

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

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OFFICE WEST VIRGINIA
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Form #6

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

AGENCY: Bureau for Behavioral Health and Health Facilities TITLE NUMBER: 64

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 99

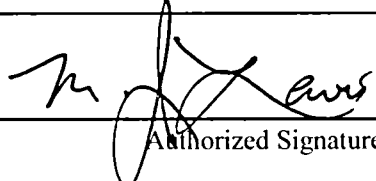
TITLE OF RULE BEING PROPOSED: Requirements for Licensure of Nonprofit Corporations
for Conservator Service

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

AUTHORIZATION IS CITED IN (house or senate bill number) SB 295

SECTION W. Va. Code 44A-1-8, PASSED ON March 18, 2011

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: MAY 10, 2011


Authorized Signature

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2011 MAY 10 PM 3: 48

OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 64
LEGISLATIVE RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

RULE 99
REQUIREMENTS FOR LICENSURE OF NONPROFIT CORPORATIONS
FOR CONSERVATOR SERVICE

§64-99-1. General.

1.1. Scope. -- This legislative rule establishes 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. This rule is 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. – May 10, 2011

1.4. Effective Date. – May 10, 2011

§64-99-2. Application and Enforcement.

2.1. Application – This legislative rule applies to any nonprofit corporation seeking appointment as conservator, limited conservator or temporary conservator for protected person.

2.2. Enforcement – This legislative rule shall be enforced by the Secretary of Health and Human Resources.

§64-99-3. Definitions.

3.1. Words used in this rule have the same meaning as set forth by definition in West Virginia Code §44A-1-4, except insofar as a different meaning is set forth by definition in this section.

3.2. Board of Directors – Those persons 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 the rules are called.

3.4. Corporation – Nonprofit corporations only, which may be taken within context to refer to the corporation as a whole or its members, directors, officers and employees.

3.5. Department – The West Virginia Department of Health and Human Resources.

3.6. Director – A member of the board of directors of the Corporation.

3.7. Employee – Includes officers but not directors of the Corporation. A director may accept duties which make him or her an employee.

3.8. 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.

3.9. License – A document issued by the Secretary which constitutes the approval for appointment to serve as conservator, limited conservator and temporary conservator.

3.10. Licensee – A corporation duly licensed by the Secretary to serve as conservator for individuals who are designated protected persons.

3.11. Member – A person having membership in the nonprofit corporation in accordance with the provisions of its articles of incorporation or bylaws.

3.12. Secretary – The Secretary of the Department of Health and Human Resources.

§64-99-4. State Administrative Procedures.

4.1. General Licensure Provisions.

4.1.1. A corporation may not 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 is valid only for the corporation named in the license and is not 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, this rule 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 its articles of incorporation, requesting a decision from the Secretary as to whether the proposed amendment will affect the status of its 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, this rule 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 Subdivision 4.2.3 of this rule within thirty days following the change.

4.1.8. A corporation shall surrender 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 this rule and with any other requirement of law, and shall include, at the least, information showing that the corporation:

- (a) Has sufficient fiscal and administrative resources to perform the fiduciary duties and make the reports and accounting required by Chapter 44A of the West Virginia Code;
- (b) Will respect and maintain the dignity and privacy of the protected person;
- (c) Will protect and advocate the legal human rights of the protected person;
- (d) Will assure that the protected person is receiving appropriate education, vocational, residential and medical services in the setting least restrictive of the individual's personal liberty;

- (e) 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) Does not provide education, vocation, residential or medical services to the protected person; and
- (g) 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 or otherwise becomes unable to serve.

4.2.3. The applicant shall submit the following information pertaining to ownership and management of the corporation 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 he or 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 this rule 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 the proof shall be maintained in the records of the Secretary relating to that license.

4.2.6. The Secretary shall issue an initial license, which shall be valid for a term of two years from the date of issuance, subject to the conditions and penalties specified in this rule.

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 he or she finds that: (a) the corporation is in compliance with the provisions of this rule and with applicable law and (b) the corporation has submitted a complete application and the renewal license fee.

4.3.3. The Secretary shall issue a renewal license, which shall be valid for a term of two years from the date of issuance, subject to the conditions and penalties specified in this rule.

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 this rule, he or 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 is at the discretion of the Secretary, but in no case may 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. The 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 this rule. Surveys may include visits and interviews with clients, employees, contractors for services and other persons as relevant. In the event that materials of record qualify as privileged attorney-client information, the corporation shall make available to the Secretary for inspection that information of record not related to the matter under attorney-client privilege.

4.5.2. The Secretary shall send a report of any initial or renewal license inspection of 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 his or her 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 this rule shall develop a plan for correction of the deficiencies and shall submit the 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 deficiencies to be corrected;
- (b) Action taken or proposed to correct the deficiencies and procedures proposed to prevent their recurrence;
- (c) The time within which the deficiencies will be corrected. That time shall be the shortest possible time within which a corporation may reasonably be expected to correct the deficiencies.

