WEST VIRGINIA CODE CHAPTER 16b ARTICLE 20

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§16B-20-1. Definitions.

For the purpose of this article:

"Birthing center" means a type of facility which is a building, house or the equivalent organized to provide facilities and staff to support a birthing service for pregnant clients.

"Director" means the director of the Office of Health Facility Licensure and Certification or his or her designee.

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

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

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§16B-20-2. Birthing centers to obtain license, application, fees, suspension, or revocation.

The Inspector General designates the director of the Office of Health Facilities Licensure and Certification to enforce the provisions of this article, except as otherwise stated.

No person, partnership, association, or corporation, or any local governmental unit or any division, department, board or agency thereof may operate a birthing center unless such operation shall have been approved and licensed by the director in accordance with the provisions of this article and the rules and regulations lawfully promulgated hereunder provided that all birthing centers which are in operation or which have received a certificate of need valid as of the date of passage of this act shall be deemed to have been so approved and shall be issued a license within 30 days of passage of this act.

Any person, partnership, association or corporation, or any local governmental unit or any division, department, board, or agency thereof desiring a license hereunder shall file with the director an application in such form as the director shall prescribe and furnish accompanied by a fee of $10. Information received by the director under the provisions of this section shall be confidential. The director is authorized to issue licenses for the operation of birthing centers which are found to comply with the provisions of this article and with all rules and regulations promulgated by the Inspector General. The license issued shall not be transferred or assignable. The director, in consultation with the Inspector General, is authorized to suspend or revoke a license issued hereunder if the provisions of this article or of the rules and regulations are violated.

Before any such license is suspended or revoked, however, written notice shall be given the licensee, stating the grounds of the complaint, and the date, time and place set for the hearing on the complaint, which date shall not be less than 30 days from the time notice is given. Such notice shall be sent by registered mail to the licensee at the address where the institution concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

If a license is revoked as herein provided, a new application for a license shall be considered by the director if, when and after, the conditions upon which revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection has been made and all provisions of this article and rules and regulations promulgated hereunder have been satisfied.

All of the pertinent provisions of §29A-5-1 of this code shall apply to and govern any hearing authorized and required by the provisions of this article and the administrative procedure in connection with and following any such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section.

The West Virginia Intermediate Court of Appeals shall have the power to affirm, modify or reverse the decision of the Board of Review and either the applicant or licensee or the Office

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of Inspector General may appeal from the court's decision to the Supreme Court of Appeals. Pending the final disposition of the matter the status quo of the applicant or licensee shall be preserved.

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

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§16B-20-3. Inspector General to establish rules and regulations; legislative findings; emergency filing.

The Inspector General shall promulgate rules and regulations not in conflict with any provision of this article, as he or she finds necessary in order to ensure adequate care and accommodations for consumers of birthing centers. In promulgating such regulations the Inspector General shall be limited to simple, necessary provisions which shall not have the effect of hampering the development and licensure of birthing centers. Such regulations shall not address acceptable site characteristics such as the number of minutes of travel time between a birthing center and a hospital, or physical environment, such as acceptable levels of temperature of any refrigerator found in a birthing center, or clinical equipment, such as the number and kind of clocks which a birthing center must have on the premises. Such regulations shall require that all birthing centers submit satisfactory evidence that the center has implemented the paternity program created pursuant to §16B-3-13 of this code along with any application for licensure.

The Legislature hereby finds and declares that it is in the public interest to encourage the development of birthing centers for the purpose of providing an alternative method of birth and therefore, in order to provide for the licensing of such birthing centers to prevent substantial harm to the public interest because of preexisting delay, within 60 days of passage of this article, the Inspector General shall proceed to promulgate such rules and regulations under the provisions of §29A-3-15 of this code.

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§16B-20-4. Insurance.

Not later than July 1, 1983, every policy or contract of individual accident and sickness insurance covered under the provision of §33-15-1 *et seq*. of this code, or policy or contract of group accident and sickness insurance covered under the provisions of §33-16-1 *et seq*. of this code, including, but not limited to, any subscriber contract issued by a corporation organized pursuant to §33-24-1 *et seq*. of this code , shall include benefits to all subscribers and members for birthing center service charges, and for care rendered therein by a licensed nurse midwife or midwife as this occupation is defined in §30-15-1 *et seq*. of this code, and which care is within the scope of duties for such licensed nurse midwife or midwife as permitted by the provisions of §30-15-7 of this code.

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§16B-20-5. Violations; penalties; injunction.

Any person, partnership, association or corporation, and any local governmental unit or any division, department, board, or agency thereof establishing, conducting, managing or operating a birthing center without first obtaining a license therefor as herein provided, or violating any provisions of this article or any rule or regulation lawfully promulgated thereunder, 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 the county jail for a period of not more than 90 days, or by both such fine and imprisonment, in the discretion of the court. For each subsequent offense the fine may be increased to not more than $500, with imprisonment in the county jail for a period of not more than 90 days, or both such fine and imprisonment, in the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

Notwithstanding the existence or pursuit of any other remedy, the Inspector General may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, corporation, or any local governmental unit, or any division, department, board or agency thereof, to restrain or prevent the establishment, conduct, management or operation of any birthing center without first obtaining a license therefor in the manner hereinbefore provided.

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