The licensee shall:

5.2.b.1. Give evidence of financial responsibility; (Class III)

5.2.b.2. Protect the physical and mental well-being of the residents; (Class II)

5.2.b.3. Keep the records and make the reports required by this rule; (Class III)

and

5.2.b.4. Meet the qualifications of the administrator if he or she assumes those duties. (Class III)

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

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

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

5.3. Administrator.

5.3.a. A residential care community shall have an administrator who is at least twenty-one (21) years of age and has an associate degree, or its equivalent in a related field. (Class III)

5.3.b. The administrator of a residential care community shall have a personal history which does not contain the following: evidence of abuse, fraud, or substantial and repeated violations of applicable laws and rules in the operation of any health or social care facility or service organization, or in the care of dependent persons; and conviction of crimes relevant for the provision of care to a dependent population as evidenced by a criminal investigative background check. (Class II)

5.3.c. The administrator shall participate in ten (10) hours of training related to the administration and operation of a residential care community annually. Attendance records shall be maintained on file at the community. (Class III)

5.3.d. The administrator shall be responsible and accountable for the development and execution of all policies and procedures required by this rule and shall be able to conform to applicable statutes, rules and regulations; know the requirements of the rule for residential care communities; and ensure the adequacy and appropriateness of services delivered to the residents. (Class II)

5.3.e. The administrator or a responsible employee, designated in writing, shall be available and in charge of the community at all times. (Class III)

5.4. Employment Standards.

5.4.a. The residential care community shall have written personnel policies and procedures which appropriately meet the needs of the community. (Class III)

5.4.b. The administrator shall assure that all staff of the community meet the age requirements of applicable State and federal law, rules and regulations and are free from communicable disease in an infectious stage. (Class I)

5.5. Staffing Requirements.

5.5.a. Each residential care community shall have a minimum of one (1) residential staff twenty-four (24) hours per day (i.e., one per eight (8) hour shift) and shall have a sufficient number of qualified employees on duty to provide the residents with all of the care and services they require. (Class I)

5.5.b. Awake staff shall be present in the facility during normal resident sleeping hours when residents require supervision during sleeping hours or are in need of limited and intermittent nursing services unless all residents are certified by a physician or psychologist as not being in need of sleep time supervision and they are not in need of limited and intermittent nursing services. (Class I)

5.5.c. A multi story facility shall maintain at least one (1) awake staff per story while

residents are sleeping, except that the secretary shall permit one (1) awake staff in a multi story facility if:

5.5.c.1. The residents of the community are certified by a physician or psychologist as not being in need of supervision during sleeping hours; (Class I)

5.5.c.2. The community has no residents who are in need of limited and intermittent nursing services; (Class I) and

5.5.c.3. The community has an immediate emergency call system from the residents to the awake staff person. (Class I)

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

5.5.e. When regular staff and supervisory staff are absent due to illness and vacations, there shall be coverage by substitute personnel with comparable qualifications. (Class I)

5.5.f. The licensee of the residential care community shall maintain and furnish to the secretary upon request, information setting forth the number (in full-time equivalents) and types of employees on duty in the community at any given time. (Class III)

5.5.g. If a resident experiences a poor outcome related to a lack of supervision or unmet care needs, the secretary may require the licensee to add staff. (Class II)

5.6. Employee Orientation and Training.

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

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

5.6.b.1. Policies and procedures; (Class III)

5.6.b.2. The rights and responsibilities of residents including protection of resident privacy and confidentiality; (Class III)

5.6.b.3. Complaint procedures; (Class III)

5.6.b.4. Procedures and agencies available in instances of abuse, neglect, and mistreatment: the State adult protective services agency, including its toll-free hot line number; the State licensure and certification agency, including its telephone number; the state bureau of

senior services, including its telephone number; and various other concerned advocacy and protection organizations; (Class III)

5.6.b.5. The care of aged, infirm or disabled adults with consideration for individual capabilities and needs; (Class III)

5.6.b.6. Personal assistance procedures as needed for resident care, including at a minimum, personal grooming care, personal hygiene care, nutritional services, and signs and symptoms of alteration in skin integrity; (Class III)

5.6.b.7. Specific duties and responsibilities of the residential staff for assisting current residents (i.e., a review of individualized service plans, the activities program and/or professionally-designed intervention strategies to help a resident with behavioral health needs to manage his or her behavior); (Class III)

5.6.b.8. Cardiopulmonary resuscitation (CPR), as applicable, and first aid; (Class II) and

5.6.b.9. Infection control. (Class II)

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

5.6.d. The licensee shall provide ongoing in-service training annually in these areas:

5.6.d.1. Resident rights and confidentiality; (Class III)

5.6.d.2. Abuse, neglect, mistreatment, and procedures to prevent the occurrence of such incidents; (Class II)

5.6.d.3. Emergency care of residents (first aid and as applicable, CPR); emergency plans for the community, including fire safety and evacuation plans; (Class II)

5.6.d.4. The responsibilities of the residential staff for assisting residents (i.e., individualized service plans, activity programs, etc.); (Class III) and

5.6.d.5. Infection control. (Class II)

5.7. Volunteers.

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

5.8. Personnel Records.

5.8.a. The licensee shall maintain a confidential personnel record on each employee, including the administrator, who provide services to residents. Each record shall contain at least the following:

5.8.a.1. An employment application which includes at least the individual's current home address and telephone number, emergency contacts, and social security number; (Class III)

5.8.a.2. Documentation of the results of a screening through the West Virginia state police central abuse registry regarding previous convictions involving abuse, mistreatment or neglect of dependent populations or theft of the property of such populations, documented verification of past employment or personal references, and a check of the nurse aide abuse registry established by the state; (Class III)

5.8.a.3. A record of orientation, annual and/or additional training, education and credentials; (Class II)

5.8.a.4. The date of employment and a position title and description; (Class III)

5.8.a.5. A health record containing the results of an employment physical examination and annual screens for tuberculosis (tine test not acceptable) and other communicable diseases as indicated by exposure, prevalence or currently accepted medical practice in congregate living situations as indicated by the commissioner of the bureau of public health of the State department of health and human resources. The employment physical and tuberculosis screening shall be obtained in the first week of employment and annually thereafter. (Class II)

5.8.b. Personnel records shall be maintained on file at the residential care community for at least three (3) years following termination of employment. The record shall have documentation of the date and reason for termination of employment. (Class III)

5.9. Administrative Admission Procedures.

5.9.a. The licensee shall not discriminate against residents or prospective resident on the basis of race, national origin, religion, age, gender, sexual orientation or disability. The admissions policy shall state the resident population that the community is licensed to serve and shall not discriminate within the confines of that definition. (Class III)

5.9.b. The relationship of a resident to the residential care community shall be covered by a written contract entered into at the time of or prior to the individual's admission. The contract shall specify the following information:

5.9.b.1. The community's admission, retention and discharge criteria; (Class III)

5.9.b.2. Written assurance of the services that the community will provide to meet the individual's needs; (Class III)

5.9.b.3. Full disclosure of all costs, an annual or monthly contract price, refund policy and an assurance that residents shall not be held liable for any cost that was not disclosed; (Class III)

5.9.b.4. How health care will be arranged or provided; (Class III)

5.9.b.5. The complaint process; (Class III)

5.9.b.6. How prescribed medications will be obtained, and who will be responsible for payment; (Class III) and

5.9.b.7. The storage, administration and disposal of medications.

5.9.c. Each party to the contract shall have a copy of the contract. Current residents shall be provided with new or updated contracts within fourteen (14) days of the effective date of this rule, if the existing contract does not meet the requirements of this rule. (Class III)

5.9.d. Thirty (30) days prior to any increases, additions, or other modifications of the rates, the licensee shall give written notice of the proposed changes to residents. (Class III)

5.9.e. The licensee shall inform and document notifying the resident of how to access the following information at the time of the agreement:

5.9.e.1. Information and referral services regarding the resident's utilization of social, recreational, and vocational activities within the community;

5.9.e.2. How the resident's personal property will be protected from loss and theft;

5.9.e.3. How the resident will be assisted in making appointments for medical, dental, nursing or mental health services, and how transportation to and from these services will be arranged;

5.9.e.4. Policies and procedures for emergency situations that affect the well-being of residents, including, but not limited to the following: life-threatening medical emergencies (including whether CPR will be provided), fires, natural disasters, severely inclement weather, industrial accidents, major incidents, a missing resident and immediate or serious threats;

5.9.e.5. The responsibility for required medical examinations and treatment orders; policies regarding room changes, retention during temporary illness or a significant change in resident status, transfers and discharges, and the resident's and the licensee's transfer and discharge notification responsibilities;

5.9.e.6. House rules governing resident behavior and responsibilities; and

5.9.e.7. A resident's bill of rights which is consistent with this rule. (Class III)

§64-75-6. Resident Rights.

