

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1969



ENROLLED

Com. Sub. for

HOUSE BILL No. 839

(By ~~Mr.~~ *Originating in the Committee*
on the Judiciary)



PASSED March 8, 1969

In Effect thirty days from Passage



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 3-12-69

839

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 839
(Originating in the Committee on the Judiciary)

[Passed March 8, 1969; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and four, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said chapter by adding thereto a new article, designated five-d, all relating to nursing homes and nursing home administrators; definitions; powers, duties and rights of the West Virginia nursing home licensing board; the license of nursing home administrators; qualifications for licenses; procedures; provisional licenses; emergency permits; judicial review; the nursing home administrators advisory council, its members, powers, duties and procedures; and severability.

Be it enacted by the Legislature of West Virginia:

That sections two and four, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that said chapter be further amended by adding thereto a new article, designated five-d, all to read as follows:

ARTICLE 5C. NURSING HOMES AND SIMILAR INSTITUTIONS.

§16-5C-2. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context:

3 (a) The term "nursing home" means and shall be
4 construed to include any building, structure, agency,
5 institution, or other place, for the reception, accommoda-
6 tion, board, care or treatment of not less than twenty-
7 four hours in any week in which an accommodation of
8 three or more beds is maintained, furnished or offered
9 for patients or individuals, who are unable sufficiently
10 or properly to care for themselves, and for which recep-
11 tion, accommodation, board, care or treatment a charge
12 is made: *Provided*, That the reception, accommodation,
13 board, care or treatment in a household or family, for

14 compensation, of a person or persons related by blood
 15 or marriage to the head of such household or family,
 16 or to his or her spouse or family, within the degree of
 17 consanguinity of first cousins, shall not be deemed to
 18 be a nursing home. The term "nursing home" shall
 19 include, but not be limited to, homes for the aged, con-
 20 valescent homes, and extended care facilities not operated
 21 in connection with a hospital. The term "nursing home"
 22 shall not include institutions operated by the federal or
 23 state governments, or institutions for the treatment and
 24 care of psychiatric or alcoholic patients, boarding homes
 25 for children, day nurseries, child-care institutions, chil-
 26 dren's homes and child-placing agencies, as defined under
 27 the laws of this state, nor hotels or offices of physicians.

28 (b) The term "person" means any individual, firm,
 29 partnership, corporation, company, association, or joint-
 30 stock association and the legal successor thereof.

31 (c) The term "board" shall mean the West Virginia
 32 nursing home licensing board as herein created.

33 (d) The term "aged" relates to any individual who
 34 has attained the age of sixty-five years.

§16-5C-4. Powers, duties and rights of board.

1 In the administration of this article, the board shall
2 have the following powers, duties and rights:

3 (a) To adopt, promulgate, amend, modify and enforce
4 regulations and standards for nursing homes.

5 (b) To exercise as sole authority all powers relating
6 to the issuance, suspension and revocation of licenses of
7 nursing homes.

8 (c) To adopt, promulgate, amend and modify rules
9 and regulations governing the qualifications of ap-
10 plicants for nursing home licenses including but not
11 limited to educational requirements, financial re-
12 quirements, moral, personal and ethical require-
13 ments.

14 (d) To adopt, promulgate, amend and modify such
15 other reasonable rules and regulations to carry out the
16 intent and purpose of this article.

17 (e) To receive and disburse funds from appropria-
18 tions made by the Congress of the United States and
19 to take whatever action not contrary to law as may be

20 proper and necessary to comply with the requirements
21 and conditions for the receipt of such federal funds.

22 (f) To receive and disburse for authorized purposes
23 any moneys appropriated to it by the Legislature.

24 (g) To receive and disburse for purposes authorized
25 by this article, any funds that may come into its hands
26 by gift, grant, donation, bequest or devise, according to
27 the terms thereof, as well as funds derived from its own
28 operation, or otherwise.

29 (h) To make contracts, and to execute all instru-
30 ments necessary or convenient in carrying out its func-
31 tions and duties; and all such contracts, agreements and
32 instruments shall be executed by the chairman of the
33 board on and in behalf of the board.

34 (i) To appoint officers, agents, employees and other
35 personnel and fix their compensation.

36 (j) To offer and sponsor educational and training pro-
37 grams for nursing home administrative, management
38 and operational personnel.

39 (k) To undertake survey, research and planning pro-
40 jects and programs relating to administration and oper-

41 ation of nursing homes, and to the health, care, treat-
42 ment and service in general of patients of such homes.

43 In addition, the board may classify nursing homes into
44 care categories such as homes for the aged, convalescent
45 homes, and extended care facilities not operated by hos-
46 pitals, and other comparable categories under the terms
47 of this article, if, in the opinion of the board, the best
48 interest of the public is served by so doing. Such classi-
49 fication shall be by rules and regulations duly promul-
50 gated and adopted in accordance with the requirements
51 hereinafter set out.

