WEST VIRGINIA CODE CHAPTER 16b

WV Legislature

§16B-1-1. Legislative Findings.

It is declared to be the public policy of this state that:

(1) The Department of Health, the Department of Human Services, and the Department of Health Facilities need separate and independent oversight by an autonomous agency to protect the vulnerable citizens served by these agencies.

(2) The Office of Inspector General shall be free of all influence, control, and direction by the Department of Health, the Department of Human Services, and the Department of Health Facilities over which it: exercises oversight and accountability, promotes transparency, and monitors legal compliance.

(3) The Office of Inspector General shall be continued to provide oversight, transparency, and accountability to the Department of Health, the Department of Human Services, and the Department of Health Facilities. The powers of the Office of Inspector General shall be interpreted broadly to effectuate this legislative purpose.

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§16B-2-1. Office of the Inspector General continued; appointment and qualifications of Director of Office of Health Facility Licensure and Certification and the Director of Investigations and Fraud Management Units.

(a) The Office of the Inspector General is continued as a separate and autonomous agency within the Department of Health. The Department of Health shall provide administrative support, at the request of the Office of Inspector General. Shared services shall be provided at the request of the Office of the Inspector General when the same cannot be accomplished with current staffing within the Office of the Inspector General. The Office of Inspector General shall be headed by the Inspector General and is comprised of the offices as provided in §5F-2-1a of this code. Any administrative supports or shared services provided or received by the Office of the Inspector General are not subject to review by the Department of Health, the Department of Human Services, or the Department of Health Facilities.

(b) (1) The Inspector General shall be appointed by the Governor, within 90 days of a vacancy, subject to the advice and consent of the Senate.

(A) The term of the Inspector General is five years.

(B) At the end of a term, the Inspector General is eligible to be reappointed for one additional term. The Inspector General shall continue to serve until a successor is appointed.

(C) If a vacancy occurs in the office, an interim Inspector General may be appointed as successor to serve for the remainder of the unexpired term.

(2) The Inspector General may be removed by the Governor only for:

(A) Misconduct in office;

(B) Persistent failure to perform the duties of the Office; or

(C) Conduct prejudicial to the proper administration of justice.

(c) The Inspector General shall be professionally qualified through experience or education in at least two of the following areas:

(1) Law;

(2) Auditing;

(3) Government operations;

(4) Financial management; or

(5) Health policy.

(d) The Inspector General shall be paid an annual salary as provided in the budget.

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(e) Funding for the office shall be as provided in the state budget.

(f) The Inspector General shall:

(1) Conduct and supervise investigations, perform inspections, evaluations, and review, and provide quality control for the programs of the Department of Human Services, the Department of Health, and the Department of Health Facilities to promote legal, regulatory, programmatic, and fiscal compliance.

(2) Investigate fraud, waste, and abuse of the Department of Human Services, the Department of Health, and the Department of Health Facilities' funds, and conduct, whether by acts or omissions in the Department of Human Services, the Department of Health, and the Department of Health Facilities, that threatens or has the reasonable likelihood to threaten public safety or demonstrates negligence, incompetence, or malfeasance;

(3) Cooperate with and coordinate investigative efforts with the Medicaid Fraud Control Unit within the Office of the Attorney General, and where a preliminary investigation establishes a sufficient basis to warrant referral, shall refer such matters to the Medicaid Fraud Control Unit;

(4) Cooperate with and coordinate investigative efforts with departmental programs and other state and federal agencies to ensure a provider is not subject to duplicative audits; and

(5) Be empowered to consult with the Legislature for policy development;

(6) (A) Organize a board of review, consisting of a chairman appointed by the Inspector General and as many assistants or employees as may be determined by the Inspector General and as may be required by federal laws and rules respecting assistance; the board of review to have such powers of a review nature and such additional powers as may be granted to it by the Inspector General and as may be required by federal laws and rules respecting assistance;

(B) Provide by rules, review, and appeal procedures within the office as may be required by applicable federal laws and rules respecting assistance, and as will provide applicants for, and recipients of, all classes of assistance, an opportunity to be heard by the board of review, a member thereof, or individuals designated by the board, upon claims involving denial, reduction, closure, delay, or other action or inaction pertaining to public assistance;

(7) (A) May subpoena any person or evidence, administer oaths, take and certify affidavits, and take depositions and other testimony for the purpose of investigating fraud, waste, and abuse of Department of Health, Department of Human Services, or Department of Health Facilities' funds, or behavior in the same departments that threaten public safety or demonstrate negligence, incompetence, or malfeasance;

(B) If a person fails to comply with a lawful order or subpoena issued under this subsection, on petition of the Inspector General or a designated Assistant Inspector General, a court of

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competent jurisdiction may compel:

(i) Compliance with the order or subpoena; or

(ii) Testimony or the production of evidence;

(C) Within 30 business days after receiving a complaint or allegation, the Inspector General shall respond to the individual who filed the complaint or allegation with:

(i) A preliminary indication of whether the Office of the Inspector General is able to investigate the complaint or allegation; and

(ii) If the Office of the Inspector General is unable to investigate the complaint or allegation because of a conflict of interest, the Office of the Inspector General shall refer the complaint or allegation to another unit of government or law enforcement.

(g) Neither the secretary nor any employee of the Department of Human Services, Department of Health, or the Department of Health Facilities may prevent, inhibit, or prohibit or cause to be prevented, inhibited, or prohibited, the Inspector General or his or her employees from initiating, carrying out, or completing any investigation, inspection, evaluation, review, or other activity oversight of public integrity by the Office of the Inspector General.

(h) The Inspector General formulates, approves, and submits his or her budget to the Governor for consideration by the Governor.

(i) The Inspector General shall supervise all personnel of the Office of the Inspector General. Qualification, compensation, and personnel practice relating to the employees of the Office of the Inspector General, shall be governed by the classified service.

(j) Employ and discharge within the Office of the Inspector General employees, including professional employees such as investigators and other professional personnel as may be necessary to carry out the functions of the Inspector General, which employees shall continue to be within the classified service provisions of §29-6-1 *et seq*. of this code and rules promulgated thereunder, except for the Inspector General.

(k) Cause the various sections of the Office of the Inspector General to be operated effectively, efficiently, and economically, and to develop goals, policies, and plans that are necessary or desirable for the effective, efficient, and economical operation of the Office of the Inspector General.

(l) Eliminate or consolidate positions and name a person to fill more than one position.

(m) Reorganize internal functions or operations.

(n) Enter into contracts or agreements requiring the expenditure of public funds and

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authorize the expenditure or obligation of public funds as authorized by law: *Provided*, That the powers granted to the Inspector General to enter into agreements and to make expenditures or obligations of public funds under this provision shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature.

(o) Promulgate rules, as defined in §29A-1-2 of this code, to implement and make effective the powers, authority, and duties granted and imposed by the provisions of this chapter in accordance with the provisions of chapter 29A of this code. The Inspector General may promulgate emergency rules pursuant to §29A-3-15 of this code to effectuate the purposes of this section.

(p) Delegate to administrators the duties the Inspector General may deem appropriate, from time to time, to facilitate execution of the powers, authority, and duties delegated to the Inspector General.

(q) Transfer permanent state employees between units of the Inspector General.

(r) Enter into memorandums of understanding;

(s) Take any other action involving or relating to internal management not otherwise prohibited by law;

(t) All legislative rules currently in effect impact the Office of the Inspector General or its programs will continue to remain in full force and effect.

(u) (1) The Director of Office of Health Facility Licensure and Certification shall be appointed by the Governor, within 90 days of a vacancy, subject to the advice and consent of the Senate;

(2) The Director of the Office of Health Facility Licensure and Certification shall have at least eight years' experience in the field of licensure and regulatory matters; and

(v)(1) The Director of Investigations and Fraud Management shall be appointed by the Governor, subject to advice and consent of the Senate.

(2) The Director of Investigations and Fraud Management shall have at least eight years' experience in the field of investigations and fraud matters.

(w) The Inspector General, the Director of The Office of Health Facility Licensure and Certification and the Director of the Investigations and Fraud Management may not be the same person.

WV Legislature

§16B-2-2. Board of Review- judicial review of decisions of contested cases.

(a) The Board of Review shall provide a fair, impartial, and expeditious grievance and appeal process to applicants or recipients of assistance as defined in §9-1-2 *et seq*. of this code and to all parties of contested cases arising under §29A-5-1 *et seq*.

(b) The Bureau of Medical Services shall provide a fair, impartial, and expeditious grievance and appeal process to providers of Medicaid services.

(c) Any party adversely affected or aggrieved by a final decision or order of the board or the bureau may seek judicial review of that decision by filing an appeal to the Intermediate Court of Appeals as provided in §29A-5-4 *et seq*. of this code.

(d) The process established by this section is the exclusive remedy for judicial review of final decisions of the Board of Review and the Bureau for Medical Services.

WV Legislature

§16B-2-3. Board of Review; subpoena powers.

(a) The Inspector General and the Chair of the Board of Review may subpoena witnesses, papers, records, documents and any other information or data it considers necessary for its determination. They shall issue all subpoenas and subpoenas duces tecum in the name of the appropriate entity.

(b) Requests for subpoenas and subpoenas duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay all fees for the attendance and travel of witnesses.

(c) A subpoena or subpoena duces tecum issued at the request of an entity shall be served by the party at least five days before the return date, either by personal service by a person over 18 years of age or by registered or certified mail, return receipt requested. If service is by mail, the five-day notice period shall not begin until the date the person or entity receives the subpoena or subpoena duces tecum.

(d) Fees for the attendance of witnesses are the same as for witnesses before the circuit court of this State and shall be paid by the party requesting the issuance of the subpoena or subpoena duces tecum.

(e) In any case of disobedience or neglect of any subpoena or subpoena duces tecum, or any refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the issuing entity may apply to the Circuit Court of Kanawha County, and the court shall compel obedience through the same manner as a subpoena or subpoena duces tecum is enforced in Kanawha County Circuit Court.

WV Legislature

§16B-2-4. Authority of Investigations and Fraud Management Division to subpoena witnesses and documents.

(a) When the Investigations and Fraud Management Unit of the Office of the Inspector General, which is charged with investigating welfare fraud and intra-agency employee misconduct, has credible information that indicates a person has engaged in an act or activity related to the Department of Human Services, the Department of Health, or the Department of Health Facilities programs, benefits, or intra-agency employee misconduct which is subject to prosecution, it may conduct an investigation to determine if the act has been committed. To the extent necessary to the investigation, the Inspector General or an employee of the Office of the Inspector General may administer oaths or affirmations and issue subpoenas for witnesses and documents relevant to the investigation, including information concerning the existence, description, nature, custody, condition, and location of any book, record, documents or other tangible thing, and the identity and location of persons having knowledge of relevant facts or any matter reasonably calculated to lead to the discovery of admissible evidence.

When the Investigations and Fraud Management Unit has probable cause to believe that a person has engaged in an act or activity which is subject to prosecution relating to the Department of Human Services, the Department of Health, or the Department of Health Facilities programs, benefits, or intra-agency employee misconduct, the Inspector General or an employee of the Office of the Inspector General may request search warrants and present and swear or affirm criminal complaints.

(b) If documents necessary to an investigation of the Investigations and Fraud Management Unit appear to be located outside the state, the documents shall be made available by the person or entity within the jurisdiction of the state having control over such documents either at a convenient location within the state or, upon payment of necessary expenses to the division for transportation and inspection, at the place outside the state where these documents are maintained.

(c) Upon failure of a person to comply with a subpoena or a subpoena for the production of evidence or failure of a person to give testimony without lawful excuse and upon reasonable notice to all persons affected thereby, the Investigations and Fraud Management Division may apply to the circuit court of the county in which compliance is sought for appropriate orders to compel obedience with the provisions of this section.

(d) The Investigations and Fraud Management Unit may not make public the name or identity of a person whose acts or conduct is investigated pursuant to this section or the facts disclosed in an investigation except as the same may be used in any legal action or enforcement proceeding brought pursuant to this code or federal law.

WV Legislature

§16B-3-1. Health facilities and certain other facilities operated in connection therewith to obtain license; exemptions; meaning of hospital, etc.

No person, partnership, association, corporation, or any state or local governmental unit or any division, department, board, or agency thereof shall establish, conduct, or maintain in the State of West Virginia any ambulatory health care facility, ambulatory surgical facility, freestanding or operated in connection with a hospital, or extended care facility operated in connection with a hospital, without first obtaining a license therefor in the manner hereinafter *Provided,* That only one license shall be required for any person, partnership, association, corporation, or any state or local governmental unit or any division, department, board, or agency thereof who operates any combination of an ambulatory health care facility, ambulatory surgical facility, hospital, extended care facility operated in connection with a hospital, or more than one thereof, at the same location. Ambulatory health care facilities, ambulatory surgical facilities, hospitals, or extended care facilities operated in connection with a hospital operated by the federal government shall be exempt from the provisions of this article.

A hospital or extended care facility operated in connection with a hospital, within the meaning of this article, shall mean any institution, place, building, or agency in which an accommodation of five or more beds is maintained, furnished, or offered for the hospitalization of the sick or injured: *Provided,* That nothing contained in this article shall apply to nursing homes, rest homes, personal care facilities, homes for the aged, extended care facilities not operated in connection with a hospital, boarding homes, homes for the infirm or chronically ill, convalescent homes, hotels or other similar places that furnish to their guests only board and room, or either of them: *Provided, however,* That the hospitalization, care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, shall not be deemed to constitute the premises a hospital or extended care facility operated in connection with a hospital, within the meaning of this article. "Hospital" shall include state hospitals as defined by §27-1-6 of this code.

An "ambulatory health care facility" shall include any facility which provides health care or mental health care to noninstitutionalized persons on an outpatient basis. This definition does not include the legally authorized practice of medicine by any one or more persons in the private office of any health care provider.

"Ambulatory surgical facility" means a facility which provides surgical treatment to patients not requiring hospitalization. This definition does not include the legally authorized practice of surgery by any one or more persons in the private office of any health care provider.

"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.

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

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

Nothing in this article or the rules and regulations adopted pursuant to the provisions of this article shall be construed to authorize the licensure, supervision, regulation, or control in any manner of: (1) Private offices of physicians, dentists, or other practitioners of the healing arts; or (2) dispensaries and first aid stations located within business or industrial establishments maintained solely for the use of employees: *Provided,* That such facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than 24 hours.

Nothing in this article shall authorize any person, partnership, association, corporation, or any state or local governmental unit or any division, department, board, or agency thereof to engage in any manner in the practice of medicine, as defined by law. This article shall not be construed to restrict or modify any statute pertaining to the placement or adoption of children.

WV Legislature

§16B-3-2. Hospitals and institutions to obtain license; qualifications of applicant.

No person, partnership, association, corporation, or any state or local governmental unit or any division, department, board, or agency thereof may continue to operate an existing ambulatory health care facility, ambulatory surgical facility, hospital, or extended care facility operated in connection with a hospital, or open an ambulatory health care facility, ambulatory surgical facility, a hospital or extended care facility operated in connection with a hospital, unless such operation shall have been approved and regularly licensed by the state as hereinafter provided. Licenses shall be issued for a particular number by type of beds and/or type of services. Any change in the number by type of bed and/or type of services shall require the issuance of a new license.

Before a license shall be issued under this article, the person applying, if an individual, shall submit evidence satisfactory to the Office of Health Facility Licensure and Certification that he or she is not less than 18 years of age, of reputable and responsible character, and otherwise qualified. In the event the applicant is an association, corporation, or governmental unit, like evidence shall be submitted as to the members thereof and the persons in charge.

Every applicant shall, in addition, submit satisfactory evidence of his or her ability to comply with the minimum standards and with all rules and regulations lawfully promulgated. Every applicant shall further submit satisfactory evidence that he or she has implemented the paternity program created pursuant to §16B-3-13 of this code.

WV Legislature

§16B-3-3. Application for license.

Any person, partnership, association, or corporation, or any state or local governmental unit or any division, department, board, or agency thereof desiring a license hereunder shall file with the state Office of Health Facility Licensure and Certification a verified application stating the name of the applicant, and if the applicant is an individual, his or her age, the type of institution to be operated, the location thereof, the name of the person in charge thereof, and such other information as the Office of Health Facility Licensure and Certification may require. An application on behalf of a corporation, association, or governmental unit shall be made by any two officers thereof or by its managing agents and shall contain like information. The application shall be on a form prescribed, prepared, and furnished by the Office of Health Facility Licensure and Certification.

WV Legislature

§16B-3-4. License fees.

(a) The application of any person, partnership, association, corporation, or any state or local government unit for a license to operate a hospital or extended care facility operated in connection with a hospital, shall be accompanied by a fee to be determined by the number of beds available for patients, according to the following schedule of fees:

(1) Those with five beds but less than 50 beds shall pay a fee of $500;

(2) Those with 50 beds or more and less than 100 beds shall pay a fee of $750;

(3) Those with 100 beds or more and less than 200 beds shall pay a fee of $1,000; and (4) those with 200 beds or more shall pay a fee of $1,250.

(b) The director may annually adjust the licensure fees for inflation based upon the consumer price index.

(c) The application of any person, partnership, association, corporation, or local governmental unit for a license to operate an ambulatory health care facility or ambulatory surgical facility shall be accompanied by a reasonable fee to be determined by the director, based on the number of patients served by the facility.

(d) No such fee shall be refunded.

(e) All licenses issued under this article shall expire on June 30 following their issuance, shall be on a form prescribed by the Office of Health Facility Licensure and Certification, shall not be described in the application, shall be posted in a conspicuous place on the licensed premises, and may be renewed from year to year upon application, investigation, and payment of the license fee, as in the case of the procurement of an original license: *Provided,* That any such license in effect on June 30 of any year, for which timely application for renewal, together with payment of the proper fee, has been made to the Office of Health Facility Licensure and Certification in conformance with the provisions of this article and, the rules and regulations issued thereunder, and prior to the expiration date of such license, shall continue in effect until: (a) June 30 next following the expiration date of such license, (b) the date of the revocation or suspension of such license pursuant to the provisions of this article, or (c) the date of issuance of a new license, whichever date first occurs: *Provided, however,* That in the case of the transfer of ownership of a facility with an unexpired license, the application of the new owner for a license shall have the effect of a license for a period of three months when filed with the director.

(f) All fees received by the Office of Health Facility Licensure and Certification under the provisions of this article shall be deposited in accordance with §16-1-13 of this code.

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§16B-3-5. Inspection.

Every building, institution, or establishment for which a license has been issued shall be inspected periodically by a duly appointed representative of the Office of Health Facility Licensure and Certification under rules and regulations to be promulgated by the Inspector General. Inspection reports shall be prepared on forms prescribed by the Office of Health Facility Licensure and Certification. Institutions licensed hereunder shall in no way be exempt from being inspected or licensed under the laws of this state relative to hotels, restaurants, lodginghouses, boardinghouses, and places of refreshment.

WV Legislature

§16B-3-5a. Accreditation reports accepted for periodic license inspection.

Notwithstanding any other provision of this article, a periodic license inspection shall not be conducted by the Office of Health Facility Licensure and Certification for a hospital if the hospital has applied for and received an exemption from that requirement: *Provided*, That no exemption granted diminishes the right of the Office of Health Facility Licensure and Certification to conduct complaint inspections.

The Office of Health Facility Licensure and Certification shall grant an exemption from a periodic license inspection during the year following accreditation if a hospital applies by submitting evidence of its accreditation by the Joint Commission on Accreditation of Health Care Organizations or the American Osteopathic Association, or any accrediting organization approved by the Centers for Medicare and Medicaid Services, and submits a complete copy of the accrediting organization's accreditation report.

If the accreditation of a hospital is for a period longer than one year, the Office of Health Facility Licensure and Certification may conduct at least one license inspection of the hospital after the first year of accreditation and before the accreditation has expired and may conduct additional license inspections if needed. Hospitals receiving a three-year accreditation shall conduct annual self-evaluations using the current year accreditation manual for hospitals unless the Office of Health Facility Licensure and Certification informs the hospital that the hospital will be inspected by the Office of Health Facility Licensure and Certification. Hospitals are not required to conduct self-evaluations for any calendar year during which they are inspected by the Office of Health Facility Licensure and Certification. These self-evaluations shall be completed and placed on file in the hospital by March 31 of each year. Hospitals shall make the results of the self-evaluation available to the Office of Health Facility Licensure and Certification upon requested.

Accreditation reports filed with the Office of Health Facility Licensure and Certification shall be treated as confidential in accordance with §16B-3-10 of this code.

WV Legislature

§16B-3-6. Office of Health Facility Licensure and Certification to issue licenses; suspension or revocation.

The Office of Health Facility Licensure and Certification is hereby authorized to issue licenses for the operation of ambulatory health care facilities, ambulatory surgical facilities, hospitals, or extended care facilities operated in connection with hospitals which are found to comply with the provisions of this article and with all regulations lawfully promulgated by the Inspector General.

The Office of Health Facility Licensure and Certification is hereby authorized to suspend or revoke a license issued hereunder, on any of the following grounds:

(1) Violation of any of the provisions of this article or the rules and regulations issued pursuant thereto;

(2) Knowingly permitting, aiding, or abetting the commission of any illegal act in such institution;

(3) Conduct or practices detrimental to the health or safety of the patients and employees of such institution; or

(4) Operation of beds or services not specified in the license.

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 institution concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

If a license is revoked as herein provided, a new application for a license shall be considered by the Office of Health Facility Licensure and Certification 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 and regulations promulgated hereunder have been satisfied.

All of the pertinent provisions of §29A-5-1 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.

WV Legislature

§16B-3-7. Judicial review.

Any applicant or licensee who is dissatisfied with the decision of the Office of Health Facility Licensure and Certification as a result of the hearing provided in §16B-3-6 of this code may, within thirty days after receiving notice of the decision, appeal to the West Virginia Intermediate Court of Appeals for judicial review of the decision.

The Board of Review shall promptly certify and file in the court the transcript of the hearings on which its decision is based.

Findings of fact by the Office of Health Facility Licensure and Certification shall be considered as prima facie correct, but the court may remand the case to the Office of Health Facility Licensure and Certification for the taking of further evidence. The Office of Health Facility Licensure and Certification may thereupon make new or modified findings of fact which shall likewise be considered as prima facie correct. All evidence in the case shall be confidential until the final order is issued by the court, which order shall be made public.

The court shall have the power to affirm, modify, or reverse the decision of the Office of Health Facility Licensure and Certification and either the applicant or licensee or the Office of the Inspector General may appeal from the court's decision to the Supreme Court of Appeals. Pending the final disposition of the matter the status quo of the applicant or licensee shall be preserved.

WV Legislature

§16B-3-8. Inspector General to establish standards; director enforces.

The Inspector General shall have the power to promulgate rules and regulations in accordance with the provisions of §29-1-1 *et seq*. of this code and the director shall have the power to enforce such rules and regulations, as the Inspector General may establish, not in conflict with any provision of this article, as it finds necessary, or in the public interest, in order to protect patients in institutions required to be licensed under this article from detrimental practices and conditions, or to ensure adequate provision for their accommodations and care. No rule or regulation or standard of the Inspector General shall be adopted or enforced which would have the effect of denying a license to a hospital or other institution required to be licensed hereunder, solely by reason of the school or system of practice employed or permitted to be employed by physicians therein: *Provided,* That such school or system of practice is recognized by the laws of this state.

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.

WV Legislature

§16B-3-9. Hospitals and similar institutions required to supply patients, upon request, with one specifically itemized statement of charges assessed to patient, at no cost to patient.

Any hospital, or other similar institution, required to be licensed under this article, upon request, shall supply to any patient who has received services from the hospital, whether on an inpatient or outpatient basis, one itemized statement which describes with specificity the exact service or medication for which a charge is assessed to the patient at the institution, at no additional cost to the patient. In the event of the death of any such patient, a relative or guardian may make such request and shall receive such statement at no additional cost.

WV Legislature

§16B-3-10. Information not to be disclosed; exception.

Information received by the Office of Health Facility Licensure and Certification under the provisions of this article shall be confidential and shall not be publicly disclosed except in a proceeding involving the question of the issuance or revocation of a license.

WV Legislature

§16B-3-11. Violations; penalties.

Any person, partnership, association, or corporation, and any state or local governmental unit or any division, department, board, or agency thereof establishing, conducting, managing, or operating an ambulatory health care facility, ambulatory surgical facility, a hospital, or extended care facility operated in connection with a hospital, without first obtaining a license therefor as herein provided, or violating any provision of this article or any rule or regulation lawfully promulgated thereunder, shall be 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 imprisonment in the county jail for a period of not more than 90 days, or by both such fine and imprisonment, in the discretion of the court. For each subsequent offense the fine may be increased to not more than $500, with imprisonment in the county jail for a period of not more than 90 days, or both such fine and imprisonment, in the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

WV Legislature

§16B-3-12. Injunction; severability.

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 state or any local governmental unit, or any division, department, board, or agency thereof, to restrain or prevent the establishment, conduct, management, or operation of any ambulatory health care facility, ambulatory surgical facility, hospital, or extended care facility operated in connection with a hospital without first obtaining a license therefor in the manner hereinbefore provided.

If any part of this article shall be declared unconstitutional, such declaration shall not affect any other part thereof.

WV Legislature

§16B-3-13. Hospital-based paternity program.

(a) Every public and private hospital licensed pursuant to §16B-3-2 of this code and every birthing center licensed pursuant to §16B-20-1 *et seq*. of this code, that provides obstetrical services in West Virginia, shall participate in the hospital-based paternity program.

(b) The Bureau for Child Support Enforcement as described in §48-18-101 of this code shall provide all public and private hospitals and all birthing centers providing obstetric services in this state with:

(1) Information regarding the establishment of paternity;

(2) An acknowledgment of paternity fulfilling the requirements of §16-5-10 of this code; and

(3) The telephone number for the Bureau for Child Support Enforcement that a parent may call for further information regarding the establishment of paternity.

(c) Prior to the discharge from any facility included in this section of any mother who has given birth to a live infant, the administrator, or his or her assignee, shall ensure that the following materials are provided to any unmarried woman and any person holding himself or herself to be the natural father of the child:

(1) Information regarding the establishment of paternity;

(2) An acknowledgment of paternity fulfilling the requirements of §16-5-10 of this code; and

(3) The telephone number for the Bureau for Child Support Enforcement that a parent may call for further information regarding the establishment of paternity.

(d) The Bureau for Child Support Enforcement shall notify the Office of Health Facility Licensure and Certification of any failure of any hospital or birthing center to conform with the requirements of this section.

(e) Any hospital or birthing center described in this article should provide the information detailed in subsection (c) of this section at any time when such facility is providing obstetrical services.

WV Legislature

§16B-3-14. Rural Emergency Hospital Act.

(a) Definitions – As used in this section:

(1) "Critical Access Hospital" means a hospital that has been deemed eligible and received designation as a critical access hospital by the Centers for Medicare and Medicaid Services (CMS).

(2) "Rural Emergency Hospital" means a facility that:

(A) Was a critical access hospital;

(B) Does not provide acute care inpatient services; and

(C) Provides, at a minimum, rural emergency hospital services.

(3) "Rural Emergency Hospital Services" means emergency department services and observation care furnished by a rural emergency hospital that does not exceed an annual per patient average of 24 hours in such rural emergency hospital.

(4) "Staffed Emergency Department" means an emergency department of a rural emergency hospital that meets the following requirements:

(A) The emergency department is staffed 24 hours a day, seven days a week; and

(B) A licensed physician, advanced practice registered nurse, clinical nurse specialist, or physician assistant is available to furnish rural emergency hospital services in the facility 24 hours a day.

(b) A hospital located in an urban area (Metropolitan Statistical Areas (MSA) county), can be considered rural for the purposes of a designation as a critical access hospital pursuant to U.S.C. §1395i-4(c)(2) if it meets the following criteria:

(1) Is enrolled as both a Medicaid and Medicare provider and accepts assignment for all Medicaid and Medicare patients;

(2) Provides emergency health care services to indigent patients;

(3) Maintains 24-hour emergency services; and

(4) Is located in a county that has a rural population of 50 percent or greater as determined by the most recent United States decennial census.

(c) A critical access hospital may apply to be licensed as a rural emergency hospital if:

(1) It has been designated as a critical access hospital for at least one year; and

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(2) It is designated as a critical access hospital at the time of application for licensure as a rural emergency hospital.

(d) In addition to the requirements of subsection (c) of this section, rural emergency hospital shall, at a minimum:

(1) Provide rural emergency hospital services through a staffed emergency department;

(2) Treat all patients regardless of insurance status; and

(3) Have in effect a transfer agreement with a Level I or Level II trauma center.

(e) A rural emergency hospital may:

(1) With respect to services furnished on an outpatient basis, provide other medical and health services as specified by the Inspector General through rulemaking; and

(2) Include a unit of a facility that is a distinct part licensed as a skilled nursing facility to furnish post-hospital extended care services.

(f) The Inspector General shall propose a rule for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to implement the provisions of this section.

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§16B-3-15. Hospital visitation.

(a) A public or private hospital licensed pursuant to the provisions of §16B-3-2 of this code is required to permit patient visitation privileges for nonrelatives unless otherwise requested by the patient or legal designee. For purposes of this section, the term "legal designee" means and includes those persons 18 years of age or older, and appointed by the patient to make health care decisions for the patient pursuant to the provisions of §16-30-6 of this code.

(b) It is the intent of the Legislature that this section facilitate a patient's visitation with nonrelative individuals, and may not, in any way, restrict or limit allowable uses and disclosures of protected health information pursuant to the Health Insurance Portability and Accountability Act, 42 U.S.C. §1320d-2 and the accompanying regulations in 45 CFR 164.500.

(c) No provision of this section may be construed to prevent a hospital from otherwise restricting visitation privileges in order to prevent harm to the patient or disruption to the facility.

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§16B-3-16. Public notice regarding the closure of a licensed health care facility or hospital.

(a) Any hospital, extended care facility operated in connection with a hospital, ambulatory health care facility, or ambulatory surgical facility, freestanding or operated in connection with a hospital licensed in the State of West Virginia under this article that intends to terminate operations, shall provide at least three weeks' notice of such intent to the public prior to the actual termination of operations. Pursuant to the provisions of §59-3-1 et seq. of this code, the hospital or facility shall cause a Class III legal advertisement to be published in all qualified newspapers of general circulation where the hospital or facility is geographically located, and a notice shall be published on the facility's web page within the same time frame. The first publication of the Class III legal advertisement shall occur at least three weeks prior to the date the hospital or facility intends to terminate operations. The Class III legal advertisement shall include, but is not limited to, a statement, along with the specific or proximate date, that the hospital, extended care facility operated in connection with a hospital, ambulatory health care facility, or ambulatory surgical facility, freestanding or operated in connection with a hospital, intends to terminate operations, and where medical records, including, but not limited to, all imaging studies may be obtained.

(b) Upon closure, the hospital or facility shall cause a Class III legal advertisement to be published in all qualified newspapers of general circulation where the hospital or facility is geographically located informing the public where medical records, including, but not limited to, all imaging studies may be obtained. This notice shall include contact information. A notice shall also be placed on the facility web page.

(c) The hospital or facility shall respond to requests for medical records made pursuant to the publication requirements in this section within 30 days.

(d) A notification of any change in location of the patient’s medical records shall be published in a newspaper of general circulation as set forth in subsection (a) of this section. The confidentiality of the medical records shall be maintained during storage.

(e) If the facility fails to produce the requested records within 30 days, a penalty of $25 per day may be assessed by a court with jurisdiction.

(f) This section is effective retroactively to September 1, 2019, and continues in effect thereafter. The applicable penalties are only effective for requests for medical records made after the effective date of passage of this section.

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§16B-3-17. Healthcare-associated infection reporting.

(a) As used in this section, the following words mean:

(1) "Centers for Disease Control and Prevention" or "CDC" means the United States Department of Health and Human Services Centers for Disease Control and Prevention;

(2) "National Healthcare Safety Network" or "NHSN" means the secure Internet-based data collection surveillance system managed by the Division of Healthcare Quality Promotion at the CDC, created by the CDC for accumulating, exchanging, and integrating relevant information on infectious adverse events associated with healthcare delivery.

(3) "Hospital" means hospital as that term is defined in §16-29B-3(b)(8) of this code.

(4) "Healthcare-associated infection" means a localized or systemic condition that results from an adverse reaction to the presence of an infectious agent or a toxin of an infectious agent that was not present or incubating at the time of admission to a hospital.

(5) "Physician" means a person licensed to practice medicine by either the Board of Medicine or the board of osteopathy.

(6) "Nurse" means a person licensed in West Virginia as a registered professional nurse in accordance with §30-7-1 *et seq*. of this code.

(b) The Secretary of the Department of Health is hereby directed to create an Infection Control Advisory Panel whose duty is to provide guidance and oversight in implementing this section. The advisory panel shall consist of the following members:

(1) Two board-certified or board-eligible physicians, affiliated with a West Virginia hospital or medical school, who are active members of the Society for Health Care Epidemiology of America and who have demonstrated an interest in infection control;

(2) One physician who maintains active privileges to practice in at least one West Virginia hospital;

(3) Three infection control practitioners, two of whom are nurses, each certified by the Certification Board of Infection Control and Epidemiology, and each working in the area of infection control. Rural and urban practice must be represented;

(4) A statistician with an advanced degree in medical statistics;

(5) A microbiologist with an advanced degree in clinical microbiology;

(6) The Director of the Division of Disease Surveillance and Disease Control in the Bureau for Public Health or a designee; and

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(7) The director of the Office of Health Facility Licensure and Certification, or his or her designee.

(c) The advisory panel shall:

(1) Provide guidance to hospitals in their collection of healthcare-associated infections;

(2) Provide evidence-based practices in the control and prevention of healthcare associated infections;

(3) Establish reasonable goals to reduce the number of healthcare-associated infections;

(4) Develop plans for analyzing infection-related data from hospitals;

(5) Develop healthcare-associated advisories for hospital distribution;

(6) Review and recommend to the Secretary of the Department of Health the manner in which the reporting is made available to the public to assure that the public understands the meaning of the report; and

(7) Other duties as identified by the Secretary of the Department of Health.

(d) Hospitals shall report information on healthcare-associated infections in the manner prescribed by the CDC National Healthcare Safety Network (NHSN). The reporting standard prescribed by the CDC National Healthcare Safety Network (NHSN) shall be the reporting system of the hospitals in West Virginia.

(e) Hospitals who fail to report information on healthcare associated infections in the manner and time frame required by the Secretary of the Department of Health shall be fined the sum of $5,000 for each such failure.

(f) The Infection Control Advisory Panel shall provide the results of the collection and analysis of all hospital data to the Secretary of the Department of Health for public availability and the Bureau for Public Health for consideration in their hospital oversight and epidemiology and disease surveillance responsibilities in West Virginia.

(g) Data collected and reported pursuant to this act may not be considered to establish standards of care for any purposes of civil litigation in West Virginia.

(h) The Secretary of the Department of Health shall require that all hospitals implement and initiate this reporting requirement.

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§16B-3-18. Designation of comprehensive, primary, acute, and thrombectomy capable stroke-ready hospitals; reporting requirements; rulemaking.

(a) A hospital, as that term is defined in §16B-3-1 *et seq*. of this code, shall be recognized by the Office of Emergency Medical Services as a comprehensive stroke center (CSC), thrombectomy-capable stroke center (TSC), primary stroke center (PSC), or an acute stroke-ready hospital (ASRH), upon submitting verification of certification as granted by the American Heart Association, the joint commission, or other nationally recognized organization to the Office of Emergency Medical Services. A hospital shall immediately notify the Office of Emergency Medical Services of any change in its certification status.

(b) The Office of Emergency Medical Services shall gain access to, and utilize, a nationally recognized stroke database that compiles information and statistics on stroke care that align with the stroke consensus metrics developed and approved by the American Heart Association and the American Stroke Association, for the purpose of improving stroke care and access across the State of West Virginia. The Office of Emergency Medical Services shall, upon request, provide the data accessed and utilized relating to comprehensive stroke centers, thrombectomy-capable stroke centers, primary stroke centers, and acute stroke-ready hospitals to the advisory committee in §16B-3-18(d) of this code.

(c) The Office of Emergency Medical Services shall provide annually, by June 1, a list of all hospitals recognized pursuant to the provisions of §16-3-18(a) of this code to the medical director of each licensed emergency medical services agency in this state. This list shall be maintained by the Office of Emergency Medical Services and shall be updated annually on its website.

(d) The Secretary of the Department of Health shall continue a stroke advisory committee which shall function as an advisory body to the secretary and report no less than biannually at regularly scheduled meetings. Its functions shall include:

(1) Increasing stroke awareness;

(2) Promoting stroke prevention and health policy recommendations relating to stroke care;

(3) Advising the Office of Emergency Medical Services on the development of stroke networks;

(4) Utilizing stroke care data to provide recommendations to the Office of Emergency Medical Services to improve stroke care throughout the state;

(5) Identifying and making recommendations to overcome barriers relating to stroke care; and

(6) Review and make recommendations to the State Medical Director of the Office of Emergency Medical Services regarding prehospital care protocols including:

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(A) The assessment, treatment, and transport of stroke patients by licensed emergency medical services agencies; and

(B) Plans for the triage and transport, within specified time frames of onset symptoms, of acute stroke patients to the nearest comprehensive stroke center, thrombectomy-capable stroke center, primary stroke center, or acute stroke-ready hospital.

