WEST VIRGINIA CODE CHAPTER 16B ARTICLE 5

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§16B-5-1. Purpose.

(a) It is the policy of this state to encourage and promote the development and utilization of resources to ensure the effective care and treatment of persons who are dependent upon the services of others by reason of physical or mental impairment who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice. Such care and treatment requires a living environment for such persons which, to the extent practicable, will approximate a normal home environment. To this end, the guiding principle for administration of the laws of the state is that such persons shall be encouraged and assisted in securing necessary care and treatment in noninstitutional surroundings.

(b) In recognition that for many such persons effective care and treatment can only be secured from proprietary, voluntary and governmental assisted living residences, it is the policy of this state to encourage, promote and require the maintenance of assisted living residences so as to ensure protection of the rights and dignity of those using the services of assisted living residences.

(c) The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

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§16B-5-2. Definitions.

(a) As used in this article, unless a different meaning appears from the context:

"Assisted living residence" means any living facility, residence, or place of accommodation, however named, available for four or more residents, in this state 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 having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited and intermittent nursing care: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute an assisted living residence within the meaning of this article. Nothing contained in this article applies to hospitals, as defined under §16B-3-1 of this code; or state institutions, as defined under §27-1-6 of this code; or residential care homes operated by the federal government or the state; or institutions operated for the treatment and care of alcoholic patients; or offices of physicians; or hotels, boarding homes, or other similar places that furnish to their guests only room and board; or to homes or asylums operated by fraternal orders pursuant to §35-3-1 et seq. of this code;

"Deficiency" means a statement of the rule and the fact that compliance has not been established and the reasons therefor;

"Director" means the Director of the Office of Health Facility Licensure and Certification within the Office of the Inspector General.

"Division" means the Office of Health Facility Licensure and Certification within the Office of the Inspector General;

"Inspector General" means the Inspector General of the Office of Inspector General as described in §16B-2-1 of this code, or his or her designee.

"Limited and intermittent nursing care" means direct hands-on nursing care of an individual who needs no more than two hours of nursing care per day for a period of time no longer than 90 consecutive days per episode: Provided, That such time limitations shall not apply to an individual who, after having established a residence in an assisted living residence, subsequently qualifies for and receives services coordinated by a licensed hospice and such time limitations shall not apply to home health services provided by a Medicare-certified home health agency. Limited and intermittent nursing care may only be provided by or under the supervision of a registered professional nurse and in accordance with rules proposed by the Inspector General for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code;

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"Nursing care" means those procedures commonly employed in providing for the physical, emotional, and rehabilitational needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: Irrigations, catheterization, special procedures contributing to rehabilitation, and administration of medication by any method which involves a level of complexity and skill in administration not possessed by the untrained person;

"Office of Health Facility Licensure and Certification" means the West Virginia Office of Health Facility Licensure and Certification within the Office of the Inspector General.

"Person" means an individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association, or political subdivision of the state;

"Personal assistance" means personal services, including, but not limited to, the following: Help in walking, bathing, dressing, feeding, or getting in or out of bed, or supervision required because of the age or mental impairment of the resident;

"Resident" means an individual living in an assisted living residence for the purpose of receiving personal assistance or limited and intermittent nursing services;

"Substantial compliance" means a level of compliance with the rules such that identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

(b) The Inspector General may define in rules any term used herein which is not expressly defined.

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§16B-5-3. Powers, duties, and rights of Inspector General.

In the administration of this article, the Inspector General has the following powers, duties, and rights:

(a) To enforce rules and standards for assisted living residences which are adopted, promulgated, amended, or modified by the Inspector General;

(b) To exercise as sole authority all powers relating to the issuance, suspension, and revocation of licenses of assisted living residences;

(c) To enforce rules adopted, promulgated, amended, or modified by the Inspector General governing the qualification of applicants for assisted living residences, including, but not limited to, educational requirements, financial requirements, personal, and ethical requirements;

(d) To receive and disburse federal funds and to take whatever action not contrary to law as may be proper and necessary to comply with the requirements and conditions for the receipt of federal funds;

(e) To receive and disburse for authorized purposes any moneys appropriated for the division by the Legislature;

(f) To receive and disburse for purposes authorized by this article, any funds that may come to the division by gift, grant, donation, bequest, or devise, according to the terms thereof, as well as funds derived from the division's operation or otherwise;

(g) To make contracts and to execute all instruments necessary or convenient in carrying out the director's functions and duties; and all such contracts, agreements, and instruments will be executed by the Inspector General;

(h) To appoint officers, agents, employees, and other personnel and fix their compensation;

(i) To offer and sponsor educational and training programs for assisted living residences' administrative, management, and operational personnel;

