WEST VIRGINIA CODE CHAPTER 16b ARTICLE 9

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§16B-9-1. Purpose.

It is the policy of this state to encourage and promote the development and utilization of quality residential communities for persons who desire to live independently in an apartment, who are or may be dependent upon the services of others by reason of physical or mental impairment, and who may require limited and intermittent nursing care and who are capable of self-preservation and are not bedfast. Individuals may not be disqualified for residency solely because they qualify for or receive services coordinated by a licensed hospice. This care and treatment requires a living environment for these persons which, to the extent practicable, approximates a normal home environment. To this end, it is the policy of this state to encourage and promote the development and maintenance of residential care communities.

The provisions of this article are remedial and shall be liberally construed to effectuate its purposes and intents. This article is intended to apply only to residential communities in which apartments are rented on a month-to-month basis. All residential care community rental contracts shall specify in bold-faced type, under the conspicuous caption "NOTICE TO RESIDENT", that residents of the residential community must be capable of self-preservation, or substantially similar words clearly conveying the same meaning. This article may not be construed to require that any person be required to vacate any property in which that person has an ownership or a leasehold interest, except for a month-to-month tenancy, because that person is disabled and incapable of self-preservation. Nothing in this article is intended to supersede the provisions of §5-11A-1 *et seq*. of this code.

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§16B-9-2. Definitions.

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

(1) "Capable of self-preservation" means that a person is, at a minimum, physically capable of removing himself or herself from situations involving imminent danger such as fire;

(2) "Deficiency" means a statement of the rule and the fact that compliance has not been established and the reasons therefor;

(3) "Director" means the director of the Office of Health Facility Licensure and Certification, or his or her designee;

(4) "Division" means the Office of Health Facility Licensure and Certification;

(5) "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;

(6) "Limited and intermittent nursing care" means direct hands-on nursing care of a resident who needs no more than two hours of nursing care per day for a period of time no longer than 90 consecutive days per episode, which care may be provided only when the need for it meets these requirements: The resident requests that he or she remain in the residential care community, the resident is advised of the availability of other specialized health care facilities to treat his or her condition, and the need for care results from a medical pathology or the normal aging process. Limited and intermittent nursing care may be provided only by or under the supervision of a registered professional nurse and in accordance with legislative rules.

(7) "Nursing care" means those procedures commonly employed in providing for the physical, emotional and rehabilitation needs of the ill or otherwise incapacitated and which require technical skills and knowledge beyond those that untrained persons possess, including, irrigations, catheterizations, and special procedures that contribute to rehabilitation and administration of medication by any method involving a level of complexity and skill not possessed by untrained persons;

(8) "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.

(9) "Person" means a natural person and every form of organization, whether incorporated or unincorporated, including partnerships, corporations, trusts, associations, and political subdivisions of the state;

(10) "Personal assistance" means services of a personal nature, including help in walking, bathing, dressing, toileting, getting in or out of bed, and supervision that is required because of the age or mental impairment of a resident;

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(11) "Resident" means an individual who lives in a residential care community for the purpose of receiving personal assistance or limited and intermittent nursing services from the community;

(12) "Residential care community" means any group of 17 or more residential apartments, however named, which are part of a larger independent living community and which are advertised, offered, maintained, or operated by an owner or manager, regardless of consideration or the absence thereof, for the express or implied purpose of providing residential accommodations, personal assistance, and supervision on a monthly basis to 17 or more persons who are or may be dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care but who are capable of self-preservation and are not bedfast. Individuals may not be disqualified for residency solely because they qualify for or receive services coordinated by a licensed hospice. Each apartment in a residential care community shall be at least 300 square feet in size, have doors capable of being locked and contain at least: One bedroom; one kitchenette that includes a sink and a refrigerator; and one full bathroom that includes a bathing area, toilet, and sink. Services utilizing equipment which requires auxiliary electrical power in the event of a power failure may not be used unless the residential care community has a backup power generator. Nothing contained in this article applies to hospitals, as defined under §16B-3-1 of this code, state institutions, as defined under §27-1-6, residential care communities operated as continuing care retirement communities or housing programs operated under rules of the federal department of housing and urban development and/or the office of rural economic development, residential care communities, operated by the federal government or the state government, institutions operated for the treatment and care of alcoholic patients, offices of physicians, hotels, boarding homes or other similar places that furnish only room and board, or to homes or asylums operated by fraternal orders pursuant to §35-3-1 of this code;

(13) "Substantial compliance" means a level of compliance with the rules promulgated hereunder that identified deficiencies pose a risk to resident health or safety no greater than a potential for causing minimal harm.