(e) The advisory committee as set forth §16B-3-18(d) of this code shall consist of no more than 14 members. Membership of the advisory committee shall include:

(1) A representative of the Department of Health;

(2) A representative of an association with the primary purpose of promoting better heart health;

(3) A registered emergency medical technician;

(4) Either an administrator or physician representing a critical access hospital;

(5) Either an administrator or physician representing a teaching or academic hospital;

(6) A representative of an association with the primary purpose of representing the interests of all hospitals throughout the state; and

(7) A clinical and administrative representative of hospitals from each level of stroke center certification by a national certifying body (CSC, TSC, PSC, and ASRH).

(f) Of the members first appointed, three shall be appointed for a term of one year, three shall be appointed for a term of two years, and the remaining members shall be appointed for a term of three years. The terms of subsequent appointees shall be three years. Members may be reappointed for additional terms.

(g) Nothing in this section may permit the Office of Emergency Medical Services to conduct inspections of hospitals in relation to recognition as a stroke center as set forth in this section: *Provided*, That nothing in this section may preclude inspections of hospitals by the Office of Emergency Medical Services which are otherwise authorized by this code.

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§16B-3-19. Hospital police departments; appointment of hospital police officers; qualifications; authority; compensation and removal; law-enforcement grants; limitations on liability and when immune from liability.

(a) The governing board of a hospital licensed under §16B-3-2 of this code may establish a hospital police department and appoint qualified individuals to serve as hospital police officers upon any premises owned or leased by the hospital and under the jurisdiction of the governing board, subject to the conditions and restrictions established in this section.

(1) A person who fulfills the certification requirements for law-enforcement officers under §30-29-5 of this code is considered qualified for appointment as a hospital police officer.

(2) A retired police officer may qualify for appointment as a hospital police officer if he or she meets the certification requirements under §30-29-5 of this code.

(3) Before performing duties as a hospital police officer in any county, a person shall qualify as is required of county police officers by:

(A) Taking and filing an oath of office as required by §6-1-1 *et seq*. of this code; and

(B) Posting an official bond as required by §6-2-1 *et seq*. of this code.

(b) A hospital police officer may carry a gun and any other dangerous weapon while on duty if the officer fulfills the certification requirement for law-enforcement officers under §30-29-5 of this code.

(c) It is the duty of a hospital police officer to preserve law and order:

(1) On the premises under the jurisdiction of the governing board and its affiliated properties; and

(2) On any street, road, or thoroughfare, except controlled access highways, immediately adjacent to or passing through the premises under the jurisdiction of the governing board, to which the officer is assigned by the chief executive officer or his or her designee: *Provided*, That a hospital police officer may only enforce the provisions of §17C-1-1 *et seq*. of this code upon request of a local law-enforcement agency.

(A) For the purposes of this subdivision, the hospital police officer is a law-enforcement officer pursuant to the provisions of §30-29-1 *et seq*. of this code;

(B) The hospital police officer has and may exercise all the powers and authority of a law-enforcement officer as to offenses committed within the area assigned;

(C) The hospital police officer is subject to all the requirements and responsibilities of a law-enforcement officer;

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(D) Authority assigned pursuant to this subdivision does not supersede in any way the authority or duty of other law-enforcement officers to preserve law and order on such hospital premises;

(E) Hospital police officers may assist a local law-enforcement agency on public highways. The assistance may be provided to control traffic in and around premises owned by the state or political subdivision when:

(i) Traffic is generated as a result of activities or events conducted or sponsored by the hospital; and

(ii) The assistance has been requested by the local law-enforcement agency;

(F) Hospital police officers may assist a local law-enforcement agency in any location under the agency’s jurisdiction at the specific request of the agency; and

(G) Hospital police officers shall enforce the general policies and procedures of the hospital as established by the chief executive officer or his or her designee.

(d) The salary of a hospital police officer is paid by the employing hospital's governing board. The hospital shall furnish each hospital police officer with a firearm and an official uniform to be worn while on duty. The hospital shall furnish, and require each officer while on duty to wear, a shield with the appropriate inscription and to carry credentials certifying the person’s identity and authority as a hospital police officer.

(e) The governing board of the employing hospital may at its pleasure revoke the authority of any hospital police officer and such officers serve at the will and pleasure of the governing board. The chief executive officer of the hospital or his or her designee shall report the termination of employment of a hospital police officer by filing a notice to that effect in the office of the clerk of each county in which the hospital police officer's oath of office was filed.

(f) For the purpose of hospital police officers appointed and established in this section, the civil service provisions of §8-14-1 *et seq*. of this code and the investigation and interrogation provisions of §8-14A-1 *et seq*. of this code shall not apply.

(g) A hospital police officer shall not be subject to civil or criminal liability unless one of the following applies:

(1) His or her acts or omissions were manifestly outside the scope of employment or official responsibilities;

(2) His or her acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner; or

(3) Liability is expressly imposed upon the hospital police officer by any other provision of this code.

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(h) A hospital police officer shall be trained in crisis de-escalation techniques consistent with the goals and objectives of this section: *Provided*, That within 180 days of beginning work as a hospital police officer, the employing hospital shall provide crisis management training to a hospital police officer through a program approved by the Law-Enforcement Professional Standards Subcommittee established by §30-29-2 of this code.

(i) A hospital with a police department is immune from liability if a loss or claim results from civil disobedience, riot, insurrection, or rebellion.

(j) Nothing in this section may be construed as creating a duty of a governing board of a hospital to establish a hospital police department.

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§16B-3-20. Patient safety and transparency.

(a) As used in this section:

"Acuity-based patient classification system" means a set of criteria based on scientific data that acts as a measurement instrument which predicts registered nursing care requirements for individual patients based on severity of patient illness, need for specialized equipment and technology, intensity of nursing interventions required, and the complexity of clinical nursing judgment needed to design, implement, and evaluate the patient's nursing care plan consistent with professional standards of care. The acuity system criteria shall take into consideration the patient care services provided by registered nurses, licensed practical nurses, and other health care personnel.

"Competency" means those observable and measurable knowledge, skills, abilities and personal attributes, as determined by the facility, that demonstrate a nurse's ability to safely perform expected nursing duties of a unit.

"Direct-care registered nurse" means a registered nurse, who is a member of the facility's staff, has no management role or responsibility, and accepts direct responsibility and accountability to carry out medical regimens, nursing or other bedside care for patients.

"Facility" means a hospital, licensed pursuant to the provisions of this article, a licensed private or state-owned and operated general acute-care hospital, an acute psychiatric hospital, or any acute-care unit within a state operated facility.

"Nursing care" means care which falls within the scope of practice, as provided §30-7-1 *et seq*. of this code.

"Orientation" means the process that the facility develops to provide initial training and information to clinical staff relative to job responsibilities and the organization's mission and goals.

"Unit" means those areas of the hospital organization not considered departments which provide specialized patient care.

"Unit Nurse Staffing Committee" means a committee made up of facility employees which includes a minimum of 51 percent of direct-care registered nurses who regularly provide direct nursing care to patients on the unit of the facility for which the nurse staffing plan is developed.

(b) The Legislature finds that to better improve the quality and efficiency of health care and to better facilitate planning for future states of emergency in West Virginia, a comprehensive system for nurses should be established to create staffing plans to ensure facilities are adequately staffed to handle the daily workload that may accompany a state of emergency. Further, the Legislature finds that nurses in West Virginia fall under the definition of "critical infrastructure," and by establishing a comprehensive staffing plan, West Virginia

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will be better equipped to deal with employment and staffing issues associated with higher acuity treatment in facilities. Additionally, the Legislature finds that based upon the nature of the acuity-based patient classification system it relies upon confidential patient information to generate a staffing plan model and therefore both the classification system and the staffing plan are considered confidential records as defined in §30-3C-3 of this code and are therefore not subject to discovery in any civil action or administrative proceeding.

(c) A facility shall:

(1) Develop, by July 1, 2024, an acuity-based patient classification system to be used to establish the staffing plan to be used for each unit;

(2) Direct each unit nurse staffing committee to annually review the facility's current acuity-based patient classification system and submit recommendations to the facility for changes based on current standards of practice; and

(3) Provide orientation, competency validation, education, and training programs in accordance with a nationally-recognized accrediting body recognized by the Centers for Medicare and Medicaid Services or in accordance with the Office of Health Facility Licensure and Certification. The orientation shall include providing for orientation of registered nursing staff to assigned clinical practice areas.

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§16B-3-21. Smoke evacuation system required for certain surgical procedures.

(a) As used in this section:

(1) "Energy generating device" means any tool that performs a surgical function using heat, laser, electricity, or another form of energy;

(2) "Smoke evacuation system" means smoke evacuators, laser plume evacuators, or local exhaust ventilators that effectively capture and neutralize surgical smoke at the site of origin and before the smoke can make ocular contact or contact with the respiratory tract of the occupants of the room; and

(3) "Surgical smoke" means the by-product, including surgical plume, smoke plume, bio-aerosols, laser-generated airborne contaminants, and other lung-damaging dust, that results from contact with tissue by an energy generating device.

(b) On or before January 1, 2025, in order to protect operating room nurses, operating room personnel, and patients from the hazards of surgical smoke, the Office of the Inspector General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code requiring a health care facility licensed under this chapter that utilizes energy generating devices to use a smoke evacuation system during any surgical procedure that is likely to produce surgical smoke.

(c) Any health facility acting by or through its agents or employees that violates subsection (b) of this section shall be punished by a fine of not less than $1,000 nor more than $5,000 for each violation.

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§16B-4-1. Purpose.

It is the policy of this state to encourage and promote the development and utilization of resources to ensure the effective and financially efficient care and treatment of persons who are convalescing or whose physical or mental condition requires them to receive a degree of nursing or related health care greater than that necessary for well individuals. Such care and treatment require a living environment for such persons which, to the extent practicable, will approximate a normal home environment. To this end, the guiding principle for administration of the laws of the state is that such persons shall be encouraged and assisted in securing necessary care and treatment in noninstitutional surroundings. In recognition that for many such persons effective care and treatment can only be secured from proprietary, voluntary, and governmental nursing homes it is the policy of this state to encourage, promote, and require the maintenance of nursing homes so as to ensure protection of the rights and dignity of those using the services of such facilities.

The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

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§16B-4-2. Definitions.

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

"Deficiency" means a nursing home's failure to meet the requirements specified in §16B-4-1 *et seq*. of this code and rules promulgated thereunder.

"Department" means the Department of Health.

"Director" means the director of the office of Health Facility Licensure and Certification.

"Distance learning technologies" means computer-centered technologies delivered over the internet, broadcasts, recordings, instructional videos, or videoconferencing.

"Household" means a private home or residence which is separate from or unattached to a nursing home.

"Immediate jeopardy" means a situation in which the nursing home's noncompliance with one or more of the provisions of this article or rules promulgated thereunder has caused or is likely to cause serious harm, impairment or death to a resident.

"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.

"Nursing home" or "facility" means any institution, residence, or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained, or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than 24 hours, for four or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation.

The care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home within the meaning of this article. Nothing contained in this article applies to nursing homes operated by the federal government; or extended care facilities operated in conjunction with a hospital; or institutions operated for the treatment and care of alcoholic patients; or offices of physicians; or hotels, boarding homes, or other similar places that furnish to their guests only room and board; or to homes or asylums operated by fraternal orders pursuant to §35-3-1 *et seq.* of this code.

"Nursing care" means those procedures commonly employed in providing for the physical, emotional, and rehabilitation 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 procedure

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contributing to rehabilitation, and administration of medication by any method which involves a level of complexity and skill in administration not possessed by the untrained person.

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

"Person" means an individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association, or political subdivision of the state.

"Resident" means an individual living in a nursing home.

"Review organization" means any committee or organization engaging in peer review or quality assurance, including, but not limited to, a medical audit committee; a health insurance review committee; a professional health service plan review committee or organization; a dental review committee; a physician's advisory committee; a podiatry advisory committee; a nursing advisory committee; any committee or organization established pursuant to a medical assistance program; any committee or organization established or required under state or federal statutes rules or regulations; and any committee established by one or more state or local professional societies or institutes, to gather and review information relating to the care and treatment of residents for the purposes of:

Evaluating and improving the quality of health care rendered, reducing morbidity or mortality, or establishing and enforcing guidelines designed to keep within reasonable bounds the cost of health care.

"Sponsor" means the person or agency legally responsible for the welfare and support of a resident.

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

The Inspector General may define in the rules any term used herein which is not expressly defined.

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§16B-4-3. Powers, duties, and rights of Inspector General.

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

(a) To enforce rules and standards promulgated hereunder for nursing homes;

(b) To exercise as sole authority all powers relating to the issuance, suspension, and revocation of licenses of nursing homes;

(c) To enforce rules promulgated hereunder governing the qualification of applicants for nursing home licenses, including, but not limited to, educational requirements, financial requirements, personal, and ethical requirements;

(d) To receive and disburse federal funds and to take whatever action not contrary to law as may be proper and necessary to comply with the requirements and conditions for the receipt of such federal funds;

(e) To receive and disburse for authorized purposes any moneys appropriated to the department by the Legislature;

(f) To receive and disburse for purposes authorized by this article any funds that may come to the department by gift, grant, donation, bequest, or devise, according to the terms thereof, as well as funds derived from the department's operation, or otherwise;

(g) To make contracts, and to execute all instruments necessary or convenient in carrying out the Inspector General's functions and duties; and all such contracts, agreements, and instruments will be executed by the Inspector General;

(h) To appoint officers, agents, employees, and other personnel and fix their compensation;

(i) To offer and sponsor educational and training programs for nursing homes for clinical, administrative, management, and operational personnel;

(j) To undertake survey, research and planning projects, and programs relating to administration and operation of nursing homes and to the health, care, treatment, and service in general of such homes;

(k) To assess civil penalties for violations of facility standards, in accordance with §16B-4-10 of this code;

(l) To inspect any nursing home and any records maintained therein that are necessary to determine compliance with licensure laws or Medicare or Medicaid certification, subject to the provisions of §16B-4-9 and §16B-4-10 of this code;

(m) To establish and implement procedures, including informal conferences, investigations,

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and hearings, subject to applicable provisions of §29A-3-1 *et seq*. of this code, and to enforce compliance with the provisions of this article and with rules issued hereunder;

(n) To subpoena witnesses and documents, administer oaths and affirmations, and to examine witnesses under oath for the conduct of any investigation or hearing. Upon failure of a person without lawful excuse to obey a subpoena to give testimony, and upon reasonable notice to all persons affected thereby, the director may apply to the circuit court of the county in which the hearing is to be held for an order compelling compliance;

(o) To make complaint or cause proceedings to be instituted against any person or persons for the violation of the provisions of this article or of rules issued hereunder. Such action may be taken by the director without the sanction of the prosecuting attorney of the county in which proceedings are instituted if the officer fails or refuses to discharge his or her duty. The circuit court of the county in which the conduct has occurred or, if emergency circumstances require, the Circuit Court of Kanawha County shall have jurisdiction in all civil enforcement actions brought under this article and may order equitable relief without bond. In no such case may the Inspector General or any person acting under the Inspector General's direction be required to give security for costs;

(p) To delegate authority to the director's employees and agents to perform all functions of the director;

(q) To make available to the Governor, the Legislature, and the public at all times online access through the Office of Health Facility Licensure and Certification website, the following information. The online information will describe the licensing and investigatory activities of the Office of Health Facility Licensure and Certification during the year. The online information will include a list of all nursing homes in the state, whether such homes are proprietary or nonproprietary; the name of the administrator or administrators; the total number of beds; the legal name of the facility; state identification number; health investigations information and reports; life safety investigations information and reports; and whether or not those nursing homes listed accept Medicare and Medicaid residents; and

(r) To establish a formal process for licensed facilities to file complaints about the inspection process or inspectors.

(s) 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-4-4. Administrative and inspection staff.

The director may, at such time or times as he or she may deem necessary, employ such administrative employees, inspectors, or other persons as may be necessary to properly carry out the provisions of this article. All employees of the Office of Health Facility Licensure and Certification shall be members of the state civil service system and inspectors shall be trained to perform their assigned duties. Such inspectors and other employees as may be duly designated by the director shall act as the director's representatives and, under the direction of the director, shall enforce the provisions of this article and all duly promulgated regulations and, in the discharge of official duties, shall have the right of entry into any place maintained as a nursing home.

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§16B-4-5. Rules; minimum standards for nursing homes.

(a) All rules shall be proposed for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code. The Inspector General shall recommend the adoption, amendment, or repeal of such rules as may be necessary or proper to carry out the purposes and intent of this article.

(b) The Inspector General shall recommend rules establishing minimum standards of operation of nursing homes including, but not limited to, the following:

(1) Administrative policies, including:

(A) An affirmative statement of the right of access to nursing homes 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;

(B) A statement of the rights and responsibilities of residents in nursing homes which prescribe, as a minimum, such a statement of residents' rights as included in the United States Department of Health and Human Services regulations, in force on the effective date of this article, governing participation of nursing homes in the Medicare and Medicaid programs pursuant to 42 U.S.C.A. §§ 1395 *et seq*. and 1396 *et seq*.;

(C) The process to be followed by applicants seeking a license;

(D) The clinical, medical, resident, and business records to be kept by the nursing home;

(E) The procedures and inspections for the review of utilization and quality of resident care; and

(F) The procedures for informal dispute resolution, independent informal dispute resolution, and administrative due process, and when such remedies are available;

(2) Minimum numbers of administrators, medical directors, nurses, aides, and other personnel according to the occupancy of the facility;

(3) Qualifications of the facility's administrators, medical directors, nurses, aides, and other personnel;

(4) Safety requirements;

(5) Sanitation requirements;

(6) Personal services to be provided;

(7) Dietary services to be provided;

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(8) Medical records;

(9) Social and recreational activities to be made available;

(10) Pharmacy services;

(11) Nursing services;

(12) Medical services;

(13) Physical facility;

(14) Resident rights;

(15) Visitation privileges that:

(A) Permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(B) Permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident; and

(C) Permit access to other specific persons or classes of persons consistent with state and federal law; and

(16) Admission, transfer, and discharge rights.

(c) To ensure compliance with §29A-3-11(b)(3) of this code, the Inspector General shall amend his or her legislative rule to exempt federally certified Medicare and Medicaid nursing facilities from provisions addressed in the federal regulations.

(d) The director shall permit the nonclinical instruction portions of a nurse aide training program approved by the Office of Health Facility Licensure and Certification to be provided through distance learning technologies.

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§16B-4-6. License required; application; fees; duration; renewal.

No person may establish, operate, maintain, offer, or advertise a nursing home within this state unless and until he or she obtains a valid license therefor as hereinafter provided, 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 nursing home, as defined in §16B-4-2 of this code, which is being operated without a valid license from the Inspector General. The procedure for obtaining a license is as follows:

(a) The applicant shall submit an application to the director on a form to be prescribed by the director, containing such information as may be necessary to show that the applicant is in compliance with the standards for nursing homes, as established by this article and the rules lawfully 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:

(A) Of each person who, as a stockholder or otherwise, has a proprietary interest of 10 percent or more in the applicant;

(B) Of each officer and director of a corporate applicant;

(C) Of each trustee and beneficiary of an applicant which is a trust; and

(D) 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 nursing home or proposed nursing home, if he or she is a different person from the applicant, and in such case, the name and address:

(A) Of each person who, as a stockholder or otherwise, has a proprietary interest 10 percent or more in the owner;

(B) Of each officer and director of a corporate applicant; and

(C) Of each trustee and applicant, the name, address, and principal occupation of each officer and director of the corporation;

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

(5) The name and address of the nursing home or the premises of the proposed nursing

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home;

(6) A description of the nursing home to be operated;

(7) The bed quota of the nursing home;

(8) An organizational plan for the nursing home indicating the number of persons employed or to be employed and the positions and duties of all employees;

(9) The name and address of the individual who is to serve as administrator;

(10) Such evidence of compliance with applicable laws and rules governing zoning, buildings, safety, fire prevention, and sanitation as the director may require;

(11) A listing of other states in which the applicant owns, operates, or manages a nursing home or long-term care facility; and

(12) Such additional information as the director may require.

(b) Upon receipt and review of an application for license made pursuant to §16B-4-6(a) of this code, and inspection of the applicant nursing home pursuant to §16B-4-9 and §16B-4-10 of this code, the director shall issue a license if he or she finds:

(1) That an individual applicant, and every partner, trustee, officer, director, and controlling person 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 nursing home by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the department, if any, and lack of revocation of a license during the previous five years or consistent poor performance in other states;

(2) That the facility is under the supervision of an administrator who is licensed pursuant to the provisions of §30-25-1 *et seq*. of this code; and

(3) That the facility is in substantial compliance with standards established pursuant to §16B-4-5 of this code, and such other requirements for a license as may be established by rule under this article.

Any license issued by the director shall state the maximum bed capacity for which it is issued, the date the license was issued, and the expiration date. Such licenses shall be issued for a period not to exceed 15 months for nursing homes: *Provided*, That any license in effect for which timely application for renewal, together with payment of the proper fee has been made to the director in conformance with the provisions of this article and the rules issued thereunder, and prior to the expiration date of the license, shall continue in effect until:

(A) Six months following the expiration date of the license; or

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(B) The date of the revocation or suspension of the license pursuant to the provisions of this article; or

(C) The date of issuance of a new license, whichever date first occurs.

Each license shall be issued only for the premises and persons named in the application and is not transferable or assignable: *Provided*, That in the case of the transfer of ownership of a facility with an unexpired license, the application by the proposed new owner shall be filed with the director no later than 30 days before the proposed date of transfer. Upon receipt of proof of the transfer of ownership, the application shall have the effect of a license for three months. The director shall issue or deny a license within three months of the receipt of the proof of the transfer of ownership. Every license shall be posted in a conspicuous place in the nursing home for which it is issued so as to be accessible to and in plain view of all residents of and visitors to the nursing home.

(c) A license is renewable, conditioned upon the licensee filing timely application for the extension of the term of the license accompanied by the fee, and contingent upon evidence of compliance with the provisions of this article and rules promulgated hereunder. Any application for renewal of a license shall include a report by the licensee in such form and containing such information as shall be prescribed by the director, including a statement of any changes in the name, address, management, or ownership information on file with the director. All holders of facility licenses as of the effective date of this article shall include, in the first application for renewal filed thereafter, such information as is required for initial applicants under the provisions of §16B-4-6(a) of this code.

(d) In the case of an application for a renewal license, if all requirements of §16B-4-6 of this code are not met, the director may at his or her discretion issue a provisional license, provided that care given in the nursing home is adequate for resident needs and the nursing home has demonstrated improvement and evidences potential for substantial compliance within the term of the license: *Provided*, That a provisional license may not be issued for a period greater than six months, may not be renewed, and may not be issued to any nursing home that is a poor performer.

(e) A nonrefundable application fee in the amount of $200 for an original nursing home license shall be paid at the time application is made for the license. Direct costs of initial licensure inspections or inspections for changes in licensed bed capacity shall be borne by the applicant and shall be received by the director prior to the issuance of an initial or amended license. The license fee for renewal of a license shall be at the rate of $15 per bed per year for nursing homes, except the annual rate per bed may be assessed for licenses issued for less than 15 months. Annually, the director may adjust the licensure fees for inflation based upon the increase in the consumer price index during the last 12 months. All such license fees shall be due and payable to the director, annually, and in the manner set forth in the rules promulgated hereunder. The fee and application shall be submitted to the director who shall retain both the application and fee pending final action on the application. All fees received by the director under the provisions of this article shall be deposited in

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accordance with §16-1-13 of this code.

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§16B-4-7. Cost disclosure; surety for resident funds.

(a) Each nursing home shall disclose in writing to all residents at the time of admission a complete and accurate list of all costs which may be incurred by them, and shall notify the residents 30 days in advance of changes in costs. The nursing home shall make available copies of the list in the nursing home's business office for inspection. Residents may not be liable for any cost not so disclosed.

(b) If the nursing home handles any money for residents within the facility, the licensee or his or her authorized representative shall either: (1) Give a bond; or (2) obtain and maintain commercial insurance with a company licensed in this state in an amount consistent with this subsection and with the surety as the director shall approve. The bond or insurance shall be upon condition that the licensee shall hold separately and in trust all residents' funds deposited with the licensee; shall administer the funds on behalf of the resident in the manner directed by the depositor; shall render a true and complete account to the depositor and the director when requested, and at least quarterly to the resident; and upon termination of the deposit, shall account for all funds received, expended, and held on hand. The licensee shall file a bond or obtain insurance in a sum at least 1.25 times the average amount of funds deposited with the nursing home during the nursing home’s previous fiscal year.

This insurance policy shall specifically designate the resident as the beneficiary or payee reimbursement of lost funds. Regardless of the type of coverage established by the facility, the facility shall reimburse, within 30 days, the resident for any losses directly and seek reimbursement through the bond or insurance itself. Whenever the director determines that the amount of any bond or insurance required pursuant to this subsection is insufficient to adequately protect the money of residents which is being handled, or whenever the amount of any such bond or insurance is impaired by any recovery against the bond or insurance, the director may require the licensee to file an additional bond or insurance in such amount as necessary to adequately protect the money of residents being handled.

The provisions of this subsection do not apply if the licensee handles less than $35 per resident per month in the aggregate. Nursing homes certified to accept payment by Medicare and Medicaid must meet the requirements for surety bonds as listed in the applicable federal regulations.

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§16B-4-8. Investigation of complaints.

(a) The director shall establish rules for prompt investigation of all complaints of alleged violations by nursing homes of applicable requirements of state law or rules, except for such complaints that the director determines are willfully intended to harass a licensee or are without any reasonable basis. Such procedures shall include provisions for ensuring the confidentiality of the complainant and for promptly informing the complaint and the nursing home involved of the results of the investigation.

(b) 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.

(1) A nursing home or licensee adversely affected by an order or citation of a deficient practice issued pursuant to this section may request the independent informal dispute resolution process contained in §16B-4-12a of this code.

(2) No later than 20 working days following the last day of a complaint investigation, the director shall transmit to the nursing home a statement of deficiencies committed by the facility. Notification of the availability of the independent informal dispute resolution process and an explanation of the independent informal dispute resolution process shall be included in the transmittal.

(c) No nursing home may discharge or in any manner discriminate against any resident, legal representative, or employee for the reason that the resident, legal representative, or employee has filed a complaint or participated in any proceeding specified in this article. Violation of this prohibition by any nursing home constitutes ground for the suspension or revocation of the license of the nursing home as provided in §16B-4-11 and §16B-4-12 of this code. Any type of discriminatory treatment of a resident, legal representative, or employee by whom, or upon whose behalf, a complaint has been submitted to the director, or any proceeding instituted under this article, within 120 days of the filing of the complaint or the institution of such action, shall raise a rebuttable presumption that such action was taken by the nursing home in retaliation for such complaint or action.

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§16B-4-9. Inspections.

The director and any duly designated employee or agent shall have the right to enter upon and into the premises of any nursing home at any time for which a license has been issued, for which an application for license has been filed with the director, or which the director has reason to believe is being operated or maintained as a nursing home without a license. If entry is refused by the owner or person in charge of the nursing home, the director may apply to the circuit court of the county in which the nursing home is located or the Circuit Court of Kanawha County for a warrant authorizing inspection to conduct the following inspections:

(1) An initial inspection prior to the issuance of a license pursuant to §16B-4-6 of this code;

(2) A license inspection for a nursing home, which shall be conducted at least once every 15 months, if the nursing home has not applied for and received an exemption from the requirement as provided for in this section;

(3) The director, by the director's authorized employees or agents, shall conduct at least one inspection prior to issuance of a license pursuant to §16B-4-6 of this code, and shall conduct periodic unannounced inspections thereafter, to determine compliance by the nursing home with applicable rules promulgated thereunder. All facilities shall comply with regulations of the State Fire Commission. The State Fire Marshal, by his or her employees or authorized agents, shall make all fire, safety, and like inspections. The director may provide for such other inspections as the director may deem necessary to carry out the intent and purpose of this article. Any nursing 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;

(4) A complaint inspection based on a complaint received by the director. If, after investigation of a complaint, the director determines that the complaint is substantiated, the director may invoke any applicable remedies available pursuant to §16B-4-11 of this code.

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§16B-4-9a. Exemptions.

(a) The director may grant an exemption from a license inspection if a nursing home was found to be in substantial compliance with the provisions of this chapter at its most recent inspection and there have been no substantiated complaints thereafter. The director may not grant more than one exemption in any two-year period.

(b) The director may grant an exemption to the extent allowable by federal law from a standard survey, only if the nursing home was found to be in substantial compliance with certification participation requirements at its previous standard inspection and there have been no substantiated complaints thereafter.

(c) The director may grant an exemption from periodic license inspections if a nursing home receives accreditation by an accrediting body approved by the director and submits a complete copy of the accreditation report. The accrediting body shall identify quality of care measures that assure continued quality care of residents. The director may not grant more than one exemption in any two-year period.

(d) If a complaint is substantiated, the director has the authority to immediately remove the exemption.

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§16B-4-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

(a) Reports of all inspections made pursuant to §16B-4-8 and §16B-4-9 of this code shall be in writing and filed with the director and shall list all deficiencies in the nursing home's compliance with the provisions of this article and the rules adopted hereunder.

(1) No later than 10 working days following the last day of the inspection, the director shall transmit to the nursing home a copy of such report and shall specify a time within which the nursing home shall submit a plan for correction of such deficiencies.

(2) Additionally, notification of the availability of the independent informal dispute resolution process and an explanation of the independent informal dispute resolution process shall be included in the transmittal.

(3) A nursing home adversely affected by an order or citation of a deficient practice issued pursuant to this section may request the independent informal dispute resolution process contained in §16B-4-12a of this code.

(4) The plan submitted by the nursing home shall be approved, rejected, or modified by the director.

(5) The inspectors or the nursing home shall allow audio taping of the exit conference with the expense to be paid by the requesting party.

(b) With regard to a nursing home with deficiencies and upon its failure to submit a plan of correction which is approved by the director, or to correct any deficiency within the time specified in an approved plan of correction, the director, in consultation with the Inspector General, may assess civil penalties as hereinafter provided or may initiate any other legal or disciplinary action as provided by this article: *Provided*, That any action by the director shall be stayed until federal proceedings arising from the same deficiencies are concluded.

(c) Nothing in this section may be construed to prohibit the director from enforcing a rule, administratively or in court, without first affording formal opportunity to make correction under this section, where, in the opinion of the director, the violation of the rule jeopardizes the health or safety of residents, or where the violation of the rule is the second or subsequent such violation occurring during a period of 12 full months.

(d) Civil penalties assessed against nursing home shall not be less than $50 nor more than $8,000: *Provided*, That the director, in consultation with the Inspector General, may not assess a penalty under state licensure for the same deficiency or violation cited under federal law and may not assess a penalty against a nursing home if the nursing home corrects the deficiency within 20 days of receipt of written notice of the deficiency unless it is a repeat deficiency or the nursing home is a poor performer.

(e) In determining whether to assess a penalty, and the amount of penalty to be assessed,

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the director, in consultation with the Inspector General shall consider:

(1) How serious the noncompliance is in relation to direct resident care and safety;

(2) The number of residents the noncompliance is likely to affect;

(3) Whether the noncompliance was noncompliance during a previous inspection;

(4) The opportunity the nursing home has had to correct the noncompliance; and

(5) Any additional factors that may be relevant.

(f) The range of civil penalties shall be as follows:

(1) For a deficiency which presents immediate jeopardy to the health, safety, or welfare of one or more residents, the director, in consultation with the Inspector General, may impose a civil penalty of not less than $3,000 nor more than $8,000;

(2) For a deficiency which actually harms one or more residents, the director, in consultation with the Inspector General, may impose a civil penalty of not less than $1,000 nor more than $3,000;

(3) For a deficiency which has the potential to harm one or more residents, the director, in consultation with the Inspector General, may impose a civil penalty of not less than $50 nor more than $1,000;

(4) For a repeated deficiency, the director, in consultation with the Inspector General, may impose a civil penalty of up to 150 percent of the penalties provided in §16B-4-10(f)(1) through §16B-4-10(f)(3) of this code; and

(5) If no plan of correction is submitted as established in this rule, a penalty may be assessed in the amount of $100 a day unless a reasonable explanation has been provided and accepted by the director, in consultation with the Inspector General.

(g) The director, in consultation with the Inspector General, shall assess a civil penalty of not more than $1,000 against an individual who willfully and knowingly certifies a material and false statement in a resident assessment. Such penalty shall be imposed with respect to each such resident assessment. The director, in consultation with the Inspector General, shall impose a civil penalty of not more than $5,000 against an individual who willfully and knowingly causes another individual to certify a material and false statement in a resident assessment. Such penalty shall be imposed with respect to each such resident assessment.

(h) The director, in consultation with the Inspector General, shall assess a civil penalty of not more than $2,000 against any individual who notifies, or causes to be notified, a nursing home of the time or date on which an inspection is scheduled to be conducted under this article or under 42 U.S.C.A. §§ 1395 *et seq.* and 1396 *et seq.*

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(i) If the director, in consultation with the Inspector General, assesses a penalty under this section, the director shall cause delivery of notice of such penalty by personal service or by certified mail. Said notice shall state the amount of the penalty, the action or circumstance for which the penalty is assessed, the requirement that the action or circumstance violates, and the basis upon which the director, in consultation with the Inspector General, assessed the penalty and selected the amount of the penalty.

(j) The Inspector General shall, in a civil judicial proceeding, recover any unpaid assessment which has not been contested under §16B-4-12 of this code within 30 days of receipt of notice of such assessment, or which has been affirmed under the provisions of that section and not appealed within 30 days of receipt of the Board of Review's final order, or which has been affirmed on judicial review, as provided in §16B-4-13 of this code. All money collected by assessments of civil penalties or interest shall be paid into a special resident benefit account and shall be applied by the Inspector General for:

(1) The protection of the health or property of facility residents;

(2) Long-term care educational activities;

(3) The costs arising from the relocation of residents to other nursing homes when no other funds are available; and

(4) In an emergency situation in which there are no other funds available, the operation of a facility pending correction of deficiencies or closure.

(k) The opportunity for a hearing on an action taken under this section shall be as provided in §16B-4-12 of this code.

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§16B-4-11. Ban on admissions; closure; transfer of residents; appointment of temporary management; assessment of interest; collection of assessments; promulgation of rules to conform with federal requirements.

(a) The director, in consultation with the Inspector General, may reduce the bed quota of the nursing home or impose a ban on new admissions, where he or she finds upon inspection of the nursing home that the licensee is not providing adequate care under the nursing home's existing bed quota, and that reduction in quota or ban on new admissions, or both, would place the licensee in a position to render adequate care. A reduction in bed quota or a ban on new admissions, or both, may remain in effect until the nursing home is determined by the director to be in substantial compliance with the rules. In addition, the director shall determine that the facility has the management capability to ensure continued substantial compliance with all applicable requirements. The director, in consultation with the Inspector General, shall evaluate the continuation of the admissions ban or reduction in bed quota on a continuing basis, and may make a partial lifting of the admissions ban or reduction in bed quota consistent with the purposes of this section. If the residents of the facility are in immediate jeopardy of their health, safety, welfare, or rights, the Inspector General may seek an order to transfer residents out of the nursing home as provided for in §16B-4-11(d) of this code. Any notice to a licensee of reduction in bed quota or a ban on new admissions shall include the terms of such order, the reasons therefor, and a date set for compliance.

(b) The director, in consultation with the Inspector General, may deny, limit, suspend, or revoke a license issued under this article or take other action as set forth in this section, if he or she finds upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or rules promulgated pursuant hereto.

(c) The suspension, expiration, forfeiture, or cancellation by operation of law or order of a license issued by the director, or the withdrawal of an application for a license after it has been filed with the director, may not deprive the director, in consultation with the Inspector General, of the authority to institute or continue a disciplinary proceeding, or a proceeding for the denial of a license application, against the licensee or applicant upon any ground provided by law or to enter an order denying the license application, suspending, or revoking the license, or otherwise taking disciplinary action on any such ground.

(d) In addition to other remedies provided in this article, upon petition from the Inspector General, a circuit court in the county in which a facility is located, or in Kanawha County if emergency circumstances occur, may determine that a nursing home’s deficiencies under this article, or under 42 U.S.C.A. §§ 1395 *et seq*. and 1396 *et seq.*, if applicable, constitute an emergency immediately jeopardizing the health, safety, welfare, or rights of its residents, and issue an order to:

(1) Close the nursing home;

(2) Transfer residents in the nursing home to other nursing homes; or

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(3) Appoint temporary management to oversee the operation of the facility and to assure the health, safety, welfare, and rights of the nursing home's residents, where there is a need for temporary management while:

(A) There is an orderly closure of the facility; or

(B) Improvements are made in order to bring the nursing home into compliance with all the applicable requirements of this article and, if applicable, 42 U.S.C.A. §§ 1395 *et seq*. and 1396 *et seq*.