4.7.3. The Secretary shall approve, modify or reject in whole or in part the plan of correction 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 deficiencies;
- (b) The seriousness of the deficiencies;
- (c) The number of protected persons affected;
- (d) The time proposed for effectuating the correction; and
- (e) Any other relevant factors.

4.7.5. The Secretary shall specifically state the reasons for modifying or rejecting a proposed plan of correction.

4.7.6. When the Secretary rejects a plan of correction, a reasonable time for submission of a revised plan shall be allowed: Provided, that the Secretary may require an immediate correction of deficiencies that present a danger of immediate risk of loss to the estate of a protected person.

4.7.7. The Secretary shall conduct any reasonable and necessary procedures 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, when appropriate, specify the nature of any deficiency in compliance with this rule or law and specifically indicate 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 this rule, reports pertaining to the corporation shall be made public at the expiration of the specified time.

4.8.8. Before releasing a report or record considered 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 this rule 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 in this rule: Provided, that the purposes shall not conflict with the corporation's responsibilities as conservator, limited conservator or temporary conservator.

5.3. Except as provided in this rule, a corporation licensed under this rule, and any officer, agent, director, servant or any employee of the corporation shall not do business with or in any way profit, either directly or indirectly, from the estate or income of any protected person for whom the corporation serves as conservator, limited conservator, or temporary 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 this rule in a format specified by the Secretary.

5.5. A corporation licensed under this rule shall not 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 the state laws and this rule 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 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 this rule 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 otherwise becomes unavailable to act as conservator;
- (b) The nomination of and the application to the circuit court for the appointment of a temporary conservator in the even 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 this rule.

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 rules 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 W. Va. 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 the 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 necessary and appropriate employee procedures and sanctions and office procedures to protect the confidentiality of the records of protected persons and to effectuate the release of the 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 this rule, contract for or accept as a donation the services to be provided: Provided, that the contractor and the donor agree to comply with the provisions of this rule and relevant state and federal law and rules and regulations and agree to undergo survey and inspection procedures regarding compliance with this rule. 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 of the 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 arrangement 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 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 its fiduciary duties and to make the fiduciary accountings and reports required by law and this rule. An independent certified public accountant shall audit the corporation at least annually. The audit shall be sent to the Secretary within one week of receipt by the corporation. The evidence shall be submitted with its initial and each renewal application and shall, at a minimum include:

- (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 this rule 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 the entities for compliance with the requirements of relevant law and this rule at least annually. The arrangements shall comply with the provisions of Subsection 5.17 of this rule.

6.3. A blanket insurance certificate encompassing some or all of the estates of protected persons of the corporation is acceptable for the purposes of this rule: Provided, that the blanket certificate is ruled acceptable by the circuit court making the appointment of the corporation as conservator, limited conservator or temporary 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 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 or her needs by?

- (a) Annually reviewing the status of the protected person's eligibility for any public support programs; and
- (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 separate account and the funds of the protected person may not be commingled with any other funds. The corporation shall show on the accounts payments and compensation for services performed for the protected person by it and for all other services received by the protected person. The corporation shall provide a statement of the protected person's account 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 may 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 this rule and serving as conservator, limited conservator, or temporary 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 specified in this rule. The corporation may effectuate other responsibilities as specified in Subsection 5.15. of this rule.

7.1.2. A protected person shall receive services according to his or her needs, characteristics, and capabilities.

7.1.3. The corporation shall have documented regular contact with the protected person 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, that there shall be no less than one person-to-person contact between the corporation membership or staff and the protected person per year.

7.1.4. 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. The corporation shall designate a specific representative for each protected person of the corporation. This responsibility may not be satisfied through contract or arrangement with another entity.

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

7.2.3. 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 representative's capabilities to perform the job. The representative shall be given supervision or consultation by an individual who is appropriately qualified until training is sufficient.

7.2.4. 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.
- (c) Additional initial and continued training needed specific to the duties, the responsibilities and the competency of the employee; and
- (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 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 the protected person.

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 corporation shall establish a conservatorship review committee to:

- (a) Review and otherwise pass upon all applications for conservatorship;
- (b) Oversee the administration of accepted conservatorships;
- (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 this rule.

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) 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. With any renewal application the corporation shall provide the Secretary 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 any other information reasonably required by the Secretary in a format designated by the Secretary.

§64-99-9. Penalties.

9.1. The Secretary may suspend or revoke a license if it finds that: (a) the corporation is in substantial violation of this rule; (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 this legislative rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in W. Va. C.S.R. §16-1-1- *et seq.*