



### BRIEF SUMMARY OF THE RULE

This rule amends Legislative Rule §64CSR85, Alzheimer's/Dementia Special Care Units and Programs. The amendment deletes language that was included in the applicability section of the original bill effective on July 1, 2002. That language listed terms that if used in advertising would not trigger a requirement for compliance with the rule.

## STATEMENT OF CIRCUMSTANCES REQUIRING THE PROPOSED RULE

A total of only eight alzheimer's/dementia special care units within nursing homes or assisted living residences have been licensed since the relatively new law, §16-5R-1, et.seq., and the rule have been in effect. These licensed providers along with the Alzheimer's Association have brought to our attention that other providers offering and advertising similar services have not been required to meet the same standards that these seven providers do by designing their advertising around the language in the applicability portion of the current rule that is then used to exempt them from compliance with the rule. Licensed providers and the department are confident that we can, in the absence of the problematic language contained in the applicability section of the current rule, distinguish between advertising that constitutes an allegation of specialized care and that which does not.



**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

No additional costs will result.

**Memorandum**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

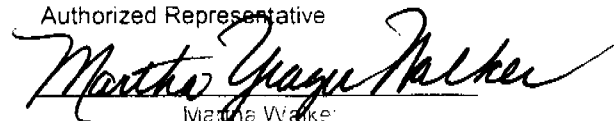
There is no cost resulting from this rule in that it is an amendment to an existing rule for activities which have already been anticipated.

Date

Agency

Department of Health and Human Resources

Authorized Representative



Martha Gray Parker  
Secretary

**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 25, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Office of Health Facility Licensure and Certification  
Bureau for Public Health  
Department of Health and Human Resources  
1 Davis Square, Suite 101  
Charleston, WV 25301-1799  
Telephone: (304) 558-0050

LEGISLATIVE RULE TITLE: Alzheimer's/Dementia Special Units and Programs

1. Authorizing statute(s) citation W. Va. Code 16-5R-5

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 17, 2005

b. What other notice, including advertising, did you give of the hearing?  
The proposed rule was distributed to all interested parties.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 18, 2005 at noon.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached \_\_\_\_\_ No comments received X

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

July 25, 2005

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

Aimee Jackson, Paralegal

Office of Health Facility Licensure and Certification

1 Davis Square, Suite 101

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- 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)

John Wilkinson, Director

Office of Health Facility Licensure and Certification

1 Davis Square, Suite 101

Charleston, WV 25301-1799

Telephone: (304) 558-0050

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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 of a hearing for the taking of evidence and a general description of the issues to be decided.

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TITLE 64  
LEGISLATIVE RULE  
BUREAU FOR PUBLIC HEALTH

FILED

2005 JUL 25 P 1:34

SERIES 85  
ALZHEIMER'S/DEMENTIA SPECIAL CARE UNITS AND PROGRAMS

OFFICE WEST VIRGINIA  
SECRETARY OF STATE**§64-85-1. 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 individuals served by alzheimer's/dementia special care units and programs. This rule shall be read in conjunction with W. Va. Code § 16-5R-1 et seq. The W. Va. Code is available in public libraries and on the Legislature's web page, <http://www.legis.state.wv.us/>.

1.2. Authority. -- W. Va. Code §§16-1-4 and 16-5R-5(a).

1.3. Filing Date. -- April 17, 2002.

1.4. Effective Date. -- July 1, 2002.

1.5. Applicability. -- This rule applies to facilities which advertise, market or otherwise promote the facility as providing special care units or programs for persons who have alzheimer's disease or a related dementia. ~~The use of advertising terms such as "medication reminders or assistance," "meal and activity reminders or assistance," "activities of daily living reminders or assistance," "supervised environment" or "short-term memory loss, confusion, or forgetfulness" will not trigger a requirement for compliance with this rule.~~

1.6. Enforcement. -- This rule is enforced by the secretary of the West Virginia department of health and human resources or his or her lawful designee.