If the Inspector General petitions a circuit court for the closure of a nursing home, the transfer of residents, or the appointment of temporary management, 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 nursing home may participate and present evidence. The burden of proof is on the Inspector General.

A circuit court may divest the licensee or operator of possession and control of a nursing home in favor of temporary management. The temporary management shall be responsible to the court and shall have such powers and duties as 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 of the nursing home, including, but not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the nursing home, or to repair or improve the nursing home so as to return it to compliance with applicable requirements, and the power to receive, conserve, and expend funds, including Medicare, Medicaid, and other payments on behalf of the licensee or operator of the nursing home. Priority shall be given to expenditures for current direct resident care or the transfer of residents. Expenditures other than normal operating expenses totaling more than $20,000 shall be approved by the circuit court.

The person charged with temporary management shall be an officer of the court, is not liable for conditions at the nursing home which existed or originated prior to his or her appointment, and is not personally liable, except for his or her own gross negligence and intentional acts which result in injuries to persons or damage to property at the nursing home during his or her temporary management. All compensation and per diem costs of the temporary manager shall be paid by the nursing home. The costs for the temporary manager for any 30-day period may not exceed the 75th percentile of the allowable administrator's salary as reported on the most recent cost report for the nursing home's peer group as determined by the director. The temporary manager shall bill the nursing home for compensation and per diem costs. Within 15 days of receipt of the bill, the nursing home shall pay the bill or contest the costs for which it was billed to the court. Such costs shall be recoverable through recoupment from future reimbursement from the state Medicaid agency in the same fashion as a benefits overpayment.

The temporary management shall promptly employ at least one person who is licensed as a nursing home administrator in West Virginia.

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A temporary management established for the purpose of making improvements in order to bring a nursing home into compliance with applicable requirements may not be terminated until the court has determined that the nursing home has the management capability to ensure continued compliance with all applicable requirements, except if the court has not made such determination within six months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the nursing home shall be closed. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court, and after deducting from receipts the costs of the temporary management, expenditures, civil penalties, and interest no longer subject to appeal, in that order, any excess shall be paid to the licensee or operator of the nursing home.

(e) The assessments for penalties and for costs of actions taken under this article shall have interest assessed at five percent per annum beginning 30 days after receipt of notice of such assessment or 30 days after receipt of the Board of Review's final order following a hearing, whichever is later. All such assessments against a nursing home that are unpaid shall be added to the nursing home's licensure fee and may be filed as a lien against the property of the licensee or operator of the nursing home. Funds received from such assessments shall be deposited as funds received in §16B-4-10 of this code.

(f) The opportunity for a hearing on an action by the Inspector General taken under this section shall be as provided in §16B-4-12 of this code.

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§16B-4-12. License denial, limitation, suspension, or revocation.

(a) The director, in consultation with the Inspector General, shall deny, limit, suspend, or revoke a license issued if the provisions of this article or if the rules promulgated pursuant to this article are violated. The director, in consultation with the Inspector General, may revoke a nursing home's license and prohibit all physicians and licensed disciplines associated with that nursing home from practicing at the nursing home location based upon an annual, periodic, complaint, verification, or other inspection and evaluation.

(b) Before any such license is denied, limited, suspended, or revoked, however, written notice shall be given to the licensee, stating the grounds for such denial, limitation, suspension, or revocation.

(c) An applicant or licensee has 10 working days after receipt of the order denying, limiting, suspending, or revoking a license to request a formal hearing contesting the denial, limitation, suspension, or revocation of a license under this article. If a formal hearing is requested, the applicant or licensee and the director shall proceed in accordance with the provisions of §29A-5-1 *et seq*. of this code.

(d) If a license is denied or revoked as herein provided, a new application for license shall be considered by the director if, when, and after the conditions upon which the denial or revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection, if applicable, has been made and all provisions of this article and rules promulgated pursuant to this article have been satisfied.

(e) If the license of a nursing home is denied, limited, suspended, or revoked, the administrator or owner or lessor of the nursing home property shall cease to operate the facility as a nursing home as of the effective date of the denial, limitation, suspension, or revocation. The owner or lessor of the nursing home property is responsible for removing all signs and symbols identifying the premises as a nursing home within 30 days. Any administrative appeal of such denial, limitation, suspension, or revocation shall not stay the denial, limitation, suspension, or revocation.

(f) Upon the effective date of the denial, limitation, suspension, or revocation, the administrator of the nursing home shall advise the director and the Board of Pharmacy of the disposition of all medications located on the premises. The disposition is subject to the supervision and approval of the director. Medications that are purchased or held by a nursing home that is not licensed may be deemed adulterated.

(g) The period of suspension for the license of a nursing home shall be prescribed by the director but may not exceed one year.

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§16B-4-12a. Independent informal dispute resolution.

(a) A facility or licensee adversely affected by an order or citation of a deficient practice issued pursuant to this article or by a citation issued for a deficient practice pursuant to federal law may request the independent informal dispute resolution process. A facility may contest a cited deficiency as contrary to law or unwarranted by the facts or both.

(b) The director shall contract with up to three independent review organizations to conduct an independent informal dispute resolution process for facilities. The independent review organization shall be accredited by the Utilization Review Accreditation Commission.

(c) The independent informal dispute resolution process is not a formal evidentiary proceeding and utilizing the independent informal dispute resolution process does not waive the facility's right to a formal hearing.

(d) The independent informal dispute resolution process consists of the following:

(1) No later than 10 working days following the last day of the survey or inspection, or no later than 20 working days following the last day of a complaint investigation, the director shall transmit to the facility a statement of deficiencies committed by the facility. Notification of the availability of the independent informal dispute resolution process and an explanation of the independent informal dispute resolution process shall be included in the transmittal;

(2) When the facility returns its plan to correct the cited deficiencies to the director, the facility may request in writing the independent informal dispute resolution process to refute the cited deficiencies;

(3) Within five working days of receipt of the written request for the independent informal dispute resolution process made by a facility, the director shall refer the request to an independent review organization from the list of certified independent review organizations approved by the state. The director shall vary the selection of the independent review organization on a rotating basis. The director shall acknowledge in writing to the facility that the request for independent review has been received and forwarded to an independent review organization for review. The notice shall include the name and address of the independent review organization.

(4) Within 10 working days of receipt of the written request for the independent informal dispute resolution process made by a facility, the independent review organization shall hold an independent informal dispute resolution conference unless additional time is requested by the facility. Before the independent informal dispute resolution conference, the facility may submit additional information.

(5) The facility may not be accompanied by counsel during the independent informal dispute resolution conference. The manner in which the independent informal dispute resolution

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conference is held is at the discretion of the facility, but is limited to:

(A) A desk review of written information submitted by the facility;

(B) A telephonic conference; or

(C) A face-to-face conference held at the facility or a mutually agreed upon location.

(6) If the independent review organization determines the need for additional information, clarification, or discussion after conclusion of the independent informal dispute resolution conference, the director and the facility shall present the requested information.

(7) Within 10 calendar days of the independent informal dispute resolution conference, the independent review organization shall provide and make a determination, based upon the facts and findings presented, and shall transmit a written decision containing the rationale for its determination to the facility and the director.

(8) If the director disagrees with the determination, the director may reject the determination made by the independent review organization and shall issue an order setting forth the rationale for the reversal of the independent review organization's decision to the facility within 10 calendar days of receiving the independent review organization's determination.

(9) If the director accepts the determination, the director shall issue an order affirming the independent review organization's determination within 10 calendar days of receiving the independent review organization's determination.

(10) If the independent review organization determines that the original statement of deficiencies should be changed as a result of the independent informal dispute resolution process and the director accepts the determination, the director shall transmit a revised statement of deficiencies to the facility within 10 calendar days of the independent review organization’s determination.

(11) Within 10 calendar days of receipt of the director’s order and the revised statement of deficiencies, the facility shall submit a revised plan to correct any remaining deficiencies to the director.

(e) A facility has 10 calendar days after receipt of the director’s order to request a formal hearing for any deficient practice cited under this article. If the facility requests a formal hearing, the director and the facility shall proceed in accordance with the provisions of §29A-5-1 *et seq*. of this code.

(f) Under the following circumstances, the facility is responsible for certain costs of the independent informal dispute resolution review, which shall be remitted to the director within 60 days of the informal hearing order:

WV Legislature

(1) If the facility requests a face-to-face conference, the facility shall pay any costs incurred by the independent review organization that exceed the cost of a telephonic conference, regardless of which part ultimately prevails.

(2) If the independent review organization's decision supports the originally written contested deficiency or adverse action taken by the director, the facility shall reimburse the director for the cost charged by the independent review organization. If the independent review organization's decision supports some of the originally written contested deficiencies, but not all of them, the facility shall reimburse the director for the cost charged by the independent review organization on a pro rata basis.

WV Legislature

§16B-4-13. Judicial review.

(a) Any applicant or licensee who is dissatisfied with the decision of the formal hearing as a result of the hearing provided for in §16B-4-12 of this code may, within 30 days after receiving notice of the decision, petition the West Virginia Intermediate Court of Appeals for judicial review of the decision.

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

(c) The judgment of the West Virginia Intermediate Court of Appeals shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of §29A-6-1 *et seq*. of this code.

WV Legislature

§16B-4-14. Legal counsel and services of the Inspector General.

(a) Legal counsel and services for the Office of Health Facility Licensure and Certification in all administrative hearings may be provided by the Attorney General or a staff attorney 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, or an attorney employed by the Inspector General in proceedings in any circuit court, by the prosecuting attorney of the county as well, all without additional compensation.

(b) The Governor may appoint counsel for the Office of Health Facility Licensure and Certification, who shall perform such legal services in representing the interests of residents in nursing homes in matters under the jurisdiction of the Inspector General as the Governor shall direct. It shall be the duty of such counsel to appear for the residents in all cases where they are not represented by counsel. The compensation of such counsel shall be fixed by the Governor.

WV Legislature

§16B-4-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever establishes, maintains, or is engaged in establishing or maintaining a nursing home without a license granted under §16B-4-6 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 jail for a period of not more than 90 days, or by both fine and confinement, at the discretion of the court. For each subsequent offense, the fine may be increased to not more than $250, with confinement in jail for a period of not more than 90 days, or by both fine and confinement, at the discretion of the court. Each day of a continuing violation after conviction is considered a separate offense.

(b) The director, in consultation with the Inspector General, may in his or her discretion bring an action to enforce compliance with this article or any rule or order hereunder whenever it appears to the director, in consultation with the Inspector General, that any 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 any person has aided, abetted or caused, or is aiding, abetting, or causing, such an act or practice. Upon application by the Inspector General, the circuit court of the county in which the conduct has occurred or is occurring, or if emergency circumstances occur the Circuit Court of Kanawha County, 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, or has revoked a license required by law to operate or conduct a nursing home, or has ordered a person to refrain from conduct violating the rules of the Inspector General, and the person has appealed the action of the director, the court may, during pendency of the appeal, issue a restraining order or injunction upon proof that the operation of the nursing home or its failure to comply with the order of the director adversely affects the well-being or safety of the residents of the nursing home. Should a person who is refused a license or the renewal of a license to operate or conduct a nursing home or whose license to operate is revoked or who has been ordered to refrain from conduct or activity which violates the rules of the Inspector General fails to appeal or should the appeal be decided favorably to the Inspector General, then the court shall issue a permanent injunction upon proof that the person is operating or conducting a nursing home without a license as required by law, or has continued to violate the rules of the Inspector General.

(c) Any nursing home that deprives a resident of any right or benefit created or established for the well-being of this resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, shall be liable to the resident for injuries suffered as a result of such deprivation. Upon a finding that a resident has been deprived of such a right or benefit, and that the resident has been injured as a result of such deprivation, and unless there is a finding that the nursing home exercised all care reasonably necessary to prevent and limit the deprivation and injury to the resident, compensatory damages shall be assessed in an amount sufficient to compensate the resident for such injury. In addition,

WV Legislature

where the deprivation of the right or benefit is found to have been willful or in reckless disregard of the lawful rights of the resident, 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 any available administrative remedies is not required prior to commencement of suit under this subsection.

(d) 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 neither be taken into consideration, nor required to be applied toward the payment or part payment of the cost of medical care or services available under that article.

(e) 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 void as contrary to public policy.

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

(g) Nothing in this section or any other section of the code shall limit the protections afforded nursing homes or their health care providers under §55-7b-1 *et seq*. of this code. Nursing homes and their health care providers shall be treated in the same manner as any other health care facility or health care provider under §55-7b-1 *et seq*. of this code. The terms "health care facility" and "health care provider" as used in this subsection shall have the same meaning as set forth in §55-7b-2(f) and (g) of this code.

(h) The proper construction of this section and the limitations and provisions of §55-7b-1 *et seq.* of this code shall be determined by principles of statutory construction.

WV Legislature

§16B-4-16. Separate accounts for residents' personal funds; consent for use; records; penalties.

(a) Each nursing home subject to the provisions of this article shall hold in a separate account and in trust each resident's personal funds deposited with the nursing home.

(b) No person may use or cause to be used for any purpose the personal funds of any resident admitted to any such nursing home unless consent for the use thereof has been obtained from the resident, or from a committee, or guardian, or relative.

(c) Each nursing home shall maintain a true and complete record of all receipts for any disbursements from the personal funds account of each resident in the nursing home, including the purpose and payee of each disbursement, and shall render a true account of such record to the resident or his or her representative upon demand and upon termination of the resident's stay in the nursing home.

(d) Any person or corporation who violates any subsection of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned in jail not more than one year, or both fined and imprisoned.

(e) Reports provided to review organizations are confidential unless inaccessibility of information interferes with the director's ability to perform his or her oversight function as mandated by federal regulations and this section.

(f) Notwithstanding §16B-4-16(b) or any other provision of this code, upon the death of a resident, any funds remaining in his or her personal account shall be made payable to the person or probate jurisdiction administering the estate of said resident: *Provided*, That if after 30 days there has been no qualification over the decedent resident's estate, those funds are presumed abandoned and are reportable to the State Treasurer pursuant to the West Virginia Uniform Unclaimed Property Act, §36-8-1 *et seq*. of this code.

WV Legislature

§16B-4-17. Federal law; legislative rules.

Notwithstanding any provision in this code to the contrary, the Inspector General shall promulgate legislative rules, in compliance with the provisions of §29A-3-1 *et seq*. of this code, pertaining to nursing homes, when those rules are required for compliance with federal law or regulations. The rules may be filed as emergency rules.

WV Legislature

§16B-4-18. Hospice palliative care required to be offered.

(a) When the health status of a nursing home facility resident declines to the state of terminal illness or when the resident receives a physician’s order for "comfort measures only", the facility shall notify the resident with information about the option of receiving hospice palliative care. If a nursing home resident is incapacitated, the facility shall also notify any person who has been given the authority of guardian, a medical power of attorney, or health care surrogate over the resident, information stating that the resident has the option of receiving hospice palliative care.

(b) The facility shall document that it has notified the resident, and any person who has been given a medical power of attorney or health care surrogate over the resident, information about the option of hospice palliative care and maintain the documentation so that the director may inspect the documentation, to verify the facility has complied with this section.

WV Legislature

§16B-4-19. Employment restrictions.

All personnel of a nursing home by virtue of ownership, employment, engagement, or agreement with a provider or contractor shall be subject to the provisions of the West Virginia Clearance for Access: Registry and Employment Screening Act, §16B-15-1 *et seq*. of this code and the rules promulgated pursuant thereto.

WV Legislature

§16B-4-20. Jury trial waiver to be a separate document.

(a) Every written agreement containing a waiver of a right to a trial by jury that is entered into between a nursing home and a person for the nursing care of a resident, must have as a separate and stand-alone document any waiver of a right to a trial by jury.

(b) Nothing in this section may be construed to require a court of competent jurisdiction to determine that the entire agreement or any portion thereof is enforceable, unenforceable, conscionable, or unconscionable.

WV Legislature

§16B-5-1. Purpose.

(a) It is the policy of this state to encourage and promote the development and utilization of resources to ensure the effective care and treatment of persons who are dependent upon the services of others by reason of physical or mental impairment who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice. Such care and treatment requires a living environment for such persons which, to the extent practicable, will approximate a normal home environment. To this end, the guiding principle for administration of the laws of the state is that such persons shall be encouraged and assisted in securing necessary care and treatment in noninstitutional surroundings.

(b) In recognition that for many such persons effective care and treatment can only be secured from proprietary, voluntary and governmental assisted living residences, it is the policy of this state to encourage, promote and require the maintenance of assisted living residences so as to ensure protection of the rights and dignity of those using the services of assisted living residences.

(c) The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

WV Legislature

§16B-5-2. Definitions.

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

"Assisted living residence" means any living facility, residence, or place of accommodation, however named, available for four or more residents, in this state which is advertised, offered, maintained, or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited and intermittent nursing care: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute an assisted living residence within the meaning of this article. Nothing contained in this article applies to hospitals, as defined under §16B-3-1 of this code; or state institutions, as defined under §27-1-6 of this code; or residential care homes operated by the federal government or the state; or institutions operated for the treatment and care of alcoholic patients; or offices of physicians; or hotels, boarding homes, or other similar places that furnish to their guests only room and board; or to homes or asylums operated by fraternal orders pursuant to §35-3-1 et seq. of this code;

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

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

"Division" means the Office of Health Facility Licensure and Certification within the Office of the Inspector General;

"Inspector General" means the Inspector General of the Office of 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 time no longer than 90 consecutive days per episode: Provided, That such time limitations shall not apply to an individual who, after having established a residence in an assisted living residence, subsequently qualifies for and receives services coordinated by a licensed hospice and such time limitations shall not apply to home health services provided by a Medicare-certified home health agency. Limited and intermittent nursing care may only be provided by or under the supervision of a registered professional nurse and in accordance with rules proposed by the Inspector General for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code;

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"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 which involves a level of complexity and skill in administration not possessed by the untrained person;

"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.

"Person" means an individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association, or political subdivision of the state;

"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 mental impairment of the resident;

"Resident" means an individual living in an assisted living residence for the purpose of receiving personal assistance or limited and intermittent nursing services;

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

(b) The Inspector General may define in rules any term used herein which is not expressly defined.

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§16B-5-3. Powers, duties, and rights of Inspector General.

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

(a) To enforce rules and standards for assisted living residences which are adopted, promulgated, amended, or modified by the Inspector General;

(b) To exercise as sole authority all powers relating to the issuance, suspension, and revocation of licenses of assisted living residences;

(c) To enforce rules adopted, promulgated, amended, or modified by the Inspector General governing the qualification of applicants for assisted living residences, including, but not limited to, educational requirements, financial requirements, personal, and ethical requirements;

(d) To receive and disburse federal funds and to take whatever action not contrary to law as may be proper and necessary to comply with the requirements and conditions for the receipt of federal funds;

(e) To receive and disburse for authorized purposes any moneys appropriated for the division by the Legislature;

(f) To receive and disburse for purposes authorized by this article, any funds that may come to the division by gift, grant, donation, bequest, or devise, according to the terms thereof, as well as funds derived from the division's operation or otherwise;

(g) To make contracts and to execute all instruments necessary or convenient in carrying out the director's functions and duties; and all such contracts, agreements, and instruments will be executed by the Inspector General;

(h) To appoint officers, agents, employees, and other personnel and fix their compensation;

(i) To offer and sponsor educational and training programs for assisted living residences' administrative, management, and operational personnel;

(j) To undertake survey, research and planning projects, and programs relating to administration and operation of assisted living residences and to the health, care, treatment, and service in general of residents of assisted living residences;

(k) To assess civil penalties for violations of assisted living residence standards in accordance with §16B-5-10 of this code;

(l) To inspect any assisted living residence and any records maintained therein subject to the provisions of §16B-5-9 and §16B-5-10 of this code;

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(m) To establish and implement procedures, including informal conferences, investigations and hearings, subject to applicable provisions of §29A-3-1 *et seq*. of this code, and to enforce compliance with the provisions of this article and with rules issued hereunder by the Inspector General;

(n) To subpoena witnesses and documents, administer oaths and affirmations, and to examine witnesses under oath for the conduct of any investigation or hearing. Upon failure of a person without lawful excuse to obey a subpoena to give testimony, and upon reasonable notice to all persons affected thereby, the director 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;

(o) To make complaint or cause proceedings to be instituted against any person for the violation of the provisions of this article or of rules issued hereunder by the Inspector General. Such action may be taken by the Inspector General without the sanction of the prosecuting attorney of the county in which proceedings are instituted if the prosecuting attorney fails or refuses to discharge his or her duty. The Circuit Court of Kanawha County or the circuit court of the county in which the conduct has occurred shall have jurisdiction in all civil enforcement actions brought under this article and may order equitable relief without bond. In no such case may the Inspector General or any person acting under the Inspector General’s direction be required to give security for costs;

(p) To delegate authority to the Inspector General's employees and agents to perform all functions of the Inspector General; and

(q) To make available to the Governor, the Legislature, and the public at all times online access through the Office of Health Facility Licensure and Certification website the following information. The online information will describe the assisted living residence licensing and investigatory activities of the division. The online information will include a list of all assisted living residences in the state and such of the following information as the director determines to apply: Whether the assisted living residences are proprietary or nonproprietary; the classification of each assisted living residence; 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 or not those assisted living residences listed accept Medicare and Medicaid residents.

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

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§16B-5-4. Administrative and inspection staff.

The director may, as he or she determines necessary, employ administrative employees, inspectors, or other persons as may be necessary to properly carry out the provisions of this article. All employees of the division will be members of the state civil service system. Inspectors and other employees as may be duly designated by the director will act as the director's representatives and, under the direction of the director, will enforce the provisions of this article and all duly promulgated rules of the director and, in the discharge of official duties, will have the right of entry into any place maintained as an assisted living residence at any time.

WV Legislature

§16B-5-5. Rules; minimum standards for assisted living residences.

(a) The Inspector General will propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to carry out the purposes and intent of this article and to enable the Inspector General to exercise the powers and perform the duties conferred upon the director by this article.

(b) The Inspector General will propose rules establishing minimum standards of operation of assisted living residences, including, but not limited to, the following:

(1) Administrative policies, including:

(A) An affirmative statement of the right of access to assisted living residences 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;

(B) A statement of the rights and responsibilities of residents;

(C) The process to be followed by applicants seeking a license;

(D) The clinical, medical, resident, and business records to be kept by the assisted living residence;

(E) The procedures for inspections and for the review of utilization and quality of resident care; and

(F) The procedures for informal dispute resolution and administrative due process and when such remedies are available.

(2) Minimum numbers and qualifications of personnel, including management, medical and nursing, aides, orderlies, and support personnel, according to the size and classification of the assisted living residence;

(3) Safety requirements;

(4) Sanitation requirements;

(5) Protective and personal services to be provided;

(6) Dietary services to be provided;

(7) Maintenance of health records;

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

(9) Physical facilities;

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(10) Requirements related to provision of limited and intermittent nursing;

(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) Such other categories as the Inspector General determines to be appropriate to ensure resident's health, safety, and welfare.

(c) The Inspector General will include in rules detailed standards for each of the categories of standards established pursuant to §16B-5-5(b) and §16B-5-5(d) of this code and will classify such standards as follows:

(1) Class I standards are standards the violation of which, as the Inspector General determines, would present either an imminent danger to the health, safety, or welfare of any resident or a substantial probability that death or serious physical harm would result;

(2) Class II standards are standards which the Inspector General determines have a direct or immediate relationship to the health, safety, or welfare of any resident, but which do not create imminent danger;

(3) Class III standards are standards which the Inspector General determines have an indirect or a potential impact on the health, safety, or welfare of any resident.

(d) An assisted living residence shall attain substantial compliance with standards established pursuant to this section and such other requirements for a license as may be established by rule under this article.

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§16B-5-6. License required; application; fees; duration; renewal.

(a) There shall be one assisted living residence license for each assisted living residence. No person may establish, operate, maintain, offer, or advertise an assisted living residence within this state unless and until he or she obtains a valid 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 assisted living residence, as defined in §16B-5-2 of this code, which is being operated without a valid license from the director. The licensee shall be responsible for, and shall have complete control of, the operation and premises of the assisted living residence and the personal assistance and supervision provided to the residents: *Provided*, That the director may review any leases or any contracts, subcontracts, agreements, or arrangements for the provision of on-site services to the residents of an assisted living residence to ensure the proper care, safety, and welfare of current or potential residents. Nothing in this article shall be construed to prevent or prohibit the ability of a resident of an assisted living residence to contract or arrange for, and to receive, privately paid nursing care or personal assistance in addition to those services provided by the licensee, subject to the consent and cooperation of the licensee and consistent with the duties and responsibilities imposed by this section.

(b) Nothing in this article shall be construed to require the licensing of landlords or property owners who are not involved in the provision of supervision, personal assistance, limited and intermittent nursing care, or other on-site professional services for the residents of an assisted living residence or in the advertising, recruitment of residents, transportation of residents, or other substantial and ongoing services for the operation or maintenance of the assisted living residence.

(c) The procedure for obtaining a license shall be as follows:

The applicant shall submit an application to the director on a form to be prescribed by the director, containing such information as may be necessary to show that the applicant is in compliance with the standards for assisted living residences as established by this article and the rules lawfully promulgated by the Inspector General hereunder. The application and any exhibits thereto shall provide the following information:

(A) The name and address of the applicant;

(B) 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

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(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;

(C) The name and address of the owner of the premises of the assisted living residence or proposed assisted living residence, if he or she is a different person from the applicant, and in such case, 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;

(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;

(D) Where the applicant is the lessee or the assignee of the assisted living residence or the premises of the proposed assisted living residence, a signed copy of the lease and any assignment thereof;

(E) The name and address of the assisted living residence or the premises of the proposed assisted living residence;

(F) The proposed bed quota of the assisted living residence and the proposed bed quota of each unit thereof;

(G) An organizational plan for the assisted living residence indicating the number of persons employed or to be employed, the positions and duties of all employees;

(H) The name and address of the individual who is to serve as administrator;

(I) Such evidence of compliance with applicable laws and rules governing zoning, buildings, safety, fire prevention, and sanitation as the director may require; and

(J) Such additional information as the director may require.

(d) Upon receipt and review of an application for license made pursuant to §16B-5-6(a) of this code and inspection of the applicant assisted living residence pursuant to §16B-5-9 and §16B-5-10 of this code, the director will issue a license if he or she finds:

(1) That an individual applicant, and every partner, trustee, officer, director, and controlling person 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 an assisted living residence by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the department, if any, and lack of revocation of a license during the

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previous five years;

(2) That the assisted living residence is under the supervision of an administrator who is qualified by training and experience; or

(3) That the assisted living residence is in substantial compliance with standards established pursuant to §16B-5-5 of this code and such other requirements for a license as the Inspector General may establish by rule under this article.

(e) The director, in consultation with the Inspector General, may deny an initial or renewal license if the information provided in an application or report is known by the applicant to be false or the applicant fails to report required information or for any other reason permitted by law or rules promulgated pursuant to this article.

(f) Any license granted by the director will state the maximum bed capacity for which it is granted, the date the license was issued, and the expiration date. Licenses will be issued for a period not to exceed one year for assisted living residences: *Provided*, That any such license in effect for which timely application for renewal, together with payment of the proper fee has been made to the department in conformance with the provisions of this article and the rules issued thereunder and prior to the expiration date of the license, shall continue in effect until: (1) One year following the expiration date of the license; or (2) the date of the revocation or suspension of the license pursuant to the provisions of this article; or (3) the date of issuance of a new license, whichever date first occurs. Each license will be issued only for the premises and persons named in the application and is not transferable or assignable: *Provided, however*, That in the case of the transfer of ownership of an assisted living residence with an unexpired license, the application of the new owner for a license shall have the effect of a license for a period of three months when filed with the director. Every license shall be posted in a conspicuous place in the assisted living residence for which it is issued so as to be accessible to and in plain view of all residents and visitors of the assisted living residence.

(g) An original license shall be renewable, conditioned upon the licensee filing timely application for the extension of the term of the license accompanied by the fee and contingent upon evidence of compliance with the provisions of this article and rules promulgated by the Inspector General hereunder; the application shall be accompanied by:

(1) The information required in §16B-5-6(c)(A) through §16B-5-6(c)(C) of this code.

(2) A balance sheet of the assisted living residence as of the end of its fiscal year, setting forth assets and liabilities at such date, including all capital, surplus, reserve, depreciation, and similar accounts;

(3) A statement of operations of the assisted living residence as of the end of its fiscal year, setting forth all revenues, expenses, taxes, extraordinary items, and other credits or charges; and

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

(h) In the case of an application for a renewal license, if all requirements of §16B-5-5 and §16B-5-6 of this code are not met, the director may in his or her discretion issue a provisional license, provided that care given in the assisted living residence is adequate for resident needs and the assisted living residence has demonstrated improvement and evidences potential for substantial compliance within the term of the license: *Provided*, That a provisional renewal may not be issued for a period greater than one year, may not be renewed, and may not be issued to any assisted living residence with uncorrected violations of any Class I standard, as defined in §16B-5-5(c) of this code.

(i) A nonrefundable application fee in the amount of $65 for an original assisted living residence license shall be paid at the time application is made for the license. An average cost of all direct costs for the initial licensure for the preceding 10 facilities based on the size of the facility's licensed bed capacity shall be borne by the applicant and shall be received by the director prior to the issuance of an initial or amended license. The license fee for renewal of a license shall be at the rate of $6 per bed per year for assisted living residences except the annual rate per bed may be assessed for licenses issued for less than one year. The director may annually adjust the licensure fees for inflation based upon the consumer price index. The bed capacity for the holder of each license will be determined by the director. All license fees shall be due and payable to the director annually, and in the manner set forth in the rules promulgated by the Inspector General. The fee and application shall be submitted to the director who will retain both the application and fee pending final action on the application. All fees received by the director under the provisions of this article will be deposited in accordance with §16-1-13 of this code.

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§16B-5-7. Cost disclosure; surety for residents' funds.

(a) Each assisted living residence shall disclose in writing to all prospective residents a complete and accurate list of all costs which may be incurred by them. Residents are not liable for any cost not so disclosed.

(b) If the assisted living residence handles any money for residents within the assisted living residence, the licensee or his or her authorized representative shall give a bond in an amount consistent with this subsection and with such surety as the director will approve. The bond shall be upon condition that the licensee shall hold separately and in trust all residents' funds deposited with the licensee, shall administer the funds on behalf of the resident in the manner directed by the depositor, shall render a true and complete account to the depositor and the director when requested, and at least quarterly to the resident, and upon termination of the deposit, shall account for all funds received, expended, and held on hand. The licensee shall file a bond in a sum to be fixed by the director based upon the magnitude of the operations of the applicant, but which sum may not be less than $2,500.

(c) Every person injured as a result of any improper or unlawful handling of the money of a resident of an assisted living residence may bring an action in a proper court on the bond required to be posted by the licensee pursuant to this subsection for the amount of damage suffered as a result thereof to the extent covered by the bond. Whenever the director determines that the amount of any bond which is filed pursuant to this subsection is insufficient to adequately protect the money of residents which is being handled, or whenever the amount of any bond is impaired by any recovery against the bond, the director may require the licensee to file an additional bond in such amount as necessary to adequately protect the money of residents being handled.

(d) The provisions of §16B-5-7(b) of this code do not apply if the licensee handles less than $25 per resident and less than $500 for all residents in any month.

WV Legislature

§16B-5-8. Investigation of complaints.

(a) The Inspector General will establish, by rule, procedures for prompt investigation of all complaints of alleged violations by assisted living residences of applicable requirements of state law or rules, except for such complaints that the director determines are willfully intended to harass a licensee or are without any reasonable basis. Such procedures will include provisions for ensuring the confidentiality of the complainant and of any other person so named in the complaint and for promptly informing the complainant and the assisted living residence involved of the results of the investigation.

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

(c) No assisted living residence may discharge or in any manner discriminate against any resident or employee for the reason that the resident or employee has filed a complaint or participated in any proceeding specified in this article. Violation of this prohibition by any assisted living residence constitutes grounds for the suspension or revocation of the license of the assisted living residence as provided in §16B-5-11 and §16B-5-12 of this code. Any type of discriminatory treatment of a resident or employee by whom, or upon whose behalf, a complaint has been submitted to the director, or any proceeding instituted under this article, within 120 days of the filing of the complaint or the institution of the action, shall raise a rebuttable presumption that the action was taken by the assisted living residence in retaliation for the complaint or action.

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§16B-5-9. Inspections.

(a) The director and any duly designated employee or agent thereof will have the right to enter upon and into the premises of any assisted living residence at any time for which a license has been issued, for which an application for license has been filed with the director, or which the director has reason to believe is being operated or maintained as an assisted living residence without a license. If entry is refused by the owner or person in charge of the assisted living residence, the director, in consultation with the Inspector General, will apply to the circuit court of the county in which the assisted living residence is located or the Circuit Court of Kanawha County for an administrative inspection warrant.

(b) The director, by the director's authorized employees or agents, will conduct at least one inspection prior to issuance of a license pursuant to §16B-5-6 of this code and will conduct periodic unannounced inspections thereafter to determine compliance by the assisted living residence with applicable statutes and rules promulgated thereunder. All assisted living residences shall comply with rules of the State Fire Commission. The State Fire Marshal, by his or her employees or authorized agents, shall make all fire, safety, and like inspections. The director may provide for such other inspections as the director may deem necessary to carry out the intent and purpose of this article. 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, in consultation with the Inspector General, may invoke any remedies available pursuant to §16B-5-11 and §16B-5-12 of this code. Any assisted living residence aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in §16B-5-12 of this code.

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§16B-5-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

(a) Reports of all inspections made pursuant to §16B-5-9 of this code will be in writing and will list all deficiencies in the assisted living residence's compliance with the provisions of this article and the rules adopted by the Inspector General hereunder. The director will send a copy of the report to the assisted living residence by physical or electronic method with verifiable delivery, and will specify a time within which the assisted living residence shall submit a plan for correction of deficiencies, which plan will be approved, rejected, or modified by the director. The inspectors will allow audio taping of the exit conference for licensure inspections with all costs directly associated with the taping to be paid by the assisted living residence, provided that an original tape is provided to inspectors at the end of taping.

(b) Upon an assisted living residence's failure to submit a plan of correction which is approved by the director, or to correct any deficiency within the time specified in an approved plan of correction, the director, in consultation with the Inspector General, may assess civil penalties as hereinafter provided or may initiate any other legal or disciplinary action as provided by this article.

(c) Nothing in this section may be construed to prohibit the Inspector General from enforcing a rule, administratively or in court, without first affording formal opportunity to make correction under this section, where, in the opinion of the director, in consultation with the Inspector General the violation of the rule jeopardizes the health or safety of residents or where the violation of the rule is the second or subsequent violation occurring during a period of 12 full months.

(d) Civil penalties assessed against assisted living residences will be classified according to the nature of the violation as defined in §16B-5-5(c) of this code and rules promulgated thereunder by the Inspector General, as follows: For each violation of a Class I standard, a civil penalty of not less than $50 nor more than $500 will be imposed; for each violation of a Class II standard, a civil penalty of not less than $25 nor more than $50 will be imposed; for each violation of a Class III standard, a civil penalty of not less than $10 nor more than $25 will be imposed. Each day a 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.

(e) The director, in consultation with the Inspector General, will assess a civil penalty not to exceed $2,000 against any individual who notifies, or causes to be notified, an assisted living residence 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, the director will cause delivery of notice of the penalty by personal service or by certified mail. The notice will state the amount of the penalty, the action or circumstance for

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which the penalty is assessed, the requirement that the action or circumstance violates, and the basis upon which the director, in consultation with the Inspector General, assessed the penalty and selected the amount of the penalty.

(g) The Inspector General will, in a civil judicial proceeding, recover any unpaid assessment which has not been contested under §16B-5-12 of this code within 30 days of receipt of notice of the assessment or which has been affirmed under the provisions of that section and not appealed within 30 days of receipt of the Board of Review's final order or which has been affirmed on judicial review, as provided in §16B-5-13 of this code. All money collected by assessments of civil penalties or interest will be paid into a special resident benefit account and will be applied by the director only for the protection of the health or property of residents of assisted living residences operated within the state that the director finds to be deficient, including payment for the costs of relocation of residents to other facilities, operation of an assisted living residence pending correction of deficiencies, or closure and reimbursement of residents for personal funds lost.

