

64-13-2 Definitions

2.1.

Definitions incorporated by reference. Those terms defined in W. Va. Code §§ 16-5C-1, et seq., are incorporated herein by reference.

2.2.

Abuse. The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychological well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain, or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology. As used in this definition, willful means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

2.3.

Administrator. A person licensed in the state of West Virginia as a nursing home administrator who is responsible for the day to day operation of the nursing home.

2.4.

Advance Directive. Written instruction of an individual, such as a living will, a durable power of attorney for health care or general durable power of attorney,

recognized under state law and relating to the provision of health care when the individual is unable to direct his or her own health care.

2.5.

Annual Inspection. For the purpose of this rule, annual inspection is defined as occurring during a time frame of nine to 15 months.

2.6.

Applicant. The person who submits an application for a license or renewal of a license to operate a nursing home.

2.7.

Bed Capacity. The maximum number of beds the nursing home is currently licensed to offer for resident occupancy.

2.8.

Capacity to make health care decisions. When a person is able to comprehend and retain information which is material to a decision, especially as to the likely consequences; the person is able to use the information and weigh it in the balance as part of the process of arriving at a decision and is able to communicate the decision in an unambiguous manner.

2.9.

Care Plan. A document, based on the comprehensive assessment and prepared by the interdisciplinary team in conjunction with the resident, that identifies measurable objectives for the highest level of functioning the resident may be expected to attain or maintain.

2.10.

Causal Factors. Any stimulus that affects the behavior of a resident either positively or negatively.

2.11.

Change of Ownership. Any transaction that results in change of control over the capital assets of a nursing home including, but not limited to, a conditional sale, a sale, a lease, or a transfer of title or controlling stock.

2.12.

Chemical Restraint. Any drug that is used for discipline or staff convenience and not required to treat medical symptoms. As used in this definition, convenience means the result of any action that has the effect of altering a resident's behavior such that the resident requires a lesser amount of effort or care and is not in the resident's best interest. As used in this definition, discipline means any action taken by facility staff for the purpose of punishing or penalizing residents.

2.13.

Competent Person. A person who has not been adjudicated incompetent by a court of law.

2.14.

Discharge. Moving the resident to a non-institutional setting when the releasing facility ceases to be responsible for the resident's care.

2.15.

Employee. Any person who performs personal services for the nursing home in exchange for monetary compensation where such personal services, including the results to be accomplished as well as the details and the means by which the results are accomplished, are controlled and directed by the nursing home, where monetary compensation is affected through the nursing home's payroll system.

2.16.

Enabler. Any device that allows the resident to accomplish tasks that otherwise he or she could not accomplish and maintains and improves a resident's ability to function.

2.17.

Experimental Research. Development and testing of clinical treatments, such as an investigational drug or therapy, that involve treatment groups, control groups, or both. For example, a clinical trial of an investigational drug is experimental research.

2.18.

Exploitation. Taking advantage of a resident for personal gain through the use of manipulation intimidation, threats, or coercion.

2.19.

Family Council. A group of persons, family members, or responsible parties of the residents, meeting as a group, having the right to express grievances in relation to the residents' well-being in general, and to make recommendations concerning nursing home policies and procedures.

2.20.

Governing Body. The person or group of persons with the ultimate responsibility and authority for the conduct of the nursing home.

2.21.

Harm. Noncompliance with this rule that has negatively affected the resident so that the resident's physical, mental, or psychosocial well-being has been compromised and is not transient in nature.

2.22.

Interdisciplinary Team. A team consisting of at least a registered nurse and other professional disciplines as appropriate, including the resident's physician, working together with the resident or the resident's representative, if applicable, to attain or maintain the resident at his or her highest practicable level of physical, mental, and psychosocial well-being.

2.23.

Independent Health Contractor. A licensed, certified, registered, or a combination of the foregoing health care provider who performs personal services for the nursing home in exchange for monetary compensation, where the nursing home has the right to specify the result to be accomplished by the work, but not the means and methods by which the result is accomplished.

2.24.

Institutional Setting. Any health care facility.

2.25.

Involuntary Seclusion. The separation of a resident from other residents or from his or her room or confinement to his or her room, with or without roommates, against the resident's will, or the will of the resident's representative.

2.26.

Legal Representative. A person appointed by an individual or by a duly authorized agency or court, or otherwise authorized by law to exercise some degree of control over a resident's affairs. Various types of legal representatives may not necessarily have the lawful authority to act on behalf of the resident in all matters that require action by the legal representative. For example, a conservator has responsibility for financial affairs, but not personal affairs such as medical care. Legal

representatives include: 2.26.1. A conservator, temporary conservator, or limited conservator appointed pursuant to the West Virginia Guardianship and

Conservatorship Act, W. Va. Code §§ 44A-1-1, et seq., within the limits set by the

appointing order; 2.26.2. A guardian, temporary guardian, or limited guardian

appointed pursuant to the West Virginia Guardianship and Conservatorship Act, W.