**§64-85-2. Definitions.**

2.1. Activities of daily living -- The activities

that individuals generally perform regularly in the course of maintaining their physical selves, such as eating, dressing, oral hygiene, toileting, personal grooming, and moving themselves from one location to another, as for example, in moving from a bed to a chair, or from one (1) room to another.

2.2. Advertise. -- To make publicly and generally known, usually by printed notice or broadcast.

2.3. Alzheimer's/Dementia Special Care Units and Programs

2.3.a. Alzheimer's/Dementia Special Care Programs. -- Any licensed facility, as defined in this rule, that provides specialized services, for a specified number of hours, for residents with a diagnosis of alzheimer's disease or a related dementia; and that advertises, markets, or otherwise promotes the facility as providing specialized alzheimer's/dementia care services.

2.3.b. Alzheimer's/Dementia Special Care Units. -- Any licensed facility, as defined in this rule, that provides specialized services, twenty-four (24) hours per day, in a specialized unit in the facility, for residents with a diagnosis of alzheimer's disease or related dementia; and that advertises, markets, or otherwise promotes the facility as providing a specialized unit for residents requiring alzheimer's/dementia care services.

2.4. Alzheimer's disease. -- A progressive, neurodegenerative disease characterized by a loss of function and death of nerve cells in several areas of the brain, leading to loss of mental functions such as memory and learning. This disease is considered to be the most common form

of dementia.

2.5. Dementia. -- A deterioration of intellectual function and other cognitive skills, leading to a decline in the ability to perform activities of daily living.

2.6. Disclosure. -- The disclosure required by W. Va. Code §16-5R-4, which is a written document prepared by the facility and provided to individuals and their families, prior to admission of the resident, to disclose the form of care or treatment provided that distinguishes it as being especially applicable to, or suitable for, individuals.

2.7. Legal Representative<sup>1</sup>. --

2.7.a. A conservator, temporary conservator or limited conservator appointed pursuant to the West Virginia guardianship and conservatorship act, W. Va. Code, §44A-1-11 et seq., within the limits set by the order;

2.7.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;

2.7.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);

2.7.d. An individual having a medical power of attorney pursuant to the West Virginia health care decisions act, W. Va. Code §16-30-1 et seq., within the limits set by the law and the appointment;

2.7.e. An individual named as representative payee under the United States

social security act, title 42 U.S.C. §301 et seq., within the limits of the payee's legal authority;

2.7.f. A health care surrogate appointed pursuant to the West Virginia health care decisions act, W. Va. Code §16-30-1 et seq., within the limits set by the appointment;

2.7.g. An attorney in fact appointed with power of attorney under common law or pursuant to uniform durable power of attorney, W. Va. Code §39-4-1 et seq., within the limits set by the appointment; or

2.7.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

2.7.i. Who has no financial ties to the health care facility.

2.8. Market. -- To expose for sale or promotion. This includes but is not limited to individual letters written to prospective users or purchasers of services, brochures and advertisements.

2.9. Promote. -- To advocate the adoption or use of; to try to sell or popularize by publicity.

**§64-85-3. State Administrative Procedures.**

3.1. General licensing provisions.

3.1.a. A facility that proposes to advertise, market, or otherwise promote the facility as providing a specialized unit or program for residents requiring alzheimer's/dementia care services in an alzheimer's/dementia special care unit or program shall first obtain an additional license from the secretary, to operate the special care unit or program.

3.1.b. A facility shall be licensed or eligible for license as a health care facility in accordance with West Virginia law, to operate an

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<sup>1</sup> Owners and administrators should note that the various types of legal representatives do not necessarily have the lawful authority to act on behalf of the resident in all matters 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

alzheimer's/dementia special care unit or program. The facility shall meet the requirements of this rule in addition to any other applicable federal or state law and rule.

3.1.c. The facility shall make application to the secretary, prior to operation and on an annual license renewal application, on a form provided by the secretary. The applicant shall complete, sign and date the application.

