

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

2010 JUL 30 PM 3:59

SECRETARY OF STATE  
STATE OF WEST VIRGINIA

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

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

CITE AUTHORITY: W.Va. Code 44A-1-8

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 99

TITLE OF RULE BEING PROPOSED: Requirements for Licensure of Nonprofit Corporations for Conservators  
Service

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.

Patricia A. Hardy  
Authorized Signature

## FISCAL NOTE FOR PROPOSED RULES

Rule Title: Requirements for Licensure of Nonprofit Corporations for Conservator Service

Type of Rule:  X  Legislative   Interpretive   Procedural

Agency: Health and Human Resources

Address: 1900 Kanawha Blvd. East  
Bldg. 3, Room 206  
Charleston, WV 25305

Phone Number: (304) 558-1555 Email: Craig.A.Richards@wv.gov

### Fiscal Note Summary

Summarize in a clear and concise manner what effect this measure will have on costs and revenues of state government.

These legislative rules establish general standards and procedures for the licensure of nonprofit corporations to serve as conservator, limited conservator and temporary conservator of persons declared by circuit courts to be protected persons. These rules are intended to protect and promote the rights and interests of protected persons of all ages for whom corporations are appointed to serve in a conservatorship capacity. This rule will generate revenues of \$100 per initial license application and for each license renewal application. Costs associated with license application review, approval and subsequent compliance monitoring (sureveyors) will be offset against revenue received. DHHR Finance will be receiving the revenues and incurring the costs associated with proper handling of such applications.

### Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	Fiscal Year		
	2010 Increase/Decrease (use "-" )	2011 Increase/Decrease (use "-" )	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
Personal Services			
Current Expenses			
Repairs and Alterations			
Equipment			
Other			
<b>2. Estimated Total Revenues</b>		1,500	1,500

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

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

The estimates should include all anticipated revenues based on projected number of applications to be received as well as all staffing and other costs related to proper handling of applications and review protocols applied to licensed entities.

**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.

Because this is a new concept in West Virginia, the Department is unable to accurately estimate the costs associated with the operation of this program. However, we believe it will be in excess of the estimated revenues as the rule requires at least one onsite review of each program annually..

Date

Agency

Authorized Representative

Department of Health and Human Resources

Patsy A. Hardy

Patsy A. Hardy  
Cabinet Secretary

Legislative Rule, 64CSR99  
Requirements For Licensure of Nonprofit Corporations For Conservatorship Service  
Department of Health and Human Resources  
Bureau for Behavioral Health and Health Facilities

BRIEF SUMMARY

The proposed rule is a new rule to comply with the requirements of West Virginia Code section 44-10A-1 which required the Secretary of Health and Human Resources to propose legislative rules for the licensure of nonprofit corporations and the review of licenses and establishing standards to assure that any corporation licensed for conservatorship meets certain designated requirements.

STATEMENT OF CIRCUMSTANCES

The West Virginia Legislature has required the Secretary of Health and Human Resources to propose rules to govern licensure of nonprofit corporations to serve as conservator. There is an immediate need for appointment of nonprofit corporations by circuit courts in the state and the courts' ability to effectuate the establishment of conservatorship for protected persons is impaired by the lack of a licensure process.

**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 30, 2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Department of Health and Human Resources  
1900 Kanawha Blvd. East  
Building 3, Room 206  
Charleston, WV 25305  
304-55801555

LEGISLATIVE RULE TITLE: Requirements for Licensure of Nonprofit Corporations for  
Conservator Service  
64CSR99

1. Authorizing statute(s) citation W. Va. Code 44A-1-8

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 30, 2010

b. What other notice, including advertising, did you give of the hearing?  
None

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 30, 2010 at 10:00 a.m.

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)

July 30, 2010

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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)

Craig Richards  
350 Capitol Street, Room 350  
Charleston, West Virginia 25301

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craig.a.richards@wv.gov

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304-558-5690  
fax 304-558-2230

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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)

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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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b. Date of hearing or comment period:

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

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d. Attach findings and determinations and reasons:

Attached 

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Comments from Rose Lowther-Berman, Office of Health Facility Licensure and Certification

Comments to 64CSR99

General Comments – there are sections of the authorizing code 44A-1-4 that are not covered in this rule  
- the Posting of bonds by conservators.