(b) The Inspector General may by rule define terms pertinent to this article which are not defined.

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§16B-9-3. Powers, duties, and rights of Inspector General.

In the administration of this article, the Inspector General may:

(1) Enforce rules and standards for residential care communities as adopted, proposed, amended, or modified by the Inspector General;

(2) Exercise all powers granted herein relating to the issuance, suspension, and revocation of licenses of residential care communities;

(3) Enforce rules governing the qualification of applicants for residential care community licenses, including, but not limited to, educational, financial, personal, and ethical requirements, as adopted, proposed, amended, or modified by the Inspector General;

(4) Receive and disburse federal funds and to take any lawful action that is necessary or appropriate to comply with the requirements and conditions for the receipt or expenditure of federal funds;

(5) Receive and disburse funds appropriated by the Legislature to the division for any authorized purpose;

(6) Receive and disburse funds obtained by the division by way of gift, grant, donation, bequest, or devise, according to the terms thereof, funds derived from the division's operation, and funds from any other source, no matter how derived, for any authorized purpose;

(7) Negotiate and enter into contracts, and to execute all instruments necessary or convenient in carrying out the functions and duties of the position of Inspector Director, and all of these contracts, agreements, and instruments shall be executed by the Inspector Director;

(8) Appoint officers, agents, employees, and other personnel and establish the duties and fix the compensation thereof;

(9) Offer and sponsor education and training programs for residential care communities' administrative, managerial, and operations personnel;

(10) Undertake survey, research, and planning projects and programs relating to the administration and operation of residential care communities and to the health, care, treatment, and service in general of residents of these communities;

(11) Establish by legislative rule in accordance with §16B-9-10 of this code and to assess reasonable civil penalties for violations of residential care community standards;

(12) Inspect any residential care community and any of the records maintained therein, subject to the provisions of §16B-9-10 of this code;

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(13) Establish legislative rules in accordance with §29A-3-1 *et seq*. of this code, setting forth procedures for implementing the provisions of this article, including informal conferences, investigations and hearings, and for enforcing compliance with the provisions of this article and the rules promulgated hereunder;

(14) Subpoena witnesses and documents, administer oaths and affirmations, and examine witnesses. Upon the failure of any person without lawful excuse to obey a subpoena to give testimony and upon reasonable notice to all persons affected thereby, the Inspector General may apply to the circuit court of the county in which the hearing is to be held or to the circuit court of Kanawha County for an order compelling compliance;

(15) Make a complaint or cause proceedings to be instituted against any person or persons for the violation of the provisions of this article or of the rules promulgated hereunder. An action may be taken by the Inspector General in the absence of concurrence or participation by the prosecuting attorney of the county in which the proceedings are instituted. The Circuit Court of Kanawha County or the circuit court of the county in which the violation has occurred has jurisdiction in any civil enforcement action brought pursuant to this article and may order equitable relief. In these cases, the court may not require that a bond be posted, nor may the Inspector General or any person acting under his or her authority be required to give security for costs;

(16) Delegate authority to his or her employees and agents in the performance of any power or duty granted in this article, except the issuance of final decisions in any adjudicatory matter; and

(17) Make available at all times online access through the Office of Health Facility Licensure and Certification website the following information. The online information shall describe the residential care community licensing and investigatory activities of the division. The online information shall include a list of all residential care communities and the following information: Whether the residential care communities are proprietary or nonproprietary, the name of the administrator or administrators, the total number of beds; license type, license number, license expiration date, health investigations information and reports, life safety investigations information and reports, and whether those residential care communities listed accept Medicare or Medicaid residents.

(18) 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-9-4. Administrative and inspection staff.

The director may, at any time he or she considers necessary, employ administrative employees, inspectors, or other persons to properly implement the provisions of this article. Employees of the division shall be members of the state civil service system and shall enforce the provisions of this article and the rules promulgated hereunder. In discharging their official duties, employees of the division have the right of entry into any place maintained as a residential care community.

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§16B-9-5. Rules; minimum standards for residential care communities.

(a) The Inspector General shall propose all rules that may be necessary or proper to implement or effectuate the purposes and intent of this article and to enable the director to exercise the powers and perform the duties conferred herein. All rules authorized or required pursuant to this article shall be proposed by the Inspector General and promulgated in accordance with the provisions governing legislative rules, contained in §29A-3-1 of this code.