6.1 Posting of Information and General Rights.

6.1.a. The licensee shall post the following information, easily readable, in a conspicuous place:

6.1.a.1. Residents' rights; (Class III)

6.1.a.2. Phone numbers of the abuse hotline; the office of the licensing agency; the state ombudsman; and the regional ombudsman; (Class III)

6.1.a.3. Information about the ombudsman program:

6.1.a.3.A. The name, address and telephone number of the designated long-term care ombudsman program serving the region in which the residential care community is located;

6.1.a.3.B. A brief description of the services provided by the long-term care ombudsman program; and

6.1.a.3.C. A statement as to the penalties for willful interference and retaliation; (Class III) and

6.1.a.4. The community's current license. (Class III)

6.1.b. The licensee shall promptly notify the resident and the resident's legal representative or designated family member whenever there is a change in residents rights. (Class III)

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

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

6.1.e. A resident shall be encouraged and assisted throughout the duration of his or her stay to exercise his or her rights as a resident and as a citizen, such as voting in governmental

elections. (Class III)

6.1.f. A resident has the right to be free from restraint, interference, coercion, discrimination, or reprisal from the licensee in exercising his or her rights. (Class II)

6.2. Notice of Rights.

6.2.a. The licensee shall provide a copy of residents' rights to the resident with duplicates on request. The date the rights are distributed shall be recorded. (Class III)

6.2.b. The resident has the right to inspect all records pertaining to him or her and to purchase photocopies at a reasonable cost that is comparable to copying charges by local public agencies. (Class III)

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

6.2.d. The licensee shall notify the resident and the resident's legal representative or designated family member at least seventy-two (72) hours prior to a change in room or room-mate assignment unless an emergency situation occurs. (Class III)

6.3. Treatment.

6.3.a. The resident has the right to participate in planning his or her overall care, to utilize the physician or pharmacist of his or her choice, to be fully informed in advance about care and treatment that may affect him or herself, to make advanced directives about his or her medical care and to refuse treatment. (Class II)

6.3.b. No resident shall be abused, exploited, neglected, mistreated, or restrained by physical or chemical means. Physical restraints shall not be used except in an emergency under physician's order not to exceed twenty-four (24) hours for the safety of the resident or others in the community until professional help arrives on the premises. Restraints utilized during emergencies shall be limited to cloth vest or soft belt restraints only and their application shall be by trained staff only. Restraints shall be released every two (2) hours for at least ten (10) minutes. These procedures shall be documented and available for review by the secretary. (Class I)

6.3.c. Any medical, dental or mental health professional, ordained minister, christian science practitioner, religious healer, social service worker, peace officer, or law enforcement officer is required under the adult protective services law, W. Va. Code § 9-6-9 to report any incident in which an incapacitated adult is neglected, abused, or in an emergency situation, subject to conditions likely to result in neglect, abuse or emergency, or has died as a result of abuse or neglect. Reports of neglect, abuse or emergency situations shall be made immediately

to the local adult protective services office of the department of health and human resources or by calling the adult protective services hotline number, as required by law and to the community's licensing agency. The secretary may report alleged failures by a licensed health care professional to report alleged incidents of neglect or abuse or emergency situations to the individual's licensing board. (Class I)

6.3.d. The licensee shall assure that all alleged violations involving abuse, exploitation or neglect are immediately and thoroughly investigated and documented by the licensee or his or her designee on receipt of the allegation. Measures shall be taken to ensure that further abuse does not occur while the investigation is in progress. (Class I)

6.3.e. If the allegation is substantiated, the licensee shall assure that appropriate sanctions are invoked or actions are taken to prevent a recurrence of alleged abuse, exploitation or neglect. (Class I)

6.3.f. The licensee shall assure that the licensing agency has been notified within seventy-two (72) hours of the date of the allegation of abuse, exploitation, or neglect. Concurrently, documentation of the investigation, the results of the investigation and the response to the investigation shall be forwarded to the licensing agency. (Class III)

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

6.4. Self Determination.

6.4.a. A resident has the right to meet with and participate in the activities of social, religious, and community groups, at his or her discretion. (Class III)

6.4.b. Residents have the right to assemble and organize themselves as a group to solicit and recommend improvements in the community's services and to resolve problems that may arise between the residents and the licensee. (Class III)

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

6.4.d. Residents have the right to be free to leave the residential care community, however, this does not absolve the licensee of the responsibility to supervise residents. (Class II)

6.5. Privacy and Confidentiality.

6.5.a. The resident has the right to personal privacy and confidentiality of his or her personal and permanent resident record. Personal privacy includes accommodations, medical treatment, written and telephone communications, personal assistance, visits and meetings of family and resident groups. (Class II)

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

6.5.c. No person shall enter a resident's apartment without identifying him or herself to the resident and receiving the resident's permission to enter. (Class III)

6.6. Complaints.

6.6.a. The resident has the right to voice grievances with respect to treatment or care furnished without discrimination or reprisal for voicing the grievance. (Class II)

6.6.b. The resident has the right to prompt action by the licensee to resolve grievances the residents might have, including those with respect to the behavior of other residents. The licensee shall respond to the complainant in writing within twenty-four (24) hours for serious complaints, such as abuse, neglect, or injuries of unknown origin. For complaints of a less serious nature, the licensee shall respond to the complainant in writing no later than four (4) days after the complaint is filed. (Class III)

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

6.7. Work.

6.7.a. The resident has the right to be employed outside the community. (Class III)

6.7.b. The resident has the right to refuse to perform services for the community. (Class III)

6.7.c. The resident has the right to perform services for the community when:

6.7.c.1. The licensee has documented the resident's need or desire for work in the service plan in the resident's record; (Class III)

6.7.c.2. The agreement specifies duties, hours of work and compensation; (Class III)

6.7.c.3. The agreement is not a condition for admission or continued residence; (Class III) and

6.7.c.4. The resident enters into the agreement voluntarily. (Class III)

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

6.7.e. A licensee shall not permit residents to perform work which creates conditions

potentially hazardous for themselves or others. (Class I)

6.8. Mail and Communication.

6.8.a. The resident has the right to send and promptly receive unopened mail. A staff member shall only open and read correspondence on the direct written request of the resident. (Class III)

6.8.b. The resident has the right to have access to stationary, postage and writing implements. (Class III)

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

6.9. Access and Visitation Rights.

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

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

6.10. Personal Property.

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

6.11. Civil Rights.

6.11.1. Individuals have the right to be free from discriminatory practices related to admission or services on the grounds of race, religion, national origin, age, gender, sexual orientation or disability. (Class II)

§64-75-7. Health Care Standards

7.1. Admission

7.1.a. Individuals admitted shall be capable of self-preservation. The resident record shall include documented certification by a physician or psychologist that the resident is capable of self-preservation by virtue of his or her ability to follow directions and, with prompting if necessary, to take appropriate action for self-preservation under emergency conditions, except as

provided in this section. The certification shall be updated as indicated by changes in the resident's physical or mental condition. (Class II)

7.1.b. Individuals admitted may be in need of personal assistance in activities of daily living, in need of supervision because of mental or physical impairment, or have limited and intermittent nursing care needs. (Class II)

7.1.c. Individuals shall not be admitted if they require ongoing or extensive nursing services. (Class II)

7.1.d. Individuals shall not be admitted if they require a level of service for which the community is not licensed or does not provide. (Class I)

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

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

7.2.b. If a resident exhibits symptoms of a mental or developmental disorder, and the resident is not receiving services to meet his or her current needs, is not a client of a behavioral health center or does not have a case manager, the licensee shall advise the resident's physician and on his or her advice notify the resident or his or her legal representative of the behavioral health service options within the community. If the resident or his or her legal representative fails to meet the resident's needs in this area in a timely manner, then the licensee should, after consultation with the resident's physician, refer the resident to a licensed behavioral health agency. (Class II)

7.2.c. The licensee shall seek immediate treatment for a resident or refuse to admit a prospective resident if the licensee has reason to believe that the resident may suffer serious harm or is likely to cause serious harm to himself or herself or to others if appropriate interventions are not provided in a timely manner. (Class I)

7.2.d. A resident who becomes incapable of self-preservation subsequent to admission may remain in the community for ninety (90) days during a temporary illness or recovery from surgery if the resident does not require nursing care in excess of limited and intermittent nursing care, the resident is not incapable of self-preservation for more than ninety (90) days, and the following criteria are substantiated through resident interview:

7.2.d.1. The resident requests to remain in the community; (Class II)

7.2.d.2. The resident is advised of the availability of other specialized health care facilities to treat his or her condition; (Class II)

7.2.d.3. The need for such care is the result of a medical pathology or a result of the normal aging process. (Class II)

7.2.e. The licensee shall maintain a non-self-preserving resident's safety and meet their needs until such time as the resident's condition improves or he or she is discharged. (Class I)

7.3. Discharge and Transfer Procedures.

7.3.a. The licensee of a community with a resident who needs more than limited and intermittent nursing care shall inform the resident or his or her legal representative of the need to move the resident to a health care facility with the capability of providing the needed level of nursing care. (Class III)

7.3.b. The licensee shall assist the resident and his or her legal representative to attempt on a weekly basis to secure placement in alternative care facilities. (Class III)

7.3.c. The licensee shall thoroughly document in the resident's record efforts made to obtain placement in alternative care facilities and refusals from the facilities in the event that the resident is unable to secure alternative placement and remains in the community. (Class III)

7.3.d. The licensee shall give a thirty-day notice prior to discharge unless an emergency situation which requires transfer to a hospital or other higher level of care exists or if the resident is a danger to him or herself or others. A copy of the written discharge notice shall be filed in the resident's record. (Class III)

7.3.e. Prior to transfer or discharge the licensee shall prepare a summary to accompany the resident which shall include the residents functional needs assessment, individualized service plans, current physician's orders, any advanced directives, any allergies and pertinent progress notes. (Class II)

7.4. Records.

7.4.a. All resident records containing the information required by this rule shall be retained at the community in a secure area and shall be made available for inspection by the secretary's duly authorized representative. (Class III)

7.4.b. The licensee shall begin at admission, maintain, and keep current, a record for each resident. (Class II)

7.4.c. The resident's record shall include:

7.4.c.1. Resident's name; social security number; birth date; sex; marital status; religious preference and affiliation, if any; (Class III)

7.4.c.2. Names, addresses and telephone numbers for the following relevant persons: physician; dentist; legal representative, if applicable; person, organization or agency responsible for payments for support of the resident, if applicable; next of kin or other interested relatives; persons to be notified in case of an emergency or death; any case management agency or organization; and any day care or other programs in which the resident regularly participates; (Class III)