- There should be a provision that the corporation shall be audited at least annually by an independent certified public accountant.
- There should be a provision that the corporation shall have insurance coverage to include general, professional and vehicular liability and property damage.
- There should be a provision that if the corporation shall maintain a current record and keep separate accounts of each protected person's funds. The corporation shall provide to a consumer at least monthly and upon request, a statement of his or her account.
- There should be a provision for that the corporation shall not commingle a protected person's funds with the corporation's funds or with the funds of any person other than another protected person served by the corporation. .
- Conservator is not defined in the regulation. Suggest the definition from the code: 44A-1-4 "Conservator means a person appointed by the courts who is responsible for managing the estate and financial affairs of a protected person, and where the context plainly indicates, the term 'conservator' means or includes a 'limited conservator' or a 'temporary conservator'".

4.2.6 States that an initial license shall be issued for 2 years, and 4.4.3 states that the same is true for a renewal license. Yet 4.5.1 states that there will be at least 1 on-site survey ANNUALLY. 4.5.1 Should be amended to state that "The Secretary shall conduct at least one on-site survey of the corporation and its activities biennially." - To conform to 4.2.6 and 4.4.3.

4.5.1 Should be amended to delete the words 'those materials confidential under attorney-client privilege'. Denying DHHR access to such materials would effectively prevent the licensing agency from ascertaining compliance with the regulations, including 64-99

5.5 would prohibit non-profit behavioral health centers that currently function as conservator for some protected persons from maintaining that status. It is also in direct contradiction to 44A-1-10 of the code which requires conservators to receive training. This section should be deleted.

5.15 The corporation must charge some sort of fee in order to remain solvent. This is very unclear.

5.19 as written and in conjunction with 4.5.1 would effectively prohibit DHHR from access to any protected person's records for any sort of review. This should be rewritten to state "The Corporation may retain legal counsel to represent the agency."

7.2.4 – 'Appropriately qualified' (regarding employees) – is not specified. Is this a master's degree, a GED, what other kinds of training are required to be qualified? Suggest that conservator representatives have a minimum of a bachelor's degree in a social services field.

7.2.7 – the numbering is off.

Disposition of Comments from Rose Lowther-Berman, Office of Health Facility Licensure and Certification (Dispositions are reported in italics following each comment.)

Comments to 64CSR99

General Comments – there are sections of the authorizing code 44A-1-4 that are not covered in this rule  
- the Posting of bonds by conservators.

*Posting of bonds by conservators is vested in the discretion of the circuit courts and is not a licensing function. No change with regard to posting bond was made to the rule. The rule was changed in section 4.2.2 to expressly incorporate the sections of the authorizing code that the rule need address.*

- There should be a provision that the corporation shall be audited at least annually by an independent certified public accountant.

*The rule was modified in section 6.1 to require an audit of the corporation at least annually by an independent certified public accountant and transmission of the audit to the Secretary within one week of its receipt by the corporation.*

- There should be a provision that the corporation shall have insurance coverage to include general, professional and vehicular liability and property damage.

*The rule was modified in section 5.18 to strengthen the insurance requirements.*

- There should be a provision that if the corporation shall maintain a current record and keep separate accounts of each protected person's funds. The corporation shall provide to a consumer at least monthly and upon request, a statement of his or her account.

*The rule was amended in section 6.7 to require a current record of separate accounts and to provide to the protected person or his guardian or attorney in fact a statement at least monthly or upon request.*

- There should be a provision for that the corporation shall not commingle a protected person's funds with the corporation's funds or with the funds of any person other than another protected person served by the corporation.

*Section 6.7 was amended so as to prohibit commingling of funds.*

- Conservator is not defined in the regulation. Suggest the definition from the code: 44A-1-4 "Conservator means a person appointed by the courts who is responsible for managing the estate and

financial affairs of a protected person, and where the context plainly indicates, the term 'conservator' means or includes a 'limited conservator' or a 'temporary conservator'.

*Rule was amended to define "conservator" in section 3.4*

4.2.6 States that an initial license shall be issued for 2 years, and 4.4.3 states that the same is true for a renewal license. Yet 4.5.1 states that there will be at least 1 on-site survey ANNUALLY. 4.5.1 Should be amended to state that "The Secretary shall conduct at least one on-site survey of the corporation and its activities biennially." - To conform to 4.2.6 and 4.4.3.

*The rule was amended to provide for surveys biennially in section 4.5.1.*

4.5.1 Should be amended to delete the words 'those materials confidential under attorney-client privilege'. Denying DHHR access to such materials would effectively prevent the licensing agency from ascertaining compliance with the regulations, including 64-99

*The rule was amended by deleting the phrase*

5.5 would prohibit non-profit behavioral health centers that currently function as conservator for some protected persons from maintaining that status. It is also in direct contradiction to 44A-1-10 of the code which requires conservators to receive training. This section should be deleted.

