

64-13-3 State Administrative Procedures

3.1.

General Licensure Provisions. 3.1.1. No person may establish, operate, maintain, offer, or advertise a nursing home as defined in this rule within the state of West Virginia unless that person obtains a valid license. 3.1.2. A separate license is required for nursing homes maintained or operated on separate premises even though maintained or operated under the same ownership or management. 3.1.3. A licensee shall notify the director if there is a special unit within the same physical environment of the nursing home, or on the same campus or premise which has a different advertised name, including but not limited to, signage outside of the building. 3.1.3.a. A separate license is unnecessary for this special unit, and the separately named unit shall still be treated as part of the overall nursing home. 3.1.3.b. The director may require the licensee to provide additional information and designate a subclassification under the primary license for the separately named unit. 3.1.4. Separate buildings on the same premises, operated under the same ownership and management, are one nursing home unless the director determines otherwise. 3.1.5. A license is valid only for the premises and persons named in the application. 3.1.6. A license is not transferable or assignable and shall be surrendered on demand to the director. 3.1.7. If the ownership of a nursing home with a valid unexpired license changes, the new owner shall apply for a new license. 3.1.8. The application for a license by the new owner has the effect of a

valid license for three months from the date the application is received by the director. 3.1.9. The nursing home shall obtain approval from the director prior to changing the name of the nursing home. 3.1.10. An approved name change is reflected in a newly issued license at a charge of \$50. 3.1.11. The words "clinic," "hospital," "sanitarium," or any other word that suggests a type of institution other than the proposed or existing nursing home shall not appear in the name. 3.1.12. A license shall state: 3.1.12.a. The name of the nursing home to which it applies; 3.1.12.b. The name of the applicant who is the licensee; 3.1.12.c. The maximum bed capacity for which it is granted; 3.1.12.d. The date of issuance; and 3.1.12.e. The expiration date. 3.1.13. The name on the license shall be that used in the application which specifically identifies the nursing home.

3.1.1.

No person may establish, operate, maintain, offer, or advertise a nursing home as defined in this rule within the state of West Virginia unless that person obtains a valid license.

3.1.2.

A separate license is required for nursing homes maintained or operated on separate premises even though maintained or operated under the same ownership or management.

3.1.3.

A licensee shall notify the director if there is a special unit within the same physical environment of the nursing home, or on the same campus or premise which has a different advertised name, including but not limited to, signage outside of the building.

3.1.3.a. A separate license is unnecessary for this special unit, and the separately named unit shall still be treated as part of the overall nursing home. 3.1.3.b. The director may require the licensee to provide additional information and designate a

subclassification under the primary license for the separately named unit.

3.1.3.a.

A separate license is unnecessary for this special unit, and the separately named unit shall still be treated as part of the overall nursing home.

3.1.3.b.

The director may require the licensee to provide additional information and designate a subclassification under the primary license for the separately named unit.

3.1.4.

Separate buildings on the same premises, operated under the same ownership and management, are one nursing home unless the director determines otherwise.

3.1.5.

A license is valid only for the premises and persons named in the application.

3.1.6.

A license is not transferable or assignable and shall be surrendered on demand to the director.

3.1.7.

If the ownership of a nursing home with a valid unexpired license changes, the new owner shall apply for a new license.

3.1.8.

The application for a license by the new owner has the effect of a valid license for three months from the date the application is received by the director.

3.1.9.

The nursing home shall obtain approval from the director prior to changing the name of the nursing home.

3.1.10.

An approved name change is reflected in a newly issued license at a charge of \$50.

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The words "clinic," "hospital," "sanitarium," or any other word that suggests a type of institution other than the proposed or existing nursing home shall not appear in the name.

3.1.12.

A license shall state: 3.1.12.a. The name of the nursing home to which it applies; 3.1.12.b. The name of the applicant who is the licensee; 3.1.12.c. The maximum bed capacity for which it is granted; 3.1.12.d. The date of issuance; and 3.1.12.e. The expiration date.

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The name of the applicant who is the licensee;

3.1.12.c.

The maximum bed capacity for which it is granted;

3.1.12.d.

The date of issuance; and

3.1.12.e.

The expiration date.

3.1.13.

The name on the license shall be that used in the application which specifically identifies the nursing home.

3.2.

