4.16. Freedom from Restraints and Abuse.

4.16.a. General. Each resident shall be free from mental and physical abuse, and free from chemical and physical restraints except when the restraint is authorized in writing by a physician for a specified and limited period of time, except under emergency circumstances.

4.16.a.1. The restraint is necessary to protect the resident from injury to himself or others; or 4.16.a.2. The restraint is used as a therapeutic intervention or enabler for specified periods of time to attain and maintain the resident’s highest practicable physical, mental or psychosocial well-being.

4.16.b. Restraints.

4.16.b.1. Assessments.

4.16.b.1.A. Before a resident is restrained, the nursing home shall conduct and document a comprehensive restraint assessment that includes:

4.16.b.1.A.1. Identifying the behaviors or clinical indications for why the resident may be a candidate for use of a restraint. The resident, and in the case of incapacity, the resident’s legal representative, shall be involved throughout this process, as well as appropriate disciplines, as indicated based on the resident’s needs;

4.16.b.1.A.2. Identifying the causal factors;

4.16.b.1.A.3. Identifying, assessing, and attempting restraint free interventions that are appropriate for the person; And

4.16.b.1.A.4. The following, if alternatives to restraints are not found to be practicable:

4.16.b.1.A.4.(a). A full explanation to the resident, and in the case of incapacity, the resident’s legal representative, of the reasons for using the restraint, the benefits and risks of the restraint, and the obtaining of written consent from the resident, and in the case of incapacity, the resident’s legal representative;

4.16.b.1.A.4.(b). Documentation that the use of the restraint will enhance the resident’s quality of life and functional abilities and is clinically beneficial; and 4.16.b. LAA.(c). An assessment of the resident to identify the least restrictive type of restraint that will provide for the resident’s needs.

4.16.b.2. Physician’s order.

4.16.b.2.A. After a comprehensive restraint assessment indicates the need for a restraint and the resident’s attending physician concurs, the resident’s attending physician
shall write an order to be included in the resident's plan of care specifying the type, precise application, circumstances and duration of the restraint.

4.16.b.3. The resident's plan of care shall include, at a minimum:

4.16.b.3.A. The type and size of restraint that is to be used;

4.16.b.3.B. When the restraint is to be used;

4.16.b.3.C. For physical restraints, a schedule of release time and what individualized activity is to be provided during that period of time; and

4.16.b.3.D. A systematic and gradual process to reduce the restraint or eliminate it, or both.

4.16.b.4. Application. Nursing home staff shall apply the physical restraints in accordance with the manufacturer's instructions and in a manner to allow for quick release.

4.16.b.5. Monitoring and release. Nursing home staff shall directly monitor a resident who has been restrained at least every half hour and shall be released from the restraint at least every two (2) hours and provided exercise, toileting, and skin care.

4.16.b.6. Policies and procedures. A nursing home shall establish and implement policies and procedures for restraint use.

4.16.b.7. Emergency.

4.16.b.7.A. In the case of an emergency, licensed nursing personnel authorized by the nursing home in writing may order the use of a physical restraint for a specified and limited period of time not to exceed twenty-four (24) hours until the resident's attending physician can be notified of the resident's condition requiring the emergency application.

4.16.b.7.B. Continued use is subject to the same evaluation process described in this Subdivision and shall be ordered by the resident's attending physician.

4.16.c. Abuse.

4.16.c.1. A resident has the right to be free from verbal, sexual, physical, and mental abuse, financial exploitation, discrimination, denial of privileges, corporal punishment and involuntary seclusion.

4.16.c.2. Staff treatment of residents.

4.16.c.2.A. The nursing home shall develop and implement written policies and procedures that prohibit neglect, abuse of residents, and misappropriation of resident property.

