WEST VIRGINIA CODE CHAPTER 16b ARTICLE 6

WV Legislature

§16B-6-1. Purpose.

It is the policy of this state to encourage the availability of appropriate noninstitutional surroundings for the elderly and for the care of persons in need of limited and intermittent nursing care or personal assistance. The registration of providers of services to such residents in unlicensed homes will help to identify where the services are available and to ensure that individuals in unlicensed homes are receiving care appropriate to their needs.

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§16B-6-1a. Powers, rights, and duties of the Inspector General.

In the administration of this article, the Inspector General shall have the following powers, duties and rights:

(a) To promulgate and enforce rules governing complaint investigations within the homes of legally unlicensed health care providers registered under this article. Such rules shall include the minimum health, safety and welfare standards in the following areas:

(1) Physical environment;

(2) Nutrition;

(3) Requirements related to limited and intermittent nursing care;

(4) Medication administration;

(5) Protective and personal services to be provided;

(6) Treatment;

(7) Visitation privileges governing access to a resident by immediate family or other relatives of the resident and by other persons who are visiting with the consent of the resident; and

(8) Such other categories as the director determines to be appropriate to ensure residents' health, safety, and welfare.

(b) To exercise as sole authority all powers relating to issuance, suspension, and revocation of registration of legally unlicensed homes providing health care;

(c) To issue directed plans of correction for deficiencies identified during complaint investigations;

(d) To order closure of any home for failure to comply with a directed plan of corrections;

(e) To take all actions required under the provisions of sections §16B-6-3, §16B-6-4, §16B-6-5, and §16B-6-6 of this code; and

(f) To deny registration to any operator of a legally unlicensed home who is listed on the state abuse registry.

(g) The Inspector General designates the director of the Office of Health Facility Licensure and Certification to enforce the provisions of this article, except where otherwise stated.

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§16B-6-2. Definitions.

As used in this article, unless a different meaning appears from the context:

"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.

"Limited and intermittent nursing care" means direct hands on nursing care of an individual who needs no more than two hours of nursing care per day for a period of no longer than 90 consecutive days per episode, which may only be provided when the need for such care meets the following factors: (1) The resident requests to remain in the home; (2) the resident is advised of the availability of other specialized health care facilities to treat his or her condition; and (3) the need for such care is the result of a medical pathology or a result of normal aging process. Limited and intermittent nursing care shall be provided under the supervision of a registered professional nurse and in accordance with rules promulgated by the director.

"Nursing care" means those procedures commonly employed in providing for the physical, emotional, and rehabilitational needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: Irrigations, catheterization, special procedures contributing to rehabilitation, and administration of medication by any method prescribed by a physician which involves a level of complexity and skill in administration not possessed by the untrained person.

"Personal assistance" means personal services, including, but not limited to, the following: Help in walking, bathing, dressing, feeding or getting in or out of bed, or supervision required because of the age or physical or mental impairment of the resident.

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

"Resident" means an individual who is provided services, whether or not for a fee, by a service provider, but resident does not include a person receiving services provided by another who is related to him or her or the spouse thereof by blood or marriage, within the degree of consanguinity of the second cousin. Residents, who are incapable of self-preservation, shall be housed only on a ground floor level of the home with direct egress to the outside. A registered unlicensed health care home shall: (1) Provide residents at the time of admission with the name, address, and telephone number of the Offices of Health Facility Licensure and Certification, the state long-term care ombudsman, and adult protective services; and (2) advise residents both orally and in writing of their right to file a complaint with the aforementioned entities.

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"Self-preservation" means that a person is at least capable of removing him or herself from situations involving imminent danger, such as fire.

"Service provider" means the individual administratively responsible for providing to consumers for a period of more than 24 hours, whether for compensation or not, services of personal assistance for one to three residents and who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice: *Provided,* That services utilizing equipment which requires auxiliary electrical power in the event of a power failure may not be used unless the home has a backup power generator.

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§16B-6-3. Registration of service providers required; form of registration; information to be provided.

(a) Service providers shall register with the director. No fee may be charged for registration. Registration information shall be provided on a registration form or may be verbally communicated to the director for placement by the director on the form, but no provision of information may be deemed to meet the registration requirement until the signature of the service provider is recorded on the registration form.

(b) Information required for registration shall include the following:

(1) Name, address, and telephone number of the service provider;

(2) Address and telephone numbers where services are provided to residents and the number of residents provided service;

(3) The services, such as nursing care or personal assistance, provided to residents; and

(4) Other information required by rules promulgated by the director.

(c) The director may deny registration if the information provided in an application is known by the applicant to be false or the applicant fails to report required information.

(d) A legally unlicensed provider may operate no more than one legally unlicensed home.

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§16B-6-3a. Exemption for the United States Department of Veterans Affairs Medical Foster Homes; reporting.

(a) The provisions of this article do not apply to any home or facility approved and annually reviewed by the United States Department of Veterans Affairs as a Medical Foster Home, pursuant to 38 CFR §17.73, in which care is provided exclusively to three or fewer veterans.

(b) The West Virginia Department of Veterans Affairs shall report annually by December 1, to the Governor, outlining the scope and effectiveness of the Medical Foster Home Program for veterans in West Virginia.

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§16B-6-4. Public availability of registry.

The director shall publish and make available to the public on an annual basis a list of service providers registered in accordance with §16B-6-3 of this code.

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§16B-6-5. Inspections; right of entry.

The director may employ inspectors to enforce the provisions of this article. These inspectors shall have the right of entry into any place where services are provided by a service provider, to determine the number of residents therein, and the adequacy of services being provided to them. The director may obtain a search warrant to inspect those premises that the director has reason to believe are being used to provide services. The inspectors shall have access to all parts of the home and grounds, including, but not limited to, all areas of all buildings on the grounds of a home, food supplies, resident medications, and resident medical records. Inspectors shall also be permitted to conduct private interviews with all residents and staff of a home.

If after investigating a complaint, the director determines that the complaint is substantiated and that an immediate and serious threat to a resident's health or safety exists, the director may petition the circuit court for an injunction, order of abatement or other appropriate action or proceeding to: (1) Close the home; (2) transfer residents in the home to other facilities; or (3) appoint temporary management to oversee the operation of the home to assure the health, safety, welfare, and rights of the home's residents where there is a need for temporary management to ensure compliance with the court's order. Any home aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in §16B-4-12 of this code.

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§16B-6-6. Enforcement; criminal penalties.

(a) Any service provider who fails to register with the director shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 or more than $2,500, or imprisoned in jail not less than 10 days, or more than 30 days after notice by certified mail by the director to such service provider of the requirements of this article.

(b) Any person who interferes with or impedes in any way the lawful enforcement of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 or more than $2,500, or imprisoned in the jail not less than 10 days, or more than 30.

(c) If after investigating a complaint, the director determines that the home is housing more than three residents, the director, in consultation with the Inspector General, shall assess a civil penalty of $50 per day per the number of residents exceeding three. Each day the 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.

(d) The Inspector General may in his or her discretion bring an action to enforce compliance with the provisions of this article.

(e) The Circuit Court of Kanawha County or the circuit court of the county in which the conduct occurred shall have jurisdiction in all civil enforcement actions brought under this article and may order equitable relief without bond.

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