

**TITLE 64
LEGISLATIVE RULES
WEST VIRGINIA DIVISION OF HEALTH**

**SERIES 13
NURSING HOME LICENSURE RULE**

'64-13-1. General Provisions.

1.1. Scope. -- It is the purpose of this rule to implement state and federal law governing the licensing, operation, and standard of care in nursing homes located in the State of West Virginia. Compliance with this rule will help each resident attain or maintain the highest practicable physical, mental and psychosocial well-being in accordance with a comprehensive assessment and plan of care and prevailing standards of care, and will promote a standard of care that assures that the ability of each resident to perform activities of daily living does not diminish unless the resident's ability is diminished solely as a result of a change in the resident's clinical condition.

1.2. Authority. -- W. Va. Code ' ' 16-1-4 and 16-5C-5.

1.3. Filing Date. -- May 10, 2001.

1.4. Effective Date. -- July 1, 2001.

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces ANursing Home Licensure Rule@ W. Va. 64CSR13, effective August 1, 1997.

1.6. Application. -- This rule applies to nursing home residents and their legal representatives as well as every individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of the state that operates or applies to operate a nursing home as defined in this rule and W. Va. ' 16-5C-2(c).

1.7. Variances From This Rule.

1.7.a. The department may grant a variance from any provision of this rule if it determines that:

1.7.a.1. Strict compliance would impose a substantial hardship on the licensee;

1.7.a.2. The licensee will otherwise meet the goal of the rule; and

1.7.a.3. A variance will not result in less protection of the health, safety and welfare of the residents.

1.7.b. A variance shall not be granted from a provision pertaining to residents' rights.

1.7.b.1. Separate federal variance procedures may apply for provisions of this rule and are contained in the federal nursing home regulations.

1.7.b.2. Requests for variances from West Virginia fire safety and building construction

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.