(j) To undertake survey, research and planning projects, and programs relating to administration and operation of assisted living residences and to the health, care, treatment, and service in general of residents of assisted living residences;

(k) To assess civil penalties for violations of assisted living residence standards in accordance with §16B-5-10 of this code;

(l) To inspect any assisted living residence and any records maintained therein subject to the provisions of §16B-5-9 and §16B-5-10 of this code;

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(m) To establish and implement procedures, including informal conferences, investigations and hearings, subject to applicable provisions of §29A-3-1 *et seq*. of this code, and to enforce compliance with the provisions of this article and with rules issued hereunder by the Inspector General;

(n) To subpoena witnesses and documents, administer oaths and affirmations, and to examine witnesses under oath for the conduct of any investigation or hearing. Upon failure of a person without lawful excuse to obey a subpoena to give testimony, and upon reasonable notice to all persons affected thereby, the director may apply to the circuit court of the county in which the hearing is to be held or to the Circuit Court of Kanawha County for an order compelling compliance;

(o) To make complaint or cause proceedings to be instituted against any person for the violation of the provisions of this article or of rules issued hereunder by the Inspector General. Such action may be taken by the Inspector General without the sanction of the prosecuting attorney of the county in which proceedings are instituted if the prosecuting attorney fails or refuses to discharge his or her duty. The Circuit Court of Kanawha County or the circuit court of the county in which the conduct has occurred shall have jurisdiction in all civil enforcement actions brought under this article and may order equitable relief without bond. In no such case may the Inspector General or any person acting under the Inspector General’s direction be required to give security for costs;

(p) To delegate authority to the Inspector General's employees and agents to perform all functions of the Inspector General; and

(q) To make available to the Governor, the Legislature, and the public at all times online access through the Office of Health Facility Licensure and Certification website the following information. The online information will describe the assisted living residence licensing and investigatory activities of the division. The online information will include a list of all assisted living residences in the state and such of the following information as the director determines to apply: Whether the assisted living residences are proprietary or nonproprietary; the classification of each assisted living residence; the name of the administrator or administrators; the total number of beds; license type; license number; license expiration date; health investigations information and reports; life safety investigations information and reports; and whether or not those assisted living residences listed accept Medicare and Medicaid residents.

(r) The Inspector General designates the director of the Office of Health Facility Licensure and Certification to enforce the provisions of this article, except there otherwise stated.

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§16B-5-4. Administrative and inspection staff.

The director may, as he or she determines necessary, employ administrative employees, inspectors, or other persons as may be necessary to properly carry out the provisions of this article. All employees of the division will be members of the state civil service system. Inspectors and other employees as may be duly designated by the director will act as the director's representatives and, under the direction of the director, will enforce the provisions of this article and all duly promulgated rules of the director and, in the discharge of official duties, will have the right of entry into any place maintained as an assisted living residence at any time.

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§16B-5-5. Rules; minimum standards for assisted living residences.

(a) The Inspector General will propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to carry out the purposes and intent of this article and to enable the Inspector General to exercise the powers and perform the duties conferred upon the director by this article.

(b) The Inspector General will propose rules establishing minimum standards of operation of assisted living residences, including, but not limited to, the following:

(1) Administrative policies, including:

(A) An affirmative statement of the right of access to assisted living residences by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy;

(B) A statement of the rights and responsibilities of residents;

(C) The process to be followed by applicants seeking a license;

(D) The clinical, medical, resident, and business records to be kept by the assisted living residence;

(E) The procedures for inspections and for the review of utilization and quality of resident care; and

(F) The procedures for informal dispute resolution and administrative due process and when such remedies are available.

(2) Minimum numbers and qualifications of personnel, including management, medical and nursing, aides, orderlies, and support personnel, according to the size and classification of the assisted living residence;

(3) Safety requirements;

(4) Sanitation requirements;

(5) Protective and personal services to be provided;

(6) Dietary services to be provided;

(7) Maintenance of health records;

(8) Social and recreational activities to be made available;

(9) Physical facilities;

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(10) Requirements related to provision of limited and intermittent nursing;

(11) Visitation privileges governing access to a resident by immediate family or other relatives of the resident and by other persons who are visiting with the consent of the resident; and

(12) Such other categories as the Inspector General determines to be appropriate to ensure resident's health, safety, and welfare.