7.4.c.3. All agreements or contracts entered into between the resident and the licensee; (Class III)

7.4.c.4. Admission, transfer and discharge data; (Class III)

7.4.c.5. Initial and subsequent physician health assessments, advanced directives, physician's orders, medication administration records; allergies; resident admission and monthly weight; the dates of physician, dentist and other health and behavioral health care providers and other professional appointments and visits (including those for accidents and illness requiring medical attention, coordinated by the licensee); all contact with the resident's physician by the community staff; observations by personnel, licensed nurses, physician, or others authorized to care for the resident; (Class II)

7.4.c.6. Documentation of incidents and accidents involving the resident, including, at a minimum, the time, place, the action taken in response to the incident and the notification of the resident's physician (if applicable), family or legal representative; (Class III)

7.4.c.7. The resident's functional needs assessment, service plan, and updates annually and as indicated by significant changes in the resident's condition; (Class II)

7.4.c.8. A list of clothing and personal possessions of the resident if the resident so desires; (Class III) and

7.4.c.9. Documentation of death, including cause and disposition of the resident's body, medications, personal effects and any valuables safeguarded by the licensee. (Class III)

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

7.4.e. Each licensee shall maintain a permanent resident register in a bound notebook in chronological order according to the date of the resident's admission. The register shall include the date of the resident's admission, his or her name, the date of his or her last day in the residential care community and the name and address of the residence, health care facility or

other place to which the resident (if living) has been discharged. (Class III)

7.5. Assessments and Service Plans

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

7.5.b. Within thirty (30) days of admission, every resident shall have an individualized functional needs assessment completed in writing by a licensed health care professional. At a minimum, the resident's assessment shall include a review of health status and functional, psychosocial, activity and dietary needs. (Class II)

7.5.c. Each resident shall have a service plan, based upon his or her functional needs assessment, developed within forty-five (45) days of admission. The service plan shall be developed in response to individual resident needs. (Class II)

7.5.d. The assessment and service plan shall reflect the resident's current needs and therefore shall be updated annually and as indicated by a significant change in the resident's condition. (Class II)

7.6. Services.

7.6.a. The licensee shall provide assistance to the resident and the resident's family in the adjustment to the residential care community setting and in the adjustment to transfer when other levels of care become necessary. (Class II)

7.6.b. The licensee shall encourage and assist all residents in developing and maintaining independence, self-determination and the highest level of functioning possible. (Class II)

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

7.6.d. The licensee shall assist the resident in making appointments for appropriate medical, dental, nursing or mental health services as needed by the resident. (Class II)

7.6.e. The licensee shall provide or arrange for appropriate transportation of the

resident to receive medical appointments and social services. (Class III)

7.7. Medications and Treatments.

7.7.a. The licensee shall ensure that resident care is provided by appropriately licensed health care professionals when required by state law and rules, and that medications and treatments given to residents are administered as required by state and federal law, rules and regulations. (Class I)

7.7.b. Prescription and over-the counter medications and treatments shall be obtained, administered or self-administered only on the written order or prescription of an individual authorized by law to prescribe drugs in this State. Copies of the prescriptions or written orders for drugs shall be retained in the resident's record. (Class I)

7.7.c. The prescribing health care professional shall determine whether or not the resident can self-administer such medications in a safe manner and shall document this in the residents medical record. (Class I)

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

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

7.7.f. The licensee shall keep a record of all drugs given to each resident indicating each dose given. The record shall include the resident's name; the name of the medication; the dosage to be administered and route of administration; the time or intervals at which the medication is to be administered; the date the medication is to begin and cease; the printed name, initials and signature of the individual who administered the medication; and any special instructions for handling or administering the medication, including instructions for maintaining aseptic conditions and appropriate storage. (Class I)

7.7.g. Medications shall be kept in a locked room, cabinet or other storage receptacle and accessible only to the staff responsible for medications unless residents are determined to be capable of self-medication. In such cases, the licensee shall provide the self-medicating resident with resources to store medications to be inaccessible to other residents. (Class I)

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

7.7.i. If refrigeration of medication is required, the licensee shall provide: a refrigerator in a locked room, a locked refrigerator, or a locked box within the refrigerator for storage. A thermometer is required in a refrigerator storing medications. The temperature within the refrigerator storing medications shall be maintained within the recommended temperature range on the medication package. (Class I)

7.7.j. If Schedule II drugs of the Uniform Controlled Substances Act W. Va. Code § 60 A -1-101 et seq. are administered, a copy of the written prescription signed by the physician shall be in the resident's record and a proof of use record shall be maintained. Schedule II drugs shall be stored in a manner so that they are securely protected by two (2) locks. The key to the separately locked Schedule II drugs shall not be the same key that is used to gain access to non-scheduled drugs. (Class I)

7.7.k. The disposition of unused medications due to situations such as a change in drug therapy, the death of the resident, the resident leaving the facility, or the resident's inability to take the medication, shall be in accordance with the following:

7.7.k.1. Individual resident drugs supplied in unit dose or the manufacturer's originally sealed container shall be returned, if unopened, unless otherwise prohibited under applicable federal or State laws, to the issuing pharmacy, Provided, That:

7.7.k.1.A. No drug covered under the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 21 U.S.C. § 801 et seq. shall be returned (Schedule II, III, IV, V); (Class III)

7.7.k.1.B. All returned drugs shall be identified as to lot or control number; (Class III) and

7.7.k.1.C. The signatures of the receiving pharmacist and the facility registered nurse shall be recorded in a separate log which lists the name of the patient, the name and strength of the drug with National Drug Code, the prescription number (if applicable), the amount of the drug returned and the date of return. The log must be retained for at least two (2) years. (Class III)

7.7.k.2. Resident drugs which are outdated, adulterated, deteriorated, or non-returnable shall be destroyed in the following manner:

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

7.7.k.2.B. All other non-scheduled legend drugs not in unit dose packaging or not in the manufacturer's originally sealed container shall be destroyed by the facility in the

presence of a pharmacist or licensed nurse. The name of the patient, the name and strength of the drug, the prescription number, if applicable, the amount destroyed, the date of destruction and the signatures of the person named above and one (1) other person shall be recorded in the patient's health record or in a separate log. The log shall be retained for at least two (2) years. (Class III)

7.7.1. When oxygen therapy is required, the community shall have a portable source available for resident use for out-of-room activities and in the event of power failure. The licensee shall maintain any equipment electrically safe and shall arrange for service as needed; store the oxygen tubing in a sanitary manner when not in use and replace it as indicated by accepted infection control measures; prohibit smoking in any location when oxygen is in use; post no smoking signs conspicuously; and enforce the smoking prohibition. (Class I)

7.8. Accident, Illness and Major Incident Procedures.

7.8.a. A standard American Red Cross first-aid kit, or the equivalent, shall be readily available at all times to provide emergency aid for commonly occurring household injuries. (Class III)

7.8.b. When a resident experiences an illness or an incident that results in injury or resident complaint, the licensee shall arrange for an appropriately licensed health care professional to do the following:

7.8.b.1. Assess the severity and cause of the accident or illness; (Class I)

7.8.b.2. Advise the staff as to the need to seek emergency assistance related to the accident or illness; (Class I) and

7.8.b.3. Record actions taken in the resident's record, and, shall recommend to the licensee in writing actions, if any, to take to avoid similar accidents or illnesses. The licensee shall keep a written documentation of the recommendations. (Class II)

7.8.c. If the resident has an obvious need for emergency assistance, the person on duty should first obtain emergency assistance, and then call the licensed health care professional. (Class I)

7.8.d. The staff of the residential care community shall monitor and document the resident's condition for a period of twenty-four (24) hours following the accident or the onset of the illness or as specified by the licensed health care professional. (Class II)

7.8.e. Major incidents shall be reported to the licensing agency by the facility as soon as possible, but no later than the next business day. (Class III)

7.8.f. The community staff shall promptly notify the resident's physician, responsible party and/or next of kin, when there is a major incident or any significant change in the resident's condition. (Class I)

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

7.9. Resident Death.

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

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

7.9.b.1. A record of the notification of the resident's physician, the designated individual for emergencies, and legal representative, if any; (Class III)

7.9.b.2. The date, time and circumstance of death, including the name of person to whom the body was released and any other details specific to the death; (Class III) and

7.9.b.3. A record of the disposition of the resident's personal belongings that were released, including funds. The resident's legal representative or next of kin shall sign a detailed receipt for these items. (Class III)

7.9.c. In the event of the death of a resident, a licensee shall deliver all property held in trust to the resident's estate administrator or executor. (Class III)

§64-75-8. Activities

8.1. The licensee shall provide a planned and meaningful activity program designed to meet the needs of each resident. The program shall:

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

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

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

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

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

§64-75-9. Dietetic Services.

9.1. General.

9.1.a. The licensee shall ensure that each resident is offered at least three (3) freshly prepared meals daily, seven (7) days a week and special diets and snacks which meet resident needs and choices, as identified in his or her needs assessment. Residents' meals shall be in substantial compliance with current Recommended Dietary Allowances of the Food and Nutrition Board of National Academy of Sciences, National Research Council, or as specified in this rule, except as ordered by a physician. (Class II)

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

9.1.c. The residents shall be offered a variety of foods at meals as follows:

9.1.c.1. At breakfast: fruit or juice; cereal, whole grain or enriched bread product; and Grade A vitamin D milk; (Class III) and

9.1.c.2. At noon and evening meals: protein sources, such as meat, poultry, fish, eggs, cooked dried legumes, cheese or peanut butter; vegetable or fruit; whole grain or enriched grain food products; and Grade A vitamin D milk. (Class III)

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

9.1.e. The licensee shall encourage resident participation in menu planning and shall serve meals at times mutually agreed upon by residents in the home with consideration of individual resident preferences. (Class III)

9.1.f. The licensee shall accommodate residents who are unable to eat at the planned mealtime and provide for a meal substitution if the resident does not tolerate the foods planned for the meal. (Class II)

9.2. Administrative Requirements.

9.2.a. The licensee shall maintain a daily record of actual foods served for each meal. Menu content shall be varied. (Class III)

9.2.b. Grocery receipts and records of actual food served shall be kept on file for at least thirty (30) days. (Class III)

9.3. Food Service Sanitation.

9.3.a. The food service facilities shall comply with the division of health's rule, Food Service Sanitation, 64 CSR17.