(h) The opportunity for a hearing on an action taken under this section shall be as provided in §16B-5-12 of this code. In addition to any other rights of appeal conferred upon an assisted living residence pursuant to this section, an assisted living residence shall have the right to request a hearing and seek judicial review pursuant to §16B-5-12 and §16B-5-13 of this code to contest the citing by the director of a deficiency on an inspection report, irrespective of whether the deficiency results in the imposition of a civil penalty.

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§16B-5-11. Enforcement actions; assessment of interest; collection of assessments; hearings.

(a) The director, in consultation with the Inspector General, will, by order, impose a ban on the admission of residents or reduce the bed quota of the assisted living residence, or any combination thereof, where he or she finds upon inspection of the assisted living residence that the licensee is not providing adequate care under the assisted living residence's existing bed quota and that reduction in quota or imposition of a ban on admissions, or any combination thereof, would place the licensee in a position to render adequate care. Any notice to a licensee of reduction in quota or ban on new admissions will include the terms of the order, the reasons therefor, and the date set for compliance.

(b) The director, in consultation with the Inspector General, may suspend or revoke a license issued under this article or take other action as set forth in this section if he or she finds upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or rules promulgated pursuant hereto.

(c) The suspension, expiration, forfeiture, or cancellation by operation of law or order of the director, in consultation with the Inspector General, of a license issued by the director or the withdrawal of an application for a license after it has been filed with the director, may not deprive the director of the director's authority to institute or continue an enforcement action or a proceeding for the denial of a license application against the licensee or applicant upon any ground provided by law or to deny the license application or suspend or revoke the license or otherwise take enforcement action on any such ground.

(d) In addition to other remedies provided in this article, upon petition from the Inspector General, the circuit court of the county in which the conduct has occurred or is occurring or the Circuit Court of Kanawha County may determine that an assisted living residence'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 assisted living residence;

(2) Transfer residents in the assisted living residence to other facilities; or

(3) Appoint temporary management to oversee the operation of the assisted living residence and to assure the health, safety, welfare, and rights of the assisted living residence's residents where there is a need for temporary management while:

(A) There is an orderly closure of the assisted living residence; or

(B) Improvements are made to bring the assisted living residence into compliance with all the applicable requirements of this article.

(e) If the Inspector General petitions a circuit court for the closure of an assisted living residence, the transfer of residents, or the appointment of a temporary management, the

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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 assisted living residence may participate and present evidence.

(f) A circuit court may divest the licensee or operator of possession and control of an assisted living residence in favor of temporary management. The temporary management shall be responsible to the court and shall have such powers and duties as 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 of the assisted living residence, including, but not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the assisted living residence, or to repair or improve the assisted living residence so as to return it to compliance with applicable requirements and the power to receive, conserve, and expend funds, including payments on behalf of the licensee or operator of the assisted living residence. Priority shall be given to expenditures for current direct resident care or the transfer of residents.

(g)The person charged with temporary management:

(1) Shall be an officer of the court;

(2) Shall be paid by the licensee;

(3) Is not liable for conditions at the assisted living residence which existed or originated prior to his or her appointment; and

(4) Is not personally liable, except for his or her own gross negligence and intentional acts which result in injuries to persons or damage to property at the assisted living residence during his or her temporary management.

(h) No person may impede the operation of temporary management. There shall be an automatic stay for a 90-day period subsequent to the establishment of temporary management of any action that would interfere with the functioning of the assisted living residence, including, but 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 assisted living residence.

(i) A temporary management established for the purpose of making improvements to bring the assisted living residence into compliance with applicable requirements may not be terminated until the court has determined that the assisted living residence has the management capability to ensure continued compliance with all applicable requirements: Provided, That if the court has not made such determination within six months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the assisted living residence shall be closed. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court and after deducting from

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receipts the costs of the temporary management, expenditures, and civil penalties and interest no longer subject to appeal, in that order, any excess shall be paid to the licensee or operator of the assisted living residence.

(j) The assessments for penalties and for costs of actions taken under this article shall have interest assessed at five percent per year beginning 30 days after receipt of notice of the assessment or 30 days after receipt of the Board of Review's final order following a hearing, whichever is later. All assessments against an assisted living residence that are unpaid shall be added to the assisted living residence's licensure fee and may be filed as a lien against the property of the licensee or operator of the assisted living residence. Funds received from assessments shall be deposited as funds received as provided in §16B-5-10 of this code.

(k) The opportunity for a hearing on an action by the director taken under this section shall be as provided in §16B-5-12 of this code.

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§16B-5-12. License denial; limitation, suspension, or revocation.

(a) The director, in consultation with the Inspector General, shall issue an order denying, limiting, suspending, or revoking a license issued pursuant to this article if the provisions of this article or of the rules promulgated pursuant to this article are violated. The director, in consultation with the Inspector General, may issue an order revoking a program's license and prohibit all licensed disciplines associated with the assisted living residence from practicing at the assisted living residence based upon an annual, periodic, complaint, verification, or other inspection and evaluation.

(b) Before any order is issued by the director, in consultation with the Inspector General, denying, limiting, suspending, or revoking a license, written notice will be given to the licensee, stating the grounds for such denial, limitation, suspension, or revocation.

(c) An applicant or licensee has 10 working days after receipt of the director's order denying, limiting, suspending, or revoking a license to request a formal hearing contesting the denial, limitation, suspension, or revocation under this article. If a formal hearing is requested, the applicant or licensee and the director shall proceed in accordance with the provisions of §29A-5-1 *et seq*. of this code.

(d) If a license is denied or revoked as herein provided, a new application for license will be considered by the director if, when, and after the conditions upon which the denial was based have been corrected and evidence of this fact has been furnished. A new license will then be granted after proper inspection, if applicable, has been made and all provisions of this article and rules promulgated pursuant to this article have been satisfied.

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

(f) If the license of an assisted living residence is denied, limited, suspended, or revoked, the administrator, any owner of the assisted living residence, or owner or lessor of the assisted living residence property shall cease to operate the facility as an assisted living residence as of the effective date of the denial, limitation, suspension, or revocation. The owner or lessor of the assisted living residence property is responsible for removing all signs and symbols identifying the premises as an assisted living residence within 30 days. Any administrative appeal of such denial, limitation, suspension, or revocation shall not stay the denial, limitation, suspension, or revocation.

(g) Upon the effective date of the denial, limitation, suspension, or revocation, the administrator of the assisted living residence shall advise the director and the Board of Pharmacy of the disposition of all medications located on the premises. The disposition is subject to the supervision and approval of the director. Medications that are purchased or held by an assisted living residence that is not licensed may be deemed adulterated.

WV Legislature

(h) If the license of an assisted living residence is suspended or revoked, any person named in the licensing documents of the assisted living residence, including persons owning or operating the assisted living residence, may not, as an individual or as part of a group, apply to operate another assisted living residence for up to five years after the date of suspension or revocation.

(i) The period of suspension for the license of an assisted living residence will be prescribed by the director, in consultation with the Inspector General, but may not exceed one year.

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§16B-5-13. Judicial review.

(a) Any applicant or licensee or the Inspector General who is adversely affected by the decision as a result of the formal hearing provided for in §16-5D-12 of this code may, within 30 days after receiving notice of the decision, petition the West Virginia Intermediate Court of Appeals for judicial review of the decision.

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

(c) The judgment of the West Virginia Intermediate Court of Appeals shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of §29A-6-1 *et seq*. of this code.

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§16B-5-14. Legal counsel and services for the Inspector General.

(a) Legal counsel and 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, his or her assistants, or an attorney employed by the Office of the Inspector General in proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

(b) The Governor may appoint counsel for the Inspector General who shall perform such legal services in representing the interests of residents in assisted living residences in matters under the jurisdiction of the Inspector General as the Governor shall direct. It shall be the duty of such counsel to appear for the residents in all cases where they are not represented by counsel. The compensation of such counsel shall be fixed by the Governor.

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§16B-5-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever advertises, announces, establishes, or maintains or is engaged in establishing or maintaining an assisted living residence without a license granted under §16B-5-6 of this code, or who prevents, interferes with, or impedes in any way the lawful enforcement of this article shall be 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 imprisonment in jail for a period of not more than 90 days, or by both such fine and imprisonment, at the discretion of the court. For each subsequent offense, the fine may be increased to not more than $250, with imprisonment in jail for a period of not more than 90 days, or both such fine and imprisonment at the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) The Inspector General may in his or her discretion bring an action to enforce compliance with this article or any rule, or order hereunder, whenever it appears to the Inspector General that any 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 Inspector General that any person has aided, abetted, or caused or is aiding, abetting, or causing such an act or practice. Upon application by the Inspector General, the circuit court of the county in which the conduct has occurred or is occurring, or the Circuit Court of Kanawha County shall have jurisdiction to grant without bond a permanent or temporary injunction, decree, or restraining order.

(c) Whenever the director, in consultation with the Inspector General, refuses to grant or renew a license or revokes a license required by law to operate or conduct an assisted living residence or orders a person to refrain from conduct violating the rules of the Inspector General, and the person deeming himself or herself aggrieved by the refusal, revocation, or order appeals the action of the director, the court may, during pendency of the appeal, issue a restraining order or injunction upon proof that the operation of the assisted living residence or its failure to comply with the order of the director adversely affects the well-being or safety of the residents of the assisted living residence. Should a person who is refused a license or the renewal of a license to operate or conduct an assisted living residence or whose license to operate is revoked or who has been ordered to refrain from conduct or activity which violates the rules of the Inspector General, fails to appeal or should such appeal be decided favorably to the director, then the court shall issue a permanent injunction upon proof that the person is operating or conducting an assisted living residence without a license as required by law or has continued to violate the rules of the Inspector General.

(d) Any assisted living residence 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, by any state statute or rule, or by any applicable federal statute or regulation shall be liable to the resident for injuries suffered as a result of the deprivation. Upon a finding that a resident has been deprived of such a right or benefit and that the resident has been injured as a result of the deprivation and unless there is a finding that the assisted living residence

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exercised all care reasonably necessary to prevent and limit the deprivation and injury to the resident, compensatory damages shall be assessed in an amount sufficient to compensate the resident for the injury. In addition, where the deprivation of any right or benefit is found to have been willful or in reckless disregard of the lawful rights of the resident, 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 any available administrative remedies may not be required prior to commencement of suit hereunder.

(e) The amount of damages recovered by a resident, in an action brought pursuant to this section, are exempt for purposes of determining initial or continuing eligibility for medical assistance pursuant to §9-5-1 *et seq*. of this code and may neither be taken into consideration nor required to be applied toward the payment or part payment of the cost of medical care or services available pursuant to §9-5-1 *et seq*. of this code.

(f) 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, shall be null and void as contrary to public policy.

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

WV Legislature

§16B-5-16. Separate accounts for residents' personal funds; consent for use; records; penalties.

(a) Each assisted living residence subject to the provisions of this article shall hold in a separate account and in trust each resident's personal funds deposited with the assisted living residence.

(b) No person may use or cause to be used for any purpose the personal funds of any resident admitted to any assisted living residence unless consent for the use thereof has been obtained from the resident or from a committee or guardian or relative.

(c) Each assisted living residence shall maintain a true and complete record of all receipts for any disbursements from the personal funds account of each resident in the assisted living residence, including the purpose and payee of each disbursement, and shall render a true account of the record to the resident or his or her representative upon demand and upon termination of the resident's stay in the assisted living residence.

(d) Any person or corporation who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned in jail not more than one year, or both fined and imprisoned.

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§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§16B-7-1. Purpose and short title.

This article shall be known as the Chronic Pain Clinic Licensing Act. The purpose of this act is to establish licensing requirements for facilities that treat patients for chronic pain management in order to ensure that patients may be lawfully treated for chronic pain by physicians in facilities that comply with oversight requirements developed by the Office of the Inspector General.

WV Legislature

§16B-7-2. Definitions.

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

(1) "Chronic pain" means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. For purposes of this article, "chronic pain" does not include pain directly associated with a terminal condition.

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

(3) "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.

(4) "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.

(5) "Owner" means any person, partnership, association, or corporation listed as the owner of a pain management clinic on the licensing forms required by this article.

(6) "Pain management clinic" means all privately-owned pain management clinics, facilities, or offices not otherwise exempted from this article and which meet both of the following criteria:

(A) Where in any month more than 50 percent of patients of the clinic are prescribed or dispensed Schedule II opioids or other Schedule II controlled substances specified in rules promulgated pursuant to this article for chronic pain resulting from conditions that are not terminal; and

(B) The facility meets any other identifying criteria established by the Inspector General by rule.

(7) "Physician" means an individual authorized to practice medicine or surgery or osteopathic medicine or surgery in this state.

(8) "Prescriber" means an individual who is authorized by law to prescribe drugs or drug therapy related devices in the course of the individual’s professional practice, including only a medical or osteopathic physician authorized to practice medicine or surgery; a physician assistant, or osteopathic physician assistant who holds a certificate to prescribe drugs; or an advanced nurse practitioner who holds a certificate to prescribe.

(b) The Inspector General may define in rules any term or phrase used in this article which is not expressly defined.

WV Legislature

§16B-7-3. Pain management clinics 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 stated.

(b) No person, partnership, association, or corporation may operate a pain management clinic without first obtaining a license from the director in accordance with the provisions of this article and the rules lawfully promulgated pursuant to this article.

(c) Any person, partnership, association, or corporation desiring a license to operate a pain management clinic in this state shall file with the Office of Health Facility Licensure and Certification an application in such form as the director shall prescribe and furnish accompanied by a fee to be determined by the director.

(d) The Director of the Office of Health Facility Licensure and Certification or his or her designee shall inspect each facility prior to issuing a license and review all documentation submitted with the application. The director shall issue a license if the facility is in compliance with the provisions of this article and with the rules lawfully promulgated pursuant to this article.

(e) 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 pursuant to this article. A license issued to one facility pursuant to this article is not transferable or assignable. A change of ownership of a licensed pain management clinic requires submission of a new application.

(f) The director or his or her designee shall inspect on a periodic basis all pain management clinics that are subject to this article and all rules adopted pursuant to this article to ensure continued compliance.

WV Legislature

§16B-7-4. Operational requirements.

(a) Any person, partnership, association, or corporation that desires to operate a pain management clinic in this state must submit to the director documentation that the facility meets all of the following requirements:

(1) The clinic shall be licensed in this state with the director, the Secretary of State, the State Tax Department, and all other applicable business or license entities.

(2) The application shall list all owners of the clinic. At least one owner shall be a physician actively licensed to practice medicine, surgery, or osteopathic medicine or surgery in this state. The clinic shall notify the director of any change in ownership within 10 days of the change and must submit a new application within the time frame prescribed by the director.

(3) Each pain management clinic shall designate a physician owner who shall practice at the clinic and who will be responsible for the operation of the clinic. Within 10 days after termination of a designated physician, the clinic shall notify the director of the identity of another designated physician for that clinic. Failing to have a licensed designated physician practicing at the location of the clinic may be the basis for a suspension or revocation of the clinic license. The designated physician shall:

(A) Have a full, active, and unencumbered license to practice medicine, surgery, or osteopathic medicine or surgery in this state:

(B) Meet one of the following training requirements:

(i) Complete a pain medicine fellowship that is accredited by the Accreditation Council for Graduate Medical Education or such other similar program as may be approved by the director; or

(ii) Hold current board certification by the American Board of Pain Medicine or current board certification by the American Board of Anesthesiology or such other board certification as may be approved by the director.

(C) Practice at the licensed clinic location for which the physician has assumed responsibility;

(D) Be responsible for complying with all requirements related to the licensing and operation of the clinic;

(E) Supervise, control, and direct the activities of each individual working or operating at the facility, including any employee, volunteer, or individual under contract, who provides treatment of chronic pain at the clinic or is associated with the provision of that treatment. The supervision, control, and direction shall be provided in accordance with rules promulgated by the Inspector General.

WV Legislature

(4) All persons employed by the facility shall comply with the requirements for the operation of a pain management clinic established by this article or by any rule adopted pursuant to this article.

(5) No person may own or be employed by or associated with a pain management clinic who has previously been convicted of, or pleaded guilty to, any felony in this state or another state or territory of the United States. All owners, employees, volunteers, or associates of the clinic shall undergo a criminal records check prior to operation of the clinic or engaging in any work, paid or otherwise, pursuant to §16B-15-1 *et seq*. of this code.

(6) The clinic may not be owned by, nor may it employ or associate with, any physician or prescriber:

(A) Whose Drug Enforcement Administration number has ever been revoked;

(B) Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction; or

(C) Who, in any jurisdiction of this state or any other state or territory of the United States, has been convicted of or plead guilty or nolo contendere to an offense that constitutes a felony for receipt of illicit and diverted drugs, including controlled substances, as defined by §60A-1-101 of this code.

(7) A person may not dispense any medication, including a controlled substance, as defined by section §60A-1-101 of this code, on the premises of a licensed pain management clinic unless he or she is a physician or pharmacist licensed in this state. Prior to dispensing or prescribing controlled substances, as defined by §60A-1-101 of this code, at a pain management clinic, the treating physician must access the Controlled Substances Monitoring Program database maintained by the Board of Pharmacy to ensure the patient is not seeking controlled substances from multiple sources. If the patient receives ongoing treatment, the physician shall also review the Controlled Substances Monitoring Program database at each patient examination or at least every 90 days. The results obtained from the Controlled Substances Monitoring Program database shall be maintained with the patient's medical records.

(8) Each clinic location shall be licensed separately, regardless of whether the clinic is operated under the same business name or management as another clinic.

(9) A pain management clinic shall not dispense to any patient more than a 72-hour supply of a controlled substance, as defined by §60A-1-101 of this code.

(10) The pain management clinic shall develop patient protocols, treatment plans, and profiles, as prescribed by the Inspector General by rule, and which shall include, but not be limited by, the following guidelines:

(A) When a physician diagnoses an individual as having chronic pain, the physician may treat

WV Legislature

the pain by managing it with medications in amounts or combinations that may not be appropriate when treating other medical conditions. The physician's diagnosis shall be made after having the individual evaluated by one or more other physicians who specialize in the treatment of the area, system, or organ of the body perceived as the source of the pain unless the individual has been previously diagnosed as suffering from chronic pain and is referred to the pain management clinic by such diagnosing physician. The physician's diagnosis and treatment decisions shall be made according to accepted and prevailing standards for medical care.

(B) The physician shall maintain a record of all of the following:

(i) Medical history and physical examination of the individual;

(ii) The diagnosis of chronic pain, including signs, symptoms, and causes;

(iii) The plan of treatment proposed, the patient's response to the treatment, and any modification to the plan of treatment;

(iv) The dates on which any medications were prescribed, dispensed, or administered, the name and address of the individual to or for whom the medications were prescribed, dispensed, or administered and the amounts and dosage forms for the drugs prescribed, dispensed, or administered; and

(v) A copy of the report made by the physician to whom referral for evaluation was made.

(C) A physician, physician assistant, certified registered nurse anesthetist, or advanced nurse practitioner shall perform a physical examination of a patient on the same day that the physician initially prescribes, dispenses or administers a controlled substance to a patient, and at least four times a year thereafter at a pain management clinic according to accepted and prevailing standards for medical care.

(D) A physician authorized to prescribe controlled substances who practices at a pain management clinic is responsible for maintaining the control and security of his or her prescription blanks and any other method used for prescribing controlled substance pain medication. The physician shall comply with all state and federal requirements for tamper-resistant prescription paper. In addition to any other requirements imposed by statute or rule, the physician shall notify the director in writing within 24 hours following any theft or loss of a prescription blank or breach of any other method for prescribing pain medication.

(c) Upon satisfaction that an applicant has met all of the requirements of this article, the director may issue a license to operate a pain management clinic. An entity that obtains this license may possess, have custody or control of, and dispense drugs designated as Schedule II or Schedule III in §60A-2-206 or §60A-2-208 of this code.

WV Legislature

§16B-7-5. Exemptions.

(a) The following facilities are not pain management clinics subject to the requirements of this article:

(1) A facility that does not prescribe or dispense controlled substances for the treatment of chronic pain;

(2) A hospital licensed in this state, a facility located on the campus of a licensed hospital that is owned, operated, or controlled by that licensed hospital, and an ambulatory health care facility as defined by §16-2D-2 of this code that is owned, operated, or controlled by a licensed hospital;

(3) A physician practice owned or controlled, in whole or in part, by a licensed hospital or by an entity that owns or controls, in whole or in part, one or more licensed hospitals;

(4) A hospice program licensed in this state;

(5) A nursing home licensed in this state;

(6) An ambulatory surgical facility as defined by §16-2D-2 of this code; and

(7) A facility conducting clinical research that may use controlled substances in studies approved by a hospital-based institutional review board or an institutional review board accredited by the association for the accreditation of human research protection programs.

(b) Any facility that is not included in this section may petition to the director for an exemption from the requirements of this article. All such petitions are subject to the administrative procedures requirements of §29A-1-1 *et seq*. of this code.

WV Legislature

§16B-7-6. Inspection.

(a) The Office of Health Facility Licensure and Certification shall inspect each pain management clinic annually, including a review of the patient records, to ensure that it complies with this article and the applicable rules.

(b) During an onsite inspection, the inspector shall make a reasonable attempt to discuss each violation with the designated physician or other owners of the pain management clinic before issuing a formal written notification.

(c) Any action taken to correct a violation shall be documented in writing by the designated physician or other owners of the pain management clinic and verified by follow-up visits by the Office of Health Facility Licensure and Certification.

WV Legislature

§16B-7-7. Suspension; revocation.

(a) The director, in consultation with the Inspector General, may suspend or revoke a license issued pursuant to this article if the provisions of this article or of the rules promulgated pursuant to this article are violated. The director, in consultation with the Inspector General, may revoke a clinic's license and prohibit all physicians associated with that pain management clinic from practicing at the clinic location based upon an annual or periodic inspection and evaluation.

(b) Before any such license is suspended or revoked, however, written notice shall be given to the licensee, stating the grounds of the complaint and shall provide notice of the right to request a hearing. The notice shall be sent by certified mail to the licensee at the address where the pain management clinic concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

(c) If a license is revoked pursuant to this article, a new application for a license may be considered by the director if, when, and after the conditions upon which revocation was based have been corrected, and evidence of this fact has been furnished to the director. A new license may then be granted after proper inspection has been made and all provisions of this article and rules promulgated pursuant to this article have been satisfied.

(d) All of the pertinent provisions of §29A-5-1 *et seq*. of this code shall apply and govern any hearing authorized and required by the provisions of this article and the administrative procedure in connection therewith.

(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 the decision to 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.

(g) If the license of a pain management clinic is revoked or suspended, the designated physician of the clinic, any other owner of the clinic or the owner or lessor of the clinic property shall cease to operate the facility as a pain management clinic as of the effective date of the suspension or revocation. The owner or lessor of the clinic property is responsible for removing all signs and symbols identifying the premises as a pain management clinic within 30 days.

(h) Upon the effective date of the suspension or revocation, the designated physician of the pain management clinic shall advise the director and the Board of Pharmacy of the disposition of all drugs located on the premises. The disposition is subject to the supervision and approval of the director. Drugs that are purchased or held by a pain management clinic

WV Legislature

that is not licensed may be deemed adulterated.

(i) If the license of a pain management clinic is suspended or revoked, any person named in the licensing documents of the clinic, including persons owning or operating the pain management clinic, may not, as an individual or as part of a group, apply to operate another pain management clinic for five years after the date of suspension or revocation.

(j) The period of suspension for the license of a pain management clinic shall be prescribed by the director, in consultation with the Inspector General, but may not exceed one year.

WV Legislature

§16B-7-8. Violations; penalties; injunction.

(a) Any person, partnership, association, or corporation which establishes, conducts, manages, or operates a pain management clinic without first obtaining a license therefor as herein provided, or which violates any provisions of this article or any rule lawfully promulgated pursuant to this article, shall be assessed a civil penalty by the director, in consultation with the Inspector General, in accordance with this subsection. Each day of continuing violation after conviction shall be considered a separate violation:

(1) If a pain management clinic or any owner or designated physician is found to be in violation of any provision of this article, unless otherwise noted herein, the director, in consultation with the Inspector General, may suspend or revoke the clinic's license.

(2) If the clinic's designated physician knowingly and intentionally misrepresents actions taken to correct a violation, the director, in consultation with the Inspector General, may impose a civil penalty not to exceed $10,000, and, in the case of an owner-operated pain management clinic, revoke or deny a pain management clinic's license.

(3) If an owner or designated physician of a pain management clinic concurrently operates an unlicensed pain management clinic, the director, in consultation with the Inspector General, may impose a civil penalty upon the owner or physician, or both, not to exceed $5,000 per day.

(4) If the owner of a pain management clinic that requires a license under this article fails to apply for a new license for the clinic upon a change-of-ownership and operates the clinic under the new ownership, the director, in consultation with the Inspector General, may impose a civil penalty not to exceed $5,000.

(5) If a physician knowingly operates, owns, or manages an unlicensed pain management clinic that is required to be licensed pursuant to this article; knowingly prescribes or dispenses or causes to be prescribed or dispensed, controlled substances in an unlicensed pain management clinic that is required to be licensed; or licenses a pain management clinic through misrepresentation or fraud; procures or attempts to procure a license for a pain management clinic for any other person by making or causing to be made any false representation, the director, in consultation with the Inspector General, may assess a civil penalty of not more than $20,000. The penalty may be in addition to or in lieu of any other action that may be taken by the director, in consultation with the Inspector General, or any other board, court, or entity.

(b) Notwithstanding the existence or pursuit of any other remedy, the director, in consultation with 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, or corporation to restrain or prevent the establishment, conduct, management, or operation of any pain management clinic or violation of any provisions of this article, or any rule lawfully promulgated thereunder without first obtaining a license therefor in the manner

WV Legislature

hereinbefore provided.

(c) In determining whether a penalty is to be imposed and in fixing the amount of the penalty, the director, in consultation with the Inspector General, shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical or emotional harm to a patient has resulted, or could have resulted, from the pain management clinic's actions or the actions of the designated or practicing physician, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated;

(2) What actions, if any, the owner or designated physician took to correct the violations;

(3) Whether there were any previous violations at the pain management clinic; and

(4) The financial benefits that the pain management clinic derived from committing or continuing to commit the violation.

(d) Upon finding that a physician has violated the provisions of this article or rules adopted pursuant to this article, the director, in consultation with the Inspector General, shall provide notice of the violation to the applicable licensing board.

WV Legislature

§16B-7-9. Rules.

(a) The Inspector General, in collaboration with the West Virginia Board of Medicine and the West Virginia Board of Osteopathy, shall promulgate rules in accordance with the provisions of §29A-1-1 *et seq.* of this code for the licensure of pain management clinics to ensure adequate care, treatment, health, safety, welfare, and comfort of patients at these facilities. These rules shall include, at a minimum:

(1) The process to be followed by applicants seeking a license;

(2) The qualifications and supervision of licensed and nonlicensed personnel at pain management clinics and training requirements for all facility health care practitioners who are not regulated by another board;

(3) The provision and coordination of patient care, including the development of a written plan of care;

(4) The management, operation, staffing, and equipping of the pain management clinic;

(5) The clinical, medical, patient, and business records kept by the pain management clinic;

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

(7) The standards and procedures for the general operation of a pain management clinic, including facility operations, physical operations, infection control requirements, health and safety requirements, and quality assurance;

(8) Identification of drugs that may be used to treat chronic pain that identify a facility as a pain management clinic, including, at a minimum, tramadol and carisoprodol;

(9) Any other criteria that identify a facility as a pain management clinic;

(10) The standards and procedures to be followed by an owner in providing supervision, direction, and control of individuals employed by or associated with a pain management clinic;

(11) Data collection and reporting requirements; and

(12) Such other standards or requirements as the Inspector General determines are appropriate.

(b) The rules authorized by this section may be filed as emergency rules if deemed necessary to promptly effectuate the purposes of this article. The Legislature finds that the changes made to this article during the 2024 regular session of the Legislature constitute an emergency for the purposes of filing any amendment to existing rules.

WV Legislature

§16B-7-10. Advertisement disclosure.

Any advertisement made by or on behalf of a pain management clinic through public media, such as a telephone directory, medical directory, newspaper or other periodical, outdoor advertising, radio, or television, or through written or recorded communication, concerning the treatment of chronic pain, as defined in §16B-7-2 of this code, shall include the name of, at a minimum, one physician owner responsible for the content of the advertisement.

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§16B-10-1. Short title.

This article may be cited as the "Ken Ervin Community Living Act."

WV Legislature

§16B-10-2. Definitions.

As used in this article the following definitions apply:

(a) "Administration of medication" means:

(1) Assisting a person in the ingestion, application, or inhalation of medications, including prescription drugs, or in the use of universal precautions or rectal or vaginal insertion of medication, according to the legibly written or printed directions of the attending physician or the health care professional in accordance with §30-5-4 of this code, or as written on the prescription label; and

(2) Making a written record of such assistance with regard to each medication administered, including the time, route and amount taken. However, for purposes of this article, "administration" does not include judgment, evaluation, assessments, injections of medication (except for prefilled insulin or insulin pens), or monitoring of medication or self-administration of medications, such as prescription drugs and self-injection of medication by the resident.

(b) "Approved medication assistive personnel (AMAP)" means unlicensed facility staff member, who meets eligibility requirements, has successfully completed the required training and competency testing, and is considered competent by the authorized registered professional nurse to administer medications or perform health maintenance tasks, or both, to residents of the facility in accordance with this article.

(c) “Authorized practitioner" means a physician licensed under the provisions of §30-3-1 *et seq*. of this code or §30-14-1 *et seq*. of this code.

(d) "Authorized registered professional nurse" means a person who holds an unencumbered license pursuant to §30-7-1 *et seq*. of this code and meets the requirements to train and supervise approved medication assistive personnel pursuant to this article, and has completed and passed the facility trainer/instructor course developed by the authorizing agency.

(e) "Authorizing agency" means the Office of Health Facility Licensure and Certification.

(f) "Delegation" means transferring to a competent individual, as determined by the authorized registered professional nurse, the authority to perform a selected task in a selected situation.

(g) "Delegation decision model" means the process the authorized registered professional nurse must follow to determine whether or not to delegate a nursing task to an approved medication assistive personnel. The delegation decision model is approved by the West Virginia Board of Examiners for Registered Professional Nurses.

(h) "Director" means the director of the Office of Health Facility Licensure and Certification,

WV Legislature

or his or her designee.

(i) "Facility" means an intermediate care facility for individuals with an intellectual disability, assisted living, behavioral health group home, private residence in which health care services and health maintenance tasks are provided under the supervision of a registered professional nurse as defined in §30-7-1 *et seq*. of this code.

(j) "Facility staff member" means an individual employed by a facility but does not include a health care professional acting within his or her scope of practice.

(k) "Family" means biological parents, adoptive parents, foster parents, or other immediate family members living within the same household.

(l) "Health care professional" means a medical doctor or doctor of osteopathy, a podiatrist, registered professional nurse, practical nurse, advanced practice registered nurse, physician's assistant, dentist, optometrist or respiratory care professional licensed under chapter thirty of this code.

(m) "Health maintenance tasks" means performing the following tasks according to the legibly written or printed directions of a health care professional or as written on the prescription label, and making a written record of that assistance with regard to each health maintenance task administered, including the time, route and amount taken:

(1) Administering glucometer tests;

(2) Administering gastrostomy tube feedings;

(3) Administering enemas;

(4) Performing ostomy care which includes skin care and changing appliances; and

(5) Performing tracheostomy and ventilator care for residents in a private residence who are living with family and/or natural supports.

(n) "Health maintenance tasks" do not include judgment, evaluation, assessments, injections of medication, except for prefilled insulin or insulin pens, or monitoring of medication or self-administration of medications, such as prescription drugs and self-injection of medication by the resident.

(o) "Immediate family" means mother, stepmother, father, stepfather, sister, stepsister, brother, stepbrother, spouse, child grandparent and grandchildren.

(p) "Inspector General" means the Inspector General of the Office of Inspector General as described in §16B-2-1 of this code, or his or her designee.

(q) "Location of medication administration or location where health maintenance tasks are

WV Legislature

performed" means a facility or location where the resident requires administration of medication or assistance in taking medications or the performance of health maintenance tasks.

(r) "Medication" means a drug, as defined in §60A-1-101 of this code, which has been prescribed by a health care professional to be ingested through the mouth, inhaled through the nose or mouth, administered through a gastrostomy tube, applied to the outer skin, eye or ear, or applied through nose drops, vaginal or rectal suppositories.

(s) "Natural supports" means family, friends, neighbors or anyone who provides assistance and support to a resident but is not reimbursed.

(t) "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.

(u) "Registered professional nurse" means a person who holds a valid license pursuant to §30-7-1, *et seq*. of this code.

(v) "Resident" means a resident of a facility who for purposes of this article, is in a stable condition.

(w) "Self-administration of medication" means the act of a resident, who is independently capable of reading and understanding the labels of drugs ordered by an authorized practitioner, in opening and accessing prepackaged drug containers, accurately identifying and taking the correct dosage of the drugs as ordered by the health care professional, at the correct time and under the correct circumstances.

(x) "Self-administration of medication with assistance" means assisting residents who are otherwise able to self-administer their own medications except their physical disabilities prevent them from completing one or more steps in the process.

(y) "Stable" means the individual's health condition is predictable and consistent as determined by the registered professional nurse.

(z) "Supervision of self-administration of medication" means a personal service which includes reminding residents to take medications, opening medication containers for residents, reading the medication label to residents, observing residents while they take medication, checking the self-administered dosage against the label on the container and reassuring residents that they have obtained and are taking the dosage as prescribed.

WV Legislature

§16B-10-3. Administration of medications; performance of health maintenance tasks; maintenance of liability insurance in facilities.

(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 stated.

(b) The director shall continue a program for the administration of medications and performance of health maintenance tasks in locations covered by this article. The program shall be developed and conducted in cooperation with the appropriate agencies, advisory bodies and boards.

(c) Administration of medication or performance of health maintenance tasks shall be performed only by:

(1) Licensed health care professionals; or

(2) Facility staff members who have been trained and retrained every two years and who are subject to the supervision of and approval by an authorized registered professional nurse.

(d) After assessing the health status of an individual resident, a registered professional nurse, in collaboration with the resident's health care professional and the facility staff member, may recommend that the facility authorize a facility staff member to administer medication or perform health maintenance tasks if the staff member:

(1) Has been trained pursuant to the requirements of this article;

(2) Is considered by the authorized registered professional nurse to be competent;

(3) Consults with the authorized registered professional nurse on a regular basis; and

(4) Is monitored or supervised by the authorized registered professional nurse.

(e) An agency or facility employing personnel for the purposes of supervising the administration of medication or the performance of health maintenance tasks shall maintain liability insurance for the licensed health care provider, any facility staff member who has been trained and is employed to administer medication or perform health maintenance tasks and if applicable the health care provider's collaborative supervising physician.

(f) Nothing in this article may be construed to prohibit any facility staff member from administering medications or performing health maintenance tasks, or providing any other prudent emergency assistance to aid any person who is in acute physical distress or requires emergency assistance.

(g) Supervision of self-administration of medication by facility staff members who are not licensed health care professionals may be permitted in certain circumstances, when the substantial purpose of the setting is other than the provision of health care.

WV Legislature

§16B-10-4. Exemption from licensure; statutory construction.

(a) Any individual who is not otherwise authorized by law to administer medication or perform health maintenance tasks may administer medication or perform health maintenance tasks in locations covered by this article if he or she meets the requirements of this article and is exempt from the licensing requirements of §30-1-1 of this code.

(b) Licensed health care professionals remain subject to their respective licensing laws.

(c) Notwithstanding any other provision of law to the contrary, this article shall not be construed to violate or be in conflict with §30-7-1 et seq. or §30-7A-1 *et seq*. of this code.

(d) Any parent or guardian may administer medication to, or perform health maintenance tasks for, his or her adult or minor child regardless of whether or not the parent or guardian receives compensation for caring for said child.

WV Legislature

§16B-10-5. Instruction and training.

(a) The authorizing agency shall establish a council of nurses to represent the facilities and registered professional nurses affected by this article. The council shall prepare a procedural manual and recommendations regarding a training course to the director. The council shall meet every two years to review and make recommendations to the training curricula, competency evaluation procedures and rules implemented by the director.

(b) The Office of Health Facility Licensure and Certification shall develop and approve training curricula and competency evaluation procedures for facility staff members who administer medication or perform health maintenance tasks. The Office of Health Facility Licensure and Certification shall consider the recommendations of the council and shall consult with the West Virginia Board of Examiners for Registered Nurses in developing the training curricula and competency evaluation procedures.

(c) The authorizing agency shall coordinate and collaborate with the Board of Respiratory Care to develop the training and testing component for health maintenance tasks related to respiratory care, including but not limited to inhaled medications, tracheostomy care and ventilator care. This includes modifying and updating the existing curriculum for an authorized registered professional nurse and the approved medication assistive persons.

(1) The authorizing agency shall develop and approve training curricula and competency evaluation. The authorizing agency shall establish a council of nurses to assist with the development of the training and evaluation process.

