WEST VIRGINIA CODE: §16b-4-11

§16B-4-11. Ban on admissions; closure; transfer of residents; appointment of temporary management; assessment of interest; collection of assessments; promulgation of rules to conform with federal requirements.

(a) The director, in consultation with the Inspector General, may reduce the bed quota of the nursing home or impose a ban on new admissions, where he or she finds upon inspection of the nursing home that the licensee is not providing adequate care under the nursing home's existing bed quota, and that reduction in quota or ban on new admissions, or both, would place the licensee in a position to render adequate care. A reduction in bed quota or a ban on new admissions, or both, may remain in effect until the nursing home is determined by the director to be in substantial compliance with the rules. In addition, the director shall determine that the facility has the management capability to ensure continued substantial compliance with all applicable requirements. The director, in consultation with the Inspector General, shall evaluate the continuation of the admissions ban or reduction in bed quota on a continuing basis, and may make a partial lifting of the admissions ban or reduction in bed quota consistent with the purposes of this section. If the residents of the facility are in immediate jeopardy of their health, safety, welfare, or rights, the Inspector General may seek an order to transfer residents out of the nursing home as provided for in §16B-4-11(d) of this code. Any notice to a licensee of reduction in bed quota or a ban on new admissions shall include the terms of such order, the reasons therefor, and a date set for compliance.

(b) The director, in consultation with the Inspector General, may deny, limit, 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 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, in consultation with the Inspector General, of the authority to institute or continue a disciplinary proceeding, or a proceeding for the denial of a license application, against the licensee or applicant upon any ground provided by law or to enter an order denying the license application, suspending, or revoking the license, or otherwise taking disciplinary action on any such ground.

(d) In addition to other remedies provided in this article, upon petition from the Inspector General, a circuit court in the county in which a facility is located, or in Kanawha County if emergency circumstances occur, may determine that a nursing home’s deficiencies under this article, or under 42 U.S.C.A. §§ 1395 *et seq*. and 1396 *et seq*., if applicable, constitute an emergency immediately jeopardizing the health, safety, welfare, or rights of its residents, and issue an order to:

(1) Close the nursing home;

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(2) Transfer residents in the nursing home to other nursing homes; or

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

(A) There is an orderly closure of the facility; or

(B) Improvements are made in order to bring the nursing home into compliance with all the applicable requirements of this article and, if applicable, 42 U.S.C.A. §§ 1395 *et seq*. and 1396 *et seq*.

If the Inspector General petitions a circuit court for the closure of a nursing home, the transfer of residents, or the appointment of temporary management, 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 nursing home may participate and present evidence. The burden of proof is on the Inspector General.

A circuit court may divest the licensee or operator of possession and control of a nursing home 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 nursing home, including, but not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the nursing home, or to repair or improve the nursing home so as to return it to compliance with applicable requirements, and the power to receive, conserve, and expend funds, including Medicare, Medicaid, and other payments on behalf of the licensee or operator of the nursing home. Priority shall be given to expenditures for current direct resident care or the transfer of residents. Expenditures other than normal operating expenses totaling more than $20,000 shall be approved by the circuit court.

The person charged with temporary management shall be an officer of the court, is not liable for conditions at the nursing home which existed or originated prior to his or her appointment, and 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 nursing home during his or her temporary management. All compensation and per diem costs of the temporary manager shall be paid by the nursing home. The costs for the temporary manager for any 30-day period may not exceed the 75th percentile of the allowable administrator's salary as reported on the most recent cost report for the nursing home's peer group as determined by the director. The temporary manager shall bill the nursing home for compensation and per diem costs. Within 15 days of receipt of the bill, the nursing home shall pay the bill or contest the costs for which it was billed to the court. Such costs shall be recoverable through recoupment from future reimbursement from the state Medicaid agency in the same fashion as a benefits overpayment.

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The temporary management shall promptly employ at least one person who is licensed as a nursing home administrator in West Virginia.

A temporary management established for the purpose of making improvements in order to bring a nursing home into compliance with applicable requirements may not be terminated until the court has determined that the nursing home has the management capability to ensure continued compliance with all applicable requirements, except 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 nursing home 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 receipts the costs of the temporary management, expenditures, civil penalties, and interest no longer subject to appeal, in that order, any excess shall be paid to the licensee or operator of the nursing home.

(e) The assessments for penalties and for costs of actions taken under this article shall have interest assessed at five percent per annum beginning 30 days after receipt of notice of such assessment or 30 days after receipt of the Board of Review's final order following a hearing, whichever is later. All such assessments against a nursing home that are unpaid shall be added to the nursing home's licensure fee and may be filed as a lien against the property of the licensee or operator of the nursing home. Funds received from such assessments shall be deposited as funds received in §16B-4-10 of this code.

(f) The opportunity for a hearing on an action by the Inspector General taken under this section shall be as provided in §16B-4-12 of this code.

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