9.3.b. When required by the local health department having jurisdiction over the county in which the center is located, all persons engaged in food service activities shall have valid food service worker permits.

§64-75-10. Fire Safety, Disaster and Emergency Preparedness.

10.1 Fire Safety.

The licensee shall provide evidence of compliance with applicable rules of the State fire commission. Any variation to compliance with the fire code must be coordinated with the department and approved in writing by the state fire marshal. (Class I)

10.2. Disaster and Emergency Preparedness.

10.2.a. The community shall have a written disaster and emergency preparedness plan which states procedures to be followed in the event of an internal or external disaster or emergency which could severely affect the operation of the community. (Class I)

10.2.b. The disaster and emergency preparedness plan shall have procedures for the following situations at minimum and shall identify specific tasks and responsibilities for all employees in the event of the following: missing residents; high winds; tornadoes; floods; bomb threats; utility failure; severe winter weather. (Class I)

10.2.c. The disaster and emergency preparedness plan shall include at least an emergency water agreement; an alternate shelter agreement; an emergency transportation policy; and an emergency food supply list and menu which will provide nutrition for all persons residing in the community for a minimum of seventy-two (72) hours. (Class I)

10.2.d. The licensee shall obtain the assistance of qualified fire safety, emergency response teams and other appropriate experts in developing and maintaining the disaster and emergency preparedness plan. Documentation by the expert shall be maintained in the community. (Class I)

10.2.e. The local fire department shall be provided with a floor plan and be given opportunities to become familiar with the community. (Class I)

10.2.f. The community shall have written plans and procedures for transferring casualties and uninjured residents. These procedures shall include the transfer of pertinent resident records including identification information, diagnoses, allergies, advanced directives, medications and treatments, and any other records needed to ensure continuity of care. (Class I)

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

10.2.h. The disaster and emergency preparedness plan shall be reviewed and updated by the administrator or his or her designee on an annual basis and signed and dated to verify review. (Class III)

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

10.2.i.1. Telephone numbers of the fire department, the police, an ambulance service and other appropriate emergency services; (Class I)

10.2.i.2. Key personnel telephone numbers, including at least the following: the administrator; physician (if applicable); or the nurse on call (if applicable); (Class I) and

10.2.i.3. The names and telephone numbers of all other personnel to be called in case of fire or emergency. (Class I)

10.2.j. Simple floor plans showing the location of exits, fire alarm pull stations, fire extinguishers, and fire fighting equipment shall be posted on all floors and in each separate wing.
(Class I)

10.3. Disaster Training and Rehearsal.

10.3.a. Within twenty-four (24) hours of admission, the disaster and emergency preparedness plan procedures shall be clearly communicated by the staff to the resident and documented. (Class I)

10.3.b. The disaster and emergency preparedness plan shall be rehearsed by all personnel from all shifts once yearly and documented. (Class I)

§64-75-11. Physical Facilities.

11.1. Applicability; Construction; Additions; Renovations; Alterations; Other Standards.

11.1.a. The provisions of Section 11 apply to physical facilities, operations, maintenance and equipment for all residential care communities, renovations or additions. (Class I)

11.1.b. A complete set of drawings and specifications for the architectural, structural, and mechanical work shall be submitted to and approved by the secretary before construction begins. This applies to new construction, additions, renovations, or alterations to existing

residential care communities. (Class I)

11.1.c. The submitted set of construction documents (drawings and specifications) shall be prepared, signed and sealed by an individual registered to practice architecture in the State of West Virginia. One (1) set of these documents shall be submitted to the State Fire Marshal for review. The new residential care community or addition shall be inspected during the construction phase by a registered professional architect, preferably the designing architect. (Class I)

11.1.d. During the construction phase an as built set of drawings shall be kept by the general contractor on which all changes (from all trades) to the project are noted. Each change shall be noted in red and dated. The architect shall present this as built set of drawings to the owner when the project is completed. (Class I)

11.1.e. All construction, new additions, renovations or alterations shall be inspected and approved by the secretary prior to admitting new or additional residents. When construction is substantially complete, the architect shall submit to the secretary a substantial completion form signed by all the parties involved and a completed inspection request form. (Class I)

11.1.f. Unless substantial construction is started within one (1) year of the date of approval of final drawings, the owner or architect shall secure written notification from the secretary that the plan approval for construction is still valid and in compliance with this rule. (Class I)

11.1.g. Plans for addition, removal or modification of equipment which is permanently affixed to the building or which may otherwise involve or necessitate new construction, alterations, or additions to the residential care community shall be submitted to and approved by the secretary. (Class I)

11.1.h. Other changes involving equipment, which may or may not require physical changes in the residential care community, but which may relate to other standards and requirements of this rule may require the secretary's approval. Communities may request approval in advance from the secretary regarding a particular change or rearrangement. Areas in which changes are likely to require approval include, but are not limited to, the kitchen, the laundry, and heating equipment. (Class I)

11.1.i. All fees specified in West Virginia Administrative Rules, Fees for Services, 64 CSR 51, for site inspections of new construction or major renovations, architect reviews of drawings and specifications, and inspections of new projects prior to openings are the responsibility of the licensee. (Class III)

11.1.j. The licensee shall submit the intended apartment/resident capacity in the plan of operation, and the final determination of this capacity shall be made by the secretary upon approval of the plan of operation. An increase in capacity can occur only with permission of the secretary. (Class II)

11.1.k. The Americans with Disabilities Act (ADA) and the American National Standards

Institute (ANSI) codes shall be followed as applicable. (Class II)

11.1.l. The residential care community shall comply with the State Building Code, 87 CSR 4⁶. (Class I)

11.1.m. Where local codes or regulations require standards higher than those required by this rule, local building codes and zoning restrictions shall be observed. (Class I)

11.1.n. Evidence of compliance signed by local fire, building and zoning officials shall be available on-site for review. (Class I)

11.2. Site Characteristics and Accessibility

11.2.a. Sites for all new communities and sites of additions to existing communities shall be inspected by the secretary prior to the architect beginning work on final drawings and specifications. (Class I)

11.2.b. Communities shall be located in a residential setting as convenient as possible for necessary services and access, if local zoning laws allow. (Class III)

11.2.c. There shall be adequate drainage to divert surface water from the community. (Class II)

11.2.d. The community's hard surface access road shall connect directly to a hard surface highway which provides access to hospitals and allows medical and fire personnel access. (Class I)

11.2.e. Any questionable soil conditions shall be reviewed by a qualified soils engineer and if conditions require, earth core borings shall be conducted. If engineered soil is installed or other soil tests conducted, the secretary shall be supplied with copies of the reports. (Class I)

11.2.f. The site shall have accessibility to electric power. Water shall be supplied with sufficient pressure to operate the fire sprinkler system adequately. (Class I)

11.2.g. Parking areas shall be constructed using clean, solid earth bed, a compacted stone base and a hard surface all weather finish coat with a slope which permits good drainage. There shall be parking spaces for all staff on duty, and a minimum of one (1) parking space for

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

each five (5) beds. A minimum of (2) two handicapped parking spaces shall be located at the main entrance. All parking areas shall be free of broken, gaped or uneven paving. (Class II)

11.2.h. Hard surface concrete walks, a minimum of forty-eight inches (48") wide with light broom top surface texture shall be provided at all exits and connect into the main walk or parking area. (Class II)

11.3. Physical Facilities and Equipment

11.3.a. Maintenance and housekeeping shall be provided to maintain safe, sanitary and accident free living conditions. (Class I)

11.3.b. Low windows, open porches, changes in floor level and similar accident hazards shall be designed so that the danger of accident is minimized. Danger areas on the property outside the building shall be safeguarded. (Class I)

11.3.c. All equipment shall be maintained as recommended by the manufacturer and the licensee shall establish a program of preventive maintenance for all equipment. (Class I)

11.3.d. The community shall be kept free of insects, rodents and vermin. Pesticides shall be applied only by an applicator certified by the United States Department of Agriculture. (Class I)

11.3.e. Each room occupied or used by residents shall have level floors which are slip resistant. Floor covering shall be maintained in a clean and odor-free condition, free from protrusions and lie flat and even. (Class II)

11.3.f. Ceilings and walls shall be in good repair, free from unfilled cracks, and finished to allow for satisfactory cleaning. (Class II)

11.3.g. All doors and windows shall be operable and shall be constructed and maintained to fit snugly, yet be opened and closed easily without requiring the use of special tools. All doors shall be provided with positive latches suitable for keeping the doors closed. (Class I)

11.3.h. Minimum door widths for new construction shall be thirty-six inches (36") for exterior exits and resident rooms. Minimum door widths for new construction shall be thirty-four inches (34") for bathroom doors. (Class II)

11.3.i. Outer openings that are left open for extended periods of time shall be screened to prevent the entrance of insects. Insect screening shall be maintained free of openings large enough to permit the entrance of insects. (Class II)

11.3.j. The community shall have a heating system capable of maintaining a temperature in all rooms used by residents of at least seventy-two degrees Fahrenheit (72°F) during cold weather. (Class I)

11.3.k. Supplemental heating devices, such as portable heaters, are prohibited. (Class I)

11.3.l. 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, electric fans and heat pumps. (Class I)