(b) The Inspector General shall propose rules establishing minimum standards for the operation of residential care communities, including, but not limited to, the following:

(1) Administrative policies, including: (i) An affirmative statement of the right of access to residential care communities by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy; and (ii) a statement of the rights and responsibilities of residents;

(2) Minimum numbers and qualifications of residential care community personnel according to the size, classification and health care needs of the residential care community;

(3) Safety requirements, except for those fire and life safety requirements under the jurisdiction of the state Fire Marshal;

(4) Sanitation requirements;

(5) Protective and personal services required to be provided;

(6) Dietary services required to be provided;

(7) Maintenance of health records, including confidentiality;

(8) Social and recreational activities required to be made available;

(9) Physical facilities;

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

(11) 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

(12) Other items or considerations that the director considers appropriate to ensure the health, safety and welfare of residents of residential care communities.

(c) The Inspector General shall propose rules that include detailed specifications for each

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category of standards required under subsections (b) and (d) of this section, and shall classify these standards as follows:

(1) Class I standards, the violation of which presents either an imminent danger to the health, safety, or welfare of a resident or a substantial probability that death or serious physical harm may result;

(2) Class II standards, the violation of which directly implicates the health, safety or welfare of a resident, but which does not present imminent danger thereto; and

(3) Class III standards, the violation of which has an indirect or potential impact on the health, safety, or welfare of any resident.

(d) A residential care community shall attain substantial compliance in every category of standard enumerated in this section in order to be considered as being in substantial compliance with the requirements of this article and the rules promulgated hereunder.

(e) Until such time as the Inspector General proposes rules governing residential care communities under this section, existing rules governing residential board and care homes shall apply to residential care communities and shall be construed so as to conform with the provisions of this article in their application to residential care communities: *Provided,* That to the extent any provisions of the rule governing residential board and care homes conflict with the provisions of this article, the provisions of this article shall govern.

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§16B-9-6. License required; application; fees; duration; renewal.

No person may establish, operate, maintain, offer, or advertise a residential care community within this state unless he or she first obtains a 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 residential care community which is being operated without a valid license from the director. The procedure for obtaining a license is as follows:

(a) The applicant shall submit an application to the director on a form prescribed by the director, containing information as may be necessary to show that the applicant is in compliance with the standards for residential care communities as established by this article and the rules promulgated hereunder. The application and any exhibits thereto shall provide the following information:

(1) The name and address of the applicant;

(2) 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; (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;

(3) The name and address of the owner of the premises of the residential care community or proposed residential care community, if different from the applicant, and if so, 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 of the premises; (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;

(4) Where the applicant is the lessee or the assignee of the residential care community or the premises of the proposed residential care community, a signed copy of the lease and any assignment thereof;

(5) The name and address of the residential care community or the premises of the proposed residential care community;

(6) The proposed number of apartments in the residential care community;

(7) (A) An organizational plan for the residential care community indicating the number of persons employed or to be employed, and the positions and duties of all employees; (B) the name and address of the individual who is to serve as administrator; and (C) evidence of

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compliance with applicable laws and rules governing zoning, building, safety, fire prevention, and sanitation, as the director may require; and

(8) Additional information as the director may require.

(b) Upon receipt and review of an application for license made pursuant to subdivision (a) of this section and inspection of the applicant pursuant to §16B-9-10 of this code, the director shall issue a license if he or she finds:

(1) That an applicant which is an individual and every partner, trustee, officer, director, and person with a controlling interest of an applicant which is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of a residential care community by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the department (if any) and a history of nonrevocation of a license during the five years immediately preceding the application;

(2) That the residential care community is under the supervision of an administrator qualified for that position by training and experience;

(3) That the residential care community is in substantial compliance with standards established pursuant to section five of this article, and other requirements as the Inspector General may establish by rule under this article.

Any license granted by the director shall state the maximum number of apartments for which it is granted, the date of issuance and the date of expiration. Residential care community licenses shall be issued for a period not to exceed one year: *Provided,* That any license which is unexpired, for which timely application for renewal has been made, together with payment of the proper fee, as required by the provisions of this article and the rules promulgated hereunder, continues in effect until: (i) One year after the original expiration date of the license; (ii) the date that the license is revoked or suspended pursuant to the provisions of this article; or (iii) the date of issuance of a new license, whichever date first occurs. Each license issued is only for the premises and applicant named in the application and may not be transferred or assigned: *Provided, however,* That if the ownership of a residential care community with an unexpired license is transferred, the filing of an application for a license with the director by the new owner shall have the effect of licensing the operation of the residential care community under the new owner for a period not to exceed three months. Every residential care community license shall be displayed in a conspicuous place at the facility for which it is issued so as to be accessible to and in plain view of residents and visitors.