Exceptions. 3.2.1. Nothing contained in this rule applies to: 3.2.1.a. A hospital as defined in W. Va. Code §§ 16-5B-1, et seq.; 3.2.1.b. Institutions as defined in W. Va. Code § 27-1-6; 3.2.1.c. A federally operated institution; 3.2.1.d. Institutions

operated for the care and treatment of alcoholic patients; 3.2.1.e. Offices of physicians; 3.2.1.f. Hotels; 3.2.1.g. Assisted Living Residences, as defined under W. Va. Code §§ 16-5D-1, et seq.; 3.2.1.h. Boarding homes or similar places that furnish to their guests only room and board; 3.2.1.i. Extended care facilities operated in conjunction with a hospital; 3.2.1.j. Facilities, including intermediate care facilities for individuals with intellectual disabilities; 3.2.1.k. Residential Care Communities as defined under W. Va. Code §§ 16-5N-1, et seq.; and 3.2.1.l. Homes or asylums operated by fraternal orders pursuant to W. Va. Code §§ 35-3-1, et seq. 3.2.2. The care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin, to the head of the household, or his or her spouse, does not constitute a nursing home within the meaning of this rule. 3.2.3. Nursing homes federally certified by the Centers for Medicare and Medicaid Services under 42 Code of Federal Regulations, Part 483, Subpart B are exempt from provisions of this rule addressed in applicable federal regulations, unless such provisions are part of an express state requirement intended to differ from the federal regulation. 3.2.3.a. The department will develop a list of the non-exempted provisions of this rule with the assistance of the Nursing Home Advisory Council. 3.2.3.b. The department will revise the non-exemption list when the Centers for Medicare and Medicaid Services makes modifications or amendments to 42 Code of Federal Regulations, Part 483, Subpart B.

3.2.1.

Nothing contained in this rule applies to: 3.2.1.a. A hospital as defined in W. Va. Code §§ 16-5B-1, et seq.; 3.2.1.b. Institutions as defined in W. Va. Code § 27-1-6; 3.2.1.c. A federally operated institution; 3.2.1.d. Institutions operated for the care and treatment of alcoholic patients; 3.2.1.e. Offices of physicians; 3.2.1.f. Hotels; 3.2.1.g. Assisted Living

Residences, as defined under W. Va. Code §§ 16-5D-1, et seq.; 3.2.1.h. Boarding homes or similar places that furnish to their guests only room and board; 3.2.1.i. Extended care facilities operated in conjunction with a hospital; 3.2.1.j. Facilities, including intermediate care facilities for individuals with intellectual disabilities; 3.2.1.k. Residential Care Communities as defined under W. Va. Code §§ 16-5N-1, et seq.; and 3.2.1.l. Homes or asylums operated by fraternal orders pursuant to W. Va. Code §§ 35-3-1, et seq.

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A hospital as defined in W. Va. Code §§ 16-5B-1, et seq.;

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Institutions as defined in W. Va. Code § 27-1-6;

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3.2.1.d.

Institutions operated for the care and treatment of alcoholic patients;

3.2.1.e.

Offices of physicians;

3.2.1.f.

Hotels;

3.2.1.g.

Assisted Living Residences, as defined under W. Va. Code §§ 16-5D-1, et seq.;

3.2.1.h.

Boarding homes or similar places that furnish to their guests only room and board;

3.2.1.i.

Extended care facilities operated in conjunction with a hospital;

3.2.1.j.

Facilities, including intermediate care facilities for individuals with intellectual disabilities;

3.2.1.k.

Residential Care Communities as defined under W. Va. Code §§ 16-5N-1, et seq.; and

3.2.1.l.

Homes or asylums operated by fraternal orders pursuant to W. Va. Code §§ 35-3-1, et seq.

3.2.2.

The care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin, to the head of the household, or his or her spouse, does not constitute a nursing home within the meaning of this rule.

3.2.3.

Nursing homes federally certified by the Centers for Medicare and Medicaid Services under 42 Code of Federal Regulations, Part 483, Subpart B are exempt from provisions of this rule addressed in applicable federal regulations, unless such provisions are part of an express state requirement intended to differ from the federal regulation.3.2.3.a.

The department will develop a list of the non-exempted provisions of this rule with the assistance of the Nursing Home Advisory Council. 3.2.3.b. The department will revise the non-exemption list when the Centers for Medicare and Medicaid Services makes modifications or amendments to 42 Code of Federal Regulations, Part 483, Subpart B.