11.3.m. Ramps shall not be less than forty-eight inches (48") wide nor steeper than one foot (1') of rise in twelve feet (12') of run, and shall be finished with a non-slip surface. (Class I)

11.3.n. Handrails shall be provided on all sides of elevators and inside and outside stairs and ramps. Handrails shall be installed between thirty-two inches (32") and thirty-four inches (34") high and support a concentrated load of two hundred and fifty (250) pounds. (Class I)

11.3.o. Communities shall have a call system which is audible to staff who are on duty and which can be accessed from each bed and other areas as necessary for the safety of residents. Portable battery operated or beeper-type systems may be considered. (Class I)

11.3.p. The community shall have space adequate for the storage of linens, maintenance and housekeeping supplies, equipment, and food supplies. (Class II)

11.3.q. All communities shall have at least one (1) janitor's closet with a service sink for each story that houses residents. However, if existing facilities cannot comply with the janitor closet requirement on each floor, the facility must demonstrate a sanitary means of disposal of waste water. (Class II)

11.3.r. Corridors, stairways and elevators shall be of a width and design that will easily accommodate the removal of residents by stretcher, and shall be constructed and maintained in compliance with all applicable fire and safety requirements. Non-slip surfaces are required for stairways. Elevators shall comply with all appropriate State and federal laws. (Class I)

11.3.s. The licensee shall implement measures to ensure resident safety if it admits residents who exhibit behaviors which may cause harm to self or others or may place themselves or others in imminent danger or jeopardy. The safety measures may include but not be limited to, door alarms. (Class I)

11.4. Apartments

11.4.a. Each apartment shall:

11.4.a.1. Be at least three hundred square feet in size; (Class II)

11.4.a.2. Have doors capable of being locked; (Class II)

11.4.a.3. Contain at least one bedroom; (Class II)

11.4.a.4. Contain a kitchenette that includes a sink and refrigerator; (Class II)

11.4.a.5. Contain one full bathroom that includes a bathing area, toilet and sink.
(Class II)

11.4.a.6. Contain grab-bars at toilets, tubs, and showers. These grab-bars shall be securely mounted to the finished wall with a steel plate or a two inch (2") by six inch (6") wood plate backing behind the wall. Grab bar brackets shall be provided at spacings which would support two hundred and fifty (250) pounds of concentrated load at any point on the grab-bar;
(Class I)

11.4.a.7. Contain furniture, if furnished by the residential care community, appropriate in size and amount to the space provided and in all cases be in good repair; (Class II) and

11.4.a.8. Have a light controlled by a switch at the entry to the apartment and to the bedroom. (Class II)

11.4.b. Multiple occupancy apartments shall have at least eighty (80) square feet of bedroom space per occupant and no more than two (2) residents may occupy an apartment.
(Class II)

11.5. Water Supply

11.5.a. The community shall have a water supply which:

11.5.a.1. Is safe and sized to meet all residential needs and requirements of the sprinkler system; (Class I) and

11.5.a.2. Has as its source of water a public water system which complies with W. Va. Division of Health Administrative Rules, Public Water Systems, 64 CSR 3, or a water well which complies with W. Va. Division of Health Administrative Rules, Water Well Regulations, 64 CSR 19, and W. Va. Division of Health Administrative Rules, Water Well Design Standards, 64 CSR 46. (Class I)

11.5.b. The community shall have hot and cold running water in sufficient supply to meet the needs of the residents, household members and employees. (Class I)

11.5.c. Hot water temperatures shall be maintained between one hundred five degrees Fahrenheit (105°F) and one hundred ten degrees Fahrenheit (110°F) at all hot water sources with the following exceptions, dishwashers and congregate laundry facilities. A thermostatic mixing valve shall be utilized to control the temperature of hot water which is used by residents.
(Class I)

11.6. Sewage.

11.6.a. Sewage disposal shall be in accordance with W. Va. Division of Health Administrative Rules, Sewage System Rules, 64 CSR 9, and W. Va. Division of Health Administrative Rules, Sewage Treatment and Collection System Design Standards, 64 CSR 47. (Class I)

11.6.b. The sewage system shall be adequate to meet the community's needs. (Class I)

11.6.c. Sewage systems shall be kept in good working order and shall be properly operated and maintained. (Class I)

11.7. Solid Waste.

11.7.a. All garbage and refuse shall be stored in durable, covered, leak-proof and vermin-proof containers and the containers shall be kept clean and free of all residue accumulation. Dumpsters in good repair are acceptable. (Class II)

11.7.b. The community shall have solid waste containers in sufficient numbers and capacity to properly store all solid waste. (Class II)

11.7.c. Solid waste, including garbage and refuse, shall be removed from the building daily and the premises weekly, or more often if necessary. (Class II)

11.7.d. A concrete platform or metal rack shall be required for outside storage of solid waste containers. The method of storage shall prevent animals from getting into the contents of the waste containers. (Class II)

11.7.e. When municipal or private garbage and refuse disposal service is not available, all garbage and refuse shall be disposed of in accordance with the applicable provisions of state and local law and rules governing the management of garbage and refuse. (Class II)

11.8. Electrical Requirements.

11.8.a. Each community shall be supplied with electrical service, wiring, outlets, and fixtures which shall be installed to meet the national electric code and shall be maintained in good and safe working conditions. (Class I)

11.8.b. The electrical service shall be of the proper size to handle the load connected to it. (Class I)

11.8.c. Electrical duplex outlet receptacles shall be provided as follows:

11.8.c.1. In new facilities electrical outlets shall be located in the living room, recreation room, dining room and bedrooms. There shall be at least one (1) receptacle on each wall. Walls longer than twelve (12) feet in the leisure room shall have at least two (2) receptacles on the walls. In existing facilities electrical outlets to meet the needs of the residents shall be provided;

(Class I)

11.8.c.2. Other habitable rooms shall have a minimum of two (2) receptacles;
(Class I)

11.8.c.3. All receptacle outlets within six (6) feet of any water supply shall be provided with ground fault circuit interrupter protection; (Class I)

11.8.c.4. Kitchens shall be provided with one (1) receptacle per four (4) lineal feet or a fraction thereof of the counter top preparation area with a minimum of two (2) receptacles per counter. In addition all counters wider than twelve inches (12") of any length shall provide a minimum of one (1) receptacle. On walls without counters there shall be receptacles with a maximum spacing of twelve feet (12'). Separate outlets shall be required for refrigerators and cooking equipment which require specialty outlets; (Class I)

11.8.c.5. The laundry room shall have a specialty outlet for the clothes dryer and a dedicated outlet for the washer. A minimum of one (1) outlet on a circuit separate from the washer and dryer shall be provided; (Class I) and

11.8.c.6. A minimum of one (1) exterior receptacle duplex outlet with ground fault circuit interrupter protection shall be provided. (Class I)

11.9. Lighting Requirements.

11.9.a. For safety reasons, general outdoor lighting shall be provided to illuminate walks, porches, patios, steps and drive areas for the purposes of the resident's safety. (Class I)

11.9.b. Emergency lights shall be mounted on walls in sufficient number to illuminate all exits on all levels. Emergency lights shall also be provided in the kitchen and as needed in areas where residents congregate. (Class I)

11.9.c. Minimum interior lighting levels shall be as follows:

11.9.c.1. Ten (10) foot candles in entrances, hallways, stairways, stair landings;
(Class III)

11.9.c.2. Twenty (20) foot candles in general areas of living room, leisure rooms, dining rooms, and bedrooms; (Class III)

11.9.c.3. Thirty (30) foot candles in reading, writing and game playing areas in living room, leisure rooms, dining rooms and bedrooms; (Class III)

11.9.c.4. Fifty (50) foot candles in the cleaning and food preparation, cooking, and laundry areas; (Class III)

11.9.c.5. Thirty (30) foot candles in bath, lavatory, and toilet areas; (Class III)

and

11.9.c.6. Fifty (50) foot candles in facial shaving and grooming areas, and at mirrors and hair styling areas. (Class III)

11.10. Pets and Other Animals.

11.10.a. Pets are permitted, provided that all residents shall be advised prior to admission that pets are kept on the premises. If pets are added after the admission of residents, all residents shall be in agreement to the addition of the pets. (Class III)

11.10.b. Wild, dangerous or obviously ill animals are prohibited. (Class I)

11.10.c. Animals and their quarters shall be kept in a clean condition at all times. (Class II)

11.10.d. Dogs and cats kept in the community or on the grounds 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. (Class I)

11.11. Laundry and Linens.

11.11.a. Laundry facilities or services for residents' personal laundry shall be provided. Laundry services may be provided by an outside laundry service. (Class III)

11.11.b. Washing machines shall be installed so that no back-siphonage possibility exists, and electric or gas clothes dryers shall be vented to the outside. (Class I)

11.11.c. All laundry shall be dried mechanically in an electric or gas clothes dryer which is vented to the outside or a chemical sanitizer shall be added to the rinse water, and the laundry air-dried. (Class I)

11.11.d. Soiled and clean laundry shall not be stored together at any time. (Class II)

11.11.e. Soiled laundry shall be stored in non-absorbent, easily cleanable covered containers or disposable plastic bags. (Class II)

11.11.f. Table and kitchen linens shall be laundered separately from other washable goods. Sanitizing agents shall be used when laundering kitchen, bath, and bed linens. (Class II)

11.11.g. Locked storage facilities shall be utilized for laundry supplies, housekeeping supplies, insecticides, work supplies and any other toxic or hazardous materials. Food and drugs shall be stored in separate locations. (Class I)

11.11.h. There shall be a supply of sheets, pillow cases, bed coverings, towels, wash

cloths, and other linens necessary to provide a minimum of two (2) changes per bed in communities that provide furnishings. (Class III)