(c) An original license may be renewed upon the timely filing of an application therefor, accompanied by the required fee and contingent upon the licensee's submission of evidence satisfactorily demonstrating compliance with the provisions of this article and the rules promulgated hereunder together with the following:

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(1) A balance sheet as of the end of the residential care community's fiscal year, setting forth its assets and liabilities as of that date, including all capital, surplus, reserve, depreciation, and similar accounts;

(2) A statement of operations of the residential care community as of the end of its fiscal year, setting forth all revenues, expenses, taxes, extraordinary items and other credits or charges; and

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

(d) In the case of an application for license renewal, if all the requirements of section five of this article are not met, the director may issue a provisional license, provided that care given in the residential care community is adequate for resident needs and the residential care community has demonstrated improvement and evidences potential for substantial compliance during the term of the provisional license: *Provided,* That a provisional license is effective for a period not to exceed one year, may not be renewed, and may not be issued to any residential care community with uncorrected violations of any Class I standard, as defined in subsection (c), section five of this article.

(e) A nonrefundable application fee in the amount of $75 for an original residential care community license shall be paid at the time an application for license is made. The average cost of all direct costs for initial licensure inspections of all residential care communities for the preceding year shall be assessed against and paid by the applicant to the director before an initial or amended license may be issued. The fee for license renewal shall be computed at the rate of $4 per apartment in the community per year: *Provided,* That the rate per apartment may be assessed against applicants for whom a license is issued for a period of less than one year. The director may annually adjust licensure fees for inflation, based upon the consumer price index. All license fees are due and payable to the director, annually, in the manner set forth in the rules promulgated hereunder. The director shall retain each application and licensure fee pending final action on the application. All fees received by the director under the provisions of this article shall be deposited in accordance with §16B-1-13 of this code.

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§16B-9-7. Cost disclosure; residents' funds; nursing care; fire code.

(a) Each residential care community shall disclose in writing to all prospective residents a complete and accurate list of all costs which may be incurred by them as residents of the community. Residents may not be held liable for any cost that was not disclosed.

(b) Residential care communities may not manage the personal finances or funds of its residents.

(c) A residential care community may be required to have registered nurses on its staff to the extent that it provides limited and intermittent nursing care.

(d) Residential care communities shall comply with the applicable provisions of the current edition of the life safety code as promulgated by the national fire protection association and adopted by the state Fire Commission.

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§16B-9-8. Investigation of complaints.

The director shall by rule establish procedures for the prompt investigation of all complaints of alleged violations of applicable requirements of state law or rules by residential care communities, except those complaints that the director determines are without any reasonable basis or are made with the sole intention to willfully harass a licensee. These procedures shall include provisions for ensuring the confidentiality of the complainant and of any other person named in the complaint, and for promptly informing the complainant and the residential care community involved of the results of the investigation.

If, after its investigation, the director determines that the complaint has merit, the director shall take appropriate disciplinary action and shall advise any injured party of the possibility of a civil remedy under this article.

No residential care community may discharge or in any manner discriminate or retaliate against any employee or resident for filing a complaint or participating in any proceeding provided for in this article. Violation of this prohibition by any residential care community constitutes grounds for the suspension or revocation of its license as provided in §16B-9-11 of this code. Any type of adverse action taken by a residential care community against a resident who has submitted a complaint to the director or upon whose behalf a complaint has been submitted or who has instituted any proceeding under this article, if taken within 120 days of the filing of the complaint or the institution of the proceeding, shall raise a rebuttable presumption that the adverse action was taken in retaliation for filing the complaint or instituting the proceeding.

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§16B-9-9. Inspections.

The director and any duly designated employee or agent thereof is authorized to enter upon and into the premises of any residential care community for which a license has been issued, for which an application for license has been filed, or which the director has reason to believe is being operated or maintained as a residential care community without a license. If entry is refused by the owner or person in charge of the residential care community, the director shall apply to the circuit court of the county in which the residential care community is located or the Circuit Court of Kanawha County for an order authorizing inspection, and the court shall issue an appropriate order if it finds good cause for inspection.