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The department will develop a list of the non-exempted provisions of this rule with the assistance of the Nursing Home Advisory Council.

3.2.3.b.

The department will revise the non-exemption list when the Centers for Medicare and Medicaid Services makes modifications or amendments to 42 Code of Federal Regulations, Part 483, Subpart B.

3.3.

Initial License. 3.3.1. An applicant shall submit an application to the director, on a form prescribed by the director, containing information sufficient to demonstrate that the nursing home is in compliance with the standards for nursing homes established in W. Va. Code §§ 16-5C-1, et seq., and this rule. 3.3.2. The application shall be filed not less than 30 days and not more than 90 days prior to the date proposed for commencement of operation.

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An applicant shall submit an application to the director, on a form prescribed by the director, containing information sufficient to demonstrate that the nursing home is in compliance with the standards for nursing homes established in W. Va. Code §§ 16-5C-1, et seq., and this rule.

3.3.2.

The application shall be filed not less than 30 days and not more than 90 days prior to the date proposed for commencement of operation.

3.4.

Renewal License. 3.4.1. An applicant for a renewal license shall submit an application to the director on the form prescribed by the director. 3.4.2. A completed application for renewal of a license shall be submitted not less than 30 days and not more than 90 days prior to the expiration date of the current license. 3.4.3. The fee for renewal of a license, as determined by the director pursuant to W. Va. Code § 16-5C-6(e) and §§ 16-5C-1, et seq., shall accompany the license renewal application. 3.4.4. The director shall renew an original license when the following conditions are met: 3.4.4.a. The director finds the nursing home in substantial compliance with the provisions of W. Va. Code §§ 16-5C-1, et seq., and with this rule; 3.4.4.b. The licensee applied for a renewal within the time period specified in this subsection; and 3.4.4.c. The licensee submitted the correct renewal

fee with the application. 3.4.5. A renewal license is valid for one year from the date of issuance.

3.4.1.

An applicant for a renewal license shall submit an application to the director on the form prescribed by the director.

3.4.2.

A completed application for renewal of a license shall be submitted not less than 30 days and not more than 90 days prior to the expiration date of the current license.

3.4.3.

The fee for renewal of a license, as determined by the director pursuant to W. Va. Code § 16-5C-6(e) and §§ 16-5C-1, et seq., shall accompany the license renewal application.

3.4.4.

The director shall renew an original license when the following conditions are met:

3.4.4.a. The director finds the nursing home in substantial compliance with the provisions of W. Va. Code §§ 16-5C-1, et seq., and with this rule; 3.4.4.b. The licensee applied for a renewal within the time period specified in this subsection; and 3.4.4.c. The licensee submitted the correct renewal fee with the application.

3.4.4.a.

The director finds the nursing home in substantial compliance with the provisions of W. Va. Code §§ 16-5C-1, et seq., and with this rule;

3.4.4.b.

The licensee applied for a renewal within the time period specified in this subsection; and

3.4.4.c.

The licensee submitted the correct renewal fee with the application.

3.4.5.

A renewal license is valid for one year from the date of issuance.

3.5.

Provisional License. 3.5.1. If the director finds that a nursing home applying for renewal of a license is not in substantial compliance with the requirements of this rule and the provisions of W. Va. Code §§ 16-5C-1, et seq., the director may, at his or her discretion, issue a provisional license. 3.5.2. A provisional license may be issued only when the director makes the following findings: 3.5.2.a. That the care given in the nursing home does not pose a substantial threat to the health and safety of residents; and 3.5.2.b. That the nursing home has demonstrated improvement and potential for substantial compliance within the term of the license for which renewal is requested. 3.5.3. A provisional license shall not be issued for a period greater than six months. 3.5.4. No extensions or renewals shall be granted on provisional licenses.

3.5.1.

If the director finds that a nursing home applying for renewal of a license is not in substantial compliance with the requirements of this rule and the provisions of W. Va. Code §§ 16-5C-1, et seq., the director may, at his or her discretion, issue a provisional license.

3.5.2.

A provisional license may be issued only when the director makes the following findings: 3.5.2.a. That the care given in the nursing home does not pose a substantial threat to the health and safety of residents; and 3.5.2.b. That the nursing home has demonstrated improvement and potential for substantial compliance within the term of the license for which renewal is requested.

3.5.2.a.