(2) The curriculum, training competency and testing components related to respiratory care shall be approved by the Respiratory Care Board pursuant to §30-34-15(e).

(d) The program developed by the Office of Health Facility Licensure and Certification shall require that any person who applies to act as a facility staff member authorized to administer medications or perform health maintenance tasks shall:

(1) Hold a high school diploma or general education diploma;

(2) Be certified in cardiopulmonary resuscitation and first aid;

(3) Participate in the initial training program developed by the department;

(4) Pass a competency evaluation developed by the department; and

(5) Participate in a retraining program every two years.

(e) Any facility may offer the training and competency evaluation program developed by the Office of Health Facility Licensure and Certification to its facility staff members. The training and competency programs shall be provided by the facility through a registered professional nurse.

WV Legislature

(f) A registered professional nurse who is authorized to train facility staff members to administer medications or perform health maintenance tasks in facilities shall:

(1) Possess a current active license as set forth in §30-7-1 *et seq*. of this code in good standing to practice as a registered nurse;

(2) Have practiced as a registered professional nurse in a position or capacity requiring knowledge of medications and the performance of health maintenance tasks for the immediate two years prior to being authorized to train facility staff members;

(3) Be familiar with the nursing care needs of residents of facilities as described in this article; and

(4) Have completed and passed the facility trainer/instructor course developed by the authorizing agency.

(g) After successfully completing the initial training and testing for the AMAP program, registered professional nurses and AMAPs shall have competencies for health maintenance tasks reassessed and documented annually by the employer of record to ensure continued competence.

WV Legislature

§16B-10-6. Availability of records; eligibility requirements of facility staff.

(a) Any facility which authorizes unlicensed staff members to administer medications or perform health maintenance tasks shall make available to the authorizing agency a list of the individual facility staff members authorized to administer medications or perform health maintenance tasks.

(b) Any facility may permit a facility staff member to administer medications or perform health maintenance tasks in a single specific agency only after compliance with all of the following:

(1) The staff member has successfully completed a training program and received a satisfactory competency evaluation as required by this article;

(2) The facility determines there is no statement on the state administered nurse aide registry indicating that the staff member has been the subject of finding of abuse or neglect of a long-term care facility resident or convicted of the misappropriation of a resident's property;

(3) The facility staff member has had a criminal background check or if applicable, a check of the State Police Abuse Registry, establishing that the individual has not been convicted of crimes against persons or drug related crimes by utilizing and following the provisions of §16B-15-1 *et seq.* of this code;

(4) The medication to be administered is received and maintained by the facility staff member in the original container in which it was dispensed by a pharmacist or the physician; and

(5) The facility staff member has complied with all other applicable requirements of this article, the legislative rules adopted pursuant to this article and other criteria, including minimum competency requirements, as are specified by the authorizing agency.

WV Legislature

§16B-10-7. Oversight of medication administration and performance of health maintenance tasks by the approved medication assistive personnel.

(a) Any facility in which medication is administered or health maintenance tasks performed by the approved medication assistive personnel shall establish an administrative monitoring system in administrative policy. The specific requirements of the administrative policy shall be established by the Inspector General, through legislative rules. These rules shall be developed in consultation with the West Virginia Board of Examiners for Registered Nurses, the West Virginia Nurses Association, the West Virginia Statewide Independent Living Council, and the West Virginia Board of Respiratory Care. These rules are required to include, at a minimum:

(1) Instructions on protocols for contacting an appropriate healthcare professional in situations where a condition arises which may create a risk to the resident's health and safety;

(2) The type and frequency of monitoring and training requirements for management of these occurrences; and

(3) Procedures to prevent drug diversion.

(b) Monitoring of facility staff members authorized pursuant to this article shall be performed by a registered professional nurse employed or contracted by the facility, who shall exercise judgment, evaluate and assess the patient, inject medicine, except prefilled insulin and insulin pens if this task is delegated to an approved medication assistive person, and monitor medications, self-administration of medications and self-injections by the resident in accordance with his or her scope of practice.

WV Legislature

§16B-10-8. Withdrawal of authorization.

The registered professional nurse who monitors or supervises the facility staff members authorized to administer medication or perform health maintenance tasks may withdraw authorization for a facility staff member if the nurse determines that the facility staff member is not performing medication administration or health maintenance tasks in accordance with the training and written instructions. The withdrawal of the authorization shall be documented and relayed to the facility and the Office of Health Facility Licensure and Certification in order to remove the facility staff member from the list of authorized individuals. The Office of Health Facility Licensure and Certification shall maintain a list of the names of persons whose authorization to administer medication or perform health maintenance tasks has been withdrawn, and the reasons for withdrawal of authorization. The list may be accessed by registered professional nurses or facilities.

WV Legislature

§16B-10-9. Fees.

The Office of Health Facility Licensure and Certification may set and collect fees necessary for the implementation of the provisions of this article pursuant to rules authorized by §16B-10-11 of this code.

WV Legislature

§16B-10-10. Limitations on medication administration or performance of health maintenance tasks.

The following limitations apply to the administration of medication or performance of health maintenance tasks by facility staff members:

(a) Injections or any parenteral medications may not be administered, except that prefilled insulin or insulin pens may be administered;

(b) Irrigations or debriding agents used in the treatment of a skin condition or minor abrasions may not be administered;

(c) No verbal medication orders may be accepted, no new medication orders shall be transcribed and no drug dosages may be converted and calculated;

(d) No medications ordered by the health care professional to be given "as needed" may be administered unless the order is written with specific parameters which preclude independent judgment; and,

(e) Health maintenance tasks for the performance of tracheostomy care and ventilator care is not permitted in an intermediate care facility for individuals with an intellectual disability, assisted living, behavioral health group home, private residence where the resident is not residing with family and/or natural supports.

WV Legislature

§16B-10-11. Rules.

The director shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code as may be necessary to implement the provision of this article.

WV Legislature

§16B-10-12. Advisory Committee.

(a) There is continued an advisory committee to assist with the development of polices and procedures regarding health maintenance care in order to safeguard the well-being and to preserve the dignity of persons who need assistance to live in their communities and avoid institutionalization.

(b)(1) The advisory committee shall consist of 11 voting members as follows:

(A) The Olmstead Coordinator within the Office of Inspector General;

(B) One physician with expertise in respiratory medicine to be chosen by the West Virginia Board of Respiratory Care.

(C) A representative chosen by AARP West Virginia;

(D) A representative chosen by the West Virginia Statewide Independent Living Council;

(E) A representative chosen by the West Virginia Developmental Disabilities Council;

(F) A representative chosen by the West Virginia Board of Respiratory Care;

(G) A representative chosen by the West Virginia Society for Respiratory Care.

(H) One representative of the West Virginia Board of Examiners for Registered Professional Nurses;

(I) One representative of the West Virginia Nurses Association;

(J) One representative of the Fair Shake Network; and

(K) The Director of the Office of Health Facility Licensure and Certification.

(c) A chairman shall be selected from the voting members of the advisory committee.

(d) The advisory committee shall meet at least four times annually, upon the call of the chairman, or at the request of the authorizing agency. A simple majority of the members shall constitute a quorum.

(e) All members of the committee shall be reimbursed reasonable expenses pursuant to the rules promulgated by the Department of Administration for the reimbursement of expenses of state officials and employees and shall receive no other compensation for their services.

WV Legislature

§16B-11-1. Name of act.

This act shall be known and may be cited as the "Alzheimer's Special Care Standards Act."

WV Legislature

§16B-11-2. Findings and declarations.

The Legislature finds and declares that:

(a) Certain nursing homes and related facilities, adult congregate living facilities, adult day care centers, hospices and adult foster homes claim to provide special care units and services for persons who have Alzheimer’s disease;

(b) It is in the public interest to provide for the protection of consumers by ensuring the accuracy and authenticity of such claims; and

(c) The provisions of this article are intended to require the facilities to actually provide the care they claim to offer, require written disclosure of special services provided, require the appropriate state licensing agency to examine the performance of such facilities in providing special services for persons who have Alzheimer's disease, and provide penalties for failure to provide the services claimed as the agency considers appropriate.

WV Legislature

§16B-11-3. Definition of Alzheimer’s special care unit/program.

For the purposes of this article, the following definitions apply:

"Alzheimer's disease" means a diagnosis of presenile dementia or senile dementia-Alzheimer type (SDAT), characterized by confusion, memory failure, disorientation, restlessness, agnosia, speech disturbances, inability to carry out purposeful movements and hallucinosis.

"Alzheimer's Special Care Unit or Program," means any facility that secures, segregates or provides a special program or special unit for residents with a diagnosis of probable Alzheimer’s disease or a related disorder and that advertises, markets or otherwise promotes the facility as providing specialized Alzheimer’s or dementia care services.

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

"Facility" means any nursing home or facility, residential board and care home, personal care home, assisted living facility, adult congregate living facility, home health agency, adult day care center, hospice or adult foster home situate or operating in this state.

"Inspector General" means the Inspector General of the Office of Inspector General as described in §16B-2-1 of this code, or his or her designee.

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

"Resident" means an individual living in a facility that offers an Alzheimer's special care unit or program.

WV Legislature

§16B-11-4. Alzheimer's special care disclosure required.

(a) Any facility which offers to provide or provides care for a person with Alzheimer's disease through an Alzheimer's special care unit or special care program shall disclose in writing the form of care or treatment that distinguishes the unit or program as being especially applicable to or suitable for such persons. The disclosure shall be provided to the Office of Health Facility Licensure and Certification, to any person seeking placement within an Alzheimer's special care unit or program, and to any legal guardian or relative acting on behalf of a resident or person seeking placement.

(b) The Office of Health Facility Licensure and Certification shall examine all disclosures provided to it as part of the facility's license renewal procedure and verify the accuracy of the disclosures.

(c) The disclosure required by this section shall include the following information:

(1) A statement of the overall treatment philosophy and mission of the special care unit or program which reflects the needs of residents afflicted with Alzheimer's disease or dementia;

(2) A description of the facility's screening, admission and discharge procedures, assessment, care planning and implementation, staffing patterns and training ratios unique to the program or unit;

(3) A description of the physical environment and design features and an explanation of how they are appropriate to support the functioning of cognitively impaired adult residents;

(4) A description of activities available to residents, the frequency and types of resident activities, and how they are specialized for residents who suffer from Alzheimer's disease;

(5) A statement that describes the involvement of families in the care of residents and the availability of family support programs;

(6) The costs of care and any additional fees unique to the Alzheimer's special care unit or program.

WV Legislature

§16B-11-5. Standards for care; rules.

(a) The Inspector General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code, setting minimum standards for the care and treatment of persons with Alzheimer's disease and other dementia in facilities offering Alzheimer's special care units or programs.

(b) The standards established pursuant to this section shall apply to all facilities offering Alzheimer's special care units or program and shall be in addition to any other statutory requirements, rules or standards that are applicable to the facility.

(c) The Inspector General shall enforce the rules and standards for Alzheimer's special care units or programs and shall exercise all powers necessary for such enforcement, including investigation and reporting of violation of the rules, issuance of notices or warnings to facilities found in violation of the standards, assessment of civil penalties in accordance with the applicable licensing provisions of the facility, and suspension or revocation of licenses.

(d) 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 indicated.

(e) If a facility advertising, marketing or otherwise promoting the facility as providing specialized Alzheimer or dementia care services does not meet the standards established by the director, the Office of Health Facility Licensure and Certification shall instruct the facility to cease such advertising, marketing, or promoting.

WV Legislature

§16B-11-6. Alzheimer's and dementia care training; rules.

(a) For the purposes of this section, "resident" means an individual receiving care or services in an adult day care facility, nursing home, assisted living facility or residential care community.

(b) The Inspector General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code, setting minimum standards for Alzheimer's and dementia care training of all staff, employees and contractors that come in regular and direct contact with residents.

(c) The standards established in this section shall apply to adult day care facilities, nursing homes, assisted living facilities and residential care communities who provide services under the supervision of a licensed operator.

WV Legislature

§16B-11-7. Establishment of a central registry.

(a) To the extent funds are available, the Governing Board of the West Virginia University shall establish an Alzheimer's Disease Registry to collect information concerning Alzheimer's disease and related disorders. The purpose of the registry shall be to provide a central database of information to assist in the development of public policy and planning. The information collected by the registry shall be analyzed to prepare reports and perform studies as necessary when such data identifies information useful in developing policy.

(b) All reporting sources, including hospitals, physicians, facilities, clinics, or other similar units diagnosing or providing treatment or care for Alzheimer's disease and related disorders, shall provide a report of each case to the Alzheimer's Disease Registry in the format specified.

(c) All information reported pursuant to this section is confidential and shall be used only for the purposes set forth herein. A report provided to the Alzheimer's Disease Registry that discloses the identity of the individual being treated shall only be released in accordance with the provisions of the Health Insurance Portability and Accountability Act of 1996. No liability of any kind or character for damages or other relief shall arise or be enforced against any reporting source by reason of having provided the information or material to the Alzheimer's Disease Registry.

(d) The governing board shall propose rules pursuant to the provisions of §29A-3-1 *et seq*. of this code to implement this section. The rules shall include, but not be limited to: (1) The content and design of all forms and reports required by this section; (2) the type of information to be collected and maintained; (3) the procedures for disclosure of nonidentifying data to other appropriate research entities; (4)the manner in which reporting entities or individuals, including families, may be contacted by the registry for additional relevant information; and (5) any other matter necessary to the administration of this section.

WV Legislature

§16B-12-1. Reporting.

(a) The Office of the Inspector General shall send to county prosecutors any findings that may be subject to criminal prosecution in cases of abuse and neglect with Intellectual/Developmental Disability (IDD). The Office of the Inspector General shall send to the Protection and Advocacy (P&A) the findings of any cases involving instances of substantiated abuse or neglect involving a person with a developmental disability.

(b) An annual report shall be submitted to the Legislative Oversight Commission on Health and Human Resources Accountability including:

(1) All instances where abuse and neglect cases involving IDD at any location has been substantiated by the Office of the Inspector General.

(2) The county or region where the substantiated abuse or neglect occurred;

(3) The descriptive category of the abuse and neglect;

(4) The type of setting where the abuse and neglect occurred;

(5) Whether the abuse and neglect information was turned over to the county prosecutor and law enforcement;

(6) The name of the provider, if the provider is involved, who is charged with the care of the individual; and

(7) The age range and gender of the individual.

(c) In instances where abuse and/or neglect leads to the death of an individual, the department shall send a letter, within 30 days after the findings where substantiated, to the Senate President, the Speaker of the House, and the chairs of LOCHHRA outlining the information above about the case.

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§16B-12-2. Independent Mental Health Ombudsman.

(a) (1) The Office of the Inspector General shall continue an independent mental health ombudsman;

(2) The duties of the mental health ombudsman shall include, but are not limited to, the following:

(A) Advocating for the well-being, treatment, safety, and rights of consumers of mental health care facilities or psychiatric hospital;

(B) Participating in any procedure to investigate, and resolve complaints filed on behalf of a consumer of a mental health care facility or psychiatric hospital, relating to action, inaction, or decisions of providers of mental and behavioral health, of public agencies, or social service agencies, which may adversely affect the health, safety, welfare, and rights of a consumer of a mental health care facility or psychiatric hospital; and

(C) Monitoring the development and implementation of federal, state, and local legislation, regulations, and policies with respect to mental and behavioral health care and services;

(3) The mental health ombudsman shall participate in ongoing training programs related to his or her duties or responsibilities;

(4)(A) Information relating to any investigation of a complaint that contains the identity of the complainant or consumer shall remain confidential except:

(i) Where imminent risk of serious harm is communicated directly to the mental health ombudsman or his or her staff; or

(ii) Where disclosure is necessary to the Office of Health Facility Licensure and Certification in order for such office to determine the appropriateness of initiating an investigation to determine facility compliance with applicable rules of licensure, certification, or both;

(B) The mental health ombudsman shall maintain confidentiality with respect to all matters including the identities of complainants, witnesses, or others from whom information is acquired, except insofar as disclosures may be necessary to enable the mental health care ombudsman to carry out duties of the office or to support recommendations;

(C) All information, records, and reports received by or developed by the mental health ombudsman program which relate to a consumer of a mental health care facility or psychiatric hospital, including written material identifying a consumer are confidential, and are not subject to the provisions of §29-1-1, *et seq*. of this code, and may not be disclosed or released by the mental health ombudsman program, except under the circumstances enumerated in this section;

(D) Nothing in this section prohibits the preparation and submission by the mental health

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ombudsman of statistical data and reports, as required to implement the provisions of this section or any applicable federal law, exclusive of any material that identifies any consumer or complainant; and

(E) The Inspector General shall have access to the records and files of the mental health ombudsman program to verify its effectiveness and quality.

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§16B-12-3. Annual capitation rate review.

(a) The Bureau for Medical Services shall conduct an annual study reviewing the adequacy and appropriateness of the reimbursement rates to providers in the Intellectual and Developmental Disabilities Waiver (IDDW) program, the Aged and Disable Waiver (ADW) program, the Personal Care (PC) Services program, and the Traumatic Brain Injury Waiver (TBIW) program. The bureau shall also include a recommendation for any adjustment deemed appropriate, including, but not limited to, annual inflationary costs, costs arising from amendments to existing contracts, costs relating to recruiting and retaining personnel, and any other costs necessitating additional payments to IDDW providers, ADW providers, PC providers, and TBIW providers. The bureau may require, and contracted providers shall provide financial data to the bureau to assist in the study. Without limiting the generality of the foregoing in conducting this study, the bureau shall review and compare equivalent programs both in and out of state in order to determine appropriate rates.

(b) Upon completion of the study, Bureau for Medical Services shall provide the report to the Joint Committee on Finance beginning July 1, 2024, and annually thereafter, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations.

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§16B-13-1. Purpose.

The purpose of this act is to establish licensing and registration requirements for facilities and physicians that treat patients with substance use disorders to ensure that patients may be lawfully treated by the use of medication and drug screens, in combination with counseling and behavioral therapies, to provide a holistic approach to the treatment of substance use disorders and comply with oversight requirements developed by the Inspector General. The Legislature recognizes the problem of substance use disorders in West Virginia and the need for quality, safe treatment of substance use disorders to adequately protect the people of West Virginia.

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§16B-13-2. Definitions.

"Addiction" means a primary, chronic disease of brain reward, motivation, memory, and related circuitry. Dysfunction in these circuits leads to characteristic biological, psychological, social, and spiritual manifestations which is reflected in an individual pathologically pursuing reward or relief by substance use, or both, and other behaviors. Addiction is characterized by inability to consistently abstain; impairment in behavioral control; craving; diminished recognition of significant problems with one's behaviors; interpersonal problems with one's behaviors and interpersonal relationships; a dysfunctional emotional response; and as addiction is currently defined by the American Society of Addiction Medicine.

"Administrator" means an individual designated by the governing body to be responsible for the day-to-day operation of the opioid treatment programs.

"Advanced alcohol and drug abuse counselor" means an alcohol and drug abuse counselor who is certified by the West Virginia Certification Board for Addiction and Prevention Professionals who demonstrates a high degree of competence in the addiction counseling field.

"Alcohol and drug abuse counselor" means a counselor certified by the West Virginia Certification Board for Addiction and Prevention Professionals for specialized work with patients who have substance use problems.

"Biopsychosocial" means relating to, or concerned with, biological, psychological, and social aspects in contrast to the strictly biomedical aspects of disease.

"Center for Substance Abuse Treatment" means the center under the Substance Abuse and Mental Health Services Administration that promotes community-based substance abuse treatment and recovery services for individuals and families in the community and provides national leadership to improve access, reduce barriers, and promote high quality, effective treatment and recovery services.

"Controlled Substances Monitoring Program Database" means the database maintained by the West Virginia Board of Pharmacy pursuant to §60A-9-3 of this code that monitors and tracks certain prescriptions written or dispensed by dispensers and prescribers in West Virginia.

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

"Dispense" means the preparation and delivery of a medication-assisted treatment medication in an appropriately labeled and suitable container to a patient by a medication-assisted treatment program or pharmacist.

"Governing body" means the person or persons identified as being legally responsible for the

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operation of the opioid treatment program. A governing body may be a board, a single entity or owner, or a partnership. The governing body must comply with the requirements prescribed in rules promulgated pursuant to this article.

"Inspector General" means the Inspector General of the Office of Inspector General as described in §16B-2-1 of this code, or his or her designee.

"Medical director" means a physician licensed within the State of West Virginia who assumes responsibility for administering all medical services performed by the medication-assisted treatment program, either by performing them directly or by delegating specific responsibility to authorized program physicians and health care professionals functioning under the medical director's direct supervision and functioning within their scope of practice.

"Medication-assisted treatment" means the use of medications and drug screens, in combination with counseling and behavioral therapies, to provide a holistic approach to the treatment of substance use disorders.

"Medication-assisted treatment program" means all publicly and privately owned opioid treatment programs and office-based, medication-assisted treatment programs, which prescribe medication-assisted treatment medications and treat substance use disorders, as those terms are defined in this article.

"Medication-assisted treatment medication" means any medication that is approved by the United States Food and Drug Administration under Section 505 of the Federal Food, Drug and Cosmetic Act, 21 U. S. C. § 355, for use in the treatment of substance use disorders that is an opioid agonist or partial opioid agonist and is listed on the Schedule of Controlled Substances in §60A-2-2201 *et seq*. of this code.

"Office-based, medication-assisted treatment" means all publicly or privately owned clinics, facilities, offices, or programs that provide medication-assisted treatment to individuals with substance use disorders through the prescription, administration, or dispensing of a medication-assisted treatment medication in the form of a partial opioid agonist.

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

"Opioid agonist" means substances that bind to and activate the opiate receptors resulting in analgesia and pain regulation, respiratory depression, and a wide variety of behavioral changes. As used in this article, the term "opioid agonist" does not include partial agonist medications used as an alternative to opioid agonists in the treatment of opioid addiction.

"Opioid treatment program" means all publicly- or privately-owned medication-assisted treatment programs in clinics, facilities, offices, or programs that provide medication-assisted treatment to individuals with substance use disorders through on-site

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administration or dispensing of a medication-assisted treatment medication in the form of an opioid agonist or partial opioid agonist.

"Owner" means any person, partnership, association, or corporation listed as the owner of a medication-assisted treatment program on the licensing or registration forms required by this article.

"Partial opioid agonist" means a Federal Drug Administration approved medication that is used as an alternative to opioid agonists for the treatment of substance use disorders and that binds to and activates opiate receptors, but not to the same degree as full agonists.

"Physician" means an individual licensed in this state to practice allopathic medicine or surgery by the West Virginia Board of Medicine or osteopathic medicine or surgery by the West Virginia Board of Osteopathic Medicine and that meets the requirements of this article.

"Prescriber" means a person authorized in this state, working within their scope of practice, to give direction, either orally or in writing, for the preparation and administration of a remedy to be used in the treatment of substance use disorders.

"Program sponsor" means the person named in the application for the certification and licensure of an opioid treatment program who is responsible for the administrative operation of the opioid treatment program and who assumes responsibility for all of its employees, including any practitioners, agents, or other persons providing medical, rehabilitative, or counseling services at the program.

"State opioid treatment authority" means the agency or individual designated by the Governor to exercise the responsibility and authority of the state for governing the treatment of substance use disorders, including, but not limited to, the treatment of opiate addiction with opioid drugs.

"State oversight agency" means the agency or office of state government identified by the Inspector General to provide regulatory oversight of medication-assisted treatment programs on behalf of the State of West Virginia.

"Substance" means the following:

(1) Alcohol;

(2) Controlled substances defined by §60A-2-204, §60A-2-206, §60A-2-208, and §60A-2-210 of this code; or

(3) Any chemical, gas, drug, or medication consumed which causes clinically and functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.

"Substance Abuse and Mental Health Services Administration" means the agency under the

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United States Department of Health and Human Services responsible for the accreditation and certification of medication-assisted treatment programs and that provides leadership, resources, programs, policies, information, data, contracts, and grants for the purpose of reducing the impact of substance abuse and mental or behavioral illness.

"Substance use disorder" means patterns of symptoms resulting from use of a substance that the individual continues to take, despite experiencing problems as a result; or as defined in the most recent edition of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders.

"Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment education, care management, and self-management of a patient’s health care while the patient is at the originating site and the health care provider is at a distant site.

"Variance" means written permission granted by the Inspector General, or designee, to a medication-assisted treatment program that a requirement of this article or rules promulgated pursuant to this article may be accomplished in a manner different from the manner set forth in this article or associated rules.

"Waiver" means a formal, time-limited agreement between the designated oversight agency and the medication-assisted treatment program that suspends a rule, policy, or standard for a specific situation so long as the health and safety of patients is better served in the situation by suspension of the rule, policy, or standard than by enforcement.

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§16B-13-3. Opioid treatment programs to obtain license; application; fees and inspections.

(a) No person, partnership, association, or corporation may operate an opioid treatment program without first obtaining a license from the director in accordance with the provisions of this article and the rules lawfully promulgated pursuant to this article.

(b) Any person, partnership, association, or corporation desiring a license to operate an opioid treatment program in this state shall file with the Office of Health Facility Licensure and Certification an application in such form and with such information as the director shall prescribe and furnish accompanied by an application fee.

(c) The Director of the Office of Health Facility Licensure and Certification or his or her designee shall inspect each facility and review all documentation submitted with the application. The director shall then approve or deny the application for a license. The director shall issue a license if the facility is in compliance with the provisions of this article and with the rules lawfully promulgated pursuant to this article.

(d) A license shall be issued in one of three categories:

(1) An initial 12 month license shall be issued to an opioid treatment program establishing a new program or service for which there is insufficient consumer participation to demonstrate substantial compliance with this article and with all rules promulgated pursuant to this article;

(2) A provisional license shall be issued when an opioid treatment program seeks a renewal license, or is an existing program as of the effective date of this article and is seeking an initial license, and the opioid treatment program is not in substantial compliance with this article and with all rules promulgated pursuant to this article, but does not pose a significant risk to the rights, health and safety of a consumer. It shall expire not more than six months from the date of issuance, and may not be consecutively reissued; or

(3) A renewal license shall be issued when an opioid treatment program is in substantial compliance with this article and with all rules promulgated pursuant to this article. A renewal license shall expire not more than one year from the date of issuance.

(e) At least 60 days prior to the license expiration date, an application for renewal shall be submitted by the opioid treatment program to the director 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 pursuant to this article. A license issued to one program location pursuant to this article is not transferrable or assignable. Any change of ownership of a licensed medication-assisted treatment program requires submission of a new application. The medication-assisted treatment program shall notify the director of any change in ownership within 10 days of the change and must submit a new application within the time frame prescribed by the director.

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(f) Any person, partnership, association, or corporation that seeks to obtain or renew a license for an opioid treatment program in this state must submit to the director the following documentation:

(1) Full operating name of the program as advertised;

(2) Legal name of the program as registered with the West Virginia Secretary of State;

(3) Physical address of the program;

(4) Preferred mailing address for the program;

(5) Email address to be used as the primary contact for the program;

(6) Federal Employer Identification Number assigned to the program;

(7) All business licenses issued to the program by this state, the State Tax Department, the Secretary of State and all other applicable business entities;

(8) Brief description of all services provided by the program;

(9) Hours of operation;

(10) Legal Registered Owner Name – name of the person registered as the legal owner of the program. If more than one legal owner (i.e., partnership, corporation, etc.) list each legal owner separately, indicating the percentage of ownership;

(11) Medical director's full name, medical license number, Drug Enforcement Administration registration number, and a list of all current certifications;

(12) For each employee of the program, provide the following:

(A) Employee's role and occupation within the program;

(B) Full legal name;

(C) Medical license, if applicable;

(D) Drug Enforcement Administration registration number, if applicable;

(E) Drug Enforcement Administration identification number to prescribe buprenorphine for addiction, if applicable; and

(F) Number of hours per week worked at program;

(13) Name and location address of all programs owned or operated by the applicant;

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(14) Notarized signature of applicant;

(15) Check or money order for licensing fee and inspection fee;

(16) Verification of education and training for all physicians, counselors and social workers practicing at or used by referral by the program such as fellowships, additional education, accreditations, board certifications and other certifications;

(17) Board of Pharmacy Controlled Substance Prescriber Report for each prescriber practicing at the program for the three months preceding the date of application; and

(18) If applicable, a copy of a valid Certificate of Need or a letter of exemption from the West Virginia Health Care Authority.

(g) Upon satisfaction that an applicant has met all of the requirements of this article, the director shall issue a license to operate an opioid treatment program. An entity that obtains this license may possess, have custody, or control of, and dispense drugs indicated and approved by the United States Food and Drug Administration for the treatment of substance use disorders.

(h) The opioid treatment program shall display the current license in a prominent location where services are provided and in clear view of all patients.

(i) The director or his or her designee shall inspect on a periodic basis all opioid treatment programs that are subject to this article and all rules adopted pursuant to this article to ensure continued compliance.

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§16B-13-4. Office-based, medication-assisted treatment programs to obtain registration; application; fees and inspections.

(a) No person, partnership, association, or corporation may operate an office-based, medication-assisted treatment program without first obtaining a registration from the director in accordance with the provisions of this article and the rules lawfully promulgated pursuant to this article.

(b) Any person, partnership, association, or corporation desiring a registration to operate an office-based, medication-assisted treatment program in this state shall file with the Office of Health Facility Licensure and Certification an application in such form and with such information as the director shall prescribe and furnish accompanied by an application fee.

(c) The Director of the Office of Health Facility Licensure and Certification or his or her designee shall inspect and review all documentation submitted with the application. The director shall approve or deny the application for registration. The director shall issue a registration if the facility is in compliance with the provisions of this article and with the rules lawfully promulgated pursuant to this article.

(d) A registration shall be issued in one of three categories:

(1) An initial 12-month registration shall be issued to an office-based, medication-assisted treatment program establishing a new program or service for which there is insufficient consumer participation to demonstrate substantial compliance with this article and with all rules promulgated pursuant to this article;

(2) A provisional registration shall be issued when an office-based, medication-assisted treatment program seeks a renewal registration, or is an existing program as of the effective date of this article and is seeking an initial registration, and the office-based, medication-assisted treatment program is not in substantial compliance with this article and with all rules promulgated pursuant to this article, but does not pose a significant risk to the rights, health, and safety of a consumer. It shall expire not more than six months from the date of issuance, and may not be consecutively reissued; or

(3) A renewal registration shall be issued when an office-based, medication-assisted treatment program is in substantial compliance with this article and with all rules promulgated pursuant to this article. A renewal registration shall expire not more than one year from the date of issuance.

(e) At least 60 days prior to the registration expiration date, an application for renewal shall be submitted by the office-based, medication-assisted treatment program to the director on forms furnished by the director. A registration shall be renewed if the director determines that the applicant is in compliance with this article and with all rules promulgated pursuant to this article. A registration issued to one program location pursuant to this article is not transferrable or assignable. Any change of ownership of a registered office-based,

medication-assisted treatment program requires submission of a new application. The office-based, medication-assisted treatment program shall notify the director of any change in ownership within 10 days of the change and must submit a new application within the time frame prescribed by the director.

(f) Any person, partnership, association, or corporation seeking to obtain or renew a registration for an office-based, medication-assisted treatment program in this state must submit to the director the following documentation:

(1) Full operating name of the program as advertised;

(2) Legal name of the program as registered with the West Virginia Secretary of State;

(3) Physical address of the program;

(4) Preferred mailing address for the program;

(5) Email address to be used as the primary contact for the program;

(6) Federal Employer Identification Number assigned to the program;

(7) All business licenses issued to the program by this state, the state Tax Department, the Secretary of State, and all other applicable business entities;

(8) Brief description of all services provided by the program;

(9) Hours of operation;

(10) Legal Registered Owner Name – name of the person registered as the legal owner of the program. If more than one legal owner (i.e., partnership, corporation, etc.) list each legal owner separately, indicating the percentage of ownership;

(11) Medical director’s full name, medical license number, Drug Enforcement Administration registration number, and a listing of all current certifications;

(12) For each physician, counselor, or social worker of the program, provide the following:

(A) Employee's role and occupation within the program;

(B) Full legal name;

(C) Medical license, if applicable;

(D) Drug Enforcement Administration registration number, if applicable;

(E) Drug Enforcement Administration identification number to prescribe buprenorphine for addiction, if applicable; and

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(F) Number of hours worked at program per week;

(13) Name and location address of all programs owned or operated by the applicant;

(14) Notarized signature of applicant;

(15) Check or money order for registration fee;

(16) Verification of education and training for all physicians, counselors, and social workers practicing at or used by referral by the program such as fellowships, additional education, accreditations, board certifications, and other certifications; and

(17) Board of Pharmacy Controlled Substance Prescriber Report for each prescriber practicing at the program for the three months preceding the date of application.

(g) Upon satisfaction that an applicant has met all of the requirements of this article, the director shall issue a registration to operate an office-based, medication-assisted treatment program. An entity that obtains this registration may possess, have custody or control of, and dispense drugs indicated and approved by the United States Food and Drug Administration for the treatment of substance use disorders.

(h) The office-based, medication-assisted treatment program shall display the current registration in a prominent location where services are provided and in clear view of all patients.

(i) The director or his or her designee shall perform complaint and verification inspections on all office-based, medication-assisted treatment programs that are subject to this article and all rules adopted pursuant to this article to ensure continued compliance.

(j) Any person, partnership, association, or corporation operating an office-based, medication-assisted treatment program shall be permitted to continue operation until the effective date of the new rules promulgated pursuant to this article. At that time a person, partnership, association, or corporation shall file for registration within six months pursuant to the licensing procedures and requirements of this section and the new rules promulgated hereunder. The existing procedures of the person, partnership, association, or corporation shall remain effective until receipt of the registration.

(k) A person, partnership, association, or corporation providing office-based, medication-assisted treatment to no more than 30 patients of their practice or program is exempt from the registration requirement contained in §16-5Y-4(a) of this code: *Provided*, That it:

(1) Attests to the Office of Health Facility Licensure and Certification on a form prescribed by the director that the person, partnership, association, or corporation requires counselling and drug screens, has implemented diversion control measures, has completed medical education training on addiction treatment encompassing all forms of medication-assisted treatment, will provide patient numbers upon request, and will provide any other

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information required by the director related to patient health and safety; and

(2) Is prohibited from establishing an office-based, medication-assisted treatment at any other location or facility after the submission of an attestation submitted pursuant to §16-5Y-4(k)(2) of this code. This subdivision includes any person, partnership, association, or corporation that has an ownership interest in a partnership, association, or corporation or other corporate entity providing office-based, medication-assisted treatment.

(l) A licensed behavioral health center, pursuant to Behavioral Health Center Licensure, 64 CSR 11, providing office-based medication-assisted treatment is exempt from the registration requirement contained in §16-5Y-4(a) of this code: *Provided*, That it:

(1) Attests to the Office of Health Facility Licensure and Certification on a form prescribed by the director that the person, partnership, association, or corporation requires counseling and drugs screens, has implemented diversion control measures, will provide patient numbers upon request, and will provide any other information required by the director related to patient health and safety; and

(2) Must notify the Office of Health Facility Licensure and Certification prior to establishing or terminating an office-based medication-assisted treatment program at any other licensed behavioral health center location after the submission of an attestation submitted pursuant to §16-5Y-4(l)(1) of this code.

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§16B-13-5. Operational requirements.

(a) The medication-assisted treatment program shall be licensed and registered in this state with the director, the Secretary of State, the State Tax Department, and all other applicable business or licensing entities.

(b) The program sponsor need not be a licensed physician but shall employ a licensed physician for the position of medical director when required by the rules promulgated pursuant to this article.

(c) Each medication-assisted treatment program shall designate a medical director. If the medication-assisted treatment program is accredited by a Substance Abuse and Mental Health Services Administration-approved accrediting body that meets nationally accepted standards for providing medication-assisted treatment, including the Commission on Accreditation of Rehabilitation Facilities or the Joint Commission on Accreditation of Healthcare Organizations, then the program may designate a medical director to oversee all facilities associated with the accredited medication-assisted treatment program. The medical director shall be responsible for the operation of the medication-assisted treatment program, as further specified in the rules promulgated pursuant to this article. He or she may delegate the day-to-day operation of a medication-assisted treatment program as provided in rules promulgated pursuant to this article. Within 10 days after termination of a medical director, the medication-assisted treatment program shall notify the director of the identity of another medical director for that program. Failure to have a medical director practicing at the program may be the basis for a suspension or revocation of the program license. The medical director shall:

(1) Have a full, active, and unencumbered license to practice allopathic medicine or surgery from the West Virginia Board of Medicine or to practice osteopathic medicine or surgery from the West Virginia Board of Osteopathic Medicine in this state and be in good standing and not under any probationary restrictions;

(2) Meet both of the following training requirements:

(A) If the physician prescribes a partial opioid agonist, he or she shall complete the requirements for the Drug Addiction Treatment Act of 2000; and

(B) Complete other programs and continuing education requirements as further described in the rules promulgated pursuant to this article;

(3) Practice at the licensed or registered medication-assisted treatment program a sufficient number of hours, based upon the type of medication-assisted treatment license or registration issued pursuant to this article, to ensure regulatory compliance, and carry out those duties specifically assigned to the medical director as further described in the rules promulgated pursuant to this article;

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(4) Be responsible for monitoring and ensuring compliance with all requirements related to the licensing and operation of the medication-assisted treatment program;

(5) Supervise, control, and direct the activities of each individual working or operating at the medication-assisted treatment program, including any employee, volunteer, or individual under contract, who provides medication-assisted treatment at the program or is associated with the provision of that treatment. The supervision, control, and direction shall be provided in accordance with rules promulgated by the Inspector General; and

(6) Complete other requirements prescribed by the Inspector General by rule.