(c) The Inspector General will include in rules detailed standards for each of the categories of standards established pursuant to §16B-5-5(b) and §16B-5-5(d) of this code and will classify such standards as follows:

(1) Class I standards are standards the violation of which, as the Inspector General determines, would present either an imminent danger to the health, safety, or welfare of any resident or a substantial probability that death or serious physical harm would result;

(2) Class II standards are standards which the Inspector General determines have a direct or immediate relationship to the health, safety, or welfare of any resident, but which do not create imminent danger;

(3) Class III standards are standards which the Inspector General determines have an indirect or a potential impact on the health, safety, or welfare of any resident.

(d) An assisted living residence shall attain substantial compliance with standards established pursuant to this section and such other requirements for a license as may be established by rule under this article.

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§16B-5-6. License required; application; fees; duration; renewal.

(a) There shall be one assisted living residence license for each assisted living residence. No person may establish, operate, maintain, offer, or advertise an assisted living residence within this state unless and until he or she obtains a valid license therefor as provided in this article, which license remains unsuspended, unrevoked, and unexpired. No public official or employee may place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in any assisted living residence, as defined in §16B-5-2 of this code, which is being operated without a valid license from the director. The licensee shall be responsible for, and shall have complete control of, the operation and premises of the assisted living residence and the personal assistance and supervision provided to the residents: *Provided*, That the director may review any leases or any contracts, subcontracts, agreements, or arrangements for the provision of on-site services to the residents of an assisted living residence to ensure the proper care, safety, and welfare of current or potential residents. Nothing in this article shall be construed to prevent or prohibit the ability of a resident of an assisted living residence to contract or arrange for, and to receive, privately paid nursing care or personal assistance in addition to those services provided by the licensee, subject to the consent and cooperation of the licensee and consistent with the duties and responsibilities imposed by this section.

(b) Nothing in this article shall be construed to require the licensing of landlords or property owners who are not involved in the provision of supervision, personal assistance, limited and intermittent nursing care, or other on-site professional services for the residents of an assisted living residence or in the advertising, recruitment of residents, transportation of residents, or other substantial and ongoing services for the operation or maintenance of the assisted living residence.

(c) The procedure for obtaining a license shall be as follows:

The applicant shall submit an application to the director on a form to be prescribed by the director, containing such information as may be necessary to show that the applicant is in compliance with the standards for assisted living residences as established by this article and the rules lawfully promulgated by the Inspector General hereunder. The application and any exhibits thereto shall provide the following information:

(A) The name and address of the applicant;

(B) The name, address, and principal occupation:

(i) Of each person who, as a stockholder or otherwise, has a proprietary interest of 10 percent or more in the applicant;

(ii) Of each officer and director of a corporate applicant;

(iii) Of each trustee and beneficiary of an applicant which is a trust; and

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(iv) Where a corporation has a proprietary interest of 25 percent or more in an applicant, the name, address, and principal occupation of each officer and director of the corporation;

(C) The name and address of the owner of the premises of the assisted living residence or proposed assisted living residence, if he or she is a different person from the applicant, and in such case, the name and address:

(i) Of each person who, as a stockholder or otherwise, has a proprietary interest of 10 percent or more in the owner;

(ii) Of each officer and director of a corporate applicant;

(iii) Of each trustee and beneficiary of the owner if it is a trust; and

(iv) Where a corporation has a proprietary interest of 25 percent or more in the owner, the name and address of each officer and director of the corporation;

(D) Where the applicant is the lessee or the assignee of the assisted living residence or the premises of the proposed assisted living residence, a signed copy of the lease and any assignment thereof;

(E) The name and address of the assisted living residence or the premises of the proposed assisted living residence;

(F) The proposed bed quota of the assisted living residence and the proposed bed quota of each unit thereof;

(G) An organizational plan for the assisted living residence indicating the number of persons employed or to be employed, the positions and duties of all employees;

(H) The name and address of the individual who is to serve as administrator;

(I) Such evidence of compliance with applicable laws and rules governing zoning, buildings, safety, fire prevention, and sanitation as the director may require; and

(J) Such additional information as the director may require.

(d) Upon receipt and review of an application for license made pursuant to §16B-5-6(a) of this code and inspection of the applicant assisted living residence pursuant to §16B-5-9 and §16B-5-10 of this code, the director will issue a license if he or she finds:

(1) That an individual applicant, and every partner, trustee, officer, director, and controlling person of an applicant which is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of an assisted living residence by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the department, if any, and lack of revocation of a license during the

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previous five years;

(2) That the assisted living residence is under the supervision of an administrator who is qualified by training and experience; or

(3) That the assisted living residence is in substantial compliance with standards established pursuant to §16B-5-5 of this code and such other requirements for a license as the Inspector General may establish by rule under this article.

(e) The director, in consultation with the Inspector General, may deny an initial or renewal license if the information provided in an application or report is known by the applicant to be false or the applicant fails to report required information or for any other reason permitted by law or rules promulgated pursuant to this article.