§64-75-12. Requirements Related to the Provision of Limited and Intermittent Nursing.⁷

12.1. Standard Requirements.

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

12.1.b. Nursing support staff shall be under the supervision of the registered professional nurse who has assumed the overall responsibility for the oversight and care provided to the residents. (Class I)

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

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

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

12.1.f. A physician or a consultant pharmacist shall conduct quarterly pharmacy reviews on all residents receiving limited or intermittent nursing services. (Class III)

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

12.1.g.1. The date, time in and time out for each visit (unless the registered

⁷The provisions of this section apply only to residential care communities providing limited and intermittent nursing. See Paragraph 4.1.d. of this rule.

professional nurse is employed by the residential care community at least thirty-five (35) hours per week); (Class III)

12.1.g.2. A list of duties performed by the registered nurse during each visit: (Class III) and

12.1.g.3. A brief statement regarding identified concerns and recommended actions taken to resolve them. (Class III)

12.1.h. The licensee shall develop a system that provides for twenty-four (24) hour accessibility between the community, the registered professional nurse, and/or other emergency personnel. (Class I)

12.2. Nursing Services.

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

12.2.a.1. A monthly progress note in the resident's record as indicated by the needs of the resident to document the status of the resident and any changes in his or her health or welfare; (Class II)

12.2.a.2. Any significant temporary or permanent changes in condition including changes resulting from incidents or accidents; (Class II) and

12.2.a.3. Any verbal or written orders received from a licensed health care professional. (Class I)

12.2.b. The registered professional nurse shall:

12.2.b.1. Provide oversight of the care and services through contact with the licensee and community staff as necessary to ensure appropriate resident care. Visits to the community shall occur at least weekly and be of sufficient duration to perform all required duties; (Class I)

12.2.b.2. Provide overall supervision of the provision of nursing services to residents by ensuring that the services established within the resident's service plan are met and that the resident's physical, mental and social well-being are not compromised; (Class I)

12.2.b.3. Complete a written nursing assessment for each resident with nursing needs within twenty-four (24) hours following admission, and which shall be updated at the time of any significant temporary or permanent change in the resident's condition. In the absence of a significant temporary or permanent change in condition, the assessment shall be reviewed quarterly; (Class I)

12.2.b.4. Coordinate the development of a component of the service plan to meet any identified nursing and medical needs of the resident with the resident and the attending physician or other licensed health care professional. This component shall be completed within seven (7) days after admission and shall be reviewed by the registered nurse at least quarterly or at the time of a significant temporary or permanent change in condition; (Class I)

12.2.b.5. Review training needs of residential care community staff members; (Class II)

12.2.b.6. Provide needed training or recommend to the residential care community appropriate training for staff; (Class II)

12.2.b.7. Provide to the licensee a written record of training provided by the registered nurse to individuals or groups with an outline of the items discussed, the date and time of the session, and signatures of individuals involved in the training; (Class II)

12.2.b.8. Provide overall supervision of medication storage, dispensing systems and disposition; (Class I) and

12.2.b.9. Coordinate admission and discharge planning as it relates to the medical component of resident care. (Class II)

§64-75-13. Penalties.

13.1. Civil Penalties.

13.1.a. The secretary shall administer penalties for violations of this rule and of W. Va. Code §§16-5N-1 et seq. as specified in W. Va. Code §§16-5N-1 et seq. and this rule.

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

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

13.1.c.1. The penalty;

13.1.c.2. A description of the nature of the violation fully stating the manner in which the licensee or non-licensed operator violated a specific statutory provision or provision of the rule; and

13.1.c.3. The basis upon which the secretary assessed the penalty and selected the amount of civil penalty.

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

13.1.e. For each violation of a Class I standard, a civil penalty shall be assessed of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). For each violation of a Class II standard, a civil penalty shall be assessed of not less than twenty-five dollars (\$25) and not more than fifty dollars (\$50). For each violation of a Class III standard, a civil penalty shall be assessed of not less than ten dollars (\$10) and not more than twenty-five dollars (\$25).

13.1.f. Each day a violation continues after the date of citation shall constitute a separate violation. The date of citation is the date the licensee receives the written statement of deficiencies.

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

13.1.g.1. The degree of substantial probability that death or serious physical harm will result and, if applicable, did result from the violation;

13.1.g.2. The severity of serious physical harm most likely to result, and if applicable, that did result from the violation; and

13.1.g.3. The extent to which the provisions of the applicable statutes or regulations were violated.

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

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

13.1.j. The assessments for penalties and for costs of legal action taken under W. Va. Code §16-5N-1 et seq. shall have monthly interest assessed at two (2%) percent on the last day of each month in which occurs the thirtieth (30th) day after receipt of notice of such assessment or after the month in which occurs the thirtieth (30th) day after receipt of the secretary's final order following a hearing, whichever is later. All such assessments against a facility that are

unpaid shall be added to the facility's licensure fee and may be filed as a lien against the property of the licensee or operator of the facility

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

13.2. Restrictions; Revocation.

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

13.2.a.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;

13.2.a.2. The licensee or the administrator of the community has been arrested for, adjudicated, and convicted of any felony or of a misdemeanor relevant for the provision of care in a health care facility or for operating a health care facility;

13.2.a.3. The licensee has been denied or has had a license to operate a health care facility revoked in West Virginia or any other jurisdiction during the previous five (5) years;

13.2.a.4. The licensee has a record of noncompliance with lawful orders of the department or other licensing or certification agency for any jurisdiction in which the applicant has operated, directed or participated in the operation of a health care facility;

13.2.a.5. The licensee or other person in charge of the community refuses entry to the secretary's duly authorized representative for an inspection or survey;

13.2.a.6. The licensee has inappropriately converted for its own use the property of a resident;

13.2.a.7. The licensee has secured property, or a bequest of property, from a resident by undue influence; or

13.2.a.8. The licensee has submitted false information either on the licensure or renewal application forms or during the course of an inspection or survey of the facility.

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

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

13.2.c.1. There is an immediate and serious threat to one or more residents; or

13.2.c.2. There are poor care outcomes resulting in an avoidable decline in a resident's condition; or

13.2.c.3. There has been a decline in the functional abilities of one or more residents resulting from neglect or abuse; and

13.2.c.4. An admission ban or reduction in bed capacity or both would place the facility in a position to render adequate care.

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

13.2.e. 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.

§64-75-14. Administrative Due Process.

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

64 CSR 75

RESIDENTIAL CARE COMMUNITIES

COMMENTERS

1. Roy Herzbach, Ombudsman Supervisor
2. Diane T. Gouhin, Executive Director, Edgewood Summit

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**Responses to Comments
and
Changes Made as a Result of the Public Comment Period**

§3.18.1. Comment: Appears to list “an individual who has no financial ties....” as another form of legal representative when the intent seems to modify the whole class of legal representatives by this one specific requirement. I recommend that this clause be deleted from the definition Section and similar language inserted instead after §5.1.f. of this rule.

Response: The word “and” preceding this phrase is a limitation as opposed to an additional form of legal representative. However, language will be added to 5.1.f. to address this concern.

§4.1.c. Comment: What about the use of the term Assisted Living? This is a term providers frequently appear to want to use but for which no category exists in West Virginia. I recommend it clearly be stated that this should specifically be mentioned as one of the categories not to be used in the community’s advertising.

Response: Since this is not a defined term and does indeed seem to describe these providers, there seems to be no reason to prohibit it’s use.

§4.2.a.10. Comment: Does the department expect to see an actual administrative policy addressing this issue or instead, evidence of some type of insurance coverage which would relate to closure and/or business interruption? Could you please help me clarify my understanding of this requirement or clarify the section of the requirement, if appropriate?

Response: An administrative policy.

§4.2.b. Comment: In the case of a residential care community being part of a larger independent living community, a balance sheet is typically developed for the entire organization and would not necessarily contain specific information for the smaller residential care community. The information on revenues and expenses for residential care community can be provided but may not take the form of a balance sheet. Does the department want a balance sheet for the entire organization or specific information on the residential care community’s revenues and expenses, as they may be different?

Response: The residential care community’s revenues and expenses.

§4.3.c. Comment: I have a concern about a potential violation of a resident’s right to

confidentiality if they need to send a copy of their waiver request to other residents and/or other resident's legal representatives or next of kin. If it is a waiver request which impacts on other residents, then I think it appropriate to send a copy. However, if it only affects the resident submitting the request, I recommend that the notification procedure be eliminated.

Response: The language of 4.3.c. is not mandated by West Virginia code §16-5N and is therefore being deleted.

§4.7.d. Comment: This section includes language which allows the secretary to disclose the name of or information which could reasonably identify the complainant or any resident if there is clear and convincing evidence which requires disclosure of names. Since protection of a resident's or complainant's identity is an essential element in the investigation process, I recommend that there be more detailed explanation as to how this "clear and convincing evidence" standard will be applied. I recommend, for example, that guidelines be established which include, that the attorney for the department needs to review any situation where there will be disclosure unless there is an immediate and serious threat to residents health, safety, and/or welfare which require immediate action.

Response: A procedural guideline can be developed to address this concern without changing the language of the requirement.

§5.1.a. Comment: The requirement to have policies and procedures established with the consultation of a licensed health care professional is not required by a residential Board and Care Home. Is there a reason for the consultation regarding policies in a residential care community but not in a residential board and care home?

Response: We have noted a need for this and hope to add the requirement to residential board and care homes.

§5.1.f. Language will be added to prohibit the licensee from serving as a resident's legal representative.

§5.5. Comment: What constitutes a "qualified" employee? Can food service or housekeeping employees qualify as the one (1) residential staff person if they are also engaging in their other duties at the same time? For example, I would have a serious concern if a food service employee while preparing meals was also caring for residents who, for example, needed assistance for an incontinence problem. Please be more specific as to what establishes an employee as "qualified."