(d) Each medication-assisted treatment program shall designate counseling staff, either employees or those used on a referral-basis by the program, which meet the requirements of this article and the rules promulgated pursuant to this article. The individual members of the counseling staff shall have one or more of the following qualifications:

(1) Be a licensed psychiatrist;

(2) Be certified as an alcohol and drug counselor;

(3) Be certified as an advanced alcohol and drug counselor;

(4) Be a counselor, psychologist, marriage and family therapist, or social worker with a master’s level education with a specialty or specific training in treatment for substance use disorders, as further described in the rules promulgated pursuant to this article;

(5) Be a counselor with a bachelor's degree in social work or another relevant human services field under the direct supervision of an advanced alcohol and drug counselor: *Provided*, That the individual practicing with a bachelor's degree under supervision applies for certification as an alcohol and drug counselor within three years of the date of employment as a counselor;

(6) Be a counselor with a graduate degree actively working toward licensure or certification in the individual’s chosen field under supervision of a licensed or certified professional in that field and/or advanced alcohol and drug counselor;

(7) Be a psych-mental health nurse practitioner or a psych-mental health clinical nurse specialist; or

(8) Be a psychiatry CAQ-certified physician assistant.

(e) The medication-assisted treatment program shall be eligible for, and not prohibited from, enrollment with West Virginia Medicaid and other private insurance. Prior to directly billing a patient for any medication-assisted treatment, a medication-assisted treatment program must receive either a rejection of prior authorization, rejection of a submitted claim, or a written denial from a patient’s insurer or West Virginia Medicaid denying coverage for that

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treatment: *Provided*, That the director, in consultation with the Inspector General, may grant a variance from this requirement pursuant to §16B-13-6 of this code. The program shall also document whether a patient has no insurance. At the option of the medication-assisted treatment program, treatment may commence prior to billing.

(f) The medication-assisted treatment program shall apply for and receive approval as required from the United States Drug Enforcement Administration, Center for Substance Abuse Treatment, or an organization designated by the Substance Abuse and Mental Health and Mental Health Administration.

(g) All persons employed by the medication-assisted treatment program shall comply with the requirements for the operation of a medication-assisted treatment program established within this article or by any rule adopted pursuant to this article.

(h) All employees of an opioid treatment program shall furnish fingerprints for a state and federal criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be accompanied by a signed authorization for the release of information and retention of the fingerprints by the Criminal Identification Bureau and the Federal Bureau of Investigation. The opioid treatment program shall be subject to the provisions of §16B-15-1 *et seq.* of this code and subsequent rules promulgated thereunder.

(i) The medication-assisted treatment program may not be owned by, nor may it employ or associate with, any physician or prescriber whose:

(1) Drug Enforcement Administration number is not currently full, active, and unencumbered;

(2) Application for a license to prescribe, dispense, or administer a controlled substance has been denied by and is not full, active, and unencumbered in any jurisdiction; or

(3) License is anything other than a full, active, and unencumbered license to practice allopathic medicine or surgery by the West Virginia Board of Medicine or osteopathic medicine or surgery by the West Virginia Board of Osteopathic Medicine in this state, and who is in good standing and not under any probationary restrictions.

(j) A person may not dispense any medication-assisted treatment medication, including a controlled substance as defined by §60A-1-101 of this code, on the premises of a licensed medication-assisted treatment program, unless he or she is a physician or pharmacist licensed in this state and employed by the medication-assisted treatment program unless the medication-assisted treatment program is a federally certified narcotic treatment program. Prior to dispensing or prescribing medication-assisted treatment medications, the treating physician must access the Controlled Substances Monitoring Program Database to ensure the patient is not seeking medication-assisted treatment medications that are controlled substances from multiple sources and to assess potential adverse drug interactions, or both.

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Prior to dispensing or prescribing medication-assisted treatment medications, the treating physician shall also ensure that the medication-assisted treatment medication utilized is related to an appropriate diagnosis of a substance use disorder and approved for that usage. The physician shall also review the Controlled Substances Monitoring Program Database no less than quarterly and at each patient's physical examination. The results obtained from the Controlled Substances Monitoring Program Database shall be maintained with the patient's medical records.

(k) A medication-assisted treatment program responsible for medication administration shall comply with:

(1) The West Virginia Board of Pharmacy regulations;

(2) The West Virginia Board of Examiners for Registered Professional Nurses regulations;

(3) All applicable federal laws and regulations relating to controlled substances; and

(4) Any requirements as specified in the rules promulgated pursuant to this article.

(l) Each medication-assisted treatment program location shall be licensed separately, regardless of whether the program is operated under the same business name or management as another program.

(m) The medication-assisted treatment program shall develop and implement patient protocols, treatment plans, or treatment strategies and profiles, which shall include, but not be limited by, the following guidelines:

(1) When a physician diagnoses an individual as having a substance use disorder, the physician may treat the substance use disorder by managing it with medication in doses not exceeding those approved by the United States Food and Drug Administration as indicated for the treatment of substance use disorders and not greater than those amounts described in the rules promulgated pursuant to this article. The treating physician and treating counselor's diagnoses and treatment decisions shall be made according to accepted and prevailing standards for medical care;

(2) The medication-assisted treatment program shall maintain a record of all of the following:

(A) Medical history and physical examination of the individual;

(B) The diagnosis of substance use disorder of the individual;

(C) The plan of treatment proposed, the patient's response to the treatment, and any modification to the plan of treatment;

(D) The dates on which any medications were prescribed, dispensed, or administered; the

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name and address of the individual for whom the medications were prescribed, dispensed, or administered; and the amounts and dosage forms for any medications prescribed, dispensed, or administered;

(E) A copy of the report made by the physician or counselor to whom referral for evaluation was made, if applicable; and

(F) A copy of the coordination of care agreement, which is to be signed by the patient, treating physician, and treating counselor. If a change of treating physician or treating counselor takes place, a new agreement must be signed. The coordination of care agreement must be updated or reviewed at least annually. If the coordination of care agreement is reviewed, but not updated, this review must be documented in the patient's record. The coordination of care agreement will be provided in a form prescribed and made available by the director;

(3) Medication-assisted treatment programs shall report information, data, statistics, and other information as directed in this code and the rules promulgated pursuant to this article to required agencies and other authorities;

(4) A prescriber authorized to prescribe a medication-assisted treatment medication who practices at a medication-assisted treatment program is responsible for maintaining the control and security of his or her prescription blanks and any other method used for prescribing a medication-assisted treatment medication. The prescriber shall comply with all state and federal requirements for tamper-resistant prescription paper. In addition to any other requirements imposed by statute or rule, the prescriber shall notify the director and appropriate law-enforcement agencies, in writing, within 24 hours following any theft or loss of a prescription blank or breach of any other method of prescribing a medication-assisted treatment medication;

(5) The medication-assisted treatment program shall have a drug testing program to ensure a patient is in compliance with the treatment strategy; and

(6) The medication-assisted treatment program shall offer long-acting reversible contraception to patients recovering from addiction; such offerings shall be provided in accordance with the following provisions:

(A) Contraceptive Counseling Requirement:

(i) The medication-assisted treatment program shall provide shared decision-making contraceptive counseling;

(ii) Counseling shall be non-coercive and tailored to the patient's lifestyle, health needs, and personal preferences, ensuring informed choice in contraceptive options;

(iii) Counseling services shall be available to both male and female patients; and

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(iv) Medical eligibility screening for potential contraindications;

(B) Medical Assessment & Referral Process:

(i) The medication-assisted treatment program may not place or insert a long-acting reversible contraception unless they have a licensed healthcare provider on staff who is trained; and

(ii) If the medication-assisted treatment program lacks a qualified provider or necessary medical equipment, it shall establish a referral system to direct patients to a licensed healthcare provider or clinic capable of full contraceptive service delivery.

(n) Medication-assisted treatment programs shall only prescribe, dispense, or administer liquid methadone to patients pursuant to the restrictions and requirements of the rules promulgated pursuant to this article.

(o) The medication-assisted treatment program shall immediately notify the director, or his or her designee, in writing of any changes to its operations that affect the medication-assisted treatment program's continued compliance with the certification and licensure requirements.

(p) If a physician treats a patient with more than 16 milligrams per day of buprenorphine then clear medical notes shall be placed in the patient's medical file indicating the clinical reason or reasons for the higher level of dosage.

(q) If a physician is not the patient's obstetrical or gynecological provider, the physician shall consult with the patient's obstetrical or gynecological provider to the extent possible to determine whether the prescription is appropriate for the patient.

(r) A practitioner providing medication-assisted treatment may perform certain aspects of telehealth if permitted under his or her scope of practice.

(s) The physician shall follow the recommended manufacturer's tapering schedule for the medication-assisted treatment medication. If the schedule is not followed, the physician shall document it in the patient's medical record and the clinical reason why the schedule was not followed. The director may investigate a medication-assisted treatment program if a high percentage of its patients are not following the recommended tapering schedule.

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§16B-13-6. Restrictions; variances and waivers.

(a) A medication-assisted treatment program shall not be located, operated, managed or owned at the same location where a chronic pain management clinic licensed and defined in §16B-7-1 *et seq*. of this code is located.

(b) Medication-assisted treatment programs shall not have procedures for offering a bounty, monetary, equipment, or merchandise reward, or free services for individuals in exchange for recruitment of new patients into the facility.

(c) Medication-assisted treatment programs shall not be located within one-half mile of a public or private licensed day care center or public or private K-12 school.

Existing medication-assisted treatment programs, including both opioid treatment programs and office based medication-assisted treatment programs that are located within one-half mile of a public or private licensed day care center or public or private K-12 school, shall be granted a variance, provided that the facility demonstrates adequate patient population controls and that it may otherwise meet the requirements of this article and the rules promulgated pursuant to this article.

(d) The director, in consultation with the Inspector General, may grant a waiver or a variance from any licensure or registration standard, or portion thereof, for the period during which the license or registration is in effect.

(1) Requests for waivers or variances of licensure or registration standards shall be in writing to the director and shall include:

(A) The specific section of this article or rules promulgated pursuant to this article for which a waiver or variance is sought;

(B) The rationale for requesting the waiver or variance;

(C) Documentation by the medication-assisted treatment program’s medical director to the director that describes how the program will maintain the quality of services and patient safety if the wavier or variance is granted; and

(D) The consequences of not receiving approval of the requested wavier or variance.

(2) The director, in consultation with the Inspector General, shall issue a written statement to the medication-assisted treatment program granting or denying a request for a waiver or variance of program licensure or registration standards.

(3) The medication-assisted treatment program shall maintain a file copy of all requests for waivers or variances and the approval or denial of the requests for the period during which the license or registration is in effect.

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(4) The Office of Health Facility Licensure and Certification shall inspect each medication-assisted treatment program prior to a waiver or variance being granted, including a review of patient records, to ensure and verify that any waiver or variance request meets the spirit and purpose of this article and the rules promulgated pursuant to this article. The Office of Health Facility Licensure and Certification may verify, by unannounced inspection, that the medication-assisted treatment program is in compliance with any waiver or variance granted by the director, in consultation with the Inspector General, for the duration of such waiver or variance.

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§16B-13-7. Inspection; inspection warrant.

(a) The Office of Health Facility Licensure and Certification shall inspect each opioid treatment program annually, including a review of the patient records, to ensure that the program complies with this article and the applicable rules. A pharmacist, employed or contracted by the director, licensed in this state, and a law-enforcement officer may be present at each inspection.

(b) The Office of Health Facility Licensure and Certification shall perform unannounced complaint and verification inspections at office based medication-assisted treatment programs, including a review of the patient records, to ensure that the program complies with this article and the applicable rules. A pharmacist, employed or contracted by the Inspector General, licensed in this state and a law-enforcement officer may be present at each inspection.

(c) During an onsite inspection, the inspectors shall make a reasonable attempt to discuss each violation with the medical director or other owners of the medication-assisted treatment program before issuing a formal written notification.

(d) Any action taken to correct a violation shall be documented in writing by the medical director or other owners of the medication-assisted treatment program and may be verified by follow-up visits by the Office of Health Facility Licensure and Certification.

(e) 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 inspection warrant against any person, partnership, association, or corporation to allow any inspection or seizure of records in order to complete any inspection allowed by this article or the rules promulgated pursuant to this article, or to meet any other purpose of this article or the rules promulgated pursuant to this article.

(f) When possible, inspections for annual certification and licensure by the medication-assisted treatment programs will be done consecutively or concurrently. However, this provision does not limit the ability to conduct unannounced inspections pursuant to a complaint.

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§16B-13-8. License and registration limitation; denial; suspension; revocation.

(a) The director, in consultation with the Inspector General, may, by order, impose a ban on the admission of patients or reduce the patient capacity of the medication-assisted treatment program, or any combination thereof, when he or she finds upon inspection of the medication-assisted treatment program that the licensee or registrant is not providing adequate care under the medication-assisted treatment program's existing patient quota, and that a reduction in quota or imposition of a ban on admissions, or any combination thereof, would place the licensee or registrant in a position to render adequate care. Any notice to a licensee or registrant of reduction in quota or ban on new admissions shall include the terms of the order, the reasons therefor and the date set for compliance.

(b) The director, in consultation with the Inspector General, shall deny, suspend, or revoke a license or registration issued pursuant to this article if the provisions of this article or of the rules promulgated pursuant to this article are violated. The director, in consultation with the Inspector General, may revoke a program's license or registration and prohibit all physicians and licensed disciplines associated with that medication-assisted treatment program from practicing at the program location based upon an annual, periodic, complaint, verification or other inspection and evaluation.

(c) Before any such license or registration is denied, suspended, or revoked, however, written notice shall be given to the licensee or registrant, stating the grounds for such denial, suspension, or revocation.

(d) An applicant, licensee or registrant has 10 working days after receipt of the director's order denying, suspending, or revoking a license or registration to request a formal hearing contesting such denial, suspension, or revocation of a license or registration under this article. If a formal hearing is requested, the applicant, licensee or registrant and the director shall proceed in accordance with the provisions of §29A-5-1 *et seq*. of this code.

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

(f) Any applicant, licensee or registrant who is dissatisfied with the decision of the director as a result of the hearing provided in this section may, within 30 days after receiving notice of the decision, petition the circuit court of Kanawha County, in term or in vacation, for judicial review of the decision.

(g) The West Virginia Intermediate Court of Appeals may affirm, modify or reverse the decision of the Board of Review and either the applicant, licensee or registrant, or the

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director may appeal from the court's decision to the Supreme Court of Appeals.

(h) If the license or registration of a medication-assisted treatment program is denied, suspended, or revoked, the medical director of the program, any owner of the program or owner or lessor of the medication-assisted treatment program property shall cease to operate the clinic, facility, office, or program as a medication-assisted treatment program as of the effective date of the denial, suspension, or revocation. The owner or lessor of the medication-assisted treatment program property is responsible for removing all signs and symbols identifying the premises as a medication-assisted treatment program within 30 days. Any administrative appeal of such denial, suspension or revocation shall not stay the denial, suspension, or revocation.

(i) Upon the effective date of the denial, suspension or revocation, the medical director of the medication-assisted treatment program shall advise the director and the Board of Pharmacy of the disposition of all medications located on the premises. The disposition is subject to the supervision and approval of the director. Medications that are purchased or held by a medication-assisted treatment program that is not licensed may be deemed adulterated.

(j) If the license or registration of a medication-assisted treatment program is suspended or revoked, any person named in the licensing or registration documents of the program, including persons owning or operating the medication-assisted treatment program, may not, as an individual or as part of a group, apply to operate another medication-assisted treatment program for up to five years after the date of suspension or revocation. The director, in consultation with the Inspector General, may grant a variance pursuant to §16B-13-6 of this code to the prohibition of this subsection.

(k) The period of suspension for the license or registration of a medication-assisted treatment program shall be prescribed by the director, in consultation with the Inspector General, but may not exceed one year.

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§16B-13-9. Violations; penalties; injunction.

(a) Any person, partnership, association, or corporation which establishes, conducts, manages, or operates a medication-assisted treatment program without first obtaining a license or registration as herein provided, or who violates any provisions of this article or any rule lawfully promulgated pursuant to this article, shall be assessed a civil penalty by the director, in consultation with the Inspector General, in accordance with this subsection. Each day of continuing violation after conviction shall be considered a separate violation:

(1) If a medication-assisted treatment program or any owner or medical director is found to be in violation of any provision of this article, unless otherwise noted herein, the director, in consultation with the Inspector General, may limit, suspend or revoke the program's license or registration;

(2) If the program's medical director knowingly and intentionally misrepresents actions taken to correct a violation, the director, in consultation with the Inspector General, may impose a civil money penalty not to exceed $10,000 and, in the case of any owner-operator medication-assisted treatment program, limit or revoke a medication-assisted treatment program's license or registration;

(3) If any owner or medical director of a medication-assisted treatment program concurrently operates an unlicensed or unregistered medication-assisted treatment program, the director, in consultation with the Inspector General, may impose a civil money penalty upon the owner or medical director, or both, not to exceed $5,000 per day;

(4) If the owner of a medication-assisted treatment program that requires a license or registration under this article fails to apply for a new license or registration for the program upon a change of ownership and operates the program under new ownership, the director, in consultation with the Inspector General, may impose a civil money penalty upon the owner, not to exceed $5,000; or

(5) If a physician operates, owns or manages an unlicensed or unregistered medication-assisted treatment program that is required to be licensed or registered pursuant to this article; knowingly prescribes or dispenses or causes to be prescribed or dispensed, a medication-assisted treatment medication through misrepresentation or fraud; procures, or attempts to procure, a license or registration for a medication-assisted treatment program for any other person by making or causing to be made any false representation, the director, in consultation with the Inspector General, may assess a civil money penalty of not more than $20,000. The penalty may be in addition to or in lieu of any other action that may be taken by the director, in consultation with the Inspector General, or any other board, court or entity.

(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 or corporation to restrain or prevent

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the establishment, conduct, management or operation of any medication-assisted treatment program or violation of any provision of this article or any rule lawfully promulgated thereunder without first obtaining a license or registration in the manner herein provided.

(c) In determining whether a penalty is to be imposed and in fixing the amount of the penalty, the director, in consultation with the Inspector General, shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical or emotional harm to a patient has resulted, or could have resulted, from the medication-assisted treatment program's actions or the actions of the medical director or any practicing physician, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated;

(2) What actions, if any, the owner or medical director took to correct the violations;

(3) Whether there were any previous violations at the medication-assisted treatment program; and

(4) The financial benefits that the medication-assisted treatment program derived from committing or continuing to commit the violation.

(d) Upon finding that a physician has violated the provisions of this article or rules adopted pursuant to this article, the director shall provide notice of the violation to the applicable licensing board.

WV Legislature

§16B-13-10. Advertisement disclosure.

Any advertisement made by or on behalf of a medication-assisted treatment program through public media, such as a telephone directory, medical directory, newspaper or other periodical, outdoor advertising, radio or television, or through written or recorded communication, concerning the treatment of substance use disorders, as defined in section two of this article, shall include the name of, at a minimum, the medical director responsible for the content of the advertisement.

WV Legislature

§16B-13-11. State Opioid Treatment Authority.

(a) Prior to establishing, operating, maintaining, or advertising a medication-assisted treatment program within this state, a medication-assisted treatment program shall be approved by the state opioid treatment authority for operation of a medication-assisted treatment program in this state.

(b) The state opioid treatment authority shall act as the state's coordinator for the development and monitoring of medication-assisted treatment programs and it shall serve as a liaison with the appropriate federal agencies.

(c) The designated state oversight agency is responsible for licensing, monitoring, and investigating complaints and grievances regarding medication-assisted treatment programs.

(d) The powers and duties of the state opioid treatment authority include, but are not limited to, the following:

(1) Facilitate the development and implementation of rules, regulations, standards and best practice guidelines to ensure the quality of services delivered by medication-assisted treatment programs;

(2) Act as a liaison between relevant state and federal agencies;

(3) Be available for consultation regarding medication-assisted treatment guidelines, rules, regulations and recovery models for individualized treatment plans of care developed by the federal government and other nationally recognized authorities;

(4) Ensure delivery of technical assistance and informational materials to medication-assisted treatment programs as needed;

(5) Perform both scheduled and unscheduled site visits to medication-assisted treatment programs in cooperation with the identified state oversight agency when necessary and appropriate;

(6) Consult with the federal government regarding approval or disapproval of requests for exceptions to federal regulations, where appropriate;

(7) Review and approve exceptions to federal and state dosage policies and procedures;

(8) Receive and refer patient appeals and grievances to the designated state oversight agency when appropriate; and

(9) Work cooperatively with other relevant state agencies to determine the services needed and the location of a proposed medication-assisted treatment program.

WV Legislature

§16B-13-12. Moratorium; certificate of need.

There is a moratorium on the licensure of new opioid treatment programs which do not have a certificate of need as of the effective date of the enactment of this section during the 2016 regular session of the Legislature which shall continue until the Legislature determines that there is a necessity for additional opioid treatment programs in West Virginia.

WV Legislature

§16B-13-13. Rules; minimum standards for medication-assisted treatment programs.

(a) The Inspector General shall promulgate rules in accordance with the provisions of §29A-1-1 *et seq*. of this code for the licensure of medication-assisted treatment programs to ensure adequate care, treatment, health, safety, welfare, and comfort of patients at these facilities. These rules shall include, at a minimum:

(1) The process to be followed by applicants seeking a license;

(2) The qualifications and supervision of licensed and nonlicensed personnel at medication-assisted treatment programs and training requirements for all facility health care practitioners who are not regulated by another board;

(3) The provision and coordination of patient care, including the development of a written plan of care and patient contract;

(4) The management, operation, staffing and equipping of the medication-assisted treatment program;

(5) The clinical, medical, patient and business records kept by the medication-assisted treatment program;

(6) The procedures for inspections and for review of utilization and quality of patient care;

(7) The standards and procedures for the general operation of a medication-assisted treatment program, including facility operations, physical operations, infection control requirements, health and safety requirements and quality assurance;

(8) Identification of drugs that may be used to treat substance use disorders that identify a facility as a medication-assisted treatment program;

(9) Any other criteria that identify a facility as a medication-assisted treatment program;

(10) The standards and procedures to be followed by an owner in providing supervision, direction and control of individuals employed by or associated with a medication-assisted treatment program;

(11) Data collection and reporting requirements;

(12) Criteria and requirements related to specific medication-assisted treatment medications; and

(13) Such other standards or requirements as the Inspector General determines are appropriate.

WV Legislature

(b) The Legislature finds that an emergency exists and, therefore, the Inspector General shall file an emergency rule to implement the provisions of this section pursuant to the provisions of §29A-3-15 of this code.

WV Legislature

§16B-14-1. Definitions.

For the purposes of this article:

"Administration of medication" means assisting a person in the ingestion, application, or inhalation of medications, or the supervision of or the providing of assistance with self-administered medication, both according to the legibly written or printed directions of the health care professional, or as written on the prescription label. "Administration" does not include judgment, evaluation, assessments, or injections of medication.

"Approved medication assistive personnel (AMAP)" means a staff member who meets eligibility requirements, has successfully completed a nationally recognized model curriculum for certified medication assistants, has passed a national medication aide certification examination approved by the National Council of State Boards of Nursing, and is considered competent by the authorized registered professional nurse to administer medications to residents of the nursing home in accordance with this article.

"Authorized practitioner" means a physician actively licensed under the provisions of §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code, an advanced practice registered nurse with prescriptive authority actively licensed under the provisions of §30-7-1 *et seq.* of this code, a physician's assistant actively licensed under the provisions of §30-3E-1 *et seq.* of this code, an optometrist actively licensed under the provisions of §30-8-1 *et seq.* of this code, or a dentist actively licensed under the provisions of §30-4-1 *et seq.* of this code.

"Authorized registered professional nurse" means a person who is actively licensed pursuant to §30-7-1 *et seq.* of this code and meets the requirements to train and supervise approved medication assistive personnel pursuant to this article, and has completed and passed the facility trainer/instructor course developed by the authorizing agency.

"Authorizing agency" means the Office of Health Facility Licensure and Certification.

"Delegation" means transferring to a competent individual, as determined by the authorized registered professional nurse, the authority to administer medications or perform a health maintenance task.

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

"Health care professional" means an allopathic physician, osteopathic physician, registered professional nurse, advanced practice registered nurse, physician's assistant, dentist, optometrist, or respiratory therapist licensed pursuant to the provisions of chapter 30 of this code.

"Health maintenance tasks" means: Administering glucometer tests; administering gastrostomy tube feedings; administering enemas; and performing tracheostomy and ventilator care for residents.

WV Legislature

"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.

"Medication" means a drug, as defined in §60A-1-101 of this code, which has been prescribed by a health care professional to be ingested through the mouth, inhaled through the nose or mouth using an inhaler or nebulizer, applied to the outer skin, eye, or ear, or applied through nose drops, or applied through vaginal or rectal suppositories. Medication does not mean a controlled substance listed in Schedule I as provided in §60A-2-204 of this code, Schedule II as provided in §60A-2-206 of this code, buprenorphine, or benzodiazepines.

"Medication reconciliation" means the process of creating an accurate list of all medications a resident is taking, including drug name, dosage, frequency, and route, so correct medications are being provided to the resident.

"Nursing home" means the same as it is defined in §16B-4-1 of this code.

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

"Prescribing practitioner" means an individual who has prescriptive authority as provided in chapter 30 of this code.

"Registered professional nurse" means a person who is actively licensed pursuant to §30-7-1 *et seq.* of this code.

"Resident" means a person living in a nursing home who is in stable condition.

"Self-administration of medication" means the act of a resident, who is independently capable of reading and understanding the labels of medication ordered by an authorized practitioner, opening, and accessing prepackaged drug containers, and accurately identifying and taking the correct dosage of the drugs as ordered by the health care professional at the correct time and under the correct circumstances.

"Self-administration of medication with assistance" means assisting residents who are otherwise able to self-administer their own medications, except their physical disabilities prevent them from completing one or more steps in the process.

"Stable" means the resident’s health condition is predictable and consistent as determined by the registered professional nurse, and the resident’s medications have been reconciled.

"Staff member" means an individual employed by a nursing home but does not include a health care professional acting within his or her scope of practice.

"Supervision of self-administration of medication" means a personal service which includes reminding residents to take medications, opening medication containers for residents, reading the medication label to residents, observing residents while they take medication,

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checking the self-administered dosage against the label on the container, and reassuring residents that they have obtained and are taking the dosage as prescribed.

WV Legislature

§16B-14-2. Administration of medications.

(a) The authorizing agency shall create a program for the administration of medications in nursing homes.

(b) Administration of medication shall be performed by an approved medication assistive personnel (AMAP) who has been trained and retrained every two years, passed a national medication aide certification examination, and who is subject to the supervision of, and approval by, an authorized registered professional nurse.

(c) After assessing the health status of a resident, a registered professional nurse, in collaboration with the resident's prescriber, may allow an AMAP to administer medication.

(d) Nothing in this article prohibits a staff member from administering medications or performing health maintenance tasks or providing any other prudent emergency assistance to aid any person who is in acute physical distress or requires emergency assistance.

WV Legislature

§16B-14-3. Exemption from licensure; statutory construction.

(a) A staff member who is not authorized by law to administer medication may do so in a nursing home if he or she meets the requirements of this article.

(b) An approved medication assistive personnel is exempt from the licensing requirements of chapter 30 of this code.

(c) A health care professional remains subject to his or her respective licensing laws.

(d) This article shall not be construed to violate or conflict with chapter 30 of this code.

WV Legislature

§16B-14-4. Instruction and training.

(a) The authorizing agency's training curricula shall be based on a nationally recognized model curriculum for certified medication assistants. The authorizing agency shall consult with the West Virginia Board of Respiratory Care Practitioners in developing the training curricula relating to the use of an inhaler or nebulizer. The certification examination must be a national Medication Aide Certification Examination.

(b) The program developed by the authorizing agency shall require that a person who applies to act as an approved medication assistive personnel shall:

(1) Hold a high school diploma or its equivalent;

(2) Be a nurse aide with at least one year of full-time experience;

(3) Be certified in cardiopulmonary resuscitation and first aid;

(4) Participate in the initial training program as set forth in §16B-14-1 of this code;

(5) Pass a national certification examination as set forth in §16B-14-1 of this code;

(6) Not have a statement on the stated administered nurse aide registry indicating that the staff member has been the subject of finding of abuse or neglect of a long-term care nursing home resident or convicted of the misappropriation of a resident's property; and

(7) Participate in a retraining program every two years.

(c) A nursing home may offer the training program developed by the authorizing agency to its staff members. The training shall be provided by the nursing home through a registered professional nurse.

(d) A registered professional nurse who is authorized to train staff members to administer medications in nursing homes shall:

(1) Possess a current active license as set forth in §30-7-1 *et seq.* of this code to practice as a registered professional nurse;

(2) Have practiced as a registered professional nurse in a position or capacity requiring knowledge of medications for the immediate two years prior to being authorized to train staff members;

(3) Be familiar with the nursing care needs of the residents as described in this article; and

(4) Have completed and passed the nursing home trainer/instructor course developed by the authorizing agency.

WV Legislature

§16B-14-5. Eligibility requirements of nursing home staff.

In order to administer medication, an approved medication assistive personnel (AMAP) shall:

(1) Determine the medication to be administered is in its original container in which it was dispensed by a pharmacist or the physician;

(2) Make a written record of assistance of medication with regard to each medication administered, including the time, route, and amount taken;

(3) Display the title Approved Medication Assistive Personnel; and

(4) Comply with the legislative rules promulgated by the authorizing agency pursuant to §29A-3-1 *et seq.* of this code relating to the provisions of this article, which shall address, at a minimum, the supervision provided by the registered professional nurse to the AMAP.

WV Legislature

§16B-14-6. Oversight of approved medication assistive personnel.

A nursing home using an approved medication assistive personnel shall establish an administrative monitoring system and shall comply with the applicable provisions of the legislative rules promulgated pursuant to §16B-10-11 of this code.

WV Legislature

§16B-14-7. Withdrawal of authorization.

(a) The registered professional nurse who supervises an approved medication assistive personnel (AMAP) may withdraw authorization for an AMAP to administer medications if the nurse determines that the AMAP is not performing the function in accordance with the training and written instructions.

(b) The withdrawal of the authorization shall be documented and relayed to the nursing home and the authorizing agency. The agency shall remove the AMAP from the list of authorized individuals. The Office of Health Facility Licensure and Certification shall maintain a list of the names of persons whose authorization has been withdrawn and the reasons for withdrawal of authorization. The list may be accessed by registered professional nurses and administrative personnel of nursing homes.

WV Legislature

§16B-14-8. Fees.

The authorizing agency may set and collect any appropriate fees necessary for the implementation of the provisions of this article pursuant to the legislative rules authorized by this article.

WV Legislature

§16B-14-9. Limitations on medication administration.

(a) An approved medication assistive personnel (AMAP) may not:

(1) Administer the first dose of a medication;

(2) Perform an injection;

(3) Administer irrigations or debriding agents to treat a skin condition or minor abrasions;

(4) Act upon verbal medication orders;

(5) Transcribe medication orders;

(6) Convert or calculate drug dosages;

(7) Administer medications to be given "as needed" as ordered by the health care professional, unless the supervising nurse has first performed and documented a bedside assessment, and then the AMAP may administer the medication based on the written order with specific parameters which preclude independent judgment; or

(8) Perform health maintenance tasks.

(b) An AMAP may not be assigned to both medication administration duty and typical nurse aide duties related to resident care and assistance with activities of daily living simultaneously. When assigned to medication administration, the AMAP’s responsibility shall be to administer medication and tasks related to the administration of medication. An AMAP may be assigned to other resident care and assistance with activities of daily living during such times that the AMAP is not engaged in, or scheduled to be engaged in, the administration of medication.

WV Legislature

§16B-14-10. Permissive participation.

The provisions of this article are not mandatory upon any nursing home or nursing home employee. A nursing home may not, as a condition of employment, require a nurse aide to become an approved medication assistive personnel (AMAP) or require its health care professionals to use AMAPs.

WV Legislature

§16B-15-1. Definitions.

As used in this article:

"Applicant" means an individual who is being considered for employment or engagement with the department, a covered provider or covered contractor.

"Background check" means a prescreening of registries specified by the Inspector General by rule and a fingerprint-based search of state and federal criminal history record information.

"Bureau" means a division within the Department of Health, Department of Human Services and Department of Health Facilities.

"Covered contractor" means an individual or entity, including their employees and subcontractors, that contracts with a covered provider to perform services that include any direct access services.

"Covered provider" means the following facilities or providers:

(i) A skilled nursing facility;

(ii) A nursing facility;

(iii) A home health agency;

(iv) A provider of hospice care;

(v) A long-term care hospital;

(vi) A provider of personal care services;

(vii) A provider of adult day care;

(viii) A residential care provider that arranges for, or directly provides, long-term care services, including an assisted living facility;

(ix) An intermediate care facility for individuals with intellectual disabilities;

(x) Any other facility or provider required to participate in the West Virginia Clearance for Access: Registry and Employment Screening program as determined by the Inspector General by legislative rule; and

(xi) Excludes medical foster home approved and annually reviewed by the United States Department of Veterans Affairs pursuant to 38 CFR §17.73.

"Department" means the Department of Health, Department of Human Services and

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Department of Health Facilities.

"Department employee" means any prospective or current part-time employee, full-time employee, temporary employee, independent contractor, or volunteer of the department.

"Direct access" means physical contact with a resident, member, beneficiary, or client, or access to their property, personally identifiable information, protected health information, or financial information.

"Direct access personnel" means an individual who has direct access by virtue of ownership, employment, engagement or agreement with the department, a covered provider, or covered contractor. Direct access personnel does not include volunteers or students performing irregular or supervised functions or contractors performing repairs, deliveries, installations or similar services for the covered provider. The director shall determine by legislative rule whether the position in question involves direct access.

"Director" means the Director of the West Virginia Clearance for Access: Registry and Employment Screening program.

"Disqualifying offense" means:

(A) A conviction of any crime described in 42 U. S. C. §1320a-7(a); or

(B) A conviction of any other crime specified by the Inspector General in rule, which shall include crimes against care-dependent or vulnerable individuals, crimes of violence, sexual offenses, and financial crimes.

"Negative finding" means a finding in the prescreening that excludes an applicant from direct access personnel positions.

"Notice of ineligibility" means a notice pursuant to §16-49-3 of this code that the Inspector General's review of the applicant’s criminal history record information reveals a disqualifying offense.

"Prescreening" means a mandatory search of databases and registries specified by the Inspector General in legislative rule for exclusions and licensure status prior to the submission of fingerprints for a criminal history record information check.

"Rap back" means the notification to the department when an individual who has undergone a fingerprint-based, state, or federal criminal history record information check has a subsequent state or federal criminal history event.

"State Police" means the West Virginia State Police Criminal Identification Bureau.

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§16B-15-2. Background check program for the department, covered providers, and covered contractors.

(a) The director shall create and implement a background check program to facilitate the processing and analysis of the criminal history and background of applicants to the department, covered providers, and covered contractors with direct access. This program shall be called the West Virginia Clearance for Access: Registry and Employment Screening.

(b) The purpose of the program is to protect West Virginia's vulnerable populations by requiring registry and criminal background checks for all direct access personnel of the department, covered providers, and covered contractors.

(c) The program shall include:

(1) A centralized Internet-based system of registries to allow the department, covered providers, and covered contractors to perform a mandatory prescreening of applicants;

(2) Fingerprint-based state and federal criminal background checks on all direct access personnel; and

(3) An integrated Rap Back Program with the State Police to allow retention of fingerprints and updates of state and federal criminal information on all direct access personnel until such time as the individual is no longer employed or engaged by the department, the covered provider, or covered contractor.

(d) The director shall notify applicants subject to a criminal history record check that their fingerprints shall be retained by the State Police Criminal Identification Bureau and the Federal Bureau of Investigation.

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§16B-15-3. Prescreening and criminal background checks.

(a) Except as otherwise permitted in this article, the department, covered provider, or covered contractor may not employ or engage an applicant prior to completing the background check process.

(b) If the applicant has a negative finding on any required prescreening registry or database, the employer shall notify the individual of such finding.