(f) Any license granted by the director will state the maximum bed capacity for which it is granted, the date the license was issued, and the expiration date. Licenses will be issued for a period not to exceed one year for assisted living residences: *Provided*, That any such license in effect for which timely application for renewal, together with payment of the proper fee has been made to the department in conformance with the provisions of this article and the rules issued thereunder and prior to the expiration date of the license, shall continue in effect until: (1) One year following the expiration date of the license; or (2) the date of the revocation or suspension of the license pursuant to the provisions of this article; or (3) the date of issuance of a new license, whichever date first occurs. Each license will be issued only for the premises and persons named in the application and is not transferable or assignable: *Provided, however*, That in the case of the transfer of ownership of an assisted living residence with an unexpired license, the application of the new owner for a license shall have the effect of a license for a period of three months when filed with the director. Every license shall be posted in a conspicuous place in the assisted living residence for which it is issued so as to be accessible to and in plain view of all residents and visitors of the assisted living residence.

(g) An original license shall be renewable, conditioned upon the licensee filing timely application for the extension of the term of the license accompanied by the fee and contingent upon evidence of compliance with the provisions of this article and rules promulgated by the Inspector General hereunder; the application shall be accompanied by:

(1) The information required in §16B-5-6(c)(A) through §16B-5-6(c)(C) of this code.

(2) A balance sheet of the assisted living residence as of the end of its fiscal year, setting forth assets and liabilities at such date, including all capital, surplus, reserve, depreciation, and similar accounts;

(3) A statement of operations of the assisted living residence as of the end of its fiscal year, setting forth all revenues, expenses, taxes, extraordinary items, and other credits or charges; and

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(4) A statement of any changes in the name, address, management, or ownership information on file with the director.

(h) In the case of an application for a renewal license, if all requirements of §16B-5-5 and §16B-5-6 of this code are not met, the director may in his or her discretion issue a provisional license, provided that care given in the assisted living residence is adequate for resident needs and the assisted living residence has demonstrated improvement and evidences potential for substantial compliance within the term of the license: *Provided*, That a provisional renewal may not be issued for a period greater than one year, may not be renewed, and may not be issued to any assisted living residence with uncorrected violations of any Class I standard, as defined in §16B-5-5(c) of this code.

(i) A nonrefundable application fee in the amount of $65 for an original assisted living residence license shall be paid at the time application is made for the license. An average cost of all direct costs for the initial licensure for the preceding 10 facilities based on the size of the facility's licensed bed capacity shall be borne by the applicant and shall be received by the director prior to the issuance of an initial or amended license. The license fee for renewal of a license shall be at the rate of $6 per bed per year for assisted living residences except the annual rate per bed may be assessed for licenses issued for less than one year. The director may annually adjust the licensure fees for inflation based upon the consumer price index. The bed capacity for the holder of each license will be determined by the director. All license fees shall be due and payable to the director annually, and in the manner set forth in the rules promulgated by the Inspector General. The fee and application shall be submitted to the director who will retain both the application and fee pending final action on the application. All fees received by the director under the provisions of this article will be deposited in accordance with §16-1-13 of this code.

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§16B-5-7. Cost disclosure; surety for residents' funds.

(a) Each assisted living residence shall disclose in writing to all prospective residents a complete and accurate list of all costs which may be incurred by them. Residents are not liable for any cost not so disclosed.

(b) If the assisted living residence handles any money for residents within the assisted living residence, the licensee or his or her authorized representative shall give a bond in an amount consistent with this subsection and with such surety as the director will approve. The bond shall be upon condition that the licensee shall hold separately and in trust all residents' funds deposited with the licensee, shall administer the funds on behalf of the resident in the manner directed by the depositor, shall render a true and complete account to the depositor and the director when requested, and at least quarterly to the resident, and upon termination of the deposit, shall account for all funds received, expended, and held on hand. The licensee shall file a bond in a sum to be fixed by the director based upon the magnitude of the operations of the applicant, but which sum may not be less than $2,500.

(c) Every person injured as a result of any improper or unlawful handling of the money of a resident of an assisted living residence may bring an action in a proper court on the bond required to be posted by the licensee pursuant to this subsection for the amount of damage suffered as a result thereof to the extent covered by the bond. Whenever the director determines that the amount of any bond which is filed pursuant to this subsection is insufficient to adequately protect the money of residents which is being handled, or whenever the amount of any bond is impaired by any recovery against the bond, the director may require the licensee to file an additional bond in such amount as necessary to adequately protect the money of residents being handled.

(d) The provisions of §16B-5-7(b) of this code do not apply if the licensee handles less than $25 per resident and less than $500 for all residents in any month.