*Section 5.5 comports with statutory language and can not be deleted.*

5.15 The corporation must charge some sort of fee in order to remain solvent. This is very unclear.

*Provision for fees is made in section 6.10.*

5.19 as written and in conjunction with 4.5.1 would effectively prohibit DHHR from access to any protected person's records for any sort of review. This should be rewritten to state "The Corporation may retain legal counsel to represent the agency."

*Section 4.5.1 was amended to secure access to records by DHHR.*

7.2.4 – 'Appropriately qualified' (regarding employees) – is not specified. Is this a master's degree, a GED, what other kinds of training are required to be qualified? Suggest that conservator representatives have a minimum of a bachelor's degree in a social services field.

*Better definition of appropriate qualification can not be made by rule that would govern all functions of the conservator representatives. No amendment is made.*

7.2.7 – the numbering is off.

*The rule is amended to correct the numbering.*

TITLE 64  
LEGISLATIVE RULE  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

2010 JUL 30 PM 3:59

SERIES 99  
REQUIREMENTS FOR LICENSURE OF NONPROFIT CORPORATIONS  
FOR CONSERVATOR SERVICE

REC. DIVISION  
STATE OF WEST VIRGINIA

**§64-99-1. General.**

1.1. Scope. -- These legislative rules establish general standards and procedures for the licensure of nonprofit corporations to serve as conservator, limited conservator and temporary conservator of persons declared by circuit courts to be protected persons. These rules are intended to protect and promote the rights and interests of protected persons of all ages for whom corporations are appointed to serve in a conservatorship capacity.

1.2. Authority. -- W. Va. Code 44A-1-8

1.3. Filing Date. -- June 30, 2010.

1.4. Effective Date.

**§64-99-2. Application and Enforcement.**

2.1. Application - These legislative rules shall apply to any nonprofit corporation seeking appointment as conservator, limited conservator or temporary conservator for a protected person.

2.2. Enforcement - These legislative rules shall be enforced by the Secretary of Health and Human Resources.

**§64-99-3. Definitions.**

3.1. Words used herein have the same meaning as set forth by definition in section 4, article 1 of chapter 44A of the West Virginia Code except insofar as a different meaning is set forth by definition herein.

3.2. Board of Directors - Those who are vested with the management of the affairs of the corporation, by whatever name they may be called.

3.3. Bylaws - The code of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are called.

3.4. Conservator -- A person appointed by the court who is responsible for managing the estate and financial affairs of a protected person, and, where the context plainly indicates, the term "conservator" means or includes a "limited conservator" or a "temporary conservator."

3.5. Corporation - Shall for the purposes of this rule refer to nonprofit corporations only, and may be taken within context to refer to the corporation as a whole or to its members, directors, officers and

employees.

3.6. Department - The West Virginia Department of Health and Human Resources.

3.7. Director - A member of the board of directors.

3.8. Employee - Shall include officers but not directors. A director may accept duties which make him an employee.

3.9. Family - One or more persons related to the protected person by blood or by marriage, who maintain contact with and interest in the protected person.

3.10. Gender - The pronoun "he" or "she" shall denote both the masculine and feminine gender. The use of any word denoting the masculine or feminine gender shall be taken to apply to both females and males.

3.11. License - The document issued by the Secretary which constitutes the approval for appointment to serve as conservator, limited conservator and temporary conservator.

3.12. Licensee - A corporation duly licensed by the Secretary to serve as conservator for individuals who are deemed protected persons.

3.13. Member - One having membership in the nonprofit corporation in accordance with the provisions of its articles of incorporation or bylaws.

3.14. Secretary - The Secretary of Health and Human Resources.

#### **64-99-4. State Administrative Procedures.**

##### **4.1. General Licensure Provisions**

4.1.1. No corporation may be appointed to serve as conservator, limited conservator or standby conservator for a protected person unless the corporation first obtains a license.

4.1.2. A license shall be valid only for the corporation named in the license and shall not be transferable or assignable.

4.1.3. A licensed corporation shall notify the Secretary ninety days in advance of any pending merger or consolidation with another corporation, submitting with the notification a copy of the plan for merger or consolidation.

4.1.4. In the event that the surviving or the new corporation proposes to continue as conservator, limited conservator or standby conservator to any of the protected persons of the licensed corporation, the incorporators of the proposed corporation shall prepare an application as for an initial license, supplying relevant information or documentation of intent where official documents are unavailable. The official documents, such as a copy of the corporation charter shall be filed with Secretary immediately upon receipt. The new or surviving corporation shall upon the granting of the new license file notice with the

circuit clerk of the continuation of all existing conservatorships, limited conservatorships and temporary conservatorships.