3.1.d. The applicant shall submit a disclosure and application for approval, completed on forms provided by the secretary.

3.1.e. The secretary may, at his or her discretion, deny the application, if the facility is the subject of enforcement action by the department or has a history of noncompliance.

3.1.f. Prior to occupancy, the applicant shall submit architectural plans for an alzheimer's/dementia special care unit, including any new additions or renovations, to the secretary and state fire marshal for approval.

### 3.2. Inspections

3.2.a. The secretary, during the facility's state licensure surveys, shall evaluate compliance with this rule and verify the accuracy of the facility's disclosure statement.

3.2.b. The secretary shall conduct complaint investigations regarding the alzheimer's/dementia special care unit or program in accordance with the applicable state licensing provisions for the facility.

### 3.3. Non-Compliance

3.3.a. In the event an alzheimer's/dementia special care unit or program fails to comply with the standards of this rule, the secretary shall cite noncompliance and enforce penalties in accordance with the applicable state licensing provisions of the facility and this rule.

3.3.b. Any facility that fails to maintain

substantial compliance with this rule is prohibited from advertising, marketing or promoting the facility as providing specialized alzheimer's or dementia care services.

### §64-85-4. Human Resources.

#### 4.1. Qualifications, Orientation and Training

4.1.a. A designated staff member shall be responsible for the coordination of the alzheimer's/dementia special care unit or program. The coordinator shall:

4.1.a.1. Coordinate as needed outside psychiatric and psychosocial services to assist with behavior modification plans;

4.1.a.2. Advocate for resident rights;

4.1.a.3. Ensure individualized interventions are provided to allow residents to express feelings resulting from the disease process, lost roles and life status;

4.1.a.4. Obtain and utilize a listing of community resources available to residents and family members, including alzheimer's networks; and

4.1.a.5. Offer monthly educational and family support group meetings.

4.1.b. The coordinator shall meet the minimum qualifications which include:

4.1.b.1. A license or degree as a health related professional;

4.1.b.2. A minimum of one year working directly with dementia or Alzheimer's care patients; and

4.1.b.3. Completion of at least a thirty (30) hour training course by a nationally recognized alzheimer's/dementia care giving resource or association, or have comparable training and experience.

4.1.c. All assigned staff members shall complete a minimum of thirty (30) hours of training on the care of residents with alzheimer's disease and related dementia. Staff shall have a minimum of fifteen (15) hours of documented training prior to supervised direct hands on resident care. An additional fifteen (15) hours of training shall be completed prior to unsupervised direct care. Supervision shall be provided by a staff person who has completed the entire training. Training shall include at a minimum:

4.1.c.1. The facility's philosophy and resident care policies;

4.1.c.2. The nature, stages, and treatment of alzheimer's disease and related dementia;

4.1.c.3. Positive therapeutic interventions and activities;

4.1.c.4. Communication techniques;

4.1.c.5. Behavior management;

4.1.c.6. Medication management;

4.1.c.7. Therapeutic environmental modifications;

4.1.c.8. Individualized comprehensive assessments and care plans;

4.1.c.9. The role of the family and their need for support;

4.1.c.10. Staff burnout prevention;  
and

4.1.c.11. Abuse prevention.

4.1.d. The facility shall provide a minimum of eight (8) hours of documented annual training to all staff on the topics in subdivision 4.1.c. of this subsection.

4.1.e. The facility shall maintain and utilize an orientation manual and policies and

procedures specific to the alzheimer's/dementia special care unit or program.

#### 4.2 Staffing Requirements

4.2.a. The alzheimer's/dementia special care unit or program shall provide sufficient numbers of direct care staff to provide care and services during all hours of operation to meet the physical, mental and psychosocial needs and to promote the highest practicable level of well-being of each resident.

4.2.b. The alzheimer's/dementia special care unit or program shall provide staffing at no less than an average of two and twenty-five one-hundredths (2.25) hours of direct care personnel time per resident per day, or during the hours of operation, or as required by the facility's state licensure rule if more demanding.