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§16B-5-8. Investigation of complaints.

(a) The Inspector General will establish, by rule, procedures for prompt investigation of all complaints of alleged violations by assisted living residences of applicable requirements of state law or rules, except for such complaints that the director determines are willfully intended to harass a licensee or are without any reasonable basis. Such procedures will include provisions for ensuring the confidentiality of the complainant and of any other person so named in the complaint and for promptly informing the complainant and the assisted living residence involved of the results of the investigation.

(b) If, after its investigation, the director determines that the complaint has merit, the director will take appropriate disciplinary action and will advise any injured party of the possibility of a civil remedy under this article.

(c) No assisted living residence may discharge or in any manner discriminate against any resident or employee for the reason that the resident or employee has filed a complaint or participated in any proceeding specified in this article. Violation of this prohibition by any assisted living residence constitutes grounds for the suspension or revocation of the license of the assisted living residence as provided in §16B-5-11 and §16B-5-12 of this code. Any type of discriminatory treatment of a resident or employee by whom, or upon whose behalf, a complaint has been submitted to the director, or any proceeding instituted under this article, within 120 days of the filing of the complaint or the institution of the action, shall raise a rebuttable presumption that the action was taken by the assisted living residence in retaliation for the complaint or action.

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§16B-5-9. Inspections.

(a) The director and any duly designated employee or agent thereof will have the right to enter upon and into the premises of any assisted living residence at any time for which a license has been issued, for which an application for license has been filed with the director, or which the director has reason to believe is being operated or maintained as an assisted living residence without a license. If entry is refused by the owner or person in charge of the assisted living residence, the director, in consultation with the Inspector General, will apply to the circuit court of the county in which the assisted living residence is located or the Circuit Court of Kanawha County for an administrative inspection warrant.

(b) The director, by the director's authorized employees or agents, will conduct at least one inspection prior to issuance of a license pursuant to §16B-5-6 of this code and will conduct periodic unannounced inspections thereafter to determine compliance by the assisted living residence with applicable statutes and rules promulgated thereunder. All assisted living residences shall comply with rules of the State Fire Commission. The State Fire Marshal, by his or her employees or authorized agents, shall make all fire, safety, and like inspections. The director may provide for such other inspections as the director may deem necessary to carry out the intent and purpose of this article. If after investigating a complaint the director determines that the complaint is substantiated and that an immediate and serious threat to a resident's health or safety exists, the director, in consultation with the Inspector General, may invoke any remedies available pursuant to §16B-5-11 and §16B-5-12 of this code. Any assisted living residence aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in §16B-5-12 of this code.

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§16B-5-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

(a) Reports of all inspections made pursuant to §16B-5-9 of this code will be in writing and will list all deficiencies in the assisted living residence's compliance with the provisions of this article and the rules adopted by the Inspector General hereunder. The director will send a copy of the report to the assisted living residence by physical or electronic method with verifiable delivery, and will specify a time within which the assisted living residence shall submit a plan for correction of deficiencies, which plan will be approved, rejected, or modified by the director. The inspectors will allow audio taping of the exit conference for licensure inspections with all costs directly associated with the taping to be paid by the assisted living residence, provided that an original tape is provided to inspectors at the end of taping.

(b) Upon an assisted living residence's failure to submit a plan of correction which is approved by the director, or to correct any deficiency within the time specified in an approved plan of correction, the director, in consultation with the Inspector General, may assess civil penalties as hereinafter provided or may initiate any other legal or disciplinary action as provided by this article.

(c) Nothing in this section may be construed to prohibit the Inspector General from enforcing a rule, administratively or in court, without first affording formal opportunity to make correction under this section, where, in the opinion of the director, in consultation with the Inspector General the violation of the rule jeopardizes the health or safety of residents or where the violation of the rule is the second or subsequent violation occurring during a period of 12 full months.

(d) Civil penalties assessed against assisted living residences will be classified according to the nature of the violation as defined in §16B-5-5(c) of this code and rules promulgated thereunder by the Inspector General, as follows: For each violation of a Class I standard, a civil penalty of not less than $50 nor more than $500 will be imposed; for each violation of a Class II standard, a civil penalty of not less than $25 nor more than $50 will be imposed; for each violation of a Class III standard, a civil penalty of not less than $10 nor more than $25 will be imposed. Each day a violation continues, after the date of citation, shall constitute a separate violation. The date of citation is the date the facility receives the written statement of deficiencies.

(e) The director, in consultation with the Inspector General, will assess a civil penalty not to exceed $2,000 against any individual who notifies, or causes to be notified, an assisted living residence of the time or date on which an inspection is scheduled to be conducted under this article.

