WEST VIRGINIA CODE: §16b-5-11

§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

WV Legislature

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 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

WV Legislature

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 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.

WV Legislature