That the care given in the nursing home does not pose a substantial threat to the health and safety of residents; and

3.5.2.b.

That the nursing home has demonstrated improvement and potential for substantial compliance within the term of the license for which renewal is requested.

3.5.3.

A provisional license shall not be issued for a period greater than six months.

3.5.4.

No extensions or renewals shall be granted on provisional licenses.

3.6.

Inspections of Licensed and Unlicensed Facilities.3.6.1. Before licensing a nursing home, the director shall inspect the nursing home. 3.6.2. The director shall conduct at least one unannounced inspection annually, to determine compliance with the provisions of W. Va. Code §§ 16-5C-1, et seq., and this rule. 3.6.3. In accordance with W. Va. Code §§ 16-5C-1, et seq., the director or designee has the right to enter the premises of a nursing home that the director has reason to believe is being operated or maintained as a nursing home without a license. 3.6.4. If the owner or person in charge of an unlicensed nursing home refuses entry pursuant to this subsection, the director shall apply to the circuit court of the county in which the nursing home is located or in the Circuit Court of Kanawha County for a warrant authorizing inspection. 3.6.5. If the director finds, on the basis of the inspection, that the nursing home is operating as a nursing home without a license, the nursing home shall apply for a license within 10 days in accordance with the provisions of this rule or shall reduce the number of residents to three or fewer. 3.6.6. A nursing home which fails to apply for a license is subject to the penalties established by the provisions of this rule. 3.6.7. The director shall file an inspection report according to this rule and shall keep the report on file for five years. 3.6.8. An inspection report shall list each deficiency in the nursing home's compliance with statutes and rules,

indicating for each deficiency specifically which provision has not been met. 3.6.9.

The director shall send a copy of the report of an inspection to the nursing home.

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Before licensing a nursing home, the director shall inspect the nursing home.

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The director shall conduct at least one unannounced inspection annually, to determine compliance with the provisions of W. Va. Code §§ 16-5C-1, et seq., and this rule.

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In accordance with W. Va. Code §§ 16-5C-1, et seq., the director or designee has the right to enter the premises of a nursing home that the director has reason to believe is being operated or maintained as a nursing home without a license.

3.6.4.

If the owner or person in charge of an unlicensed nursing home refuses entry pursuant to this subsection, the director shall apply to the circuit court of the county in which the nursing home is located or in the Circuit Court of Kanawha County for a warrant authorizing inspection.

3.6.5.

If the director finds, on the basis of the inspection, that the nursing home is operating as a nursing home without a license, the nursing home shall apply for a license within 10 days in accordance with the provisions of this rule or shall reduce the number of residents to three or fewer.

3.6.6.

A nursing home which fails to apply for a license is subject to the penalties established by the provisions of this rule.

3.6.7.

The director shall file an inspection report according to this rule and shall keep the

report on file for five years.

3.6.8.

An inspection report shall list each deficiency in the nursing home's compliance with statutes and rules, indicating for each deficiency specifically which provision has not been met.

3.6.9.

The director shall send a copy of the report of an inspection to the nursing home.

3.7.

License; Posting; Licensed Capacity. 3.7.1. The owner shall post the license in a conspicuous place on the licensed premises. 3.7.2. The department on behalf of the State of West Virginia shall maintain ownership of each license certificate issued to a licensee; upon the suspension or revocation of the license, or upon discontinuing operation of the home by voluntary action of the licensee, the owner shall return each license certificate to the director immediately. 3.7.3. The number of residents in a nursing home may not at any time exceed the licensed capacity of the home as shown on the license. 3.7.4. Emergency. A request for temporary authority to exceed the licensed capacity may be made to the director in the event of an emergency.

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The department on behalf of the State of West Virginia shall maintain ownership of each license certificate issued to a licensee; upon the suspension or revocation of the license, or upon discontinuing operation of the home by voluntary action of the licensee, the owner shall return each license certificate to the director immediately.

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3.7.4.

Emergency. A request for temporary authority to exceed the licensed capacity may be made to the director in the event of an emergency.

3.8.