4.1.5. In the event that the new corporation does not propose, is not granted a license, or is not approved by the circuit court to continue as conservator, limited conservator or temporary conservator, the licensed corporation shall dissolve itself from its conservatorships according to law, these rules and the procedures of the corporation as approved by the Secretary.

4.1.6. A corporation shall notify the Secretary in advance of any proposed amendment to the articles of incorporation, requesting a decision from the Secretary as to whether the proposed amendment will affect the status of the license. In the event that the proposed amendment will adversely affect the status of the license, the corporation shall either: (a) abandon the proposed amendment and any proposals for associated activity; or (b) if the amendment is adopted, dissolve itself from its conservatorships according to law, these rules and the procedures of the corporation as approved by the Secretary.

4.1.7. The corporation shall notify the Secretary of any changes in the ownership and management of the corporation specified in Section 4.2.3 of these rules within thirty days following the change.

4.1.8. An expired or otherwise invalid license shall be surrendered to the director on written demand.

4.1.9. A license shall state the name of the nonprofit corporation, the type of license, the date of issue, and the date of expiration of the license.

## 4.2. Initial License

4.2.1. An applicant shall submit an application to the Secretary on forms provided by the Secretary not less than thirty days and not more than ninety days prior to the date proposed for commencement of operation. A nonrefundable fee of \$100.00 shall be submitted with the application.

4.2.2. Information required for the initial license and any renewal may include affirmative evidence of ability to comply with these rules and regulations and with any other requirement of law, and shall include, at the least, information showing that:

- (a) the corporation has sufficient fiscal and administrative resources to perform the fiduciary duties and make the reports and accountings required by Chapter 44A of the West Virginia Code.
- (b) The corporation will respect and maintain the dignity and privacy of the protected person;
- (c) The corporation will protect and advocate the legal human rights of the protected person;
- (d) The corporation will assure that the protected person is receiving appropriate educational, vocational, residential and medical services in the setting least restrictive of the individual's personal liberty;
- (e) The corporation will encourage the protected person to participate to the maximum extent of his or her abilities in all decisions affecting him or her and to act in his or her own behalf on all matters in which he or she is able to do so;
- (f) The corporation does not provide educational, vocational, residential or medical services to the protected person;
- (g) The corporation has written provisions in effect for the distribution of assets and for the appointment of temporary conservators for any protected persons it serves in the event the

corporation ceases to be licensed by the Department of Health and Human Resources or otherwise becomes unable to serve.

4.2.3. The following information pertaining to ownership and management shall be submitted to the Secretary: (a) the names, addresses and place of employment of all officers and directors of the corporation; (b) the name and address of the individual to receive notices and orders; (c) the address of the principal office of the corporation; (d) the names and addresses of all other offices or locations of the corporation where activities related to the conservatorship services are performed; and (e) the name and address of any parent or subsidiary corporation and the names and addresses of its officers and directors.

4.2.4. The application shall include a copy of: (a) the articles of incorporation filed with the West Virginia Secretary of state; (b) a copy of the corporate charter issued by the Secretary of state; (c) the ruling or determination of the federal government regarding the corporation's status as a tax-exempt nonprofit corporation under federal income tax statutes and regulations; and (d) the letter of approval for nonprofit status under the tax laws of West Virginia issued by the State tax commissioner.

4.2.5. The Secretary shall issue an initial license if she finds that: (a) the corporation is in conformance with or, in the case of proposed activities, supplies satisfactory evidence of ability and intent to conform to, these rules and with applicable law and (b) has submitted a complete application and the application fee. Within sixty days of the issuance of an initial license the applicant shall provide proof of liability insurance to the Secretary and said proof shall be maintained in the records of the Secretary relating to that license.

4.2.6. An initial license shall be issued for a term of two years from the date of issuance, subject to the conditions and penalties specified herein.

#### 4.3. Renewal License

4.3.1. An applicant for a renewal license shall submit an application to the Secretary on forms provided by the Secretary not less than thirty days and not more than sixty days prior to the expiration date of the current license. A nonrefundable fee of one hundred dollars shall be included with the application.

4.3.2. The Secretary shall issue a renewal license when it finds that: (a) the corporation is in compliance with the provisions of these rules and with applicable law and (b) the corporation has submitted a complete application and the renewal license fee.