The director, by and through his or her agents or employees, shall conduct at least one inspection of a residential care community before issuing a license to it and shall conduct periodic unannounced inspections thereafter to determine if it is in compliance with all applicable statutory requirements and rules. All residential care communities shall comply with applicable rules of the state Fire Commission. The State Fire Marshal, by and through his or her agents or employees, shall make all fire, safety, and similar inspections of residential care communities. The director may provide for other inspections he or she considers necessary to effectuate the intent and purpose of this article. If the director determines upon investigation that a complaint is substantiated and that an immediate and serious threat to health or safety exists at a residential care community, he or she may invoke any remedy available pursuant to §16B-9-11 of this code. Any residential care community aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in §16B-9-12 of this code.

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§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 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,

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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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§16B-9-11. License limitation, suspension, and revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearing.

(a) The director, in consultation with the Inspector General, shall by order impose a ban on the admission of additional residents or reduce the number of apartments permitted in a residential care community, or any combination thereof, where it is determined upon inspection that a licensee is not providing adequate care to its residents under its existing quota and, further, that a reduction in the quota or the imposition of a ban on additional admissions, or a combination thereof, would enable the licensee to render adequate care to its residents. A notice to a licensee of a reduction in its quota or a ban on additional admissions shall include the terms of the order, the reasons therefor, and the date by which it must comply.

(b) The director, in consultation with the Inspector General, may suspend or revoke a license issued under this article if it is determined upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or rules promulgated hereunder.

(c) Whenever a license is limited, suspended, or revoked pursuant to this section, the director, in consultation with the Inspector General, shall file an administrative complaint stating facts constituting the grounds therefor. Upon the filing of this administrative complaint, the director, in consultation with the Inspector General, shall notify the licensee in writing, enclose a copy of the administrative complaint, and advise the licensee of its opportunity for a hearing pursuant to §16B-9-12 of this code. The notice and copy of the administrative complaint shall be served on the licensee by certified mail, return receipt requested.

(d) The suspension, revocation, or expiration of a license, or the withdrawal of an application for a license after it has been filed with the director, in consultation with the Inspector General, may not deprive the director, in consultation with the Inspector General, of his or her authority to institute or continue a disciplinary proceeding or to deny an application for a license.

(e) In addition to other remedies provided in this article, upon petition from the Inspector General, a circuit court may determine that a residential care community's deficiencies under this article constitute an emergency immediately jeopardizing the health, safety, welfare or rights of its residents, and issue an order to:

(1) Close the residential care community;

(2) Transfer residents of the residential care community to other facilities; or

(3) Appoint a temporary manager to oversee the operation of the residential care community

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and to assure the health, safety, welfare and rights of the residential care community's residents, where there is a need for temporary management while:

(A) There is an orderly closure of the residential care community; or

(B) Corrections are made in order to bring the residential care community into compliance with all applicable requirements of this article and the rules promulgated hereunder.

If the Inspector General petitions a circuit court for the closure of a residential care community, for the transfer of residents, or for the appointment of a temporary manager, the circuit court shall hold a hearing no later than seven days thereafter, at which time the Inspector General and the licensee or operator of the residential care community may participate and present evidence.

A circuit court may divest the licensee or operator of possession and control of a residential care community in favor of temporary management. The temporary management is accountable to the court and has those powers and duties that the court may grant to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare and rights of the residents, including, but not limited to, replacing managerial and other staff, hiring consultants, making necessary expenditures to close the residential care community or to repair or improve the residential care community so as to return it to compliance with applicable requirements, and receiving, conserving and expending funds, including making payments on behalf of the licensee or operator. Priority in making payments shall be given to expenditures for current direct resident care and the transfer of residents, if necessary.

The person charged with temporary management shall be an officer of the court and paid by the residential care community if resources are available; he or she may not be held liable in any capacity for conditions at the residential care community that originated or existed before his or her appointment nor may he or she be held personally liable for any act or omission, except those constituting gross negligence or intentional acts that result in injuries to persons or damage to property during his or her tenure as temporary manager.

It is unlawful for any person to impede the operation of temporary management as appointed by the court. For 90 days after the appointment of temporary management at a residential care community, any legal action that would interfere with its functioning or operation shall be automatically stayed. These actions include, but are not limited to, cancellation of insurance policies, termination of utility services, attachments to working capital accounts, foreclosures, evictions and repossessions of equipment used in the residential care community.

Temporary management appointed by the court for purposes of making improvements to bring a residential care community into compliance with applicable requirements may not be terminated until the court has determined that the residential care community has the management capability to ensure continued compliance with all applicable requirements:

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Provided, That if the court does not make such a determination within six months of the appointment of the temporary management, the temporary management terminates by operation of law at that time, and the residential care community shall be closed. After the termination of the temporary management, the person who was appointed as the temporary management shall make an accounting to the court, and after deducting the costs of the temporary management, expenditures and civil penalties and interest no longer subject to appeal, in that order, from receipts, the remainder, if any, shall be paid to the licensee or operator of the residential care community.

