WEST VIRGINIA CODE: §16b-5-6

§16B-5-6. License required; application; fees; duration; renewal.

(a) There shall be one assisted living residence license for each assisted living residence. No person may establish, operate, maintain, offer, or advertise an assisted living residence within this state unless and until he or she obtains a valid license therefor as provided in this article, which license remains unsuspended, unrevoked, and unexpired. No public official or employee may place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in any assisted living residence, as defined in §16B-5-2 of this code, which is being operated without a valid license from the director. The licensee shall be responsible for, and shall have complete control of, the operation and premises of the assisted living residence and the personal assistance and supervision provided to the residents: *Provided*, That the director may review any leases or any contracts, subcontracts, agreements, or arrangements for the provision of on-site services to the residents of an assisted living residence to ensure the proper care, safety, and welfare of current or potential residents. Nothing in this article shall be construed to prevent or prohibit the ability of a resident of an assisted living residence to contract or arrange for, and to receive, privately paid nursing care or personal assistance in addition to those services provided by the licensee, subject to the consent and cooperation of the licensee and consistent with the duties and responsibilities imposed by this section.

(b) Nothing in this article shall be construed to require the licensing of landlords or property owners who are not involved in the provision of supervision, personal assistance, limited and intermittent nursing care, or other on-site professional services for the residents of an assisted living residence or in the advertising, recruitment of residents, transportation of residents, or other substantial and ongoing services for the operation or maintenance of the assisted living residence.

(c) The procedure for obtaining a license shall be as follows:

The applicant shall submit an application to the director on a form to be prescribed by the director, containing such information as may be necessary to show that the applicant is in compliance with the standards for assisted living residences as established by this article and the rules lawfully promulgated by the Inspector General hereunder. The application and any exhibits thereto shall provide the following information:

(A) The name and address of the applicant;

(B) The name, address, and principal occupation:

(i) Of each person who, as a stockholder or otherwise, has a proprietary interest of 10 percent or more in the applicant;

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(ii) Of each officer and director of a corporate applicant;

(iii) Of each trustee and beneficiary of an applicant which is a trust; and

(iv) Where a corporation has a proprietary interest of 25 percent or more in an applicant, the name, address, and principal occupation of each officer and director of the corporation;

(C) The name and address of the owner of the premises of the assisted living residence or proposed assisted living residence, if he or she is a different person from the applicant, and in such case, the name and address:

(i) Of each person who, as a stockholder or otherwise, has a proprietary interest of 10 percent or more in the owner;

(ii) Of each officer and director of a corporate applicant;

(iii) Of each trustee and beneficiary of the owner if it is a trust; and

(iv) Where a corporation has a proprietary interest of 25 percent or more in the owner, the name and address of each officer and director of the corporation;

(D) Where the applicant is the lessee or the assignee of the assisted living residence or the premises of the proposed assisted living residence, a signed copy of the lease and any assignment thereof;

(E) The name and address of the assisted living residence or the premises of the proposed assisted living residence;

(F) The proposed bed quota of the assisted living residence and the proposed bed quota of each unit thereof;

(G) An organizational plan for the assisted living residence indicating the number of persons employed or to be employed, the positions and duties of all employees;

(H) The name and address of the individual who is to serve as administrator;

(I) Such evidence of compliance with applicable laws and rules governing zoning, buildings, safety, fire prevention, and sanitation as the director may require; and

(J) Such additional information as the director may require.

(d) Upon receipt and review of an application for license made pursuant to §16B-5-6(a) of this code and inspection of the applicant assisted living residence pursuant to §16B-5-9 and §16B-5-10 of this code, the director will issue a license if he or she finds:

(1) That an individual applicant, and every partner, trustee, officer, director, and controlling person of an applicant which is not an individual, is a person responsible and suitable to

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operate or to direct or participate in the operation of an assisted living residence by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the department, if any, and lack of revocation of a license during the previous five years;

(2) That the assisted living residence is under the supervision of an administrator who is qualified by training and experience; or

(3) That the assisted living residence is in substantial compliance with standards established pursuant to §16B-5-5 of this code and such other requirements for a license as the Inspector General may establish by rule under this article.

(e) The director, in consultation with the Inspector General, may deny an initial or renewal license if the information provided in an application or report is known by the applicant to be false or the applicant fails to report required information or for any other reason permitted by law or rules promulgated pursuant to this article.

(f) Any license granted by the director will state the maximum bed capacity for which it is granted, the date the license was issued, and the expiration date. Licenses will be issued for a period not to exceed one year for assisted living residences: *Provided*, That any such license in effect for which timely application for renewal, together with payment of the proper fee has been made to the department in conformance with the provisions of this article and the rules issued thereunder and prior to the expiration date of the license, shall continue in effect until: (1) One year following the expiration date of the license; or (2) the date of the revocation or suspension of the license pursuant to the provisions of this article; or (3) the date of issuance of a new license, whichever date first occurs. Each license will be issued only for the premises and persons named in the application and is not transferable or assignable: *Provided, however*, That in the case of the transfer of ownership of an assisted living residence with an unexpired license, the application of the new owner for a license shall have the effect of a license for a period of three months when filed with the director. Every license shall be posted in a conspicuous place in the assisted living residence for which it is issued so as to be accessible to and in plain view of all residents and visitors of the assisted living residence.

(g) An original license shall be renewable, conditioned upon the licensee filing timely application for the extension of the term of the license accompanied by the fee and contingent upon evidence of compliance with the provisions of this article and rules promulgated by the Inspector General hereunder; the application shall be accompanied by:

(1) The information required in §16B-5-6(c)(A) through §16B-5-6(c)(C) of this code.

(2) A balance sheet of the assisted living residence as of the end of its fiscal year, setting forth assets and liabilities at such date, including all capital, surplus, reserve, depreciation, and similar accounts;

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(3) A statement of operations of the assisted living residence as of the end of its fiscal year, setting forth all revenues, expenses, taxes, extraordinary items, and other credits or charges; and

(4) A statement of any changes in the name, address, management, or ownership information on file with the director.

(h) In the case of an application for a renewal license, if all requirements of §16B-5-5 and §16B-5-6 of this code are not met, the director may in his or her discretion issue a provisional license, provided that care given in the assisted living residence is adequate for resident needs and the assisted living residence has demonstrated improvement and evidences potential for substantial compliance within the term of the license: *Provided*, That a provisional renewal may not be issued for a period greater than one year, may not be renewed, and may not be issued to any assisted living residence with uncorrected violations of any Class I standard, as defined in §16B-5-5(c) of this code.

(i) A nonrefundable application fee in the amount of $65 for an original assisted living residence license shall be paid at the time application is made for the license. An average cost of all direct costs for the initial licensure for the preceding 10 facilities based on the size of the facility's licensed bed capacity shall be borne by the applicant and shall be received by the director prior to the issuance of an initial or amended license. The license fee for renewal of a license shall be at the rate of $6 per bed per year for assisted living residences except the annual rate per bed may be assessed for licenses issued for less than one year. The director may annually adjust the licensure fees for inflation based upon the consumer price index. The bed capacity for the holder of each license will be determined by the director. All license fees shall be due and payable to the director annually, and in the manner set forth in the rules promulgated by the Inspector General. The fee and application shall be submitted to the director who will retain both the application and fee pending final action on the application. All fees received by the director under the provisions of this article will be deposited in accordance with §16-1-13 of this code.

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