4.2.b.1. When the resident census is greater than five (5) residents, a minimum of two (2) direct care personnel shall be present.

4.2.b.2. "Available" or "on call" staff shall not be calculated into the minimum staffing hours required.

4.2.c. A licensed nurse shall be available on-site if any resident requires nursing procedures, including as needed (PRN) injections, or as required by the facility's state licensure rule, if more restrictive.

4.2.d. Direct care staff shall not have housekeeping, laundry, food preparation or maintenance duties as their primary responsibilities. The unlicensed direct care staff included in the minimum staffing shall not be responsible for medication administration during the day or evening shift, including staff in a facility that participates in 64CSR60 "Medication Administration By Unlicensed Personnel".

4.2.e. The secretary may require staffing above the minimum requirement specified in this subsection if necessary to meet the resident's needs.

**§64-85-5. Admission, Transfer and Discharge.**

5.1. Each facility shall have a written policy of pre-admission screening, admission, transfer and discharge procedures, including an explanation of the level of care the facility is licensed to provide and the conditions that may necessitate a resident's transfer or discharge.

5.2. Admission criteria shall include a signed and dated physician's diagnosis of alzheimer's disease or related dementia, a description of any behavioral, personality and physical symptoms, medical history, physical exam, and treatment plan.

5.3. The facility shall base admission decisions on the facility's ability to meet the individual's needs, state licensure limitations on the facility's level of care, and the availability of licensed nursing staff to provide care.

5.4. Prior to admission, the facility shall provide a copy and an explanation of the disclosure statement to the resident and/or the resident's legal representative. The facility shall maintain a copy of this disclosure, signed and dated by the resident and/or legal representative, in the resident's record.

**§64-85-6. Assessments and Plans of Care.**

6.1. Within three (3) days of admission, the unit coordinator, with input from at least the resident and/or the resident's legal representative, shall review the immediate care needs of the resident and establish a preliminary care plan.

6.2. Within seven (7) days of admission, an interdisciplinary team including the unit coordinator, a social worker, the activities director, direct care staff and a registered nurse and other professional disciplines as appropriate, shall complete an initial assessment of a new resident which includes at a minimum: a social history; family supports; level of activities of daily living functioning; cognitive level; behavioral impairment; and nutritional status, including weight and nutritional requirements.

6.3. Within twenty-one (21) days of admission the interdisciplinary team and the resident and/or the resident's legal representative, shall develop a written individualized care plan, signed by each member of the alzheimer's/dementia special care unit or program staff, the resident and/or the resident's legal representative which shall:

6.3.a. Reflect the resident as a person, with family history and interests;

6.3.b. Accurately describe specific needs, choices, problems and any inappropriate behaviors;

6.3.c. Describe specific desired outcomes and specific interventions to be used to achieve the desired outcomes;

6.3.d. Support the individual toward as much independence as possible;

6.3.e. Include opportunities for resident choice and self management; and

6.3.f. Contain the job titles of staff who are to be primarily responsible for implementing the care plan.

6.4. The facility shall make a copy of the care plan available to all staff to ensure consistent implementation.

6.5. The facility shall provide resident care in accordance with the care plan.

6.6. The interdisciplinary team shall review, evaluate for effectiveness and revise the resident's assessment and care plan at least quarterly or more frequently as indicated by the changing needs of the resident.

**§64-85-7. Behavior Management.**

7.1. The alzheimer's/dementia special care unit or program shall conduct and document an ongoing evaluation of any resident with behaviors,

which are persistent and constitute sources of distress or dysfunction to the resident, or present a danger to the resident or other individuals. The evaluation shall determine the following:

7.1.a. A baseline of the intensity, duration, and frequency of the behavior;

7.1.b. Antecedent behaviors and activities;

7.1.c. Recent changes or risk factors in the resident's life;

7.1.d. Environment factors such as time of day, staff involved, noise, levels etc.;

7.1.e. The resident's medical status;

7.1.f. Staffing patterns at times of inappropriate behavior;

7.1.g. Alternative, structured activities or behaviors that have been successful or unsuccessful in the past; and

7.1.h. The effectiveness of behavioral management approaches.