(c) If the applicant has a negative finding on any required prescreening registry or database, that individual may not immediately be engaged by the department, covered provider, or covered contractor.

(d) If the applicant does not have a negative finding in the prescreening process, the applicant shall submit to fingerprinting for a state and federal criminal history record information check.

(e) The State Police shall notify the Inspector General of the results of the criminal history record information check.

(f) If the director’s review of the criminal history record information reveals that the applicant does not have a disqualifying offense, the director shall provide written notice to the department's bureau, covered provider, or covered contractor that the individual may be engaged.

(g) An applicant shall submit to a subsequent required prescreening and background check 90 days prior but no later than 60 days to the expiration date of the clearance. The director shall review and provide approval prior to any lapse in clearance or approval.

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§16B-15-4. Notice of ineligibility; prohibited participation as direct access personnel or department employee.

(a) If the director's review of the applicant’s criminal history record information reveals a disqualifying offense, the director shall provide written notice to the department's bureau, covered provider, or covered contractor advising that the applicant is ineligible for work. The director may not disseminate the criminal history record information.

(b) The director, covered provider, or covered contractor may not engage an applicant with a disqualifying offense as direct access personnel. If the applicant has been provisionally employed pursuant to §16B-15-6 of this code, the employer shall terminate the provisional employment upon receipt of the notice.

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§16B-15-5. Variance; appeals.

(a) If the director issues a notice of ineligibility, the applicant, or the employer on the applicant's behalf, may file a written request for a variance with the director not later than 30 days after the date of the notice required by §16B-15-3 or §16B-15-4 of this code.

(b) The director may grant a variance if:

(1) Mitigating circumstances surrounding the negative finding or disqualifying offense is provided; and

(2) The director finds that the individual will not pose a danger or threat to residents, members and their property.

(c) The director shall establish in legislative rule factors that qualify as mitigating circumstances.

(d) The director shall send notice to the applicant and the department's bureau, covered provider, or covered contractor of the written decision indicating whether a variance has been granted or denied within 30 days of receipt of the written request, if the written request is submitted after receipt of an ineligibility determination, or within 60 days of receipt of the written request if the written request is submitted at the same time as the application.

(e) If an applicant believes that their criminal history record information within this state is incorrect or incomplete, they may challenge the accuracy of such information by writing to the State Police for a personal review. However, if the discrepancies are at the charge or final disposition level, the applicant must address this with the court or arresting agency that submitted the record to the State Police.

(f) If an applicant believes that their criminal history record information outside this state is incorrect or incomplete, they may appeal the accuracy of such information by contacting the Federal Bureau of Investigation for instructions.

(g) If any changes, corrections, or updates are made in the criminal history record information, the State Police shall notify the Inspector General that the applicant has appealed the accuracy of the criminal history records and provide the Inspector General with the updated results of the criminal history record information check, which the Inspector General shall review de novo in accordance with the provisions of this article.

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§16B-15-6. Provisional employment pending completion of background check.

(a) The department, covered provider, or covered contractor may permit an applicant to work on a provisional basis for not more than 60 days pending notification from the director regarding the results of the criminal background check if:

(1) The applicant is subject to direct on-site supervision, as specified in rule by the Inspector General, during the course of the provisional period; and

(2) In a signed statement the applicant:

(A) Affirms that he or she has not committed a disqualifying offense;

(B) Acknowledges that a disqualifying offense reported in the required criminal history record information check shall constitute good cause for termination; and

(C) Acknowledges that the department, covered provider, or covered contractor may terminate the individual if a disqualifying offense is reported in the background check.

(b) Provisional employees who have requested a variance shall not be required to sign such a statement. The department, covered provider, or covered contractor may continue to employ an applicant if an applicant applies for a variance of his or her fitness determination until the variance is resolved.

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§16B-15-7. Clearance for subsequent employment.

(a) An applicant is not required to submit to fingerprinting and a criminal background check if:

(1) The individual previously submitted to fingerprinting and a full criminal background check as required by this article;

(2) The prior criminal background check confirmed that the individual did not have a disqualifying offense or the individual received prior clearance by an approved variance from the director to work for or with the same type of covered provider or covered contractor; and

(3) The Rap Back Program has not identified any criminal activity that constitutes a disqualifying offense.

(b) The director shall provide notice of prior clearance or approved variance for direct access status upon request by a subsequent bureau, covered provider, or covered contractor inquiries within 10 days of the request.

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§16B-15-8. Fees.

In order to enforce the requirements and intent of this article, the following fees may be charged:

(1) The State Police may assess a fee to the department, applicants, covered providers, or covered contractors for conducting the criminal background check and for collecting and retaining fingerprints for Rap Back as authorized under this article.

(2) The director may assess a fee to applicants, the department, covered providers, or covered contractors for the maintenance of the Internet-based system required by this article. The assessment shall be deposited into a special revenue account within the State Treasurer's office to be known as the Office of Inspector General Criminal Background Administration Account. Expenditures from the account shall be made by the director for purposes set forth in this article and are authorized from collections. The account shall be administered by the director and may not be deemed a part of the general revenue of the state.

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§16B-15-9. Rules; penalties; confidentiality; immunity.

(a) The Inspector General shall propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code to implement the provisions of this article. The Inspector General may promulgate emergency rules, if justified, pursuant to §29A-3-15 of this code as may be required.

(b) Failure of a covered provider or covered contractor to ensure proper completion of the background check process for each individual employed as direct access personnel may result in the imposition of monetary civil penalties. In addition, engaging individuals knowing that they are ineligible to work may subject the employer to monetary civil penalties.

(c) The director shall treat and maintain any criminal background search information obtained under this article as confidential. The director shall limit the use of records solely to the purposes authorized in this article. The criminal history record information in the custody of the director is not subject to subpoena, other than one issued in a criminal action or investigation; is confidential by law and privileged; and is not subject to discovery or admissible in evidence in any private civil action.

(d) The Office of the Inspector General and its employees are immune from liability, civil or criminal, that might otherwise be incurred or imposed for good faith conduct in determining eligibility or granting variances permitted by this article.

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§16B-16-1. The Foster Care Ombudsman.

(a) There is continued within the Office of the Inspector General the position of the West Virginia Foster Care Ombudsman. The Office of the Inspector General shall employ a Foster Care Ombudsman to affect the purposes of this article. The independent Foster Care Ombudsman shall have experience as a current or former foster parent or experience in the area of child welfare.

(b) The duties of the Foster Care Ombudsman include, but are not limited to, the following:

(1) Establishing a statewide procedure to receive, investigate, and resolve complaints:

(A) Filed on behalf of a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, a foster child, foster parent, or kinship parent;

(B) On the Foster Care Ombudsman's own initiative, of a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system; or

(C) On the Foster Care Ombudsman's own initiative, on behalf of a foster child, relating to action, inaction, or decisions of the state agency, child-placing agency, or residential care facility which may adversely affect the foster child, foster parent, or kinship parent;

(2) Participating in any procedure to investigate and resolve complaints filed on behalf of a foster child, a foster parent, a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, or a kinship parent, relating to an action, inaction, or decision of providers of managed care services, or the representatives of such providers, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare, and rights of a foster child, a foster parent, a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, or a kinship parent.

(3) Review periodically and make appropriate recommendations for the policies and procedures established by any state agency providing services to the child welfare system;

(4) Pursuant to an investigation, provide assistance to an individual who the Foster Care Ombudsman determines is in need of assistance, including, but not limited to, collaborating with an agency, provider, or others on behalf of the best interests of the child;

(5) Advocating for the rights of a foster child, a foster parent, a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, or a kinship parent.

(6) Recommend action when appropriate, including, but not limited to, undertaking

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legislative advocacy and making proposals for systemic reform and formal legal action, in order to secure and ensure the legal, civil, and special rights of children in the child welfare system and the juvenile justice system;

(7) Monitoring the development and implementation of federal, state, and local legislation, regulations, and policies with respect to foster care services.

(8) Conduct programs of public education when necessary and appropriate;

(9) Participate in ongoing training programs related to his or her duties or responsibilities;

(10) Have input into the creation of, and thereafter make recommendations consistent with, the foster children, foster parents, and kinship parents bill of rights;

(11) Establishing and maintaining a statewide uniform reporting system to collect and analyze data relating to complaints for the purpose of identifying and resolving significant problems faced by foster children, foster parents, children who are subject to a reported allegation of abuse and neglect, children who have died or sustained a critical incident, children in the juvenile justice system, and kinship parents as a class. The data shall be submitted to the Bureau of Social Services within the Department of Human Services and the Legislative Oversight Commission on Health and Human Resources Accountability on a quarterly basis.

(12) Take appropriate steps to advise the public of the services of the Foster Care Ombudsman, the purpose of the ombudsman, and procedures to contact the office; and

(13) Make inquiries and obtain assistance and information from other state governmental agencies or persons as the Foster Care Ombudsman requires for the discharge of his or her duties.

(c) (1) The Foster Care Ombudsman or his or her staff may not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to the identity of an individual providing information to the ombudsman as part of an official investigation, or the substance of that person’s report to the ombudsman as part of an official investigation. All memoranda, work product, notes, or case files developed and maintained as part of an official investigation of the Foster Care Ombudsman Office are confidential and are not subject to discovery, subpoena, or other means of legal compulsion, and are not admissible as evidence in a judicial or administrative proceeding.

(2) The ombudsman may be compelled to provide testimony by a court or administrative body of competent jurisdiction related to any action carried out by the office that is unrelated to the substance of a specific official investigation, or reports submitted to the Legislative Oversight Commission on Health and Human Resources Accountability provided for in §9-5-27 and §49-9-102 of this code. Should the ombudsman be compelled to testify, provide evidence in discovery, respond to a subpoena, or otherwise divulge testimony or

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evidence in any judicial, administrative, or legislative proceeding, the ombudsman may not be compelled to provide testimony or evidence concerning the identity of any complainant or any individual providing information to the ombudsman as part of an official investigation, or the substance of any complaint or report unless the ombudsman should decline to exercise that privilege. The purpose of this provision is to ensure a level of confidentiality between the ombudsman and a person reporting to, complaining to, or providing other evidence to the ombudsman as part of an official investigation carried out by the office.

(3) Any objection by the ombudsman to the disclosure of any testimony, documentary, or physical evidence shall be reviewed by the presiding official of such tribunal, in camera, upon the request of the ombudsman, and the presiding official shall prevent the disclosure of the identity of any complainant, witness, or reporter as well as the substance of their complaint, testimony, or report.

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§16B-16-2. Investigation of complaints.

(a) Upon receipt of a complaint or by court order within the scope of the Foster Care Ombudsman Program, the Foster Care Ombudsman shall investigate, except as provided in §49-9-102(c) of this code, any act, practice, policy, or procedure of any state agency, child-placing agency, juvenile facility, or residential care facility which affects the health, safety, welfare, or rights of a foster child, a foster parent, a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, or a kinship parent.

(b) Investigative activities of the Foster Care Ombudsman include, but are not limited to: information gathering, mediation, negotiation, informing parties of the status of the investigation, notification to any aggrieved party of alternative processes, reporting of suspected violations to a licensing or certifying agency, and the reporting of suspected criminal violations to the appropriate authorities.

(c) The Foster Care Ombudsman need not investigate any complaint upon determining that:

(1) The complaint is trivial, frivolous, vexatious, or not made in good faith;

(2) The complaint has been too long delayed to justify present investigation;

(3) The resources available, considering the established priorities, are insufficient for an adequate investigation;

(4) The matter complained of is not within the investigatory authority of the Foster Care Ombudsman; or

(5) A real or apparent conflict of interest exists and no other person within the office is available to investigate the complaint in an impartial manner.

(d) The Office of the Inspector General and other appropriate state governmental agencies may establish and implement cooperative agreements for receiving, processing, responding to, and resolving complaints involving state governmental agencies under the provisions of this section.

(e) The Foster Care Ombudsman shall submit an annual written report to the Governor containing:

(1) The number of complaints;

(2) The types of complaints;

(3) The location of the complaints;

(4) How the complaints are resolved; and

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(5) Any other information the Foster Care Ombudsman feels is appropriate.

(f) The Foster Care Ombudsman shall summarize the reports and present that information to the Legislative Oversight Commission on Health and Human Resources Accountability. Nothing shall preclude the Foster Care Ombudsman office from submitting data, findings, or reports beyond this annual report.

(g) Another office, department, agency, or official may not prohibit the release of an ombudsman's recommendations to the Governor and the Legislature.

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§16B-16-3. Access to foster care children.

(a) The Foster Care Ombudsman shall, with proper identification, have access to a foster family home, a state agency, a child-placing agency, or a residential care facility for the purposes of investigations of a complaint. The Foster Care Ombudsman may enter a foster family home, a state agency, a child-placing agency, or a residential care facility at a time appropriate to the complaint. The visit may be announced in advance or be made unannounced as appropriate to the complaint under investigation. Upon entry, the Foster Care Ombudsman shall promptly and personally advise the person in charge of his or her presence. If entry is refused by the person in charge, the Foster Care Ombudsman may apply to the magistrate court of the county in which a foster family home, a state agency, a child-placing agency, or a residential care facility is located for a warrant authorizing entry, and the court shall issue an appropriate warrant if it finds good cause therefor.

(b) For activities other than those specifically related to the investigation of a complaint, the Foster Care Ombudsman, upon proper identification, shall have access to a foster family home, a state agency, a child-placing agency, or a residential care facility between the hours of 8:00 a.m. and 8:00 p.m. in order to:

(1) Provide information on the Foster Care Ombudsman Program to a foster child, foster parents, or kinship parents;

(2) Inform a foster child, a foster parent, or a kinship parent of his or her rights and entitlements, and his or her corresponding obligations, under applicable federal and state laws; and

(3) Direct the foster child, the foster parents, or the kinship parents to appropriate legal resources;

(c) Access to a foster family home, a state agency, a child-placing agency, or a residential care facility under this section shall be deemed to include the right to private communication with the foster child, the foster parents, or the kinship parents.

(d) A Foster Care Ombudsman who has access to a foster family home, a state agency, a child-placing agency, or a residential care facility under this section shall not enter the living area of a foster child, foster parent, or kinship parent without identifying himself or herself to the foster child, foster parent, or kinship parent. After identifying himself or herself, an ombudsman shall be permitted to enter the living area of a foster child, foster parent, or kinship parent unless that foster child, foster parent, or kinship parent communicates on that particular occasion the foster child, foster parents', or kinship parents' desire to prevent the ombudsman from entering. A foster child, foster parent, or kinship parent has the right to terminate, at any time, any visit by the Foster Care Ombudsman.

(e) Access to a foster family home, a state agency, a child-placing agency, or a residential care facility pursuant to this section includes the right to tour the facility unescorted.

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§16B-16-4. Access to records.

(a) The Foster Care Ombudsman is allowed access to any foster child's, foster parents' or kinship parents' records, including medical records reasonably necessary to any investigation, without fee.

(b) The Foster Care Ombudsman is allowed access to all records of any foster family home, state agency, child-placing agency, or residential care facility that is reasonably necessary for the investigation of a complaint, including, but not limited to, incident reports; dietary records; policies and procedures that a foster family home, a state agency, a child-placing agency, or a residential care facility are required to maintain under federal or state law; admission agreements; staffing schedules; or any document depicting the actual staffing pattern.

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§16B-16-5. Subpoena powers.

(a) The Foster Care Ombudsman may, in the course of any investigation:

(1) Apply to the circuit court of the appropriate county or the Circuit Court of Kanawha County for the issuance of a subpoena to compel at a specific time and place, by subpoena, the appearance, before a person authorized to administer oaths, the sworn testimony of any person whom the Foster Care Ombudsman reasonably believes may be able to give information relating to a matter under investigation; or

(2) Apply to the circuit court of the appropriate county or the Circuit Court of Kanawha County for the issuance of a subpoena duces tecum to compel any person to produce at a specific time and place, before a person authorized to administer oaths, any documents, books, records, papers, objects, or other evidence which the Foster Care Ombudsman reasonably believes may relate to a matter under investigation.

(b) A subpoena or subpoena duces tecum applied for by the Foster Care Ombudsman may not be issued until a circuit court judge in term or vacation thereof has personally reviewed the application and accompanying affidavits and approved, by a signed order entered by the judge, the issuance of the subpoena or subpoena duces tecum. Subpoenas or subpoenas duces tecum applied for pursuant to this section may be issued on an ex parte basis following review and approval of the application by the judge in term or vacation thereof.

(c) The Attorney General shall, upon request, provide legal counsel and services to the Foster Care Ombudsman in all administrative proceedings and in all proceedings in any circuit court and the West Virginia Supreme Court of Appeals.

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§16B-16-6. Cooperation among government departments or agencies.

(a) The Foster Care Ombudsman shall have access to the records of any state government agency reasonably necessary to any investigation. The Foster Care Ombudsman shall be notified of and be allowed to observe any survey conducted by a government agency affecting the health, safety, welfare, or rights of the foster child, the foster parents, or the kinship parents.

(b) The Foster Care Ombudsman shall develop procedures to refer any complaint to any appropriate state government department, agency, or office.

(c) When abuse, neglect, or exploitation of a foster child is suspected, the Foster Care Ombudsman shall make a referral to the Bureau for Children and Families, Office of Health Facility Licensure and Certification, or both.

(d) Any state government department, agency, or office that responds to a complaint referred to it by the Foster Care Ombudsman Program shall make available to the Foster Care Ombudsman copies of inspection reports and plans of correction, and notices of any citations and sanctions levied against the foster family home, the child-placing agency, or the residential care facility identified in the complaint.

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§16B-16-7. Confidentiality of investigations.

(a) Information relating to any investigation of a complaint that contains the identity of the complainant, a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, a foster child, foster parent, or kinship parent shall remain confidential except:

(1) Where imminent risk of serious harm is communicated directly to the Foster Care Ombudsman or his or her staff;

(2) Where disclosure is necessary to the bureau in order for such office to determine the appropriateness of initiating an investigation regarding potential abuse, neglect, or emergency circumstances; or

(3) Where disclosure is necessary to the Office of Health Facility Licensure and Certification in order for such office to determine the appropriateness of initiating an investigation to determine facility compliance with applicable rules of licensure, certification, or both.

(b) The Foster Care Ombudsman shall maintain confidentiality with respect to all matters including the identities of complainants, witnesses, or others from whom information is acquired, except insofar as disclosures may be necessary to enable the Foster Care Ombudsman to carry out duties of the office or to support recommendations.

(c) Notwithstanding any other section within this article, all information, records, and reports received by or developed by the Foster Care Ombudsman Program which relate to a foster child, foster parent, or kinship parent, including written material identifying a foster child, foster parent, or a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, or kinship parent, are confidential pursuant to §49-5-101 *et seq*. of this code and are not subject to the provisions of §29B-1-1 *et seq*. of this code, and may not be disclosed or released by the Foster Care Ombudsman Program, except under the circumstances enumerated in this section.

(d) Nothing in this section prohibits the preparation and submission by the Foster Care Ombudsman of statistical data and reports, as required to implement the provisions of this article or any applicable federal law, exclusive of any material that identifies any foster child, foster parent, kinship parent, or complainant.

(e) The Inspector General shall have access to the records and files of the Foster Care Ombudsman Program to verify its effectiveness and quality where the identity of any complainant, a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, or foster child, foster parent, or kinship parent is not disclosed.

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§16B-16-8. Limitations on liability.

(a) The Foster Care Ombudsman participating in an investigation carried out pursuant to this article who is performing his or her duties is immune from civil liability that otherwise might result by reason of his or her participation in the investigation, as long as such participation is not violative of any applicable law, rule, or regulation, and done within the scope of his or her employment and in good faith.

(b) If an act or omission by the Foster Care Ombudsman or an act in good faith pursuant to a specific foster child, foster parent, or kinship parent complaint causes a foster child's, foster parents', or kinship parents' rights to be violated, no foster family home, state agency, child-placing agency, or residential care facility, its owners, administrators, officers, director, agents, consultants, employees, or any member of management may be held civilly liable as a result of the act or omission.

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§16B-16-9. Willful interference; retaliation; penalties.

(a) An individual who willfully interferes with or impedes the Foster Care Ombudsman in the performance of his or her official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100.

(b) An individual who institutes or commits a discriminatory, disciplinary, retaliatory, or reprisal action against a foster child, foster parent, or kinship parent for having filed a complaint with or provided information in good faith to the Foster Care Ombudsman in carrying out the duties pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100.

(c) An individual violating the provisions of subsection (a) or (b) of this section is, for the second or any subsequent offense under either of these subsections, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $250. Each day of a continuing violation after conviction shall be considered a separate offense.

(d) Nothing in this section infringes upon the rights of an employer to supervise, discipline, or terminate an employee for other reasons.

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§16B-16-10. Funding for Foster Care Ombudsman Program.

The Foster Care Ombudsman Program shall receive such funds appropriated by the Legislature for the operation of the program.

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§16B-17-1. Short title.

This article shall be known and may be cited and referred to as "The West Virginia Human Rights Act."

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§16B-17-2. Declaration of policy.

It is the public policy of the State of West Virginia to provide all of its citizens equal opportunity for employment, equal access to places of public accommodations, and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment and public accommodations is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness, or disability. Equal opportunity in housing accommodations or real property is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, blindness, disability, or familial status.

The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness, disability, or familial status is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

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§16B-17-3. Definitions.

When used in this article:

(a) The term "person" means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of persons;

(b) The term "commission" means the West Virginia Human Rights Commission;

(c) The term "director" means the executive director of the commission who reports to the Inspector General;

(d) The term "employer" means the state, or any political subdivision thereof, and any person employing 12 or more persons within the state for 20 or more calendar weeks in the calendar year in which the act of discrimination allegedly took place or the preceding calendar year: *Provided,* That such terms shall not be taken, understood or construed to include a private club;

(e) The term "employee" shall not include any individual employed by his or her parents, spouse or child;

(f) The term "labor organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or for other mutual aid or protection in relation to employment;

(g) The term "employment agency" includes any person undertaking, with or without compensation, to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency;

(h) The term "discriminate" or "discrimination" means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness, disability or familial status and includes to separate or segregate;

(i) The term "unlawful discriminatory practices" includes only those practices specified in §16B-17-9 of this code;

(j) The term "place of public accommodations" means any establishment or person, as defined herein, including the state, or any political or civil subdivision thereof, which offers its services, goods, facilities, or accommodations to the general public, but shall not include any accommodations which are in their nature private. To the extent that any penitentiary, correctional facility, detention center, regional jail or county jail is a place of public accommodation, the rights, remedies and requirements provided by this article for any

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violation of subdivision (6), §16B-17-9 of this code shall not apply to any person other than: (1) Any person employed at a penitentiary, correctional facility, detention center, regional jail or county jail; (2) any person employed by a law-enforcement agency; or (3) any person visiting any such employee or visiting any person detained in custody at such facility;

(k) The term "age" means the age of 40 or above;

(l) For the purpose of this article, a person shall be considered to be blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is occasioned by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees; and

(m) The term "disability" means:

(1) A mental or physical impairment which substantially limits one or more of such person's major life activities. The term "major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

(2) A record of such impairment; or

(3) Being regarded as having such an impairment.

For the purposes of this article, this term does not include persons whose current use of or addiction to alcohol or drugs prevents such persons from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

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§16B-17-4. Powers and objectives.

The commission shall have the power and authority and shall perform the functions and services as in this article prescribed and as otherwise provided by law. The commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the state and shall strive to eliminate all discrimination in employment and places of public accommodations by virtue of race, religion, color, national origin, ancestry, sex, age, blindness or handicap and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of race, religion, color, national origin, ancestry, sex, blindness, handicap or familial status.

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§16B-17-5. Composition; appointment, terms, and oath of members; compensation and expenses.

The commission shall be composed of nine members, all residents, and citizens of the State of West Virginia and broadly representative of the several racial, religious, and ethnic groups residing within the state, to be appointed by the Governor, by and with the advice and consent of the Senate. Not more than five members of the commission shall be members of the same political party and not more than five members shall be appointed from any one congressional district.

Members of the commission shall be appointed for terms of three years commencing on July 1 of the year of their appointments, except that the nine members first appointed hereunder shall be appointed for terms of from one to three years, respectively, so that the terms of three members of the commission will expire on June 30 of each succeeding year thereafter. Upon the expiration of the initial terms, all subsequent appointments shall be for terms of three years each, except that appointments to fill vacancies shall be for the unexpired term thereof. Members shall be eligible for reappointment. Before assuming and performing any duties as a member of the commission, each commission member shall take and subscribe to the official oath prescribed by section 5, article IV of the Constitution of West Virginia, which executed oath shall be filed in the office of the Secretary of State.

The members of the commission shall not receive a salary, but each appointed member shall be paid $50 per diem for actual time spent in the performance of duties under this article and shall be reimbursed for actual and necessary expenses incident to the performance of their duties, upon presentation of an itemized and sworn statement thereof. The foregoing per diem and reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the commission.

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§16B-17-6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.

As soon as practical after July 1, of each year, the Governor shall call a meeting of the commission to be convened at the State Capitol. The commission shall at such meeting organize by electing one of its members as chairperson of the commission and one as vice chairperson thereof for a term of one year or until their successors are elected and qualified. At such meeting the commission shall also elect from its membership such other officers as may be found necessary and proper for its effective organization.

The Governor shall, by and with the advice and consent of the Senate, appoint an executive director to serve at his or her will and pleasure. The executive director shall serve as secretary of the commission. The executive director shall have a college degree. He or she shall be selected with particular reference to his or her training, experience and qualifications for the position and shall be paid an annual salary, payable in monthly installments, from any appropriations made therefor. The commission, upon recommendation of the executive director and in accordance with the requirements of the civil service law, may employ such personnel as may be necessary for the effective and orderly performance of the functions and services of the commission. The commission shall employ an administrative law judge who shall be an attorney, duly licensed to practice law in the State of West Virginia, for the conduct of the public hearings authorized in §16B-17-8(d)(3) of this code.

The commission shall equip and maintain its offices at the State Capitol and shall hold its annual organizational meeting there. The commission may hold other meetings during the year at such times and places within the state as may be found necessary and may maintain one branch office within the state as determined by the commission to be necessary for the effective and orderly performance of the functions and services of the commission. Any five members of the commission shall constitute a quorum for the transaction of business. Minutes of its meetings shall be kept by its secretary.

The executive director and other commission personnel shall be reimbursed for necessary and reasonable travel and subsistence expenses actually incurred in the performance of commission services upon presentation of properly verified expense accounts as prescribed by law.

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§16B-17-7. Assistance to commission; legal services.

The commission may call upon other officers, departments, and agencies of the state government to assist in its hearings, programs, and projects. The Attorney General of the state shall render legal services to the commission upon request made by the commission or by the chairman or the executive director thereof.

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§16B-17-8. Commission powers; functions; services.

The commission is hereby authorized and empowered:

(a) To cooperate and work with federal, state and local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial, religious and ethnic groups in this state;

(b) To enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations and other identifiable groups of the state in programs and campaigns devoted to the advancement of tolerance, understanding and the equal protection of the laws of all groups and peoples;

(c) To receive, investigate and pass upon complaints alleging discrimination in employment or places of public accommodations, because of race, religion, color, national origin, ancestry, sex, age, blindness or disability, and complaints alleging discrimination in the sale, purchase, lease, rental and financing of housing accommodations or real property because of race, religion, color, national origin, ancestry, sex, blindness, disability or familial status, and to initiate its own consideration of any situations, circumstances or problems, including therein any racial, religious or ethnic group tensions, prejudice, disorder or discrimination reported or existing within the state relating to employment, places of public accommodations, housing accommodations and real property;

(d) To hold and conduct public and private hearings, in the county where the respondent resides or transacts business or where agreed to by the parties or where the acts complained of occurred, on complaints, matters and questions before the commission and, in connection therewith, relating to discrimination in employment or places of public accommodations, housing accommodations or real property and during the investigation of any formal complaint before the commission relating to employment, places of public accommodations, housing accommodations or real property to:

(1) Issue subpoenas and subpoenas duces tecum upon the approval of the executive director or the chairperson of the commission; administer oaths; take the testimony of any person under oath; and make reimbursement for travel and other reasonable and necessary expenses in connection with such attendance;

(2) Furnish copies of public hearing records to parties involved therein upon their payment of the reasonable costs thereof to the commission;

(3) Delegate to an administrative law judge who shall be an attorney, duly licensed to practice law in West Virginia, the power and authority to hold and conduct hearings, as herein provided, to determine all questions of fact and law presented during the hearing and to render a final decision on the merits of the complaint, subject to the review of the commission as hereinafter set forth.

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Any respondent or complainant who shall feel aggrieved at any final action of an administrative law judge shall file a written notice of appeal with the commission by serving such notice on the executive director and upon all other parties within 30 days after receipt of the administrative law judge's decision. The commission shall limit its review upon such appeals to whether the administrative law judge's decision is:

(A) In conformity with the Constitution and the laws of the state and the United States;

(B) Within the commission's statutory jurisdiction or authority;

(C) Made in accordance with procedures required by law or established by appropriate rules of the commission;

(D) Supported by substantial evidence on the whole record; or

(E) Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(4) To enter into conciliation agreements and consent orders.

Each conciliation agreement shall include provisions requiring the respondent to refrain from the commission of unlawful discriminatory practices in the future and shall contain such further provisions as may be agreed upon by the commission and the respondent.

If the respondent and the commission agree upon conciliation terms, the commission shall serve upon the complainant a copy of the proposed conciliation agreement. If the complainant agrees to the terms of the agreement or fails to object to such terms within 15 days after its service upon him or her, the commission shall issue an order embodying such conciliation agreement. If the complainant objects to the agreement, he or she shall serve a specification of his or her objections upon the commission within such period. Unless such objections are met or withdrawn within 10 days after service thereof, the commission shall notice the complaint for hearing.

Notwithstanding any other provisions of this section, the commission may, where it finds the terms of the conciliation agreement to be in the public interest, execute such agreement, and limit the hearing to the objections of the complainant.

If a conciliation agreement is entered into, the commission shall serve a copy of the order embodying such agreement upon all parties to the proceeding.

Not later than one year from the date of a conciliation agreement, the commission shall investigate whether the respondent is complying with the terms of such agreement. Upon a finding of noncompliance, the commission shall take appropriate action to assure compliance;

(5) To apply to the circuit court of the county where the respondent resides or transacts

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business for enforcement of any conciliation agreement or consent order by seeking specific performance of such agreement or consent order;

(6) To issue cease and desist orders against any person found, after a public hearing, to have violated the provisions of this article or the rules of the commission;

(7) To apply to the circuit court of the county where the respondent resides or transacts business for an order enforcing any lawful cease and desist order issued by the commission;

(e) To recommend to the Governor and Legislature policies, procedures, practices and legislation in matters and questions affecting human rights;

(f) To delegate to its executive director such powers, duties and functions as may be necessary and expedient in carrying out the objectives and purposes of this article who shall report to the Inspector General;

(g) To prepare a written report on its work, functions and services for each year ending on June 30 and to deliver copies thereof to the Governor on or before December 1, next thereafter;

(h) To do all other acts and deeds necessary and proper to carry out and accomplish effectively the objects, functions and services contemplated by the provisions of this article, including the promulgation of legislative rules in accordance with the provisions of §29A-3-1 *et seq*. of this code, implementing the powers and authority hereby vested in the commission;

(i) To create such advisory agencies and conciliation councils, local, regional or statewide, as in its judgment will aid in effectuating the purposes of this article, to study the problems of discrimination in all or specific fields or instances of discrimination because of race, religion, color, national origin, ancestry, sex, age, blindness, disability or familial status; to foster, through community effort or otherwise, goodwill, cooperation and conciliation among the groups and elements of the population of this state, and to make recommendations to the commission for the development of policies and procedures, and for programs of formal and informal education, which the commission may recommend to the appropriate state agency. Such advisory agencies and conciliation councils shall be composed of representative citizens serving without pay. The commission may itself make the studies and perform the acts authorized by this subdivision. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster goodwill and cooperation among all elements of the population of the state;

(j) To accept contributions from any person to assist in the effectuation of the purposes of this section and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this section;

(k) To issue such publications and such results of investigation and research as in its

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judgment will tend to promote goodwill and minimize or eliminate discrimination: *Provided,* That the identity of the parties involved shall not be disclosed.

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§16B-17-9. Unlawful discriminatory practices.

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the State of West Virginia or its agencies or political subdivisions:

(1) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions, or privileges of employment if the individual is able and competent to perform the services required even if such individual is blind or disabled: *Provided*, That it shall not be an unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subdivision: *Provided further*, That an employer may grant preference in hiring to a military spouse or to a veteran or disabled veteran in accordance with the provisions of §16B-17-9a of this code without violating the provisions of this article. For purposes of this subdivision, "military spouse" means the husband or wife of a member of the Armed Forces who, as determined by the United States Secretary of Defense, is performing active duty pursuant to orders that authorize a permanent change of station move, if such husband or wife relocates to the member's new permanent duty station.

(2) For any employer, employment agency, or labor organization, prior to the employment or admission to membership, to: (A) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, sex, or age of any applicant for employment or membership; (B) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specifications, or discrimination based upon race, religion, color, national origin, ancestry, sex, disability, or age; or (C) Deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, sex, age, blindness, or disability;

(3) For any labor organization because of race, religion, color, national origin, ancestry, sex, age, blindness, or disability of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individual with respect to hire, tenure, terms, conditions, or privileges of employment or any other matter, directly or indirectly, related to employment;

(4) For an employer, labor organization, employment agency, or any joint labor-management committee controlling apprentice training programs to:

(A) Select individuals for an apprentice training program registered with the State of West Virginia on any basis other than their qualifications as determined by objective criteria which permit review;

(B) Discriminate against any individual with respect to his or her right to be admitted to or

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participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program;

(C) Discriminate against any individual in his or her pursuit of such programs or to discriminate against such a person in the terms, conditions, or privileges of such programs;

(D) Print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for these programs or to make any inquiry in connection with a program which expresses, directly or indirectly, discrimination or any intent to discriminate unless based upon a bona fide occupational qualification;

(5) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his or her race, religion, color, national origin, ancestry, sex, age, blindness, or disability;

(6) For any person being the owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodations to:

(A) Refuse, withhold from, or deny to any individual because of his or her race, religion, color, national origin, ancestry, sex, age, blindness, or disability, either directly or indirectly, any of the accommodations, advantages, facilities, privileges, or services of the place of public accommodations;

(B) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges, or services of any such place shall be refused, withheld from, or denied to any individual on account of race, religion, color, national origin, ancestry, sex, age, blindness, or disability, or that the patronage or custom thereat of any individual, belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex, or age, or who is blind or disabled, is unwelcome, objectionable, not acceptable, undesired, or not solicited; or

(7) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman, or financial institution to:

(A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass, or cause physical harm or economic loss or to aid, abet, incite, compel, or coerce any person to engage in any of the unlawful discriminatory practices defined in this section;

(B) Willfully obstruct or prevent any person from complying with the provisions of this article, or to resist, prevent, impede, or interfere with the commission or any of its members or representatives in the performance of a duty under this article; or

(C) Engage in any form of reprisal or otherwise discriminate against any person because he or she has opposed any practices or acts forbidden under this article or because he or she

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has filed a complaint, testified, or assisted in any proceeding under this article.

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§16B-17-9a. Veterans and military spouses preference not a violation of equal employment opportunity under certain circumstances.

(a) An employer may grant preference in hiring to a veteran or disabled veteran who has been honorably discharged from the United States Armed Services, or to a military spouse, provided that the person granted the hiring preference meets all of the knowledge, skills, and eligibility requirements of the job to be filled. Such hiring preference may be granted without violating the provisions of this article or any other state equal employment opportunity law.

(b) For purposes of this section:

(1) "Veteran" means any person who has received an honorable discharge and:

(A) Has provided more than 180 consecutive days of full-time, active-duty service in the United States Armed Services or Reserve components thereof, including the National Guard; or

(B) Has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

(2) "Military spouse" means the husband or wife of a member of the Armed Forces who, as determined by the United States Secretary of Defense, is performing active duty pursuant to orders that authorize a permanent change of station move, if such husband or wife relocates to the member's new permanent duty station.

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§16B-17-10. Discriminatory practices; investigations, hearings, procedures and orders.

Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice shall make, sign and file with the commission a verified complaint, which shall state the name and address of the person, employer, labor organization, employment agency, owner, real estate broker, real estate salesman or financial institution alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission's rules and regulations. The commission upon its own initiative, or the Attorney General, shall, in like manner, make, sign and file such complaint. Any employer, whose employees, or some of them, hinder or threaten to hinder compliance with the provisions of this article, shall file with the commission a verified complaint, asking for assistance by conciliation or other remedial action and, during such period of conciliation or other remedial action, no hearings, orders or other actions shall be held, made or taken by the commission against such employer. Any complaint filed pursuant to this article must be filed within 365 days after the alleged act of discrimination.

After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the commission shall make a prompt investigation in connection therewith.

