

requirements shall be addressed to the appropriate authorities.

1.8. Enforcement. -- This rule is enforced by the secretary of the Department of Health and Human Resources or his or her lawful designee.

'64-13-2. Definitions.

2.1. 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.

2.2. 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.

2.3. Annual Inspection. -- For the purpose of this rule, annual inspection is defined as occurring during a time frame of nine (9) to fifteen (15) months.

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

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

2.6. Capacity to make decisions. -- A person who 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.

2.7. 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.

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

2.9. 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.

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

2.11. Deemed Status. -- Special consideration granted to a nursing home that receives accreditation from an accrediting organization whereby an accreditation report may be used in place of an annual licensing inspection by the State if the standards of the accrediting organization recognized by HCFA are comparable to the Medicare standards.

2.12. Deficiency. -- An entry made on the West Virginia Department of Health and Human Resources STATE FORM that describes the specific requirements of the rule with which the nursing home failed to comply, an explicit statement that the requirement was not met, and the evidence to support the decision of noncompliance.

64CSR13

2.13. Department. -- West Virginia Department of Health and Human Resources.

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. 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.

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

2.17. 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.

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

2.19. 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.

2.20. Immediate Jeopardy. -- A situation in which the nursing home=s noncompliance with one or more requirements of this rule has caused, or is likely to cause, serious injury, harm, impairment, or death of a resident.

2.21. 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.

2.22. Institutional Setting.-- Any health care facility.

2.23. Legal Representative.-- ¹ 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; namely one of the following most appropriate to the decision to be made. Legal representatives include:

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

¹Nursing home administrators should note that various types of legal representatives do 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.

64CSR13

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

2.23.c. A person appointed as committee or guardian prior to June 9, 1994, within limits set by the appointing order and W. Va. Code ' 44A-1-2-(d);

2.23.d. 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;

2.23.e. 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;

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

2.23.g. A person having a durable power of attorney pursuant to W. Va. Code ' 39-4-1, a power of attorney under common law, within the limits of the appointment;

2.23.h. 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;

2.23.i. A parent or guardian of a minor; or

2.23.j. 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.

2.24. 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.

2.25. Licensed or Registered.

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

2.25.b. Nursing home. -- A nursing home licensed by the Department.

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

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

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

2.29. Next of Kin. -- In descending order of priority;

2.29.a. The resident=s spouse;

2.29.b. The resident=s adult children;

2.29.c. The resident=s parents;

2.29.d. The resident=s adult siblings;

2.29.e. The resident=s adult grandchildren;

2.29.f. The resident=s close friends; and

2.29.g. 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 chapter twenty-nine of the West Virginia Code.

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

2.31. Nourishing Snack. -- Two (2) or more food items from the basic food groups plus a beverage of milk, juice or the resident=s preference.

2.32. Nursing Home. -- Any institution, or any part or unit of an institution, however named, in West Virginia, which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four hours, for four or more persons who are ill or otherwise incapacitated and in need of nursing care due to physical or mental impairment, or which provides services for the rehabilitation of persons who are convalescing from an illness or incapacitation.

2.33. 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.

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

2.35. 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.

2.36. 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.

2.37. 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.

2.38. The 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.

2.39. 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.

2.40. Regulatory Grouping. -- A set of directly-related regulatory requirements.

2.41. Repeat Deficiency. -- A deficiency that: 1) is cited on the current inspection and, 2) was cited on the previous inspection or any intervening inspection between the current inspection and the previous inspection and, 3) has had a plan of correction submitted for the previous inspection or any intervening inspection that was accepted by the director and, 4) is cited based on the same regulatory grouping.

2.42. 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.

2.43. Restraint. -- Any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident=s body that the person cannot remove at will and which restricts freedom from movement or normal access to one=s body, or any drug used to limit movement by a resident or to limit mental capacity of a resident beyond the requirements of therapeutic treatment.

2.44. 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.

2.45. Secretary. -- The Secretary of the Department of Health and Human Resources.

2.46. State Board of Review.-- A board designated by State law through which a resident may appeal a discharge from a nursing home.

2.47. Standard Quality of Care. -- Substantial compliance with this rule.

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

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

'64-13-3. State Administrative Procedures.

3.1. General Licensure Provisions.

3.1.a. 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.b. 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.c. Separate buildings on the same premises, operated under the same ownership and management, are one (1) nursing home unless the director determines otherwise.