Va. Code §§ 44A-1-1, et seq., within the limits set by the appointing order; 2.26.3. A

person appointed as committee or guardian prior to June 9, 1994, within limits set

by the appointing order and W. Va. Code §§ 44A-1-1, et seq.; 2.26.4. A person having medical power of attorney pursuant to the West Virginia Health Care Decisions Act, W. Va. Code §§ 16-30-1, et seq., within the limits set by the law and the appointment; 2.26.5. A representative payee under the U.S. Social Security Act, Title 42 US Code § 301, et seq., within the limits of the payee's legal authority; 2.26.6. A surrogate decision-maker appointed pursuant to the West Virginia Health Care Decisions Act, W. Va. Code §§ 16-30-1, et seq., within the limits set by the appointment; 2.26.7. A person having a power of attorney pursuant to W. Va. Code §§ 39B-1-101, et seq.; 2.26.8. A person identified pursuant to the W. Va. Code § 16-3C-4, to grant consent for HIV related testing and for the authorization of the release of the results; 2.26.9. A parent or guardian of a minor; or 2.26.10. A person lawfully appointed in a similar or like relationship of responsibility for a resident under the laws of this State, or another state or legal jurisdiction, within the limits of the applicable statute and appointing authority.

2.26.1.

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

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A person appointed as committee or guardian prior to June 9, 1994, within limits set by the appointing order and W. Va. Code §§ 44A-1-1, et seq.;

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

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A surrogate decision-maker appointed pursuant to the West Virginia Health Care Decisions Act, W. Va. Code §§ 16-30-1, et seq., within the limits set by the appointment;

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A person identified pursuant to the W. Va. Code § 16-3C-4, to grant consent for HIV related testing and for the authorization of the release of the results;

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A parent or guardian of a minor; or

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A person lawfully appointed in a similar or like relationship of responsibility for a resident under the laws of this State, or another state or legal jurisdiction, within the limits of the applicable statute and appointing authority.

2.27.

License. The document issued by the secretary that is the licensee's authority to receive residents and perform services included within the scope of this rule.

2.28.

Licensed or Registered. 2.28.1. Person. Licensed or registered by the proper authority to follow a profession in the State of West Virginia. 2.28.2. Nursing home.

A nursing home licensed by the Department.

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Person. Licensed or registered by the proper authority to follow a profession in the State of West Virginia.

2.28.2.

Nursing home. A nursing home licensed by the Department.

2.29.

Licensee. A person, persons, or entity holding a license to operate a nursing home, who is responsible for compliance with all rules and minimum standards.

2.30.

Medicaid. The medical assistance program established pursuant to Title XIX of the Social Security Act.

2.31.

Medicare. The medical insurance program established pursuant to Title XVIII of the Social Security Act.

2.32.

Mental Abuse. Is a form of abuse that includes, but is not limited to, the following:

2.32.1. Harassing a resident; 2.32.2. Mocking, insulting, or ridiculing; 2.32.3. Yelling or hovering over a resident, with the intent to intimidate; 2.32.4. Threatening a resident, including, but not limited to, depriving a resident of care or withholding a resident from contact with family and friends; and 2.32.5. Isolating a resident from social interaction or activities.

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2.32.3.

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Threatening a resident, including, but not limited to, depriving a resident of care or withholding a resident from contact with family and friends; and

2.32.5.

Isolating a resident from social interaction or activities.

2.33.

Misappropriation of Resident Property. The deliberate misplacement; exploitation; or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent.

2.34.

Mistreatment. The inappropriate treatment or exploitation of a resident.

2.35.

Neglect. The failure of the facility, its employees, or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.

2.36.

Next of Kin. In descending order of priority; 2.36.1. The resident's spouse; 2.36.2. The resident's adult children; 2.36.3. The resident's parents; 2.36.4. The resident's adult siblings; 2.36.5. The resident's adult grandchildren; 2.36.6. The resident's close friends; and 2.36.7. Any other person or entity, including guardians, public officials, and private corporations and other persons or entities which the department may from time to time designate in rules promulgated pursuant to W. Va. Code §§ 29A-1-1, et seq.

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The resident's adult grandchildren;

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The resident's close friends; and

2.36.7.

Any other person or entity, including guardians, public officials, and private corporations and other persons or entities which the department may from time to time designate in rules promulgated pursuant to W. Va. Code §§ 29A-1-1, et seq.

2.37.

Noncompliance. Any deficient practice or nonconformity that causes a nursing home to not be in substantial compliance with this rule.

2.38.

Nourishing Snack. Two or more food items from the basic food groups plus a beverage of milk, juice or the resident's preference.

2.39.

Nursing Personnel. The director of nursing, the charge nurse, and all employees under the direct supervision of the director of nursing or charge nurse who attend to resident-oriented nursing functions, including registered professional nurses, licensed practical nurses, and nursing aides, but excluding employees engaged in

administration, dietetics, social services, activities staff, housekeeping, laundry, and maintenance.

2.40.