7.2. The facility shall implement a less restrictive, systematic, non-medication behavioral management approach to assist a resident prior to obtaining orders for psychotropic or behavioral modifying medications.

7.3. The facility shall ensure that any resident receiving a psychotropic or behavioral modifying medication shall:

7.3.a. Have that medication administered in a dose based on the age recommendations of the individual;

7.3.b. Have a diagnosed and documented condition justifying the use of the medication;

7.3.c. Receive daily monitoring for any side effects or adverse reaction to the medication;

7.3.d. Have adverse findings reported to the resident's physician immediately; and

7.3.e. Have periodic dose reductions in the medication in an attempt to discontinue the medication unless the physician has determined that a dose reduction is contraindicated, based on the resident's condition.

7.4. A registered professional nurse or other appropriate licensed health care professional shall evaluate all residents receiving psychotropic or behavioral modifying medications monthly to assess the resident's functional level, identify potential adverse effects of the medication and consult with the resident's physician to determine if the medication should be continued.

7.5. The resident's physician shall document in the resident's medical record every six (6) months a reassessment and determination for the continued use of the medications and reasons a dose reduction would be contraindicated.

#### **§64-85-8. Social Services.**

8.1. A licensed social worker or licensed professional counselor shall be responsible for providing the alzheimer's/dementia special care unit or program with the following services:

8.1.a. A comprehensive social assessment of each resident which includes the following:

8.1.a.1. The resident's preferred name;

8.1.a.2. The resident's past places of residence;

8.1.a.3. The resident's family support system, with names and telephone numbers;

8.1.a.4. The resident's past employment status, career history, and educational level;

8.1.a.5. The resident's place of birth;

8.1.a.6. The resident's childhood history (i.e. rural or city, religion, lifestyle, culture);

8.1.a.7. Languages spoken;

8.1.a.8. Names of the resident's parents, children, siblings and legal representative;

8.1.a.9. Names of the resident's pets;  
and

8.1.a.10. The resident's adult daily routines (i.e. hour of rising and sleep, habits, etc.);  
and

8.1.b. Participation in resident interdisciplinary care planning.

**§64-85-9. Activities.**

9.1. The alzheimer's/dementia special care unit and program shall provide activities appropriate to the needs of the individual residents. The residents' routine should be developed and structured seven (7) days per week and incorporate the possible need for therapeutic programming twenty four (24) hours per day in an alzheimer's/dementia special care unit and during the hours of operation of the alzheimer's/dementia special care program.

9.2. The activities program shall be directed by a person who is a therapeutic recreation specialist, occupational therapist, or activities professional who has:

9.2.a. Two years of experience in a social or recreational program in the past five years, one of which was full-time in a resident activities program in a health care setting;

9.2.b. Demonstrated the ability to provide for an ongoing program of activities designed to meet the residents needs;

9.2.c. Completed a training course approved by the state; and

9.2.d. Completed the training required in subdivision 4.1.c. of this rule.

9.3. At least one employee per shift shall be responsible for activities programming with the assistance, participation and coordination of all direct care staff.

9.4. Activities programming shall:

9.4.a. Be provided to large and small groups, and on an individual basis;

9.4.b. Be geared toward long term memory rather than short term memory;

9.4.c. Provide multiple short activities to work with short attention spans;

9.4.d. Provide experiences with animals, nature, and children;

9.4.e. Provide opportunities for physical, social and emotional outlets;

9.4.f. Provide activities that create a feeling of usefulness; and

9.4.g. Be appropriate and meaningful for each resident, by respecting his or her cognitive level, beliefs, culture, values, and life experience.

