WEST VIRGINIA CODE: §16b-5-10

§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.

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(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 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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