ARTICLE 5D. NURSING HOME ADMINISTRATORS.

§16-5D-1. Definitions.

1 As used in this article, unless a different meaning ap-
2 pears from the context:

3 (1) The term "nursing home" means a nursing home
4 (as that term is defined in subdivision (a), section two,
5 article five-c of this chapter) which offers professional
6 or a skilled nursing care, but shall not include personal
7 care homes, rest homes and homes for the aged.

8 (2) The term "nursing home administrator" means an

9 individual responsible for planning, organizing, directing
10 and controlling a nursing home, or who in fact performs
11 such functions, whether or not such individual has an
12 ownership interest in the nursing home and whether or
13 not such functions are shared with one or more other
14 persons.

15 (3) The word "board" shall mean the West Virginia
16 nursing home licensing board created by section three,
17 article five-c of this chapter.

18 (4) The word "person" shall mean any individual,
19 firm, partnership, corporation or association.

20 (5) The word "council" shall mean the state nursing
21 home advisory council created by section eleven of this
22 article.

§16-5D-2. Administrators license required.

1 On and after July one, one thousand nine hundred
2 sixty-nine, no person shall be or act as a nursing home
3 administrator, except as provided in section nine hereof,
4 unless he is a holder of a currently valid license or pro-
5 visional license issued pursuant to this article.

§16-5D-3. Qualifications for license; exceptions; application; fees.

1 (a) To be eligible for a license as a nursing home
2 administrator a person must

3 (1) Be of good moral character;

4 (2) Possess such qualifications and meet such reason-
5 able standards as the board may prescribe pursuant to
6 subdivision (a), section seven of this article;

7 (3) Pass the examination prescribed by the board in
8 the subject of nursing home administration; and

9 (4) Have sufficient knowledge and soundness of judg-
10 ment to be able to adequately discharge the functions of
11 a nursing home administrator.

12 (b) Any person who holds a license or certificate as a
13 nursing home administrator issued by any other state,
14 the requirements for which license or certificate are
15 found by the board to be at least as great as those pro-
16 vided in this article may be granted a license without ex-
17 amination if he meets all of the other requirements for
18 licensing in this state.

19 (c) Any applicant for any such license shall submit
20 an application therefor at such time, in such manner,

21 on such forms and containing such information as the
 22 board may from time to time by reasonable rule and
 23 regulation prescribe, and pay to the board a license fee of
 24 one hundred dollars, which fee shall be returned to the
 25 applicant if he is denied a license.

**§16-5D-4. Issuance of license; renewal of license; renewal fee;
 display of license.**

1 Whenever the board finds that an applicant meets all
 2 of the requirements of this article for a license as a
 3 nursing home administrator, it shall forthwith issue to
 4 him such license; and otherwise the board shall deny the
 5 same. The license shall be valid for a period ending on
 6 June thirty next ensuing and may be renewed without
 7 examination upon application for renewal on a form
 8 prescribed by the board and payment to the board of a
 9 renewal fee of fifty dollars: *Provided*, That the board may
 10 deny an application for renewal for any reason which
 11 would justify the denial of an original application for a
 12 license. The board shall prescribe the form of licenses and
 13 each such license shall be conspicuously displayed by the
 14 licensee at the nursing home which he administers.

§16-5D-5. Provisional license.

1 Persons actively engaged as nursing home administra-
2 tors prior to June thirty, one thousand nine hundred
3 sixty-nine, and who fail to meet any of the requirements
4 of subdivision (2) or (3), subsection (a), section three
5 of this article may nevertheless be issued a provisional
6 license as a nursing home administrator if application
7 is made therefor prior to July one, one thousand nine
8 hundred sixty-nine. No provisional license shall be re-
9 newed after July one, one thousand nine hundred seven-
10 ty-two.

§16-5D-6. Emergency permit.

1 If a licensed nursing home administrator dies or is
2 unable to continue as such for an unexpected cause, the
3 owner, governing body or other appropriate authority
4 in charge of the nursing home involved may designate
5 an acting administrator to whom the board may im-
6 mediately issue an emergency permit if it finds such
7 appointment will not endanger the safety of the occu-
8 pants of such nursing home. Such emergency permit
9 shall be valid for a period determined by the board not

10 to exceed six months and shall not be renewed. The
11 fee for an emergency permit shall be fifty dollars.

§16-5D-7. Powers and duties of the board.