Change in Status Necessitating Discharge or Transfer of Residents.3.8.1. Whenever a licensee plans to discontinue all or part of its operation or change its ownership or location, and the change in status would necessitate the discharge or transfer of residents, the administrator shall notify the director at least 90 days prior to the proposed date of the change in status. 3.8.2. For licensees planning a change in status as described in this rule:3.8.2.a. This rule remains fully applicable until all residents have been discharged or transferred. 3.8.2.b. At least 60 days prior to the date of the planned change in status, the administrator shall provide the director with a written transfer plan, subject to approval by the director. This plan shall include the following: 3.8.2.b.1. Documentation that adequate staff and resident care will be provided; 3.8.2.b.2. The licensee's arrangements to make an orderly transfer of residents and to minimize the health risks; and 3.8.2.b.3. The placement action proposed to be taken for each resident. 3.8.2.c. The administrator, upon request, shall provide the licensing agency with any additional information related to the transfer plan as well as follow-up reports regarding specific placement action. 3.8.2.d. The licensee shall not admit new residents after the date of the written notice required in this Section.

3.8.1.

Whenever a licensee plans to discontinue all or part of its operation or change its ownership or location, and the change in status would necessitate the discharge or

transfer of residents, the administrator shall notify the director at least 90 days prior to the proposed date of the change in status.

3.8.2.

For licensees planning a change in status as described in this rule:3.8.2.a. This rule remains fully applicable until all residents have been discharged or transferred. 3.8.2.b. At least 60 days prior to the date of the planned change in status, the administrator shall provide the director with a written transfer plan, subject to approval by the director. This plan shall include the following: 3.8.2.b.1. Documentation that adequate staff and resident care will be provided; 3.8.2.b.2. The licensee's arrangements to make an orderly transfer of residents and to minimize the health risks; and 3.8.2.b.3. The placement action proposed to be taken for each resident. 3.8.2.c. The administrator, upon request, shall provide the licensing agency with any additional information related to the transfer plan as well as follow-up reports regarding specific placement action. 3.8.2.d. The licensee shall not admit new residents after the date of the written notice required in this Section.

3.8.2.a.

This rule remains fully applicable until all residents have been discharged or transferred.

3.8.2.b.

At least 60 days prior to the date of the planned change in status, the administrator shall provide the director with a written transfer plan, subject to approval by the director. This plan shall include the following: 3.8.2.b.1. Documentation that adequate staff and resident care will be provided; 3.8.2.b.2. The licensee's arrangements to make an orderly transfer of residents and to minimize the health risks; and 3.8.2.b.3. The placement action proposed to be taken for each resident.

3.8.2.b.1.

Documentation that adequate staff and resident care will be provided;

3.8.2.b.2.

The licensee's arrangements to make an orderly transfer of residents and to minimize the health risks;
and

3.8.2.b.3.

The placement action proposed to be taken for each resident.

3.8.2.c.

The administrator, upon request, shall provide the licensing agency with any additional information related to the transfer plan as well as follow-up reports regarding specific placement action.

3.8.2.d.

The licensee shall not admit new residents after the date of the written notice required in this Section.

3.9.

Nursing Home Licensing Advisory Council. 3.9.1. The director shall establish a licensing advisory council composed of licensed nursing home administrators, representatives of appropriate government agencies and consumers. 3.9.2. The composition of the council shall be determined by the director and be comprised of no less than 10 members and no more than 15 members. 3.9.3. The purpose of the council is to make recommendations to the director about regulatory issues and improvement of nursing home services. 3.9.4. The council shall hold a meeting not less than semiannually, at least one of which shall be held in a public setting and receive input from the public.

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The council shall hold a meeting not less than semiannually, at least one of which shall be held in a public setting and receive input from the public.

3.10.

Transfer Agreements. 3.10.1. The nursing home shall have in effect a transfer agreement with one or more hospitals approved for participation under the Medicare and Medicaid programs that reasonably assures: 3.10.2. Timely admission of a resident to the hospital when transfer is medically appropriate as determined by a physician; and 3.10.3. Medical and other information needed for care and treatment of residents is exchanged between the institutions.

3.10.1.

The nursing home shall have in effect a transfer agreement with one or more hospitals approved for participation under the Medicare and Medicaid programs that reasonably assures:

3.10.2.

Timely admission of a resident to the hospital when transfer is medically appropriate as determined by a physician; and

3.10.3.

Medical and other information needed for care and treatment of residents is exchanged between the institutions.

3.11.

Interpretive Guidelines. The department may issue interpretive guidelines related to this rule and prior to the adoption and implementation of the guidelines, shall provide notice of a public comment period to all affected parties.