4.3.3. A renewal license shall be issued for a term of two years from the date of issuance subject to the conditions and penalties specified herein.

#### 4.4. Provisional License

4.4.1. If the Secretary finds that a corporation applying for a renewal license is not in compliance with the requirements of these rules, she may issue a provisional license.

4.4.2. A provisional license may be issued only when the corporation has demonstrated improvement in deficiencies and the potential for compliance within the term for which the provisional license is issued.

4.4.3. The term of a provisional license shall be at the discretion of the Secretary but in no case

shall be longer than twelve months.

4.4.4. A provisional license may not be renewed.

#### 4.5. Inspections

4.5.1. The Secretary shall conduct at least one on-site survey of the corporation and its activities biennially. Such surveys shall include one or more of the locations from which the corporation provides services. Surveys shall include inspections of individual protected person conservatorship and financial records and corporation records required by law and these rules. Surveys may include visits and interviews with clients, employees, contractors for services and others as relevant. In the event that materials of record qualify as privileged attorney-client information, the corporation shall make available for Secretary inspection that information of record not related to the matter under attorney-client privilege.

4.5.2. A report of any initial or renewal license inspection shall be sent to the corporation within fifteen working days of the completion of the inspection.

#### 4.6. Complaint Investigation

4.6.1. Any person may register a complaint with the Secretary alleging violation of applicable laws or rules by the corporation. A complaint shall state the substance of the complaint and the corporation by name.

4.6.2. The Secretary shall conduct an investigation of the complaint and shall prepare a report of its investigation.

4.6.3. Within ten working days after the completion of its investigation the Secretary shall notify the corporation and the circuit court which appointed the conservator of the complaint, the results of its investigation and any corrective action required to be taken by the corporation.

#### 4.7. Plans of Correction

4.7.1. A corporation found on the basis of inspection or other investigation to have deficiencies in compliance with these rules shall develop a plan for correction of the deficiencies and shall submit such plan to the Secretary within thirty days of receipt of the report of the inspection or other investigation.

4.7.2. The plan of correction shall specify:

(a) the deficiency to be corrected;

(b) action taken or proposed to correct the deficiency and procedures proposed to prevent its recurrence;

(c) the time within which the deficiency will be corrected. Such time shall be the shortest possible time within which the corporation may reasonably be expected to correct the deficiency.

4.7.3. The plan of correction shall be approved, modified or rejected in whole or in part by the Secretary in writing within ten working days of receipt.

4.7.4. In accepting, modifying or rejecting the plan for correction, the Secretary shall consider:

- (a) the adequacy of the actions and procedures taken or proposed to correct the deficiency;
- (b) the seriousness of the violation;
- (c) the number of protected persons affected;
- (d) the time proposed for effectuating the correction;
- (e) any other relevant factors.

4.7.5. In modifying or rejecting a proposed plan of correction, the reasons for the modification or rejection shall be specifically stated.

4.7.6. When the Secretary rejects a plan of correction, a reasonable time for submission of a revised plan shall be allowed: **Provided, however,** That the Secretary may require an immediate correction in the case of a violation that presents a danger of immediate risk of loss to the estate of a protected person.

4.7.7. The Secretary shall conduct such procedures as are reasonable and necessary to ensure the correction of any deficiencies identified during a routine licensure inspection or any other investigation.

#### 4.8. Secretary Reports and Records

4.8.1. A report of any inspection or investigation made by the Secretary shall be in writing and shall be on file with the Secretary.

4.8.2. Reports of the Secretary of any inspection or investigation shall specify the nature of each deficiency in compliance with these rules and indicate specifically the rule or law violated.

4.8.3. The Secretary shall make available for public inspection the following:

- (a) applications and exhibits;
- (b) inspection reports;
- (c) reports of any other investigations;
- (d) any records of hearings, decisions and declaratory rulings; and
- (e) any responses of the corporation requested to be made part of the public record.

4.8.4. The Secretary shall provide copies of materials available for public information at a nominal cost upon written request.

4.8.5. The Secretary shall treat a report of inspection of a corporation as public information from the time a written plan of correction is submitted.

4.8.6. If the corporation does not submit a written plan of correction within the time specified by the Secretary or these rules, reports pertaining to the corporation shall be made public at the expiration of the specified time.

4.8.7. Other records and reports shall be treated as public information from the time they are submitted to or issued by the Secretary: **Provided, however,** That nothing contained in these rules shall be construed to require or permit the public disclosure of confidential medical, social, personal or financial records of any protected person of the corporation.

