WEST VIRGINIA CODE: §16B-9-11

§16B-9-11. License limitation, suspension, and revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearing.

(a) The director, in consultation with the Inspector General, shall by order impose a ban on the admission of additional residents or reduce the number of apartments permitted in a residential care community, or any combination thereof, where it is determined upon inspection that a licensee is not providing adequate care to its residents under its existing quota and, further, that a reduction in the quota or the imposition of a ban on additional admissions, or a combination thereof, would enable the licensee to render adequate care to its residents. A notice to a licensee of a reduction in its quota or a ban on additional admissions shall include the terms of the order, the reasons therefor, and the date by which it must comply.

(b) The director, in consultation with the Inspector General, may suspend or revoke a license issued under this article if it is determined upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or rules promulgated hereunder.

(c) Whenever a license is limited, suspended, or revoked pursuant to this section, the director, in consultation with the Inspector General, shall file an administrative complaint stating facts constituting the grounds therefor. Upon the filing of this administrative complaint, the director, in consultation with the Inspector General, shall notify the licensee in writing, enclose a copy of the administrative complaint, and advise the licensee of its opportunity for a hearing pursuant to §16B-9-12 of this code. The notice and copy of the administrative complaint shall be served on the licensee by certified mail, return receipt requested.

(d) The suspension, revocation, or expiration of a license, or the withdrawal of an application for a license after it has been filed with the director, in consultation with the Inspector General, may not deprive the director, in consultation with the Inspector General, of his or her authority to institute or continue a disciplinary proceeding or to deny an application for a license.

(e) In addition to other remedies provided in this article, upon petition from the Inspector General, a circuit court may determine that a residential care community'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 residential care community;

www.Legislature

(2) Transfer residents of the residential care community to other facilities; or

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

(A) There is an orderly closure of the residential care community; or

(B) Corrections are made in order to bring the residential care community into compliance with all applicable requirements of this article and the rules promulgated hereunder.

If the Inspector General petitions a circuit court for the closure of a residential care community, for the transfer of residents, or for the appointment of a temporary manager, the 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 residential care community may participate and present evidence.

A circuit court may divest the licensee or operator of possession and control of a residential care community in favor of temporary management. The temporary management is accountable to the court and has those powers and duties that 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, including, but not limited to, replacing managerial and other staff, hiring consultants, making necessary expenditures to close the residential care community or to repair or improve the residential care community so as to return it to compliance with applicable requirements, and receiving, conserving and expending funds, including making payments on behalf of the licensee or operator. Priority in making payments shall be given to expenditures for current direct resident care and the transfer of residents, if necessary.

The person charged with temporary management shall be an officer of the court and paid by the residential care community if resources are available; he or she may not be held liable in any capacity for conditions at the residential care community that originated or existed before his or her appointment nor may he or she be held personally liable for any act or omission, except those constituting gross negligence or intentional acts that result in injuries to persons or damage to property during his or her tenure as temporary manager.

It is unlawful for any person to impede the operation of temporary management as appointed by the court. For 90 days after the appointment of temporary management at a residential care community, any legal action that would interfere with its functioning or operation shall be automatically stayed. These actions include, but are 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 residential care community.

Temporary management appointed by the court for purposes of making improvements to

WV Legislature

bring a residential care community into compliance with applicable requirements may not be terminated until the court has determined that the residential care community has the management capability to ensure continued compliance with all applicable requirements: *Provided,* That if the court does not make such a determination within six months of the appointment of the temporary management, the temporary management terminates by operation of law at that time, and the residential care community shall be closed. After the termination of the temporary management, the person who was appointed as the temporary management shall make an accounting to the court, and after deducting the costs of the temporary management, expenditures and civil penalties and interest no longer subject to appeal, in that order, from receipts, the remainder, if any, shall be paid to the licensee or operator of the residential care community.

(f) Assessments for civil penalties and costs of actions taken under this article, including attorney fees, shall accrue interest at the rate of five percent per annum, beginning on the 30th day after receipt of notice of the assessment or the 30th day after receipt of the director's final order following a hearing, whichever later occurs. All assessments against a residential care community that remain unpaid shall be added to its licensure fee next due and may be filed as a lien against the property of the licensee or operator of the residential care community. Funds received from these assessments shall be deposited in the same manner as are funds received pursuant to §16B-9-10 of this code.

(g) The Inspector General is authorized to propose emergency rules, if necessary, to expand the powers of the Inspector General beyond those provided in this article, to the extent required to comply with federal requirements: *Provided,* That the Inspector General's powers may be expanded only to the extent required by federal requirements. Emergency rules proposed pursuant to this subsection are subject to the provisions governing legislative rules contained in §29A-3-1, *et seq*. of this code.

(h) The opportunity for a hearing on any action taken by the director under this section is as provided in §16B-9-12 of this code.

WV Legislature