WEST VIRGINIA CODE: §16b-9-10

§16B-9-10. Reports of inspections; plans of correction; assessment of penalties, fees, and costs; use of funds derived therefrom; hearings.

(a) Reports of all inspections made pursuant to §16B-9-9 of this code shall be in writing and filed with the director, and shall list all deficiencies in the residential care community's compliance with the provisions of this article and the rules promulgated hereunder. The director shall send a copy of the report to the residential care community and shall specify a time within which the residential care community shall submit a plan for correction of any listed deficiencies, which plan shall be approved, rejected, or modified by the director. Inspectors shall allow audio taping of the exit conference that follows a licensure or certification inspection, with all costs incurred as a result of the taping to be paid by the residential care community. A copy of the audio tape shall be provided to the inspector.

(b) Upon the failure of a residential care community to submit a plan of correction as required or to correct any deficiency within the time specified, the director, in consultation with the Inspector General, may assess a civil penalty or initiate other appropriate legal or disciplinary action, as provided by this article.

(c) Nothing in this section may be construed to require the director to afford a formal opportunity for a residential care community to correct a deficiency before initiating an enforcement action in either an administrative or judicial forum, where, in the opinion of the director, in consultation with the Inspector General, the deficiency jeopardizes the health or safety of the community's residents or where the deficiency is the second or subsequent violation to occur within a 12-month period.

(d) Civil penalties assessed against residential care communities shall be classified according to the nature of the violation, as provided in §16B-9-5(c) and rules promulgated thereunder, consistent with the following: For each violation of a Class I standard, the civil penalty imposed shall be not less than $50 nor more than $500; for each violation of a Class II standard, the civil penalty imposed shall be not less than $25 nor more than $50; for each violation of a Class III standard, the civil penalty imposed shall be not less than $10 nor more than $25. Each day that a violation continues after the date of citation constitutes a separate violation. The date of the citation is the date the facility receives the written statement of deficiencies.

(e) The director, in consultation with the Inspector General, shall assess a civil penalty not to exceed $2,000 against any individual who notifies a residential care community, or causes it to be notified, in advance, of the time or date on which an inspection is scheduled to be conducted under this article.

(f) If the director, in consultation with the Inspector General, assesses a penalty under this section, he or she shall cause a notice of penalty to be delivered to the residential care

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community by personal service or by certified mail. This notice shall state the amount of the penalty, the action, deficiency or other circumstance for which the penalty is assessed, the statutory requirement or rule which has been violated and the basis upon which the director, in consultation with the Inspector General, determined the amount of the penalty.

(g) The Inspector General shall recover in a judicial proceeding any civil penalty which: (i) Remains uncontested and unpaid for 30 days after its receipt; or (ii) if contested, has been affirmed by the Board of Review and remains unappealed for 30 days after receipt of the Board of Review's final order; or (iii) if appealed, has been affirmed upon judicial review of the Board of Review’s final order. All funds received in the form of civil penalties or interest thereon pursuant to this article shall be deposited in a special resident benefit account which is hereby established and applied by the director exclusively for the protection of the health or property of residents of residential care communities operated within this state that the director determines to be deficient, which may include payment of costs to relocate residents of a deficient residential care community to other facilities, operation costs of a residential care community pending correction of deficiencies or closure and reimbursement of residents for personal funds lost.

(h) The opportunity for a hearing on any action taken under this section is as provided in §16B-9-12 of this code. In addition to any other rights of appeal conferred upon a residential care community under this section, it may also request a hearing and seek judicial review pursuant to §16B-9-12 and §16B-9-13 of this code to contest the director's citing of a deficiency in an inspection report, irrespective of whether the deficiency results in the imposition of a civil penalty.

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