4.8.8. Before releasing a report or record deemed public information the Secretary shall delete any confidential information regarding a protected person which could reasonably permit identification of the protected person.

4.8.9. The Secretary shall delete from complaints made available to the public under this section any information required to be held confidential under these rules or state or federal law.

#### **§64-99-5. General Organization and Management.**

5.1. The corporation shall have a valid West Virginia charter to conduct business as a nonprofit corporation.

5.2. A major purpose of the corporation shall be to aid and assist and to promote the rights and well-being of protected persons. The corporation may have purposes other than the provision of conservatorship services as specified herein: **Provided, however,** That such purposes shall not conflict with the corporation's responsibilities as conservator, limited conservator or temporary conservator.

5.3. Except as provided herein, no corporation licensed under these rules, nor any officer, agent, director, servant or any employee of the corporation shall do business with or in any way profit, either directly or indirectly, from the estate or income of any protected person for whom such corporation serves as conservator or limited conservator.

5.4. Each director, officer, agent and employee of the corporation shall file with the Secretary an annual written statement under oath regarding conflict of interest under these rules in a format specified by the Secretary.

5.5. No corporation licensed under these rules shall provide educational, vocational, residential or medical services to its protected persons or to other protected persons.

5.6. The corporation shall have a duly constituted board of directors and officers as prescribed by law.

5.7. The corporation shall have bylaws in accordance with state laws and these rules which shall provide for at least the following:

(a) specification of the powers and duties of the board of directors, the officers and the committees;

(b) the number and the length of term of the members of the board of directors and of the officers;

(c) the qualifications and the method of selection of the members of the board of directors;

- (d) the frequency of board and of corporation meetings;
- (e) the classes of members and their voting privileges;
- (f) an annual audit by an accredited auditor; and
- (g) an annual report of all activities of the corporation.

5.8. The corporation shall have written policies and procedures consistent with these rules which shall include at a minimum:

- (a) the distribution of the assets of protected persons in the event the corporation ceases to be licensed by the Secretary or may otherwise become unable to act as conservator;
- (b) the nomination of and the application to the circuit court for the appointment of a temporary conservator in the event the corporation ceases to be licensed by the Secretary or otherwise becomes unable to act as conservator; and
- (c) other policies and procedures required by these rules.

5.9. The corporation shall have an executive director who:

- (a) is responsible for the operation and the administration of the corporation on a day-to-day basis;
- (b) is supervised and evaluated by the board of directors of the corporation; and
- (c) is responsible for the supervision and evaluation of staff.

5.10. The corporation shall not discriminate in any matter of employment on the basis of race, color, national origin, ancestry, religion, physical handicap or sex and shall abide by all provisions of applicable local, state and federal law and regulations regarding employment.

5.11. The corporation shall not discriminate among protected persons or refuse to accept as protected persons any individual on grounds of race, color, religion, national origin, sex or financial resources: **Provided**, the protected persons resources meet the requirements of WV Code 44A- 1-8.

5.12. The corporation shall maintain the confidentiality of all protected persons-identifiable records in its custody or accessible to the corporation in the performance of its duties as conservator, limited conservator or temporary conservator and shall comply with all state and federal laws regarding confidentiality of financial records, health records or other records.

5.13. The corporation shall maintain separate financial records for each protected person for whom it serves as conservator and shall comply with all state and federal law regarding administration of the estate of the protected person.

5.14. The corporation shall develop and implement such employee procedures and sanctions and such office procedures as are necessary and appropriate to protect the confidentiality of the records of protected persons and to effectuate the release of such records to proper interested parties.

5.15. Where state law or this rule requires the provision of services by the corporation in the financial

affairs of a protected person, the corporation may, unless specified otherwise by these rules, contract for or accept as a donation the services to be provided: **Provided**, That the contractor and the donor shall agree to comply with the provisions of these rules and relevant state and federal law and rules and regulations and shall agree to undergo survey and inspection procedures regarding compliance with these rules. When services are to be donated or provided on a volunteer basis there shall be a written specification of the extent and the nature of services to be provided and activities to be performed by the donor or volunteer. In the event that such services are performed by entities other than the corporation, the corporation shall be held responsible for the adequacy and effectiveness of those services.

5.16. The corporation shall have on file all orders, authorizations and directions of the circuit court regarding the protected person.

5.17. The corporation shall not exceed the authority of any such orders, authorizations or directions of the circuit court.