(f) If the director, in consultation with the Inspector General, assesses a penalty under this section, the director will cause delivery of notice of the penalty by personal service or by certified mail. The notice will state the amount of the penalty, the action or circumstance for

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which the penalty is assessed, the requirement that the action or circumstance violates, and the basis upon which the director, in consultation with the Inspector General, assessed the penalty and selected the amount of the penalty.

(g) The Inspector General will, in a civil judicial proceeding, recover any unpaid assessment which has not been contested under §16B-5-12 of this code within 30 days of receipt of notice of the assessment or which has been affirmed under the provisions of that section and not appealed within 30 days of receipt of the Board of Review's final order or which has been affirmed on judicial review, as provided in §16B-5-13 of this code. All money collected by assessments of civil penalties or interest will be paid into a special resident benefit account and will be applied by the director only for the protection of the health or property of residents of assisted living residences operated within the state that the director finds to be deficient, including payment for the costs of relocation of residents to other facilities, operation of an assisted living residence pending correction of deficiencies, or closure and reimbursement of residents for personal funds lost.

(h) The opportunity for a hearing on an action taken under this section shall be as provided in §16B-5-12 of this code. In addition to any other rights of appeal conferred upon an assisted living residence pursuant to this section, an assisted living residence shall have the right to request a hearing and seek judicial review pursuant to §16B-5-12 and §16B-5-13 of this code to contest the citing by the director of a deficiency on an inspection report, irrespective of whether the deficiency results in the imposition of a civil penalty.

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§16B-5-11. Enforcement actions; assessment of interest; collection of assessments; hearings.

(a) The director, in consultation with the Inspector General, will, by order, impose a ban on the admission of residents or reduce the bed quota of the assisted living residence, or any combination thereof, where he or she finds upon inspection of the assisted living residence that the licensee is not providing adequate care under the assisted living residence's existing bed quota and that reduction in quota or imposition of a ban on admissions, or any combination thereof, would place the licensee in a position to render adequate care. Any notice to a licensee of reduction in quota or ban on new admissions will include the terms of the order, the reasons therefor, and the date set for compliance.

(b) The director, in consultation with the Inspector General, may suspend or revoke a license issued under this article or take other action as set forth in this section if he or she finds upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or rules promulgated pursuant hereto.

(c) The suspension, expiration, forfeiture, or cancellation by operation of law or order of the director, in consultation with the Inspector General, of a license issued by the director or the withdrawal of an application for a license after it has been filed with the director, may not deprive the director of the director's authority to institute or continue an enforcement action or a proceeding for the denial of a license application against the licensee or applicant upon any ground provided by law or to deny the license application or suspend or revoke the license or otherwise take enforcement action on any such ground.

(d) In addition to other remedies provided in this article, upon petition from the Inspector General, the circuit court of the county in which the conduct has occurred or is occurring or the Circuit Court of Kanawha County may determine that an assisted living residence's deficiencies under this article constitute an emergency immediately jeopardizing the health, safety, welfare, or rights of its residents and issue an order to:

(1) Close the assisted living residence;

(2) Transfer residents in the assisted living residence to other facilities; or

(3) Appoint temporary management to oversee the operation of the assisted living residence and to assure the health, safety, welfare, and rights of the assisted living residence's residents where there is a need for temporary management while:

(A) There is an orderly closure of the assisted living residence; or

(B) Improvements are made to bring the assisted living residence into compliance with all the applicable requirements of this article.

(e) If the Inspector General petitions a circuit court for the closure of an assisted living residence, the transfer of residents, or the appointment of a temporary management, the

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circuit court shall hold a hearing no later than seven days thereafter, at which time the Inspector General and the licensee or operator of the assisted living residence may participate and present evidence.

(f) A circuit court may divest the licensee or operator of possession and control of an assisted living residence in favor of temporary management. The temporary management shall be responsible to the court and shall have such powers and duties as the court may grant to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare, and rights of the residents of the assisted living residence, including, but not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the assisted living residence, or to repair or improve the assisted living residence so as to return it to compliance with applicable requirements and the power to receive, conserve, and expend funds, including payments on behalf of the licensee or operator of the assisted living residence. Priority shall be given to expenditures for current direct resident care or the transfer of residents.

(g)The person charged with temporary management:

(1) Shall be an officer of the court;

(2) Shall be paid by the licensee;

(3) Is not liable for conditions at the assisted living residence which existed or originated prior to his or her appointment; and

(4) Is not personally liable, except for his or her own gross negligence and intentional acts which result in injuries to persons or damage to property at the assisted living residence during his or her temporary management.