Response: The term "qualified" staff is used to require for instance, a licensed nurse to

perform a nursing procedure, etc. The rule requires minimum residential staff and additionally in §5.5.d. requires staff for housekeeping, food service, etc.

§5.6.b.4. Comment: Reference to the State Commission on Aging needs to be changed to the Bureau of Senior Services.

Response: Agree. The correction will be made.

§5.9.-6.3. Comment: Recommend using language presently contained in the Nursing Home Licensure Rule which states the contract shall include the following:

- a. The daily, weekly, or monthly fee charged by the facility and refund provisions for the unused portions;
- B. The services and accommodations to be provided by the facility in consideration for the daily, weekly, or monthly rate;
- C. Delineation of the responsibilities for the provision of payment for services not covered by the basic rate.

I would then add as stated in 5.9.b.3., that there be a statement that "residents shall not be liable for any cost that was not disclosed."

I would also recommend that there be additional language clarifying the policy of the facility as it relates to the refunding of deposit money, if required, paid by the resident. This often needs to be tied into the notice requirements related to a resident's discharge or voluntarily leaving the home.

Response: The current language addresses these items.

§6.2.b. Comment: What is a reasonable cost? Based on our staff's experience with similar issue in nursing homes this can be a problem. In the federal nursing home standards the regs. allow the resident or his or her legal representative to "purchase at a cost not to exceed the community standard photocopies of the records or any portions of them upon request a two working days notice to the facility." The interpretive guidelines to these regs. state that the rate charged per copy is the rate charged by organizations such as the public library, the post office... in addition to the cost of clerical time needed to photocopy the records. I recommend regs. Provide guidance as to what constitutes reasonable cost.

Response: The language will be altered to incorporate comparable copying costs of public agencies.

§6.3.b. Comment: What constitutes trained staff for purposes of application of restraints? Our staff frequently see restraints improperly applied with potentially harmful results. Training needs to be more specific.

Response: Evidence of trained staff is application of restraints in accordance with the manufacturer's requirements and this rule. This is communicated with providers.

6.3.c. and 6.3.f. Comment: 6.3.c. requires 72 hours for notification to APS while 6.3.f. requires 72 hours for notification to OHFLAC. I recommend that the language reflect immediate notification to both agencies. Nursing homes are required to make immediate notification to OHFLAC. I see no reason Residential Care Community staff should not as well.

Response: Adult Protective Services has a 24-hour hotline to facilitate reporting at night and on weekends, whereas OHFLAC does not.

§7.2.b. Comment: The last sentence dealing with the licensee referring a resident to a licensed behavioral health agency conflicts with a resident's right to refuse medical treatment. OHFLAC's Licensure of Behavioral Health Center Rule (at CSR11) affirms people's right to refuse treatment offered by centers in § 64-11-12, 12.1.4. If the resident is a danger to himself or herself, then the provider has the options through the Mental Hygiene Process. In addition, how would the licensees know how to distinguish between symptoms that are related to behavioral health and those that are related to more organic problems such as Alzheimer's dementia. Also, what about people who have a developmental disability or mental illness, exhibit symptoms, but seem to function well in the community and don't want any additional assistance?

Response: The purpose of the last sentence is to make providers aware of their responsibility to assist residents in seeking treatment for behavioral symptoms as they would for physical symptoms. Those referrals do not do away with the resident's right to refuse treatment. To eliminate the concern the second to the last sentence will be deleted and language will be added that a referral should occur after consultation with the resident's physician.

§7.2.c. Comment: What is the criteria used to determine if a licensee has "reason to believe that the resident may suffer serious harm or is likely to cause serious harm to himself or herself, or to others? This section needs to provide more specific guidance on this issue. Also, what if the resident does have clear behavioral health needs but nothing is available to him or her, either because of where he or she lives or because he or she cannot afford treatment. Must the resident then move out by default?

Response: Providers currently demonstrate the ability to identify behaviors that meet the above criteria. If mental health services are needed but not obtainable, referral

should then be made to the ombudsman and advocates for the mentally ill/mentally retarded to assist these individuals.

§7.2.d. & 7.2.e. Comment: Are there not specific protections that need to be established for residents who are no longer able to self-preserve? For example, if it is a multistory dwelling, residents who can no longer self-preserve should be on the first floor with easy access from the building. Are there applicable fire marshal's requirements that the licensee needs to have called to their attention?

Response: Non-self-preserving residents are prohibited from residence in these communities except for short term conditions or if receiving hospice services. These individuals will be living in apartments and it may be difficult or inappropriate to transfer to another apartment under the above specified conditions. The regulations require under §7.2.e., that the non-self-preserving resident's safety be maintained by the licensee. Should the community house nonself-preserving residents, they would need to meet additional requirements by the state fire marshal and a referral would be made.

§7.2.e. Comment: In terms of practical application in this section, does the department have a preference in how the residential care community accomplishes this provision? For example, the community could utilize a policy and procedure for assisted preservation of any applicable resident or could require a private care giver be employed by the resident to perform preservation or some other combination of solutions. What will be deemed acceptable in this regard?

Response: The options listed could satisfy the requirement, however, may not satisfy requirements of the state fire code enforced by the state fire marshal. This question should be referred to the state firemarshal as you need a recommendation from that office prior to the consideration of licensure by the department.

§7.4.c.8. Comment: This requirement that a list of clothing and personal possessions of the resident be made part of the resident's record should be voluntary not mandatory. Residents should have the option of not revealing personal possessions.

Response: Agree. The language will be altered to reflect this.

§9.1.f. I'm not certain as to what is referred to by a resident not "tolerating" the foods planned for the meal? I recommend meal substitution be allowed for both personal preferences (I.E., I do not like the meal being served), or because the resident has a difficult time accommodating the food (e.g., residents may have problems swallowing certain foods).

Response: This regulation addresses food intolerance relative to food consistency,

allergies, etc. §9.1.a. addresses providing meals that meet the residents needs and choices.

§11.4. Comment: Are residents allowed to bring their own furniture? I recommend this be allowed and that the contract specify the homes' policy in this regard.

Response: The apartments may be furnished or unfurnished. It seems unlikely that this would not be part of the services identified in the contract.

§11.4.a.4. Comment: Can a kitchenette also include a stove? If stoves are permitted, I recommending reviewing some of the policies requiring three meals a day for each resident. Residents might opt to cook some of the meals themselves. They may find this cost-saving.

Response: Stoves would be permissible if their presence conforms to the state fire code.

§11.4.a.7. Upon review of the comment about §11.4., language will be added to clarify that this requirement addresses apartments furnished by the community.

§11.11.h. Comment: Residents in a residential care community will have an apartment rather than simply a room and as such will typically furnish the apartment with his or her own belongings. This would include linens. As such, it would stand to reason that the community would be placed at a disadvantage if this requirement were the responsibility of the community and not the resident. Not only will residents' furniture be too varied to have sufficient quantities of linens on hand, but standardized linen would have an institutional rather than residential feel to the atmosphere. Should the resident not bring adequate linens upon moving to the community or require replacements, why not ask the community to be available to assist the resident, if need be, in securing linens instead of the requirement to provide them.

Response: Agree, if residents provide their own furniture. Not all communities may choose to require this. The language will be altered to require this only if the community provides furnishings.

§13.1. Comment: It appears after reviewing the section on Civil Penalties that this particular section is not utilized except in the most severe corrective situations and then only after other requirements have failed to be met. I am not clear however on the specific monetary provisions if a licensee contests the citation and requests the administrative hearing. If this appeal is requested, does the civil penalty (including accrued interest) continue to accumulate during the appeal process or is it frozen at a

point in time until the appeal process is made final? Could you please help to clarify my understanding of this requirement or clarify the section of the requirement, if appropriate?

Response: The penalty does stop with the date of the repeat citation and does not accrue during the appeal process.



July 31, 1998

Marsha Dadisman
Acting Director
Regulatory Development
Department of Health & Human Resources
Capitol Complex - Building 3, Room 265
Charleston, WV 25305

Re: Residential Care Communities
Proposed Legislative Rule

Dear Ms. Dadisman:

Please accept the following comments as they relate to the Proposed Legislative Rule entitled Residential Care Communities. On behalf of Edgewood Summit, I am pleased to see that the Department of Health and Human Resources was able to develop the proposed rules within the time frame initially specified by the Enrolled Committee Substitute for Senate Bill No. 349 which was passed and signed into law by Governor Underwood. Additionally, I am pleased to see how closely the proposed language mirrors the existing regulations for Residential Board and Care Homes as the department had indicated would be the case.

In reviewing the Proposed Rule, I have noted that updates to the language, definitions and order of placement within the rules has been nicely accomplished, while not altering the content or intent of the sections modified. The definition of supervision of self-administered medications in addition to the clarified definitions of supervision and self-preservation are welcome inclusions.

I do have questions related to the interpretation of the rules in a few areas. Those individual questions are as follows:

4.2.a.10. Documentation of provisions in policy to ensure the continuing care of

residents ...after notification of closure...any expenses incurred ...are the responsibility of the owner.

Question: Does the department expect to see an actual administrative policy addressing this issue or instead, evidence of some type of insurance coverage which would relate to closure and/or business interruption? Could you please help clarify my understanding of this requirement or clarify the section of the requirement, if appropriate?

4.2.b. The application shall be completed ... applicant shall provide ... a balance sheet showing all expenses and all income

Question: In the case of a residential care community being part of a larger independent living community, a balance sheet is typically developed for the entire organization and would not necessarily contain specific information for the smaller residential care community. The information on revenues and expenses for the residential care community can be provided but may not take the form of a balance sheet. Does the department want a balance sheet for the entire organization or specific information on the residential care community's revenues and expenses, as they may be different?