1 (a) The board shall:

2 (1) Examine applicants and determine their
3 eligibility for a license or emergency permit as a nursing
4 home administrator;

5 (2) Prepare, conduct and grade an apt and
6 proper examination of applicants for a license and deter-
7 mine the satisfactory passing score thereon;

8 (3) Promulgate reasonable rules and regula-
9 tions implementing the provisions of this article and the
10 powers and duties conferred upon the board hereby, all
11 of which reasonable rules and regulations shall be
12 promulgated in accordance with the provisions of article
13 three, chapter twenty-nine-a of this code;

14 (4) Issue, renew, deny, suspend or revoke
15 licenses and emergency permits in accordance with the
16 provisions of this article and, in accordance with the
17 administrative procedures hereinafter provided, may re-

18 view, affirm, reverse, vacate or modify its order with
19 respect to any such denial, suspension or revocation;

20 (5) Develop, impose and enforce standards
21 which must be met by individuals in order to receive
22 a license as a nursing home administrator, which stan-
23 dards shall be designed to insure that nursing home
24 administrators will be individuals who are of good char-
25 acter and are otherwise suitable, and who, by training or
26 experience in the field of institutional administration,
27 are qualified to serve as nursing home administrators;

28 (6) Employ, direct, discharge and define the
29 duties of personnel necessary to effectuate the provisions
30 of this article;

31 (7) Keep accurate and complete records of its
32 proceedings, certify the same as may be appropriate,
33 and prepare, from time to time, a list showing the names
34 and addresses of all licensees;

35 (8) Approve courses of study or training in the
36 field of nursing home administration as sufficient to meet
37 education and training requirements for nursing home
38 administrators established by this article;

39 (9) Conduct a course of study or training of
40 the type referred to in subdivision (8) of this subsection
41 if such courses are not otherwise reasonably available
42 to residents of this state; and

43 (10) Take such other action as may be reason-
44 ably necessary or appropriate to effectuate the provisions
45 of this article.

46 (b) All moneys paid to the board shall be accepted
47 by a person designated by the board and deposited by
48 him with the treasurer of the state and credited to an
49 account to be known as the "West Virginia nursing
50 home licensing board fund". All of the reimbursement
51 of all reasonable and necessary expenses actually incurred
52 by members and all other costs and expenses incurred
53 by the board in the administration of this article shall
54 be paid from such fund.

**§16-5D-8. Suspension or revocation of license or emergency
permit.**

1 (a) The board may at any time upon its own motion
2 and shall upon the verified written complaint of any
3 person, conduct an investigation to determine whether
4 there are any grounds for the suspension or revocation

5 of a license or emergency permit issued under the pro-
6 visions of this article.

7 (b) The board shall suspend or revoke any license
8 or emergency permit when it finds the holder thereof has:

9 (1) Obtained a license or emergency permit by
10 means of fraud or deceit; or

11 (2) Failed or refused to comply with the pro-
12 visions of this article, article five-c of this chapter, or
13 any reasonable rule and regulation promulgated by the
14 board or any order or final decision of the board.

15 (c) The board shall also suspend or revoke any license
16 or emergency permit if it finds the existence of any
17 ground which would justify the denial of an application
18 for such license or permit if application were then being
19 made for it.

§16-5D-9. Procedures for hearing.

1 (a) Whenever the board shall deny an application for
2 any original or renewal license or deny an application for
3 an emergency permit or shall suspend or revoke any
4 license or emergency permit, it shall make and enter an
5 order to that effect and serve a copy thereof on the ap-

6 plicant or licensee, as the case may be, by certified mail,
7 return receipt requested. Such order shall state the
8 grounds for the action taken and shall require that any
9 license or emergency permit suspended or revoked there-
10 by shall be returned to the board by the holder within
11 twenty days after receipt of said order.

12 (b) Any person adversely affected by any such order
13 shall be entitled to a hearing thereon(as to all issues
14 not excluded from the definition of a "contested case"
15 set forth in article one, chapter twenty-nine-a of this
16 code) if, within twenty days after receipt of a copy
17 thereof, he files with the board a written demand for such
18 hearing. A demand for hearing shall operate automati-
19 cally to stay or suspend the execution of any order sus-
20 pending or revoking a license or emergency permit or
21 denying an application for a renewal license. The board
22 may require the person demanding such hearing to give
23 reasonable security for the costs thereof and if such per-
24 son does not substantially prevail at such hearing such
25 costs shall be assessed against him and may be collected
26 by an action at law or other proper remedy.

27 (c) Upon receipt of a written demand for such hearing,
28 the board shall set a time and place therefor not less than
29 ten and not more than thirty days thereafter. Any
30 scheduled hearing may be continued by the board upon
31 its own motion or for good cause shown by the person
32 demanding the hearing.

33 (d) All of the pertinent provisions of article five,
34 chapter twenty-nine-a of this code shall apply to and
35 govern the hearing and the administrative procedures in
36 connection with and following such hearing, with like
37 effect as if the provisions of said article five were set
38 forth in this subsection.