Office of Health Facility Licensure and Certification. The agency within the West Virginia Department of Health and Human Resources responsible for regulatory oversight of West Virginia nursing homes.

2.41.

Ombudsman. Any person or organization designated by the State Long-Term Care Ombudsman as part of the West Virginia Long-Term Care Ombudsman Program.

2.42.

Physical Restraint. Any manual method, physical, or mechanical device, equipment, or material that meets all of the following criteria: 2.42.1. Is attached or adjacent to the resident's body; 2.42.2. Cannot be removed easily by the resident; and 2.42.3. Restricts the resident's freedom of movement or normal access to his or her body. 2.42.4. As used in this definition, removed easily means the manual method, physical, or mechanical device, equipment, or material, can be removed intentionally by the resident in the same manner as it was applied by the staff.

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Is attached or adjacent to the resident's body;

2.42.2.

Cannot be removed easily by the resident; and

2.42.3.

Restricts the resident's freedom of movement or normal access to his or her body.

2.42.4.

As used in this definition, removed easily means the manual method, physical, or mechanical device, equipment, or material, can be removed intentionally by the resident

in the same manner as it was applied by the staff.

2.43.

Plan of Care. The overall profile of services and expected outcomes of care that may include those plans to meet the person's needs after discharge to the community. This includes all care and services outlined in the resident's medical record.

2.44.

Poor Performer. A nursing home which has repeat deficiencies that resulted in harm or greater whereby the nursing home cannot avoid an enforcement action by correction of the deficiency.

2.45.

Premises. A tract of land, together with all buildings, equipment, fixtures, and facilities erected, constructed, or situated on the land, and all rights, powers, easements, and rights-of-way, and all interests in property, real, personal, or mixed, now owned or hereafter acquired by a licensed person and appurtenant to or used in connection with the nursing home.

2.46.

Protection and Advocacy Network. The system established to protect and advocate the rights of persons with developmental disabilities specified in the Developmental Disabilities Assistance and Bill of Rights Act, and the protection and advocacy system established under the Protection and Advocacy for Mentally Ill Individuals Act.

2.47.

Qualified. The capacity of a person who is licensed, certified, or registered to perform a duty or a task in accordance with applicable State law and other accrediting bodies.

2.48.

Regulatory Deficiency. A set of directly related regulatory requirements.

2.49.

Repeat Deficiency. A deficiency that meets all of the following conditions: is cited on the current inspection; was cited on the previous inspection or any intervening inspection between the current inspection and the previous inspection; has had a plan of correction submitted for the previous inspection or any intervening inspection that was accepted by the director; and is cited based on the same regulatory grouping.

2.50.

Resident Council. A group of residents having the right to meet as a group and to express grievances in relation to the residents' well-being in general and to make recommendations concerning nursing home policies and procedures.

2.51.

Resident Resource Amount. The portion of a resident's income determined by the Department which a resident who receives Medicaid long-term care assistance contributes to the cost of care every month.

2.52.

Routine Dental Service. A service consisting of an annual inspection of the oral cavity for signs of disease, diagnosis of dental disease, dental radiographs as needed, dental cleaning, fillings, minor dental plate adjustments, smoothing of broken teeth, and limited prosthodontic procedures such as impressions of dentures and fitting of dentures.

2.53.

Sexual Abuse. Non-consensual sexual contact of any type with a resident. Sexual abuse includes, but is not limited to: 2.53.1. Unwanted intimate touching of any

kind; 2.53.2. All types of sexual assault or battery; 2.53.3. Forced observation of a sexual act of any kind; and 2.53.4. Taking sexually explicit photographs, audio or video recordings, or both of a resident or residents and maintaining, distributing, or both the same, including posting to social media. This includes, but is not limited to, nudity, fondling, intercourse, or any combination thereof involving a resident or residents.

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All types of sexual assault or battery;

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Taking sexually explicit photographs, audio or video recordings, or both of a resident or residents and maintaining, distributing, or both the same, including posting to social media. This includes, but is not limited to, nudity, fondling, intercourse, or any combination thereof involving a resident or residents.

2.54.

Staff. Any person or persons who perform personal services for the nursing home in exchange for monetary compensation where such personal services, including the results to be accomplished as well as the details and the means by which the results are accomplished, are controlled and directed by the nursing home, regardless of whether monetary compensation is effected through the nursing home's payroll system or the nursing home's accounts payable system.

2.55.

Standard Quality of Care. Substantial compliance with this rule.

2.56.

State Board of Review. A board within the Department designated by state law through which a resident may appeal a discharge or transfer from a nursing home.

2.57.

Transfer. Moving the resident from the nursing home to another legally responsible institutional setting.

2.58.

Treatment. Care provided for the purposes of maintaining and or restoring health, improving functional levels, or relieving symptoms.

2.59.

Verbal Abuse. A form of abuse, including, but not limited to, the use of oral, written, or gestured communication or sounds, to residents within hearing distance, regardless of age, ability to comprehend, or disability. Verbal abuse may be considered a form of mental abuse.