(h) No person may impede the operation of temporary management. There shall be an automatic stay for a 90-day period subsequent to the establishment of temporary management of any action that would interfere with the functioning of the assisted living residence, including, but not limited to, cancellation of insurance policies, termination of utility services, attachments to working capital accounts, foreclosures, evictions, and repossessions of equipment used in the assisted living residence.

(i) A temporary management established for the purpose of making improvements to bring the assisted living residence into compliance with applicable requirements may not be terminated until the court has determined that the assisted living residence has the management capability to ensure continued compliance with all applicable requirements: Provided, That if the court has not made such determination within six months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the assisted living residence shall be closed. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court and after deducting from

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receipts the costs of the temporary management, expenditures, and civil penalties and interest no longer subject to appeal, in that order, any excess shall be paid to the licensee or operator of the assisted living residence.

(j) The assessments for penalties and for costs of actions taken under this article shall have interest assessed at five percent per year beginning 30 days after receipt of notice of the assessment or 30 days after receipt of the Board of Review's final order following a hearing, whichever is later. All assessments against an assisted living residence that are unpaid shall be added to the assisted living residence's licensure fee and may be filed as a lien against the property of the licensee or operator of the assisted living residence. Funds received from assessments shall be deposited as funds received as provided in §16B-5-10 of this code.

(k) The opportunity for a hearing on an action by the director taken under this section shall be as provided in §16B-5-12 of this code.

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§16B-5-12. License denial; limitation, suspension, or revocation.

(a) The director, in consultation with the Inspector General, shall issue an order denying, limiting, suspending, or revoking a license issued pursuant to this article if the provisions of this article or of the rules promulgated pursuant to this article are violated. The director, in consultation with the Inspector General, may issue an order revoking a program's license and prohibit all licensed disciplines associated with the assisted living residence from practicing at the assisted living residence based upon an annual, periodic, complaint, verification, or other inspection and evaluation.

(b) Before any order is issued by the director, in consultation with the Inspector General, denying, limiting, suspending, or revoking a license, written notice will be given to the licensee, stating the grounds for such denial, limitation, suspension, or revocation.

(c) An applicant or licensee has 10 working days after receipt of the director's order denying, limiting, suspending, or revoking a license to request a formal hearing contesting the denial, limitation, suspension, or revocation under this article. If a formal hearing is requested, the applicant or licensee and the director shall proceed in accordance with the provisions of §29A-5-1 *et seq*. of this code.

(d) If a license is denied or revoked as herein provided, a new application for license will be considered by the director if, when, and after the conditions upon which the denial was based have been corrected and evidence of this fact has been furnished. A new license will then be granted after proper inspection, if applicable, has been made and all provisions of this article and rules promulgated pursuant to this article have been satisfied.

(e) Any applicant or licensee who is dissatisfied with the decision as a result of the formal hearing provided in this section may, within 30 days after receiving notice of the decision, petition the West Virginia Intermediate Court of Appeals for judicial review of the decision.

(f) If the license of an assisted living residence is denied, limited, suspended, or revoked, the administrator, any owner of the assisted living residence, or owner or lessor of the assisted living residence property shall cease to operate the facility as an assisted living residence as of the effective date of the denial, limitation, suspension, or revocation. The owner or lessor of the assisted living residence property is responsible for removing all signs and symbols identifying the premises as an assisted living residence within 30 days. Any administrative appeal of such denial, limitation, suspension, or revocation shall not stay the denial, limitation, suspension, or revocation.

(g) Upon the effective date of the denial, limitation, suspension, or revocation, the administrator of the assisted living residence shall advise the director and the Board of Pharmacy of the disposition of all medications located on the premises. The disposition is subject to the supervision and approval of the director. Medications that are purchased or held by an assisted living residence that is not licensed may be deemed adulterated.

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(h) If the license of an assisted living residence is suspended or revoked, any person named in the licensing documents of the assisted living residence, including persons owning or operating the assisted living residence, may not, as an individual or as part of a group, apply to operate another assisted living residence for up to five years after the date of suspension or revocation.

(i) The period of suspension for the license of an assisted living residence will be prescribed by the director, in consultation with the Inspector General, but may not exceed one year.

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§16B-5-13. Judicial review.

(a) Any applicant or licensee or the Inspector General who is adversely affected by the decision as a result of the formal hearing provided for in §16-5D-12 of this code may, within 30 days after receiving notice of the decision, petition the West Virginia Intermediate Court of Appeals for judicial review of the decision.

(b) The court may affirm, modify, or reverse the decision of the Board of Review and either the applicant, licensee, or the Inspector General may appeal from the court's decision to the Supreme Court of Appeals.