9.5. Planned and spontaneous group and individual activities shall be provided in the following areas at least daily:

9.5.a. Gross motor activities (i.e. exercise, dancing, gardening, cooking, etc.);

9.5.b. Self care activities (i.e. dressing, personal hygiene, grooming, etc.);

9.5.c. Social activities (i.e. spiritual, intellectual, games, music, etc.); and

9.5.d. Sensory and memory enhancement activities (i.e. auditory, scent, taste, and tactile stimulation, and reminiscing, etc.)

9.6. The alzheimer's/dementia special care unit or program shall offer the following activities at least weekly at a minimum and within specified time periods:

9.6.a. Crafts (i.e. decorations, pictures, painting, etc.); and

9.6.b. Outdoor activities, as weather permits (i.e. walking outdoors, field trips, etc.)

9.7. The alzheimer's/dementia special care unit or program shall offer the following activities at least monthly:

9.7.a. Seasonal and holiday activities

#### §64-85-10. Physical Environment.

10.1. The alzheimer's/dementia special care unit and alzheimer's/dementia special care program site shall be designed to accommodate residents with dementia in a non-institutional home-like environment. The design and environment shall assist residents in their activities of daily living; enhance their quality of life, reduce tension, agitation, and problem behaviors, and promote their safety.

10.2. In addition to the physical design standards required for the facility's license, an alzheimer's/dementia special care unit and program site shall have the following:

10.2.a. A floor plan design with limited access to the designated area so that visitors and staff do not pass through the unit to get to other areas of the facility;

10.2.b. A multipurpose room for dining, group and individual activities and family visits which complies with the facility's applicable licensing requirements for common space;

10.2.c. Security measures to provide for the safety of wandering residents that are as unobtrusive as possible;

10.2.d. High visual contrasts between

floors and walls, and doorways and walls in resident use areas. Except for fire exits, door and access ways may be designed to minimize contrast to obscure or conceal areas the residents should not enter;

10.2.e. Non-reflective floors, walls and ceilings which minimize glare;

10.2.f. Evenly distributed lighting which minimizes glare and shadows and is designed to meet specific needs of the residents;

10.2.g. A monitoring or nurses' station, which includes a communication system such as a telephone or two-way voice actuated call system to the main staff station of the facility, and space for charting and storage for resident records; and

10.2.h. Secured outdoor space and walkways which allow residents to ambulate but prevent undetected egress.

10.2.h.1. Outdoor areas shall have fencing or barriers that prevent elopement and do not have features that pose a threat to resident safety.

10.2.h.2. Walkways shall meet the accessibility requirements of the Americans with Disabilities Act (ADA) structural building codes.

10.3. The alzheimer's/dementia special care unit and alzheimer's/dementia special care program (as applicable) shall:

10.3.a. Provide freedom of movement for the residents to common areas, and to their personal spaces, and shall not lock residents out of or inside their rooms;

10.3.b. Provide plates and eating utensils which provide visual contrast between them and the table and that maximize the independence of the individual residents;

10.3.c. Provide comfortable chairs, in the common use area, including chairs that allow for gently rocking or gliding;

10.3.d. Encourage and assist residents to decorate and furnish their rooms in accordance with their personal preferences;

10.3.e. Individually identify resident's rooms to assist residents in recognizing their room based on each resident's cognitive level;

10.3.f. Keep corridors and common use areas free of objects which may cause falls;

10.3.g. Be free of toxic plants; and

10.3.h. Only use public address systems in the unit (if one exists) for emergencies

10.4. The alzheimer's/dementia special care unit or program shall develop policies and procedures to deal with residents who may wander so as to prevent egress and shall include actions to be taken in case a resident elopes.

10.5. If locking devices are used on exit doors, the locking devices shall be electronic and release when the following occurs:

10.5.a. The fire alarm or sprinkler system is activated;

10.5.b. Power to the facility fails; and

10.5.c. A key button or key pad located at the exits for routine use by staff for service is passed.