4.16.c.3. A nursing home shall not employ persons who have:

4.16.c.3.A. Been found guilty of abusing, neglecting, exploiting or mistreating residents, incapacitated adults or children by a court of law; or 4.16.c.3.B. Had a finding entered into the Certified Nursing Assistant Registry or the West Virginia Adult Abuse Registry concerning abuse, neglect, exploitation or mistreatment of residents or misappropriation of their property.
4.16.c.4. A nursing home shall report any knowledge it has of actions by a court of law against an employee, that would indicate unfitness for service as a nurse aide or other nursing home staff to the West Virginia Certified Nursing Assistant Registry or the appropriate licensing authority and the director.

4.16.c.4.A. Actions by a court of law which indicate unfitness for service include a substantiated charge of abuse, neglect or exploitation against an employee, or conviction of an offense for actions related to bodily injury, theft or misuse of funds or property, or other crimes related to public welfare, in any jurisdiction within or outside of the State of West Virginia.

4.16.c.5. A nursing home shall ensure that all alleged violations involving mistreatment, neglect, exploitation or abuse, including injuries of unknown source, and misappropriation of resident property are reported in accordance with State law.

4.16.c.6. A nursing home shall document that all alleged violations are thoroughly investigated and shall take appropriate steps to prevent further potential abuse while the investigation is in progress.

4.16.c.7. The results of all investigations shall be reported to the administrator or his or her designated representative and to other officials in accordance with State law, including the director within five (5) working days of the incident, and if the alleged violation is verified appropriate corrective action shall be taken.


4.17.a. A nursing home shall develop and implement written procedures for registering and responding to complaints by residents, their legal representatives and the public.

4.17.b. A nursing home shall designate an employee to be responsible for receiving complaints.

4.17.c. A nursing home shall establish a method to inform the administrator of all complaints.

4.17.d. A nursing home shall establish a process for investigation and assessment of the validity of all complaints.

4.17.e. A nursing home shall provide a mechanism to record all complaints received and any action taken on them and to communicate the findings or outcomes to the resident, or the resident’s legal representative, making the complaint.

4.17.1 A nursing home shall assure that careful consideration is given to each complaint even when it has been made by a person who often makes complaints having no valid basis.

4.17.g. A nursing home shall establish a program to assure that its personnel are familiar with complaint policies and procedures.

4.17.h. A nursing home shall establish a program to educate residents and their legal representatives about the nursing home’s complaint policies and procedures.

11.3. Criminal Background Checks.

11.3.a. A nursing home shall conduct a criminal conviction investigation on all applicants for employment.

11.3.b. If an applicant has been convicted of a misdemeanor or a felony offense constituting child abuse or neglect or abuse or neglect of an incapacitated adult, he or she may not be employed by a nursing home.

11.3.c. An applicant may also not be employed by the nursing home if he or she is under indictment for, or convicted of, in any court of a crime punishable by imprisonment for more than one year or is a fugitive from justice.


15.2. Complaint Investigation.

15.2.a. Any person may register a complaint with the director alleging violation of applicable statutes and rules by a nursing home.

15.2.a.1. The director shall document all complaints and shall identify the nursing home involved.

15.2.b. A complaint that the director determines is willfully intended to harass a nursing home or is without any reasonable basis shall not be investigated.

15.2.b.1. The director shall notify a complainant presenting a complaint determined either as intended to harass a nursing home or as without reasonable basis that no further investigation will be conducted.

15.2.c. The director shall conduct an unannounced inspection of the nursing home to determine the validity of the complaint.

15.2.c.1. The director shall provide the nursing home with general notice of the substance of the complaint only at the time of the inspection.

15.2.d. The director shall conduct other investigations necessary to determine the validity of the complaint.

15.2.e. No later that twenty (20) working days after investigating and completing a complaint, the director shall notify the complainant and the nursing home in writing of the results of the investigation.

15.2.e.1. A description of the corrective action the nursing home shall be required to take and of any disciplinary action to be taken by the director shall be sent to the complainant.

15.2.e.2. If a complaint has been found to be substantiated, the director shall advise any injured party of the possibility of a civil remedy under W. Va. Code §16-5C-1 et. seq.
15.2.f. The names of a complainant or of any person named in a complaint shall not be disclosed by the department without that person's written authorization.