(c) The judgment of the West Virginia Intermediate Court of Appeals shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of §29A-6-1 *et seq*. of this code.

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§16B-5-14. Legal counsel and services for the Inspector General.

(a) Legal counsel and services for the Inspector General in all administrative hearings and all proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General, his or her assistants, or an attorney employed by the Office of the Inspector General in proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

(b) The Governor may appoint counsel for the Inspector General who shall perform such legal services in representing the interests of residents in assisted living residences in matters under the jurisdiction of the Inspector General as the Governor shall direct. It shall be the duty of such counsel to appear for the residents in all cases where they are not represented by counsel. The compensation of such counsel shall be fixed by the Governor.

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§16B-5-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever advertises, announces, establishes, or maintains or is engaged in establishing or maintaining an assisted living residence without a license granted under §16B-5-6 of this code, or who prevents, interferes with, or impedes in any way the lawful enforcement of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not more than $100 or by imprisonment in jail for a period of not more than 90 days, or by both such fine and imprisonment, at the discretion of the court. For each subsequent offense, the fine may be increased to not more than $250, with imprisonment in jail for a period of not more than 90 days, or both such fine and imprisonment at the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) The Inspector General may in his or her discretion bring an action to enforce compliance with this article or any rule, or order hereunder, whenever it appears to the Inspector General that any person has engaged in, or is engaging in, an act or practice in violation of this article or any rule or order hereunder, or whenever it appears to the Inspector General that any person has aided, abetted, or caused or is aiding, abetting, or causing such an act or practice. Upon application by the Inspector General, the circuit court of the county in which the conduct has occurred or is occurring, or the Circuit Court of Kanawha County shall have jurisdiction to grant without bond a permanent or temporary injunction, decree, or restraining order.

(c) Whenever the director, in consultation with the Inspector General, refuses to grant or renew a license or revokes a license required by law to operate or conduct an assisted living residence or orders a person to refrain from conduct violating the rules of the Inspector General, and the person deeming himself or herself aggrieved by the refusal, revocation, or order appeals the action of the director, the court may, during pendency of the appeal, issue a restraining order or injunction upon proof that the operation of the assisted living residence or its failure to comply with the order of the director adversely affects the well-being or safety of the residents of the assisted living residence. Should a person who is refused a license or the renewal of a license to operate or conduct an assisted living residence or whose license to operate is revoked or who has been ordered to refrain from conduct or activity which violates the rules of the Inspector General, fails to appeal or should such appeal be decided favorably to the director, then the court shall issue a permanent injunction upon proof that the person is operating or conducting an assisted living residence without a license as required by law or has continued to violate the rules of the Inspector General.

(d) Any assisted living residence that deprives a resident of any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation shall be liable to the resident for injuries suffered as a result of the deprivation. Upon a finding that a resident has been deprived of such a right or benefit and that the resident has been injured as a result of the deprivation and unless there is a finding that the assisted living residence

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exercised all care reasonably necessary to prevent and limit the deprivation and injury to the resident, compensatory damages shall be assessed in an amount sufficient to compensate the resident for the injury. In addition, where the deprivation of any right or benefit is found to have been willful or in reckless disregard of the lawful rights of the resident, punitive damages may be assessed. A resident may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of any available administrative remedies may not be required prior to commencement of suit hereunder.

(e) The amount of damages recovered by a resident, in an action brought pursuant to this section, are exempt for purposes of determining initial or continuing eligibility for medical assistance pursuant to §9-5-1 *et seq*. of this code and may neither be taken into consideration nor required to be applied toward the payment or part payment of the cost of medical care or services available pursuant to §9-5-1 *et seq*. of this code.

(f) Any waiver by a resident or his or her legal representative of the right to commence an action under this section, whether oral or in writing, shall be null and void as contrary to public policy.

(g) The penalties and remedies provided in this section are cumulative and shall be in addition to all other penalties and remedies provided by law.

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§16B-5-16. Separate accounts for residents' personal funds; consent for use; records; penalties.

(a) Each assisted living residence subject to the provisions of this article shall hold in a separate account and in trust each resident's personal funds deposited with the assisted living residence.

(b) No person may use or cause to be used for any purpose the personal funds of any resident admitted to any assisted living residence unless consent for the use thereof has been obtained from the resident or from a committee or guardian or relative.

(c) Each assisted living residence shall maintain a true and complete record of all receipts for any disbursements from the personal funds account of each resident in the assisted living residence, including the purpose and payee of each disbursement, and shall render a true account of the record to the resident or his or her representative upon demand and upon termination of the resident's stay in the assisted living residence.

(d) Any person or corporation who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned in jail not more than one year, or both fined and imprisoned.

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