WEST VIRGINIA CODE: §16b-9-15

§16B-9-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever advertises, announces, establishes or maintains, or is engaged in establishing or maintaining a residential care community without a license granted under §16B-9-6 of this code, or who prevents, interferes with or impedes in any way the lawful enforcement of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not more than $100, or by confinement in the regional or county jail for a period of not more than 90 days, or both, at the discretion of the court. For a second or subsequent offense, the fine may be increased to not more than $250, with confinement in the regional or county jail for a period of not more than 90 days, or both, at the discretion of the court. Each day that a violation continues after conviction therefor constitutes a separate offense.

(b) The Inspector General may bring an action to enforce compliance with this article, any rule promulgated hereunder, or order issued hereunder, whenever it appears to the director in consultation with the Inspector General, that a person has engaged in or is engaging in an act or practice in violation of this article or any rule or order hereunder, or whenever it appears to the director, in consultation with the Inspector General, that a person has aided, abetted or caused, or is aiding, abetting or causing such an act or practice. Upon application by the director, the circuit court of the county in which the conduct has occurred or is occurring has jurisdiction to grant without bond a permanent or temporary injunction, decree or restraining order.

Whenever the director, in consultation with the Inspector General, has refused to grant or renew a license, revoked a license that is required to operate a residential care community, or ordered a person to refrain from actions that violate the rules promulgated pursuant to this article, and the person has appealed the action of the director, the court may, during the pendency of the appeal, issue a restraining order or injunction upon proof that the operation of the residential care community or its failure to comply with the order of the director adversely affects the well-being or safety of the residents of the residential care community. Should a person who appeals an order of the director fail to appear or should the appeal be decided in favor of the director, the court shall issue a permanent injunction upon proof that the person is operating or conducting a residential care community without a license as required by law, or has continued to violate the rules promulgated pursuant to this article.

(c) Any residential care community that deprives a resident of any right or benefit created or established for the well-being of the resident by the terms of any contract, any state statute or rule, or by any applicable federal statute or regulation, is liable to that resident in a civil action for any injuries suffered as a result of the deprivation. Upon a finding that a resident has been deprived of a right or benefit and suffered an injury thereby, compensatory damages shall be assessed in an amount sufficient to compensate the resident for the injury, unless there is a finding that the residential care community exercised due care reasonably

WV Legislature

necessary to prevent and limit the deprivation and injury to the resident. In addition, if the deprivation by a residential care community of a right or benefit is found to have been willful or in reckless disregard, punitive damages may be assessed. A resident may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of available administrative remedies may not be required prior to commencing an action hereunder.

The amount of damages recovered by a resident in an action brought pursuant to this section is exempt for purposes of determining initial or continuing eligibility for medical assistance under §9-5-1 *et seq*. of this code, and may not be taken into consideration or required to be applied toward the payment or part payment of the cost of medical care or services available under that article.

Any waiver by a resident or his or her legal representative of the right to commence an action under this section, whether oral or in writing, is null and void as contrary to public policy.

(d) The penalties and remedies provided in this section are cumulative and are in addition to all other penalties and remedies provided by law.

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