15.2.f.1. If a complaint becomes the subject of a judicial proceeding, nothing in this section shall be construed to restrict disclosure of information that would otherwise be disclosed in a judicial proceeding.

15.2.g. Before any complaint is disclosed to a nursing home or the public pursuant to Subdivision 16.2.v of this rule, the nursing home shall redact any information in the complaint that could reasonably identify the complainant or a resident.

15.2.h. A nursing home is prohibited from discharging or in any manner discriminating against a resident or employee because the person, legal representative, next of kin or concerned party has filed a complaint or participated in a proceeding authorized by W. Va. Code §16-5C-1 et seq.

15.2.h.1. A rebuttable presumption of retaliatory action against a resident shall arise against any nursing home that adversely discriminates against a resident who submitted, or on whose behalf a complaint was submitted, to the director or who is involved in any proceeding instituted under W. Va. Code §16-5C-1 et seq., within one hundred and twenty (120) days of the filing of the complaint.

15.2.i. A nursing home shall make investigations of complaints involving immediate jeopardy to resident health or safety within twenty four (24) hours of the date of receipt of the complaint.

15.2.i.1. A nursing home shall make investigations of complaints involving harm that does not present immediate jeopardy, within ten (10) days of the date of the complaint.

15.2.i.2. A nursing home shall make investigations of complaints involving no harm, but with potential for greater than minimal harm, that are not immediate jeopardy, within forty-five (45) days of the date of the complaint.

15.2.i.3. A nursing home shall make investigations of complaints involving no harm with potential for minimal harm and all other complaints at the time of the next inspection.

15.2.j. If within one hundred twenty (120) days of an inspection or a complaint investigation, a nursing home fails to comply with the requirements of this rule, the director shall inform all residents of the nursing home’s non-compliance.

15.2.j.1. If the non-compliance results in an action against the license of the nursing home, the director shall notify residents of the time period during which residents may relocate if they wish prior to the deficient nursing home being reported to the Social Security Administration if the nursing home is certified under the Medicare or Medicaid programs.

15.2.j.2. The director shall provide all residents with a list of nursing homes and agencies to assist them in moving if they wish to relocate.

15.2.k. The director shall make copies and information concerning applications, inspections, investigations and other reports available for public inspection from the time of receipt of the plan of correction.
15.2.k.1. A nursing home shall make copies of all inspection reports available to the state long-term ombudsman, the local office of adult protective services, and the Social Security regional offices.

15.2.l. Within two hundred ten (210) days of an inspection or complaint investigation after which deficiencies are not timely corrected, the director shall send the name and address of the deficient nursing home to the appropriate regional office of the Social Security Administration and identify it as a deficient nursing home.

15.2.m. The director shall provide the State long-term care ombudsman with the following within ninety (90) days: 15.2.m.1. A statement of deficiencies reflecting nursing home noncompliance;

15.2.m.2. Reports of adverse actions imposed on a nursing home; and

15.2.m.3. The date and time of any inspection.

§64-85-7. Behavior Management. [ALZHEIMER'S/DEMENTIA SPECIAL CARE UNITS AND PROGRAMS]

7.1. The alzheimer's/dementia special care unit or program shall conduct and document an ongoing evaluation of any resident with behaviors, which are persistent and constitute sources of distress or dysfunction to the resident, or present a danger to the resident or other individuals. The evaluation shall determine the following:

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

7.1.b. Antecedent behaviors and activities;

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

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

7.1.e. The resident's medical status;

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

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

7.1.h. The effectiveness of behavioral management approaches.

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

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

7.3.a. Have that medication administered in a dose based on the age recommendations of the individual;
7.3.b. Have a diagnosed and documented condition justifying the use of the medication;
7.3.c. Receive daily monitoring for any side effects or adverse reaction to the medication;
7.3.d. Have adverse findings reported to the resident’s physician immediately; and
7.3.e. Have periodic dose reductions in the medication in an attempt to discontinue the medication unless the physician has determined that a dose reduction is contraindicated, based on the resident’s condition.

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

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