5.18. The corporation shall carry liability and other insurance to protect the corporation from foreseeable liabilities arising from the performance of its conservatorship duties and responsibilities. The insurance shall be adequate in amount and coverage to protect all of the estates managed by the corporation against accidental loss. The corporation shall also procure vehicular and property insurance on property owned by the protected person as appropriate.

5.19. The corporation shall retain legal counsel to assist in making arrangements for and in performing its conservatorship duties and responsibilities.

5.20. The license shall be displayed in a conspicuous and public place in plain view of all protected persons, clients and visitors to the office of the corporation and a copy of the license shall be displayed in a like manner in every office and location of the corporation.

#### **§64-99-6. Fiduciary Responsibilities and Rights.**

6.1. The corporation shall provide evidence that it has sufficient fiscal and administrative resources to perform the fiduciary duties and to make the fiduciary accountings and reports required by law and these rules. The corporation shall be audited at least annually by an independent certified public accountant. The audit shall be sent to the Secretary within one week of receipt by the corporation. Such evidence shall include at a minimum, to be submitted with its initial and each renewal application:

(a) a report of the corporation which shall include a complete statement of all assets, liabilities, income and expenses of the corporation for the period covered;

(b) a record of insurance;

(c) a statistical summary of reports and records submitted to the circuit court, the number and type of reports required and the employees available to effectuate these reports; and

(d) a statistical summary report of any other activities effectuating the provisions of law and these rules concerning estate management and the securing of financial support for the protected person.

6.2. The corporation may make arrangement for part of all of the activities required to be performed in the management of a protected person's financial affairs to be executed by other lawful entities: **Provided**, That the corporation shall provide written evidence that it has reviewed and approved the

activities of such entities for compliance with the requirements of relevant law and this rule at least annually. Such arrangements shall comply with the provisions of Section 5.17 herein.

6.3. A blanket insurance certificate encompassing some or all of the estates of protected persons of the corporation shall be acceptable for the purposes of these rules: Provided, That such blanket certificate is ruled acceptable by the circuit court making the appointment of the corporation as conservator, limited conservator or standby conservator.

6.4. The corporation shall manage the income, property and any assets of each protected person for the benefit of the protected person and shall retain evidence that any expenditures of income or from the estate of the protected person for which it has lawful authority are used for the benefit of the protected person.

6.5. The corporation shall implement procedures to facilitate that any protected person receives maximum support for his needs by:

(a) annually reviewing the status of the protected person's eligibility for any public support programs;

(b) intervening as needed to ensure that any financial or other support continues.

6.7. The corporation shall maintain current detailed individual financial accounts and records for each protected person. Each account shall be maintained as a separate account and the funds of the protected person may not be comingled with any other funds. Such accounts shall show payments and compensation for services performed for the protected person by the corporation and for all other services received by the protected person. A statement of the protected person's account shall be provided at least monthly and upon request to the protected person or the protected person's guardian or attorney in fact if a guardian or attorney in fact has been appointed.

6.8. The corporation shall have on file all financial reports submitted to the circuit court.

6.9. The Secretary shall have the authority to require the certification of specified reports and accounts of protected persons and of the corporation by the corporation's auditor or by an independent accountant.

6.10. Any corporation licensed under these rules and serving as conservator or limited conservator shall be entitled to reasonable compensation as provided by law for services provided as conservator.

#### **§64-99-7. Management of Conservatorship of the Protected person.**

##### **7.1. Services Generally**

7.1.1 The corporation shall maintain an effective and direct role in the execution of its conservatorship responsibilities. To this end, the corporation shall through its membership, employees, officers and directors be directly responsible for certain requirements as specified herein. The corporation may effectuate other responsibilities as specified in Section 5.15 of this rule.

7.1.3. Services shall be provided to each protected person according to the needs, characteristics and capabilities of the individual protected person.

7.1.7. There shall be documented regular contact between the corporation and its protected persons as frequently as indicated by the needs, characteristics, capabilities, living circumstances and any other pertinent conditions of the protected person and as feasible to the fiscal resources of the protected person and the corporation: **Provided, however,** That there shall be no less than one person-to-person contact between the corporation membership or staff and the protected person per year.

7.1.10. The corporation shall encourage protected persons to participate to the maximum of their abilities in all decisions affecting them.

## 7.2. Staffing

7.2.1. Each protected person of the corporation shall have a specific representative. This responsibility may not be satisfied through contract or arrangement with another entity.

7.2.3. The representative shall be responsible for maintaining continuity of the corporation's relationship to the individual and shall be personally familiar with the protected person and his circumstances.