(f) Assessments for civil penalties and costs of actions taken under this article, including attorney fees, shall accrue interest at the rate of five percent per annum, beginning on the 30th day after receipt of notice of the assessment or the 30th day after receipt of the director's final order following a hearing, whichever later occurs. All assessments against a residential care community that remain unpaid shall be added to its licensure fee next due and may be filed as a lien against the property of the licensee or operator of the residential care community. Funds received from these assessments shall be deposited in the same manner as are funds received pursuant to §16B-9-10 of this code.

(g) The Inspector General is authorized to propose emergency rules, if necessary, to expand the powers of the Inspector General beyond those provided in this article, to the extent required to comply with federal requirements: *Provided,* That the Inspector General's powers may be expanded only to the extent required by federal requirements. Emergency rules proposed pursuant to this subsection are subject to the provisions governing legislative rules contained in §29A-3-1, *et seq*. of this code.

(h) The opportunity for a hearing on any action taken by the director under this section is as provided in §16B-9-12 of this code.

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§16B-9-12. Administrative appeals from civil penalty assessment, license limitation, suspension, or revocation.

(a) Any licensee or applicant aggrieved by an order issued pursuant to §16B-9-5, §16B-9-6, §16B-9-10 or §16B-9-11 of this code shall, upon timely written request, be afforded an opportunity for a hearing by the Board of Review at which the order may be contested as contrary to law, unwarranted by the facts, or both. The provisions of §29A-5-1 *et seq*. of this code governing contested cases apply to and govern hearings conducted pursuant to this section and the administrative procedures in connection therewith. A licensee or applicant may also request an informal meeting with the director before requesting a hearing.

(b) After a hearing conducted pursuant to this section, the Board of Review shall make and enter a written order either dismissing the complaint or taking whatever action is authorized and appropriate pursuant to this article. This written order shall be served upon the licensee and his or her attorney of record, if any, by certified mail, return receipt requested, accompanied by the director's findings of fact and conclusions of law as specified in §29A-5-3 of this code. If the director, in consultation with the Inspector General, suspends a residential care community's license, the order directing the suspension shall specify the grounds for the suspension and the time by which the conditions or circumstances giving rise to the suspension must be corrected in order for the licensee to be entitled to reinstatement of its license. If the director, in consultation with the Inspector General, revokes a license, he or she may stay the effective date of the revocation upon a showing that a delay is necessary to assure appropriate placement of the licensee's residents: *Provided,* That the effective date of revocation may not be stayed for more than 90 days. The Board of Review's order is final unless it is vacated, reversed or modified by the West Virginia Intermediate Court of Appeals upon judicial review in accordance with the provisions of §16B-9-13 of this code.

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§16B-9-13. Judicial review.

Any licensee adversely affected by an order of the director rendered after a hearing held in accordance with the provisions of §16B-9-12 of this code is entitled to judicial review thereof. All of the pertinent provisions of section §29A-5-4 of this code apply to and govern these proceedings with like effect as if those provisions were set forth in extenso herein.

The judgment of the West Virginia Intermediate Court is final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of §29A-6-1 of this code.

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§16B-9-14. Legal counsel and services for the Inspector General.

(a) Legal counsel and legal services for the Inspector General in all administrative hearings and all proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her assistants, an attorney employed by the Inspector General or, in proceedings in any circuit court, by the prosecuting attorney of the county wherein the action is instituted, all without additional compensation.

(b) The Governor may appoint counsel for the Inspector General, who shall perform legal services in representing the interests of residents in residential care communities in matters under the jurisdiction of the director, as the Governor shall direct. It is the duty of counsel so appointed to appear for the residents in all cases where they are not represented by counsel. The compensation of counsel so appointed shall be fixed by the Governor.

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§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 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

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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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§16B-9-16. Availability of reports and records.

The director shall make available for public inspection and provide copies at a nominal cost of all inspection reports and other reports of residential care communities filed with or issued by the director. Nothing contained in this section may be construed to allow the public disclosure of confidential medical, social, personal, or financial records of any resident. The Inspector General shall adopt rules that are reasonably necessary to effectuate the provisions of this section and preserve the confidentiality of medical, social, personal, or financial records of residents.

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