39 (e) Any such hearing shall be conducted by a quorum
40 of the board. For the purpose of conducting any such
41 hearing any member of the board shall have the power
42 and authority to issue subpoenas and subpoenas duces
43 tecum which shall be issued and served within the time,
44 for the fees and shall be enforced, as specified in section
45 one, article five of said chapter twenty-nine-a.

46 (f) At any such hearing the person who demanded the
47 same may represent himself or be represented by an

48 attorney at law admitted to practice before any circuit
49 court of this state. Upon request by the board, it shall
50 be represented at any such hearing by the attorney gen-
51 eral or his assistants without additional compensation.

52 (g) After any such hearing and consideration of all of
53 the testimony, evidence and record in the case, the board
54 shall render its decision in writing. The written decision
55 of the board shall be accompanied by findings of fact and
56 conclusions of law as specified in section three, article
57 five, chapter twenty-nine-a of this code, and a copy of
58 such decision and accompanying findings and conclusions
59 shall be served by certified mail, return receipt requested,
60 upon the person demanding such hearing, and his attorney
61 of record, if any.

62 (h) The decision of the board shall be final unless
63 reversed, vacated or modified upon judicial review thereof
64 in accordance with the provisions of section ten of this
65 article.

**§16-5D-10. Judicial review; appeal to supreme court of appeals;
legal representation for board.**

1 Any person adversely affected by a decision of the
2 board rendered after a hearing held in accordance with

3 the provisions of section nine of this article shall be
4 entitled to judicial review thereof. All of the pertinent
5 provisions of section four, article five, chapter twenty-
6 nine-a of this code shall apply to and govern such judicial
7 review with like effect as if the provisions of said section
8 four were set forth in this section.

9 The judgment of the circuit court shall be final unless
10 reversed, vacated or modified on appeal to the supreme
11 court of appeals in accordance with the provisions of
12 section one, article six, chapter twenty-nine-a of this
13 code.

14 Legal counsel and services for the board in all appeal
15 proceedings in any circuit court and the supreme court
16 of appeals shall be provided by the attorney general
17 or his assistants and in any circuit court by the prose-
18 cuting attorney of the county as well, all without addi-
19 tional compensation.

**§16-5D-11. Creation of state nursing home administrators ad-
visory council; members, terms, meetings, offi-
cers; general provisions; powers and duties.**

1 (a) There is hereby created the state nursing home
2 administrators advisory council which shall be composed

3 of five members appointed by the governor of which
4 members, three shall be nursing home administrators,
5 one shall be a hospital administrator and one shall be
6 the chairman of the board.

7 (b) The members of the council, other than the
8 chairman of the board (who shall serve for the term
9 of his office) shall be appointed for overlapping terms
10 of four years each and until their respective successors
11 have been appointed and qualified, except that the
12 original appointments shall be for terms of four, three,
13 two and one year respectively. Vacancies shall be filled
14 by appointment by the governor for the unexpired term
15 of the member whose office shall be vacant and such
16 appointment shall be made within sixty days of the
17 occurrence of such vacancy.

18 (c) The council shall elect annually from its mem-
19 bers, a chairman and vice-chairman. Meetings may be
20 held as frequently as its business may require, at the
21 call of the chairman upon the request of a majority of
22 members of the council, or as requested by the chairman
23 of the board. A quorum of the council shall consist
24 of not less than three members.

25 (d) Members of the council shall receive no compen-
26 sation, but each shall be entitled to receive his reasonable
27 and necessary expenses actually incurred in the perform-
28 ance of his duties, such expenses to be paid from the
29 special fund provided for in subsection (b), section seven
30 of this article.

31 (e) The board may request the council, and upon
32 such request, the council shall, or upon its own initiative
33 the council may:

34 (1) Consider any matters relating to the practice
35 of nursing home administration including any matter
36 pertaining to the administration and enforcement of this
37 article and advise the board thereon;

38 (2) Recommend the enactment or amendment
39 of laws as may be deemed necessary in respect to the
40 practice of nursing home administration;

41 (3) Recommend to the board the promulgation
42 of rules and regulations, not inconsistent with law, as
43 may be deemed necessary, and the amendment or repeal
44 thereof; and

45 (4) Recommend to the board the commencement
46 of an investigation into improper practices of licensees.

§16-5D-12. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held unconsti-
3 tutional or invalid, such unconstitutionality or invalidity
4 shall not affect other provisions or applications of the
5 article, and to this end the provisions of this article are
6 declared to be severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompkins
Chairman Senate Committee

Clayton C. Roush
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Harmon Murray
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Leah B. Jackson
President of the Senate

Don F. Bump
Speaker House of Delegates

The within approved this the 14th
day of March, 1969.

Archibald Shaw Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/13/69

Time 3:15 p.m.