7.2.4. Conservator representatives shall be qualified for their jobs by virtue of training, experience or a combination of both. The corporation shall develop detailed statements of the experience and training requirements for conservator representatives. The corporation may provide or arrange for training where needed to supplement deficiencies in the individual's capabilities to perform the job. The individual shall be given supervision or consultation by an individual who is appropriately qualified until training is sufficient.

7.2.5. The corporation shall maintain an employee training program which shall provide at a minimum:

(a) orientation and training for new employees and volunteers to acquaint them with the philosophy, organization, programs, practices and goals of the corporation;

(b) orientation to talking competently with protected persons for purposes of a routine contact basis; and

(c) additional initial and continued training needed specific to the duties, the responsibilities and the competency of the employee.

(d) training in management of accounts, property and financial assets.

## 7.3. Protection and Advocacy

7.3.1. The corporation shall define procedures for the procuring or provision of legal counsel to represent the interests of the protected person and shall procure such legal counsel when it is in the best interests of the protected person. Any person providing legal services to the corporation shall not be eligible to act as legal counsel for the protected person.

7.3.2. The corporation shall inform the protected person regarding the procedures for terminating or changing the type of conservatorship or the conservator.

7.3.3. The corporation shall assure that those persons who provide services to the protected

person respect the rights and dignity of its protected persons.

7.3.4. The corporation shall not perform any conservatorship function for any individual in the absence of lawful proceedings appointing the corporation as conservator, limited conservator or temporary conservator.

7.3.5. The corporation may advise and assist families in implementing procedures to initiate conservatorship.

7.3.6. Each nonprofit corporation shall establish a conservatorship review committee to perform the following duties:

- (a) review and otherwise pass upon all applications for conservatorship;
- (b) oversee the administration of those conservatorships accepted;
- (c) review each case on a periodic basis to determine that conservatorship is in the best interest of each client and, if not, to petition for termination of the conservatorship; and
- (d) contact information for the protected person's next of kin.

#### **64-99-8. Conservatorship Records and Reporting.**

8.1. The corporation shall maintain a conservatorship record for each protected person for whom it has responsibility for full or limited conservatorship of the person. The conservatorship record shall document all information and activities pertinent to the conservatorship and as required by law and these rules.

8.2. The conservatorship record shall contain at a minimum the following information concerning the protected person:

- (a) a summary of all orders and directions of the circuit court concerning the protected person and the conservatorship;
- (b) demographic identifying information;
- (f) a current record of the protected person's address;

8.3. The conservatorship record shall contain at least the following information concerning activities with respect to the protected person;

- (a) a record of contacts between the corporation staff and the protected person;
- (b) a record of services provided by the corporation staff;
- (c) a summary report of any services provided under contract;
- (d) evaluations of services provided to the protected person;
- (e) copies of any reports provided to the circuit court;
- (f) a record of any other activities undertaken on behalf of the protected person; and

(g) an annual summary report regarding the estate of the protected person reflecting all financial transactions that have affected the estate, and an evaluation and description of the assets of the estate.

8.4. The corporation shall maintain on file a current summary list of the names and addresses of all protected persons for whom it is acting as conservator.

8.5. The corporation shall provide the Secretary with any renewal application a statistical summary report to include the number of protected persons, the type of conservatorships, the ages of protected persons, the number of visits, emergency contacts, services provided and such other information as the Secretary may reasonably require in a format designated by the Secretary.

#### **§64-99-9. Penalties.**

9.1. The Secretary shall have the power to suspend or revoke a license if it finds that: (a) the corporation is in substantial violation of these rules; (b) the corporation charges fees in excess of those authorized by the circuit court or the fiduciary commissioner; (c) the corporation is found by due process of law to be in violation of the provisions of Chapters 31, 44 or 27 of the Code of West Virginia of 1931, as amended; or (d) the corporation has violated any state or federal law or has in any way violated its fiduciary duty to the protected person.

9.2. The Secretary may refuse to grant a license or may revoke a license if it determines that there has been subterfuge or other dishonest action in applying for an initial or a renewal license.

#### **§64-99-10. Administrative Due Process.**

Those persons adversely affected by the enforcement of these legislative rules desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the West Virginia Procedural Rules, Board of Health, Chapter 16-1, Series I, 1981, Rules of Procedure for Contested Case Hearing and Declaratory Rulings. The aforementioned procedural rules are incorporated herein by reference.

#### **§64-99-11. Severability.**

If any provisions of these rules or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or the application of these rules which can be given effect without invalid provisions or application, and to this end the provisions of these rules are declared to be severable.