WEST VIRGINIA CODE CHAPTER 16b ARTICLE 8

WV Legislature

§16B-8-1. Purpose and short title.

This article shall be known as the Hospice Licensure Act. The purpose of this Act is to establish licensing requirements for hospices. It is the intent of the Legislature to establish, promote and make available within this state a comprehensive hospice care program for the treatment of physical, emotional, and mental symptoms of terminal illness.

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§16B-8-2. Definitions.

"Bereavement services" means support services designed to assist individuals to experience, respond emotionally to, and adjust to the death of another person.

"Director" means the Director of the Office of Health Facility Licensure and Certification, or his or her designee.

"Hospice" means a coordinated program of home and inpatient care provided directly or through an agreement under the direction of an identifiable hospice administration which provides palliative and supportive medical and other health services to terminally ill individuals and their families. Hospice utilizes a medically directed interdisciplinary team. A hospice program of care provides care to meet the physical, psychological, social, spiritual, and other special needs which are experienced during the final stages of illness and during dying and bereavement.

"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.

"Interdisciplinary team" means the hospice patient and the patient's family, the attending physician and the following hospice personnel: Physician, nurse, social worker, clergy and trained volunteer. Providers of supportive services such as mental health, pharmaceutical, and any other appropriate allied health services may also be included on the team as the needs of the individual dictate.

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

"Palliative services" means treatment directed at controlling pain, relieving other symptoms, and focusing on the special needs of the individual and family as they experience the stress of the dying process, rather than treatment designed for investigation and intervention for the purpose of cure or prolongation of life.

"Terminally ill" means that an individual has a medical prognosis that his or her life expectancy is six months or less or another length of time determined by the centers for Medicare and Medicaid services and designated in federal hospice regulations.

The Inspector General may define in regulation any term or phrase used in this article which is not expressly defined.

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§16B-8-3. Hospices to obtain license; application; fees and inspections.

(a) 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 state.

(b) No person, partnership, association, or corporation or any governmental unit or any division, department, board, or agency thereof may operate a hospice without first obtaining a license from the director in accordance with the provisions of this article and the rules lawfully promulgated hereunder.

(c) Any person, partnership, association, or corporation or any governmental unit or any division, department, board, or agency thereof desiring a license hereunder shall file with the director an application in such form as the director shall prescribe and furnish accompanied by a fee to be determined by the director, based upon the number of persons served by the hospice. The director shall inspect the hospice prior to issuing a license. Upon receipt and review of an application for license, the director shall issue a license if the hospice is in compliance with the provisions of this article and with the rules lawfully promulgated hereunder. The license is not transferable or assignable.

(d) A license shall expire one year from the date of issuance. Sixty days prior to the expiration date, an application for renewal shall be submitted on forms furnished by the director. A license shall be renewed if the director determines that the applicant is in compliance with this article and with all rules promulgated hereunder.

(e) The director or his or her designee shall inspect all hospices that are subject to rules adopted pursuant to this article periodically and at least as often as required by the Centers for Medicare and Medicaid Services in order to determine compliance with the provisions of this article and with rules adopted hereunder, and regulations promulgated by the Centers for Medicare and Medicaid Services.

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§16B-8-4. Suspension; revocation.

(a) The director, in consultation with the Inspector General, is authorized to suspend or revoke a license issued hereunder if the provisions of this article or of the rules are violated.

(b) Before any such license is suspended or revoked, however, written notice shall be given the licensee, stating the grounds of the complaint, and the date, time, and place set for the hearing on the complaint, which date shall not be less than 30 days from the time notice is given. Such notice shall be sent by registered mail to the licensee at the address where the hospice concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

(c) If a license is revoked as herein provided, a new application for a license shall be considered by the director, in consultation with the Inspector General, if, when and after the conditions upon which revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection has been made and all provisions of this article and rules promulgated hereunder have been satisfied.

(d) All of the pertinent provisions of §29A-5-1 *et seq*. of this code shall apply to and govern any hearing authorized and required by the provisions of this article and the administrative procedure in connection with and following any such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section.

(e) Any applicant or licensee who is dissatisfied with the decision of the Board of Review as a result of the hearing provided in this section may, within 30 days after receiving notice of the decision, appeal to the West Virginia Intermediate Court of Appeals for judicial review of the decision.

(f) The court may affirm, modify, or reverse the decision of the Board of Review and either the applicant or licensee or the Inspector General may appeal from the court's decision to the Supreme Court of Appeals.

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§16B-8-5. Inspector General to establish rules.

The Inspector General may promulgate rules in accordance with the provisions of §29A-1-1 *et seq*. of this code for the licensure of hospice programs to ensure adequate care, treatment, health, safety, welfare, and comfort of hospice patients. Such rules shall include, but not be limited to:

(a) The qualifications and supervision of licensed and nonlicensed personnel;

(b) The provision and coordination of inpatient care and in-home treatment services, including the development of a written plan of care;

(c) The management, operation, staffing, and equipping of the hospice program;

(d) The clinical and business records kept by the hospice;

(e) The procedures for the review of utilization and quality of patient care; and

(f) Such other requirements as the director determines to be appropriate.

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§16B-8-6. Violations; penalties; injunction.

(a) Any person, partnership, association, or corporation, and any local governmental unit or any division, department, board, or agency thereof which establishes, conducts, manages, or operates a hospice without first obtaining a license therefor as herein provided, or which violates any provisions of this article or any rule or regulation lawfully promulgated thereunder, shall be assessed a civil penalty by the director, in consultation with the Inspector General, not to exceed $50 for each violation. Each day of continuing violation after conviction shall be considered a separate violation.

(b) Notwithstanding the existence or pursuit of any other remedy, the Inspector General may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, corporation, or any governmental unit or any division, department, board, or agency thereof to restrain or prevent the establishment, conduct, management, or operation of any hospice or violation of any provisions of this article or any rule or regulation lawfully promulgated thereunder without first obtaining a license therefor in the manner hereinbefore provided.

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