5.1.a. The licensee shall, in consultation with a licensed health care professional, establish and adopt written policies and procedures

Question: The requirement to have policies and procedures established with the consultation of a licensed health care professional is not required by a Residential Board and Care Home. Is there a reason for the consultation regarding policies in a Residential Care Community but not in a Residential Board and Care Home?

7.2.e. The licensee shall maintain a non-self-preserving resident's safety and meet their needs until such time as the resident's condition improves or he or she is discharged.

Question: In terms of practical application in this section, does the department have a preference in how the residential care community accomplishes this provision? For example, the community could utilize a policy and procedure for assisted preservation of any applicable resident or could require a private caregiver be employed by the resident to perform preservation or some other combination of solutions. What will be deemed acceptable in this regard?

11.11.h. There shall be a supply of sheets, pillow cases, bed coverings, towels, wash cloths, and other linens necessary to provide a minimum of two (2) changes per bed.

Question: Residents in a residential care community will have an apartment rather than simply a room and as such will typically furnish the apartment with his or her own belongings. This would include linens. As such, it would stand to reason that the community would be placed at a disadvantage if this requirement were the responsibility of the community and not the resident. Not only will resident's furniture be too varied to have sufficient quantities of linens on hand, but standardized linen would have an institutional rather than residential feel to the atmosphere. Should the resident not bring adequate linens upon moving to the community or require replacements, why not ask the community to be available to assist the resident, if need be, in securing linens instead of the requirement to provide them.

13.1 Civil Penalties

Question: It appears after reviewing the section on Civil Penalties that this particular section is not utilized except in the most severely corrective situations and then only after other requirements have failed to be met. I am not clear however on the specific monetary provisions if a licensee contests the citation and requests the administrative hearing. If this appeal is requested, does the civil penalty (including accrued interest) continue to accumulate during the appeal process or is it frozen at a point in time until the appeal process is made final? Could you please help clarify my understanding of this requirement or clarify the section of the requirement, if appropriate?

Thank you for allowing Edgewood Summit to review the Proposed Legislative Rule and make comments in its regard prior to the final adoption of the language. We look forward to the enactment of the rule and offer our assistance should public involvement be desired.

Best regards,



Diane T. Gouhin
Executive Director

LEGAL AID SOCIETY OF CHARLESTON

LONG-TERM CARE OMBUDSMAN PROGRAM

922 Quarrier St., 4th Floor Charleston, WV 25301
(304) 343-4481 ext. 35 1-800-834-0598
FAX (304) 345-5934

July 30, 1998

REGION I

YWCA
1100 Chapline Street
Wheeling, WV 26003
233-6331

REGION I

P.O. Box 1865
Parkersburg, WV 26101
295-3339

REGION II

Legal Aid Society of
Charleston
922 Quarrier St., 4th Floor
Charleston, WV 25301
343-4481 ext. 31

REGION II

APPALRED
910 Fourth Ave., Suite 301
Huntington, WV 25701
522-1901

REGION III

P.O. Box 546
Keyser, WV 26726
788-6770

REGION III

1988 Listravia Avenue
Morgantown, WV 26505
296-0985

REGION IV

P.O. Box 2985
Elkins, WV 26241
636-4463

REGION IV

APPALRED
1428 Main Street
Princeton, WV 24740
425-9138

Sponsored by: Bureau of
Senior Services

Marsha Dadisman - Acting Director
Regulatory Dept., DHHR
Capitol Complex - Building 3, Room 265
Charleston, WV 25305

Dear Ms. Dadisman:

I am writing to comment on proposed legislative rule West Virginia Code § 16-5N-1, Residential Care Communities. I appreciate the opportunity to provide feedback. My comments follow:

§ 3.18.1 - Appears to list "an individual who has no financial ties ..." as another form of legal representative when the intent seems to modify the whole class of legal representatives by this one specific requirement. I recommend that this clause be deleted from the definition Section and similar language inserted instead after § 5.1.F of this rule.

§ 4.1.c - What about the use of the term Assisted Living? This is a term providers frequently appear to want to use but for which no category exists in West Virginia. I recommend it clearly be stated that this should specifically be mentioned as one of the categories not to be used in the community's advertising.

§ 4.3.c - I have a concern about a potential violation of a resident's right to confidentiality if they need to send a copy of their waiver request to other residents and/or other resident's legal representatives or next of kin. If it is a waiver request which impacts on other residents, then I think it appropriate to send a copy. However, if it only affects the resident submitting the request, I recommend that the notification procedure be eliminated.

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§ 4.6.d - This section includes language which allows the secretary to disclose the name of or information which could reasonably identify the complainant or any resident if there is clear and convincing evidence which requires disclosure of names. Since protection of a resident's or complainant's identity is an essential element in the investigative process, I recommend that there be a more detailed explanation as to how this "clear and convincing evidence" standard will be applied. I recommend, for example, that guidelines be established which include, that the attorney for the department needs to review any situation where there will be disclosure unless there is an immediate and serious threat to residents health, safety and/or welfare which requires immediate action.

§ 5.5 - What constitutes a "qualified" employee? Can food service or housekeeping employees qualify as the one (1) residential staff person if they are also engaging in their other duties at the same time? For example, I would have a serious concern if a food service employee while preparing meals was also caring for residents who, for example, needed assistance for an incontinence problem. Please be more specific as to what establishes an employee as "qualified".

§ 5.6. - 6.4 - Reference to the State Commission on Aging needs to be changed to the State Bureau of Senior Services.

§ 5.9. - 6.3 - Recommend using language presently contained in the Nursing Home Licensure Rule which states the contract shall include the following:

- a). The daily, weekly, or monthly fee charged by the facility and refund provisions for unused portions;
- b). The services and accommodations to be provided by the facility in consideration for the daily, weekly, or monthly rate;
- c). Delineation of the responsibilities for the provision of payment for services not covered by the basic rate.

I would then add as stated in **5.9.b.3**, that there be a statement that "residents shall not be liable for any cost that was not disclosed."

I would also recommend that there be additional language clarifying the policy of the facility as it relates to the refunding of deposit money, if required, paid by the resident. This often needs to be tied into notice requirements related to a resident's discharge or voluntarily leaving the home.

§ 6.2.b - What is reasonable cost? Based on our staff's experience with a similar issue in nursing homes this can be a problem. In the federal nursing home standards the regs. allow the resident or his or her legal representative to "purchase

at a cost not to exceed the community standard photocopies of the records or any portions of them upon request and 2 working days notice to the facility." The interpretive guidelines to these regs. state that the rate charged per copy is the rate charged by organizations such as the public library, the post office . . . in addition to the cost of the clerical time needed to photocopy the records." I recommend regs. provide guidance as to what constitutes reasonable cost.

§ 6.3.b - What constitutes trained staff for purposes of application of restraints? Our staff frequently see restraints improperly applied with potentially harmful results. Training needs to be more specific.

§ 6.3.c and 6.3.f - 6.3.c requires immediate notification to APS while 6.3.f requires 72 hours for notification to OHFLAC. I recommend that the language reflect immediate notification to both agencies. Nursing homes are required to make immediate notification to OHFLAC. I see no reason Residential Care community staff should not as well.

§ 7.2.b - The last sentence dealing with the licensee referring a resident to a licensed behavioral health agency conflicts with a resident's right to refuse medical treatment. OHFLAC's Licensure of Behavioral Health Center Rule (at CSR11) affirms people's right to refuse treatment offered by centers in § 64-11-12,12.1.4. If the resident is a danger to himself or herself, then the provider has options through the Mental Hygiene Process. In addition, how would licensees know how to distinguish between symptoms that are related to behavioral health and those that are related to more organic problems such as Alzheimer's Dementia. Also, what about people who have a developmental disability or mental illness, exhibit symptoms, but seem to function well in the community and don't want any additional assistance?

§ 7.2.c - What is the criteria used to determine if a licensee has "reason to believe that the resident may suffer serious harm or is likely to cause serious harm to him or herself, or to others? This section needs to provide more specific guidance on this issue. Also, what if the resident does have clear behavioral health needs but nothing is available to him or her, either because of where he or she lives or because he or she cannot afford treatment. Must the resident then move out by default?

§ 7.2.d & 7.2.e - Are there not specific protections that need to be established for residents who are no longer able to self-preserve? For example, if it is a multi-story dwelling, residents who can no longer self-preserve should be on first floor with easy access from the building. Are there applicable fire marshal requirements that the licensee needs to have called to their attention?

§ 7.4.c.8 - This requirement that a list of clothing and personal possessions of the resident be made part of the resident's record should be voluntary not mandatory. Resident should have the option of not revealing personal possessions.

§ 9.1.f - I'm not certain as to what is referred to by a resident not "tolerating" the foods planned for the meal? I recommend meal substitution be allowed for both personal preference (i.e., I do not like the meal being served), or because resident has a difficult time accommodating the food (e.g., resident may have problems swallowing certain foods).

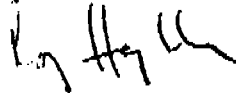
§ 11.4.a.4 - Can a kitchenette also include a stove? If stoves are permitted, I recommend reviewing some of the policies requiring 3 meals a day for each resident. Resident might opt to cook some of the meals themselves. They may find this cost-saving.

§ 11.4 - Are residents allowed to bring in their own furniture? I recommend this be allowed and that the contract specify the homes' policy in this regard.

Finally, just as a matter of clarification, if there exists a group of sixteen (16) or less residential apartments which are part of a larger independent living community and they provide the same services as those permitted in Residential Care communities, are they subject to existing regulations? If so, which ones?

If you have any questions on my comments, please do not hesitate to contact me.

Very truly yours,



Roy Herzbach
Ombudsman Supervisor

RH:cm