10.6. If key pads are used to lock and unlock exits:

10.6.a. Directions for their operations shall be posted on the outside of the door to allow individuals access to the unit; and

10.6.b. Staff shall be trained in the methods of releasing the locking device.

10.7. All locking devices and keypad locks shall meet all applicable fire safety requirements.

## §64-85-11. Penalties.

### 11.1. Civil Penalties.

11.1.a. For violations of this rule, the secretary shall administer the civil penalties in the West Virginia Code and rules applicable to the facility.

11.1.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 any rule applicable to the primary facility and issue citations. The secretary shall assess supplemental penalties 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.

11.1.c. The secretary shall issue all citations in writing and shall include at least the following:

11.1.c.1. The penalty;

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

11.1.c.3. The basis upon which the secretary assessed the penalty and selected the amount of civil money penalty, as well as the basis for the calculations.

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

11.1.e. Each day a violation continues after the date by which correction was required by an approved plan of correction, or if an approved plan of correction was not submitted, the date on which the plan was due constitutes a separate violation.

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

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

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

11.1.f.3. The extent to which the provisions of the applicable statutes or rules were violated.

11.1.g. 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.

11.1.h. 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 ten (10) business days after service of the citation or specification of time in which violations are 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, 64CSR1.

11.1.i. The assessments for penalties and for costs of legal action taken under the relevant

W.Va. Code for the facility shall have monthly interest assessed at two percent (2%) on the last day of each month in which occurs the thirtieth (30<sup>th</sup>) day after receipt of notice of the assessment or after the month in which occurs the thirtieth (30<sup>th</sup>) day after receipt of the secretary's final order following a hearing, whichever is later.

11.1.i.1. All 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.

11.1.j. The secretary shall, in a civil judicial proceeding, recover any unpaid assessment which : (a) has not been contested under the applicable statute or rule within thirty (30) days of receipt of notice of the assessment; (b) has been affirmed under the applicable statute or rule 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 the applicable statute or rule.

11.1.j.1. 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 costs of relocation of residents to other facilities; operation of a home pending correction of deficiencies or closure; and reimbursement of residents for personal funds lost.

11.2. Suspension or Revocation of the License.

11.2.a. The secretary may suspend or revoke the current license of the alzheimer's/dementia unit or program, if he or she finds evidence of one (1) or more of the following:

11.2.a.1. The facility failed to provide to prospective patients or their legal representatives, in writing, the form of care or

treatment specific to alzheimer's residents that contains the information set forth on W. Va. Code §16-5R-4(c)(1-6);

11.2.a.2. The facility continued to advertise, market, or otherwise promote the facility as a specialized alzheimer's/dementia care unit or program after receiving notice that the unit or program does not meet department standards.

11.2.a.3. The facility failed to be in substantial compliance with the standards set forth in this rule or the rule applicable to the primary facility.

11.2.b. The secretary shall consider all available evidence at the time of the determination, including the history of the facility, unit or program 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, unit or program, residents, law enforcement officials, and other interested individuals.

11.3. Ban on New Admissions. Reduction in Bed Capacity.

11.3.a. In addition to all other actions and penalties specified in this rule, the secretary may ban new admissions by order until further notice by the secretary or reduce the bed capacity of a unit or both, when on the basis of inspection he or she determines that:

11.3.a.1. There is an immediate and serious threat to one or more residents;

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

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

11.3.a.4. An admission ban or reduction in bed capacity or both would place the

facility, unit or program in a position to render adequate care.

11.3.b. 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 for the order and the date set for compliance with the order.

11.3.c. In addition to all other actions and penalties specified by law and this rule, the secretary may revoke a license which has been obtained through the use of fraud and subterfuge.

#### **§64-85-12. Administrative Due Process.**

12.1. Administrative due process and remedies for actions taken under this rule, are set forth in the West Virginia Department of Health and Human Resources Administrative Rules, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR1 and W. Va. Code §§ 29A-4-1, et seq. and 29A-5-1, et seq.