If it shall be determined after such investigation that no probable cause exists for substantiating the allegations of the complaint, the commission shall, within 10 days from such determination, cause to be issued and served upon the complainant written notice of such determination, and the said complainant or his or her attorney may, within 10 days after such service, file with the commission a written request for a meeting with the commission to show probable cause for substantiating the allegations of the complaint. If it shall be determined after such investigation or meeting that probable cause exists for substantiating the allegations of the complaint, the commission shall immediately endeavor to eliminate the unlawful discriminatory practices complained of by conference, conciliation and persuasion. The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors: *Provided,* That the commission may publish the facts in the case of any complaint which has been dismissed, and the terms of conciliation when the complaint has been adjusted, without disclosing the identity of the parties involved.

In case of failure so to eliminate such practice or in advance thereof, if in the judgment of the commission circumstances so warrant, the commission shall cause to be issued and served a written notice, together with a copy of such complaint as the same may have been amended, in the manner provided by law for the service of summons in civil actions, requiring the person, employer, labor organization, employment agency, owner, real estate broker, real estate salesman or financial institution named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before the commission in the county where the respondent resides or transacts business at a time and

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place to be specified in such notice: *Provided,* That said written notice be served at least 30 days prior to the time set for the hearing.

The case in support of the complaint shall be presented before the commission by one of its attorneys or agents. The respondent may file a written, verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony and evidence. Except as provided in this article, all of the pertinent provisions of §29A-5-1 *et seq*. of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extensor in this section.

If, after such hearing and consideration of all of the testimony, evidence and record in the case, the commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this article, the commission shall issue and cause to be served on such respondent an order to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, or the admission to full and equal enjoyment of the services, goods, facilities, or accommodations offered by any respondent place of public accommodation, and the sale, purchase, lease, rental or financial assistance to any complainant otherwise qualified for the housing accommodation or real property, denied in violation of this article, as in the judgment of the commission, will effectuate the purposes of this article, and including a requirement for report of the manner of compliance. Such order shall be accompanied by findings of fact and conclusions of law as specified in §29A-5-3 of this code.

If, after such hearing and consideration of all of the testimony, evidence and record in the case, the commission shall find that a respondent has not engaged in such unlawful discriminatory practice, the commission shall state its findings of fact and conclusions of law as aforesaid and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent.

A copy of its order shall be delivered in all cases by the commission to the complainant, the respondent, the Attorney General and to such other public officers as the commission may deem proper. Any such order shall not be enforceable except as provided in §16B-17-11 of this code.

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§16B-17-11. Appeal and enforcement of commission orders.

(a) From any final order of the commission, an application for review may be prosecuted by either party to the Supreme Court of Appeals within thirty days from the receipt thereof by the filing of a petition therefor to such court against the commission and the adverse party as respondents, and the clerk of such court shall notify each of the respondents and the commission of the filing of such petition. The commission shall, within ten days after receipt of such notice, file with the clerk of the court the record of the proceedings had before it, including all the evidence. The court or any judge thereof in vacation may thereupon determine whether or not a review shall be granted. And if granted to a nonresident of this state, he or she shall be required to execute and file with the clerk before such order or review shall become effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may be awarded against him or her thereon. The commission may certify to the court and request its decision of any question of law arising upon the record, and withhold its further proceeding in the case, pending the decision of court on the certified question, or until notice that the court has declined to docket the same. If a review be granted or the certified question be docketed for hearing, the clerk shall notify the board and the parties litigant or their attorneys and the commission of the fact by mail. If a review be granted or the certified question docketed, the case shall be heard by the court in the manner provided for other cases: *Provided,* That in the following cases the appellant may prosecute the appeal in the circuit court of Kanawha County pursuant to section four, §29A-5-1 *et seq*. of this code: (1) Cases in which the commission awards damages other than back pay exceeding $5,000; (2) cases in which the commission awards back pay exceeding $30,000; and (3) cases in which the parties agree that the appeal should be prosecuted in circuit court. In such cases the appellee shall respond within thirty days of filing and the court shall make a determination within the following 30 days: *Provided, however,* That appeals filed erroneously in the circuit court after April 1, 1987, and prior to July 1, 1989, may be prosecuted in the Supreme Court of Appeals without regard to the time limits specified herein: *Provided further,* That any party adversely affected by the final judgment of the circuit court of Kanawha County may seek review thereof by appeal to the Supreme Court of Appeals pursuant to §29A-6-1 of this code filed within 30 days of entry of the final order of the circuit court.

The appeal procedure contained in this subsection shall be the exclusive means of review, notwithstanding the provisions of chapter twenty-nine-a of this code: *Provided,* That such exclusive means of review shall not apply to any case wherein an appeal or a petition for enforcement of a cease and desist order has been filed with a circuit court of this state prior to April 1, 1987.

(b) In the event that any person shall fail to obey a final order of the commission within thirty days after receipt of the same, or, if applicable, within thirty days after a final order of the circuit court or the Supreme Court of Appeals, a party or the commission may seek an order from the circuit court for its enforcement. Such proceedings shall be initiated by filing of a petition in said court, and served upon the respondent in the manner provided by law for the service of summons in civil actions; a hearing shall be held on such petition within 60

days of the date of service. The court may grant appropriate temporary relief, and shall make and enter upon the pleadings, testimony, and proceedings such order as is necessary to enforce the order of the commission or Supreme Court of Appeals.

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§16B-17-12. Local human relations commissions.

(a) The legislative body of a political subdivision may, by ordinance or resolution, authorize the establishment or membership in and support of a local human relations commission. The number and qualifications of the members of any local commission and their terms and method of appointment or removal shall be such as may be determined and agreed upon by the legislative body, except that no such member shall hold office in any political party.

(b) The legislative body of any political subdivision shall have the authority to appropriate funds, in such amounts as may be deemed necessary, for the purpose of contributing to the operation of a local commission.

(c) The local commission shall have the power to appoint such employees and staff, as it may deem necessary, to fulfill its purpose.

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§16B-17-13. Exclusiveness of remedy; exceptions.

(a) Except as provided in subsection (b), nothing contained in this article shall be deemed to repeal or supersede any of the provisions of any existing or hereafter adopted municipal ordinance, municipal charter or of any law of this state relating to discrimination because of race, religion, color, national origin, ancestry, sex, age, blindness or disability, but as to acts declared unlawful by §16B-17-9 of this article the procedure herein provided shall, when invoked, be exclusive and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the complainant concerned. If such complainant institutes any action based on such grievance without resorting to the procedure provided in this article, he or she may not subsequently resort to the procedure herein. In the event of a conflict between the interpretation of a provision of this article and the interpretation of a similar provision contained in any municipal ordinance authorized by charter, the interpretation of the provision in this article shall apply to such municipal ordinance.

(b) Notwithstanding the provisions of subsection (a) of this section, a complainant may institute an action against a respondent in the county wherein the respondent resides or transacts business at any time within 90 days after the complainant is given notice of a right to sue pursuant to this subsection or, if the statute of limitations on the claim has not expired at the end of such 90-day period, then at any time during which such statute of limitations has not expired. If a suit is filed under this section, the proceedings pending before the commission shall be deemed concluded.

The commission shall give a complainant who has filed a complaint a notice of a right to sue upon: (1) The dismissal of the complaint for any reason other than an adjudication of the merits of the case; or (2) the request of a complainant at any time after the timely filing of the complaint in any case which has not been determined on its merits or has not resulted in a conciliation agreement to which the complainant is a party. Upon the issuance of a right to sue letter pursuant to subdivision (1) or (2), the commission may dismiss the complaint.

Notice of right to sue shall be given immediately upon complainant being entitled thereto, by personal service or certified mail, return receipt requested, which notice shall inform the complainant in plain terms of his or her right to institute a civil action as provided in this section within ninety days of the giving of such notice. Service of the notice shall be complete upon mailing.

(c) In any action filed under this section, if the court finds that the respondent has engaged in or is engaging in an unlawful discriminatory practice charged in the complaint, the court shall enjoin the respondent from engaging in such unlawful discriminatory practice and order affirmative action which may include, but is not limited to, reinstatement or hiring of employees, granting of back pay or any other legal or equitable relief as the court deems appropriate. In actions brought under this section, the court in its discretion may award all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, to the complainant.

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(d) The provisions of this section shall be available to all complainants whose active cases are pending before the Human Rights Commission as well as those complainants who file after the effective date of this section.

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§16B-17-14. Penalty.

Any person who shall willfully resist, prevent, impede or interfere with the commission, its members, agents or agencies in the performance of duties pursuant to this article, or shall willfully violate a final order of the commission, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment not exceeding 30 days, or by both such fine and imprisonment, in the discretion of the court, but seeking judicial review of an order shall not be deemed to be such willful conduct.

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§16B-17-15. Construction; severability.

The provisions of this article shall be liberally construed to accomplish its objectives and purposes. If any provision of this article be held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect or invalidate the other provisions hereof, all of which are declared and shall be construed to be separate and severable.

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§16B-17-16. Certain records exempt.

Notwithstanding any other provisions of this article, it shall not be an unlawful discriminatory practice for the Bureau of Employment Programs to ascertain and record the age, sex, race, religion, color, national origin, ancestry, blindness or disability of any individual for the purpose of making such reports as may from time to time be required by agencies of the federal government or be necessary to show compliance with any rule or regulation issued by any such agency. Said records may be made and kept in the manner required by the federal government: *Provided,* That such recording of the age, sex, race, religion, color, national origin, ancestry, blindness or disability of any individual shall not be used to discriminate, within the meaning of this article, directly or indirectly, against any such individual as prohibited by all other sections of this article.

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§16B-17-17. Posting of law and information.

Every employer, labor organization, employment agency and person operating a place of public accommodations, as defined herein, subject to this article, shall keep posted in a conspicuous place or places on his or her premises a notice or notices to be prepared or approved by the commission, which shall set forth excerpts of this article and such other relevant information which the commission shall deem necessary.

WV Legislature

§16B-17-18. Injunctions in certain housing complaints.

When it appears that a housing unit or units described in a complaint may be sold, rented or otherwise disposed of before a determination of the complaint or case has been made by the commission or during judicial review of any final order of the commission, the circuit court of the county in which such housing unit or units are located may, upon the joint petition of the commission and the complainant, or if there be more than one complainant, all such complainants, issue a prohibitive injunction restraining the sale, rental or other disposition of such housing unit or units except in compliance with the order of the court. No such injunction shall be issued by the court until the complainant or complainants shall have posted bond, with good security therefor, in such penalty as the court or judge awarding it may direct. The court may include in any such injunction granted such other conditions as it deems proper and just. Such injunction, if granted, shall be of no more than 30 days duration. If at the end of such 30-day period the commission notifies the court that additional time is needed for the disposal or determination of the complaint or case or the conclusion of such judicial review, the court, for good cause shown, may extend the period of the injunction for such additional time as the court deems proper. No such extension shall be granted except upon the continuation or reposting of the bond required for the original injunction and any such extension of the injunction may be granted upon such additional terms and conditions as to the court seem proper and just.

WV Legislature

§16B-17-19. Private club exemption.

Nothing in this article shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or guests of members or from giving preference to its members or guests of members: *Provided,* That this exemption shall not apply to any private club not in fact open to the public which owns or operates residential subdivisions providing lodgings for rental, occupancy or sale, or which provides real estate for sale for the construction of single or multiunit dwellings.

WV Legislature

§16B-17-20. Violations of human rights; civil action by attorney general.

(a) A person has the right to engage in lawful activities without being subject to actual or threatened:

(1) Physical force or violence against him or her or any other person, or

(2) Damage to, destruction of or trespass on property,

any of which is motivated by race, color, religion, sex, ancestry, national origin, political affiliation or disability.

(b) Whenever any person, whether or not acting under the color of law, intentionally interferes or attempts to interfere with another person's exercise or enjoyment of rights secured by this article or §16B-18-1 *et seq*. of this code, by actual or threatened physical force or violence against that person or any other person, or by actual or threatened damage to, destruction of or trespass on property, the Attorney General may bring a civil action:

(1) For injunctive or other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the rights secured, or

(2) For civil penalties as specified in subsection (c) of this section, or

(3) For both equitable relief and civil penalties.

This action must be brought in the name of the state and instituted in the circuit court for the county where the alleged violator resides or has a principal place of business or where the alleged violation occurred.

(c) A civil penalty of not more than $5,000 per violation may be assessed against any person violating this section.

(d) Each preliminary, temporary, or permanent injunction issued under this section must include a statement describing the penalties to be imposed for a knowing violation of the order or injunction as provided in subsection (e) of this section. The clerk of the circuit court shall transmit one certified copy of each order or injunction issued under this section to the appropriate law-enforcement agency or agencies having authority over locations where the defendant was alleged to have committed the act giving rise to the action, and service of the order or injunction must be accomplished pursuant to the West Virginia rules of civil procedure.

(e) A person who knowingly violates a preliminary, temporary or permanent injunction issued under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned in the county or regional jail not more than one year, or both fined and imprisoned.

WV Legislature

§16B-18-1. Short title.

This article may be cited as the "West Virginia Fair Housing Act."

WV Legislature

§16B-18-2. Declaration of policy.

It is the policy of the State of West Virginia to provide, within Constitutional limitations, for fair housing throughout the state.

WV Legislature

§16B-18-3. Definitions.

As used in this article:

(a) "Commission" means the West Virginia Human Rights Commission;

(b) "Dwelling" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence or sleeping place by one or more persons or families and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof;

(c) "Family" includes a single individual;

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers and fiduciaries;

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant;

(f) "Discriminatory housing practice" means an act that is unlawful under §16B-18-5, §16B-18-6, §16B-18-7, or §16B-18-19 of this article;

(g) "Disability" means, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of the person's major life activities;

(2) A record of having such an impairment; or

(3) Being regarded as having such an impairment, but the term does not include current, illegal use of or addiction to a controlled substance, as defined in Section 102 of the Controlled Substances Act, Title 21, United States Code, Section 802;

(h) "Aggrieved person" includes any person who:

(1) Claims to have been injured by a discriminatory housing practice; or

(2) Believes that the person will be injured by a discriminatory housing practice that is about to occur;

(i) "Complainant" means the person, including the commission, who files a complaint under §16B-18-11;

(j) "Familial status" means:

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(1) One or more individuals who have not attained the age of 18 years being domiciled with:

(A) A parent or another person having legal custody of the individual or individuals; or

(B) The designee of the parent or other person having custody of the individual with the written permission of the parent or other person; or

(2) Any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years;

(k) "Conciliation" means the attempted resolution of issues raised by a complaint or by the investigation of the complaint through informal negotiations involving the aggrieved person, the respondent and the commission;

(l) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation;

(m) "Respondent" means:

(1) The person or other entity accused in a complaint of an unfair housing practice; and

(2) Any other person or entity identified in the course of investigation and notified as required with respect to respondents identified under §16B-18-11(a);

(n) The term "rooming house" means a house or building where there are one or more bedrooms which the proprietor can spare for the purpose of giving lodgings to persons he or she chooses to receive; and

(o) The term "basic universal design" means the design of products and environments to be useable by all people, to the greatest extent possible, without the need for adaptation or specialization.

(p) "Assistance animal" means any service, therapy or support animal, weighing less than 150 pounds, with or without specific training or certification, that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviate one or more identified symptoms or effects of a person's disability.

WV Legislature

§16B-18-3a. Volunteer services or materials to build or install basic universal design features; workers, contractors, engineers, and architects; immunity from civil liability.

Any person, including a worker, contractor, engineer or architect, who in good faith provides services or materials, without remuneration, to build or install basic universal design features as set forth in §30-42-10 of this code may not be liable for any civil damages as the result of any act or omission in providing such services or materials: *Provided*, That the basic universal design feature or features shall be built or constructed in accordance with applicable state and federal laws and applicable building codes.

WV Legislature

§16B-18-4. Application of article.

(a) The prohibitions against discrimination in the sale or rental of housing set forth in §16B-18-5 of this code shall apply to all dwellings except as hereinafter exempted. Nothing in section five of this article, other than subsection (b) of this section, shall apply to the rental of a room or rooms in a rooming house occupied by the owner as a place of residence and containing no more than four rented rooms or rooms to be rented. Solely for the purposes of familial status, nothing in section five shall apply to:

(1) Any single-family house sold or rented by an owner: *Provided,* That such private individual owner does not own more than three such single-family houses at any one time: *Provided, however,* That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any 24 month period: *Provided further,* That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his or her behalf under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such single-family houses at any one time: *And provided further,* That the sale or rental of any such single-family house shall be excepted from the application of this article only if such house is sold or rented:

(A) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman or person; and

(B) Without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of subsection (c), §16B-18-5 of this code; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other such professional assistance as necessary to perfect or transfer the title; or

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(b) For the purposes of subsection (a) of this section, a person shall be deemed to be in the business of selling or renting dwellings if:

(1) The person has within the preceding 12 months participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(2) The person has within the preceding 12 months participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any

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interest therein; or

(3) The person is the owner of any dwelling designed or intended for occupancy by or occupied by five or more families.

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§16B-18-5. Discrimination in sale or rental of housing and other prohibited practices.

As made applicable by section four of this article and except as exempted by §16B-18-4 and §16B-18-8 of this code, it is unlawful:

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, ancestry, sex, familial status, blindness, disability or national origin;

(b) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, ancestry, sex, familial status, blindness, disability or national origin;

(c) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, blindness, disability, familial status, ancestry or national origin, or an intention to make any such preference, limitation or discrimination;

(d) To represent to any person because of race, color, religion, sex, blindness, disability, familial status, ancestry or national origin that any dwelling is not available for inspection, sale or rental when the dwelling is in fact available;

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, blindness, disability, familial status, ancestry or national origin; or

(f) (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of: (A) That buyer or renter; (B) a person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or (C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a disability of: (A) That person; (B) a person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or (C) any person associated with that person.

(3) For purposes of this subdivision, discrimination includes:

(A) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises, except that, in the case of a

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rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(B) A refusal to make reasonable accommodations in rules, policies, practices or services when the accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling; or

(C) In connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is thirty months after the date of enactment of the West Virginia Fair Housing Act, a failure to design and construct those dwellings in a manner that:

(i) The public use and common use portions of the dwellings are readily accessible to and usable by disabled persons;

(ii) All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and

(iii) All premises within the dwellings contain the following features of adaptive design: (I) An accessible route into and through the dwelling; (II) light switches, electrical outlets, thermostats and other environmental controls in accessible locations; (III) reinforcements in bathroom walls to allow later installation of grab bars; and (IV) usable kitchens and bathrooms that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the *American National Standard for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People*, commonly cited as ANSI A117.1, suffices to satisfy the requirements of subparagraph (3)(C)(iii) of this subdivision.

(5) (A) If a unit of general local government has incorporated into its laws the requirements set forth in subparagraph (3)(C) of this subdivision, compliance with those laws satisfy the requirements of that subparagraph.

(B) The commission or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of subparagraph (3)(C) of this subdivision are met.

(C) The commission shall encourage, but may not require, units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with subparagraph (3)(C) of this subdivision, and may provide technical assistance to units of local government and other persons to implement the requirements of that subparagraph.

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(D) Nothing in this article requires the commission to review or approve the plans, designs or construction of all covered multifamily dwellings to determine whether the design and construction of the dwellings are consistent with the requirements of subparagraph (3)(C) of this subdivision.

(6) (A) Nothing in paragraph (5) of this subdivision affects the authority and responsibility of the commission or a local public agency to receive and process complaints or otherwise engage in enforcement activities under this article.

(B) Determinations by a unit of general local government under subparagraphs (5)(A) and (B) of this subdivision are not conclusive in enforcement proceedings under this article.

(7) As used in this section, the term "covered multifamily dwellings" means: (A) Buildings consisting of four or more units if the buildings have one or more elevators; and (B) ground floor units in other buildings consisting of four or more units.

(8) Nothing in this article invalidates or limits any law of this state or any political subdivision of this state that requires dwellings to be designed and constructed in a manner that affords disabled persons greater access than is required by this article.

(9) This section does not require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. The burden of proving such threat to health or safety or the likelihood of such damage is upon the respondent.

(10) For the purposes of this subdivision, rules, policies, practices, or services regarding animals are subject to the reasonable accommodation requirements of subparagaph (B), paragraph (3) of this subdivision and the following provisions:

(A) In connection with a request for reasonable accommodation to the rules, policies or services, a person with a disability may be required to submit documentation, from a professional treatment provider, of the disability related need for the assistance animal.

(i) Such documentation is sufficient if it establishes that the assistance animal will provide some type of disability-related assistance or emotional support.

(ii) A person with a disability may not be required to submit or provide access to medical records or medical providers, or to provide detailed or extensive information or documentation of a person's physical or mental impairments.

(B) A person with a disability may be denied the accommodation of an assistance animal if there is credible evidence that:

(i) The assistance animal poses a direct threat to the health or safety of others that cannot be eliminated by another reasonable accommodation; or

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(ii) The assistance animal would cause substantial physical damage to the property of other that cannot be reduced or eliminated by another reasonable accommodation.

(C) A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct.

(D) A request for a reasonable accommodation may not be unreasonably denied, conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed.

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§16B-18-6. Discrimination in residential real estate-related transactions.

(a) It is unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction or in the terms or conditions of such a transaction because of race, color, religion, sex, blindness, disability, familial status, ancestry or national origin.

(b) As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance: (A) For purchasing, constructing, improving, repairing or maintaining a dwelling; or (B) secured by residential real estate; or

(2) The selling, brokering or appraising of residential real property.

(c) Nothing in this article prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, ancestry, sex, blindness, disability, or familial status.

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§16B-18-7. Discrimination in provision of brokerage services.

It is unlawful to deny any person access to or membership or participation in any multiple listing service, real estate broker's organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership, or participation on account of race, color, religion, sex, blindness, disability, familial status, ancestry or national origin.

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§16B-18-8. Religious organization or private club exemption.

(a) Nothing in this article shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color or national origin. Nor shall anything in this article prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b) (1) Nothing in this article limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this article regarding familial status apply with respect to housing for older persons.

(2) As used in this section, "housing for older persons" means housing:

(A) Provided under any state or federal program that the secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program; or

(B) Intended for, and solely occupied by, persons 62 years of age or older; or

(C) Intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the commission shall develop regulations which require at least the following factors: (i) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; (ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and (iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of: (A) Persons residing in such housing as of the date of enactment of this article who do not meet the age requirements of subdivision (2)(B) or (C) of this subsection: *Provided,* That new occupants of such housing meet the age requirements of such subdivisions; or (B) unoccupied units: *Provided, however,* That such units are reserved for occupancy by persons who meet the age requirements of subdivision (2)(B) or (C) of this subsection.

(4) Nothing in this article prohibits conduct against a person because such person has been

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convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Controlled Substances Act, Title 21, United States Code, Section 802.

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§16B-18-9. Administration; authority and responsibility; delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review; cooperation of the commission and executive departments and agencies to further fair housing purposes; functions of the commission.

The authority and responsibility for administering this article shall be in the West Virginia Human Rights Commission.

The commission may delegate any of its functions, duties and powers to employees of the Human Rights Commission, including functions, duties and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business or matter under this article. The person to whom such delegations are made with respect to hearing functions, duties and powers shall be a licensed attorney. Insofar as possible, conciliation meetings shall be held in the county where the discriminatory housing practices allegedly occurred. The commission shall by rule prescribe such rights of appeal from the decisions of its administrative law judges to other administrative law judges or to other officers in the commission, to boards of officers or to itself, as shall be appropriate and in accordance with law.

All executive departments and agencies shall administer their programs and activities relating to housing, including any agency having regulatory or supervisory authority over financial institutions, in a manner affirmatively to further the purposes of this article and shall cooperate with the commission to further such purposes.

The commission may:

(1) Make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban and rural, throughout the state;

(2) Publish and disseminate reports, recommendations and information derived from such studies, including reports to the Legislature specifying the nature and extent of progress made statewide in eliminating discriminatory housing practices and furthering the purposes of this article, obstacles remaining to achieving equal housing opportunity and recommendations for further legislative or executive action;

(3) Cooperate with and execute such cooperative agreements with federal agencies as are necessary to carry out the provisions of this article; and

(4) Administer the programs and activities relating to fair housing in a manner affirmatively to further the policies of this article.

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§16B-18-10. Education and conciliation; conferences and consultations; reports.

Immediately upon the effective date of this article, the commission shall commence such educational and conciliatory activities as in its judgment will further the purposes of this article. It may call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this article and its suggested means of implementing it, and may endeavor with their advice to work out programs of voluntary compliance and of enforcement. It may pay per diem, travel and transportation expenses for persons attending such conferences as permitted by law. It may consult with local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their locality, and whether and how local enforcement programs might be utilized to combat such discrimination in connection with the commission's enforcement of this article. The commission shall issue reports on such conferences and consultations as it deems appropriate.

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§16B-18-11. Administrative enforcement; preliminary matters; complaints and answers; service; conciliation; injunctions; reasonable cause determinations; issuance of charge.

(a) (1) (A) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the commission alleging a discriminatory housing practice. The commission, on the commission's own initiative, may also file such a complaint. Such complaint shall be in writing and shall contain such information and be in such form as the commission requires. The commission may also investigate housing practices to determine whether a complaint should be brought under this section.

(B) Upon the filing of such complaint: (i) The commission shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this article; (ii) the commission shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2) of this subsection, serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this article, together with a copy of the original complaint; (iii) each respondent may file, not later than ten days after receipt of notice from the commission, an answer to such complaint; and (iv) unless it is impracticable to do so, the commission shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint.

(C) If the commission is unable to complete the investigation within 100 days after the filing of the complaint, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(D) Complaints and answers shall be under oath or affirmation and may be reasonably and fairly amended at any time.

(2) (A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1) of this subsection, to such person, from the commission.

(B) Such notice, in addition to meeting the requirements of paragraph (1) of this subsection, shall explain the basis for the commission's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) (1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the commission, the commission shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between

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the respondent and the complainant and shall be subject to approval by the commission.

(3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this article.

(5) (A) At the end of each investigation under this section, the commission shall prepare a final investigative report containing: (i) The names and dates of contacts with witnesses; (ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent; (iii) a summary description of other pertinent records; (iv) a summary of witness statements; and (v) answers to interrogatories.

(B) A final report under this paragraph may be amended if additional evidence is later discovered.

(c) Whenever the commission has reasonable cause to believe that a respondent has breached a conciliation agreement, the commission shall refer the matter to the Attorney General with a recommendation that a civil action be filed under §16B-18-15 of this code for the enforcement of such agreement.

(d) Nothing said or done in the course of conciliation under this article may be made public or used as evidence in a subsequent proceeding under this article without the written consent of the persons concerned, except the commission shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the commission's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) (1) If the commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this article, the commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary injunction or other order granting preliminary or temporary relief shall be issued in accordance with the West Virginia rules of civil procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and §16B-18-13 of this code.

(2) Whenever the commission has reason to believe that a basis may exist for the commencement of proceedings against any respondent under subsections (a) and (b), §16B-18-15 of this code or for proceedings by any governmental licensing or supervisory authorities, the commission shall transmit the information upon which such belief is based to

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the Attorney General, or to such authorities, as the case may be.

(f) (1) The commission shall within 100 days after the filing of the complaint determine, based on the facts, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the commission has approved a conciliation agreement with respect to the complaint. If the commission is unable to make the determination within 100 days after the filing of the complaint, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(2) (A) If the commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section thirteen of this article.

(B) Such charge: (i) Shall consist of a short and plain statement of the facts upon which the commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur; (ii) shall be based on the final investigative report; and (iii) need not be limited to the facts or grounds alleged in the complaint filed under subsection (a) of this section.

(C) If the commission determines that the matter involves the legality of any state or local zoning or other land use law or ordinance, the commission shall immediately refer the matter to the Attorney General for appropriate action under section fifteen of this article, instead of issuing such charge.

(3) If the commission determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall promptly dismiss the complaint. The commission shall make public disclosure of each such dismissal.

(4) The commission may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an act of Congress or a state law seeking relief with respect to that discriminatory housing practice.

(g) After the commission issues a charge under this section, the commission shall cause a copy thereof, together with information as to how to make an election under subsection (a), §16B-18-13 of this code and the effect of such an election, to be served: (1) On each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and (2) on each aggrieved person on whose behalf the complaint was filed.

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§16B-18-12. Subpoenas; giving of evidence; witness fees; enforcement of subpoenas.

The commission may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this article. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the circuit courts of this state.

Witnesses summoned by a subpoena under this article shall be entitled to the same witness and mileage fees as witnesses in proceedings in the circuit courts of this state. Fees payable to a witness summoned by a subpoena shall be paid by the commission, the complainant or the respondent in accordance with §29A-5-1 *et seq*. of this code.

Enforcement of subpoenas may be had in the circuit courts of this state as set out in §29A-5-1 *et seq*. of this code.

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§16B-18-13. Election of remedies; administrative hearings and discovery; exclusivity of remedies; final orders; review by commission; judicial review; remedies; attorney fees.

(a) When a charge is filed under §16B-18-11 of this code a complainant, a respondent or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (o) of this section in lieu of a hearing under subsection (b) of this section. The election must be made not later than 20 days after the receipt by the electing person of service under section eleven of this article or, in the case of the commission, not later than 20 days after such service. The person making such election shall give notice of doing so to the commission and to all other complainants and respondents to whom the charge relates.

(b) If an election is not made under subsection (a) of this section with respect to a charge filed under section eleven of this article, the commission shall provide an opportunity for a hearing on the record with respect to a charge issued under said section. The commission shall delegate the conduct of a hearing under this section to an administrative law judge who shall be a licensed attorney. The administrative law judge shall conduct the hearing at a place in the county in which the discriminatory housing practice is alleged to have occurred or is about to occur.

(c) At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses and obtain the issuance of subpoenas under §16B-18-12 of this code. Any aggrieved person may intervene as a party in the proceeding. The rules of evidence apply to the presentation of evidence in such hearing as they would in a civil action in the circuit courts of this state. The case in support of the complaint shall be presented before the administrative law judge by the Attorney General.

(d) (1) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(3) The commission shall, not later than 180 days after the date of enactment of this subsection, issue rules to implement this subsection.

(e) Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

(f) An administrative law judge may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an act of Congress or a state law

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seeking relief with respect to that discriminatory housing practice.

(g) (1) The administrative law judge shall commence the hearing under this section no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the charge, the administrative law judge shall notify the commission, the aggrieved person on whose behalf the charge was filed and the respondent in writing of the reasons for not doing so.

(2) The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the commission, the aggrieved person on whose behalf the charge was filed and the respondent in writing of the reasons for not doing so.

(3) If the administrative law judge finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent: (A) In an amount not exceeding $10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice; (B) in an amount not exceeding $25,000 if the respondent has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of this charge; and (C) in an amount not exceeding $50,000 if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of this charge; except that if the acts constituting the discriminatory housing practice that are the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs (B) and (C) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer or tenant without actual notice of the charge filed under this article.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, not later than thirty days after the date of the issuance of such order or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review: (A) Send copies of the findings of fact, conclusions of law and the order to that governmental agency; and (B) recommend to that governmental agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license

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of the respondent.

(6) In the case of an order against a respondent against whom another order was issued within the preceding five years under this section, the commission shall send a copy of each such order to the Attorney General.

(7) If the administrative law judge finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such administrative law judge shall enter an order dismissing the charge. The commission shall make public disclosure of each such dismissal.

(h) (1) The commission may review any finding, conclusion or order issued under subsection (g) of this section. Such review shall be completed not later than 30 days after the finding, conclusion or order is so issued; otherwise the finding, conclusion or order becomes final.

(2) The commission shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

(i) (1) Any party aggrieved by a final order for relief under this section granting or denying, in whole or in part, the relief sought may obtain a review of such order under §29A-5-4 of this code.

(2) Notwithstanding §29A-1-1 *et seq*. of this code, venue of the proceeding shall be in the judicial circuit in which the discriminatory housing practice is alleged to have occurred and filing of the petition for review shall be not later than 30 days after the order is entered.

(j) (1) The commission may petition the circuit court in the circuit in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the administrative law judge and for appropriate temporary relief or injunctive relief by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or injunctive relief.

(2) The commission shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the administrative law judge.

(k) (1) Upon the filing of a petition under subsection (i) or (j) of this section, the court may:

(A) Grant to the petitioner, or any other party, such temporary relief, injunction or other order as the court deems just and proper;

(B) Affirm the order or decision of the administrative law judge or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the administrative law judge if the substantial rights of the parties have been prejudiced

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because the administrative findings, inferences, conclusions, decision or order are: (i) In violation of Constitutional or statutory provisions; or (ii) in excess of the statutory authority or jurisdiction of the commission; or (iii) made upon unlawful procedures; or (iv) affected by other error of law; or (v) clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; and

(C) Enforce such order to the extent that such order is affirmed or modified.

(2) Any party to the proceeding before the administrative law judge may intervene in the circuit court.

(3) No objection not made before the administrative law judge shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

(4) The judgment of the circuit court shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals of this state in accordance with the provisions of §29A-6-1 of this code.

(l) If no petition for review is filed under subsection (i) of this section before the expiration of 45 days after the date the administrative law judge's order is entered, the administrative law judge's findings of fact and order shall be conclusive in connection with any petition for enforcement: (1) Which is filed by the commission under subsection (j) of this section after the end of such day; or (2) under subsection (m) of this section.

(m) If before the expiration of 60 days after the date the administrative law judge's order is entered, no petition for review has been filed under subsection (i) of this section, and the commission has not sought enforcement of the order under subsection (j) of this section, any person entitled to relief under the order may petition for a decree enforcing the order in the circuit court for the circuit in which the discriminatory housing practice is alleged to have occurred.

(n) The judge of the circuit court in which a petition for enforcement is filed under subsection (l) or (m) of this section shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the commission, the respondent named in the petition and to any other parties to the proceeding before the administrative law judge. The judgment of the circuit court shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals pursuant to §29A-6-1 of this code.

(o) (1) If an election is made under subsection (a) of this section, the commission shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in the appropriate circuit court seeking relief under this subsection. Venue for such civil action shall be in the circuit court in the county in which the alleged discriminatory housing practice occurred.

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(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under §16B-18-12 of this code. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under said section shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(p) In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under section fourteen of this article, the administrative law judge or the court, as the case may be, in its discretion, may allow a prevailing complainant a reasonable attorney's fee and costs.

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§16B-18-14. Enforcement by private persons; civil actions; appointed attorneys; remedies; bona fide purchasers; intervention by Attorney General.

(a) (1) (A) An aggrieved person may commence a civil action in an appropriate circuit court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this article, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such two-year period shall not include any time during which an administrative proceeding under this article was pending with respect to a complaint or charge under this article based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under subsection (a), §16B-18-11 of this code and without regard to the status of any such complaint, but if the commission has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the commission if an administrative law judge has commenced a hearing on the record under this article with respect to such charge.

(b) Upon application by a person alleging a discriminatory housing practice, the court may: (1) Appoint an attorney for such person; or (2) authorize the commencement or continuation of a civil action under subsection (a) of this section without the payment of fees, costs or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c) (1) In a civil action under subsection (a) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the complainant actual and punitive damages, and subject to subsection (d) of this section, may grant as relief, as the court deems appropriate, any permanent or temporary injunction or other order, including an order enjoining the respondent from engaging in such practice or ordering such affirmative action as may be appropriate.

(2) In a civil action under subsection (a) of this section, the court, in its discretion, may allow a prevailing complainant a reasonable attorney's fee and costs.

(d) Relief granted under this section shall not affect any contract, sale, encumbrance or lease consummated before the granting of such relief and involving a bona fide purchaser,

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encumbrancer or tenant without actual notice of the filing of a complaint with the commission or civil action under this section.

(e) Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under subsection (d), §16B-18-15 of this code in a civil action to which such section applies.

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§16B-18-15. Enforcement by Attorney General; pattern or practice cases; subpoena enforcement; remedies; intervention.

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this article, or that any group of persons has been denied any of the rights granted by this article and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate circuit court.

(b) (1) The Attorney General may commence a civil action in any appropriate circuit court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the commission under subsection (f), §16B-18-11 of this code. A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2) The Attorney General may commence a civil action in any appropriate circuit court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the commission under subsection (c), §16B-18-12 of this code. A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under subsection (c), section eleven of this article.

(c) The Attorney General, on behalf of the commission or other party at whose request a subpoena is issued under this article, may enforce such subpoena in appropriate proceedings in the circuit court for the circuit in which the person to whom the subpoena was addressed resides, was served or transacts business.

(d) (1) In a civil action under subsection (a) or (b) of this section, the court:

(A) May award such preventive relief, including a permanent or temporary injunction or other order against the person responsible for a violation of this article as is necessary to assure the full enjoyment of the rights granted by this article;

(B) May award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(C) May, to vindicate the public interest, assess a civil penalty against the respondent: (i) In an amount not exceeding $50,000 for a first violation; and (ii) in an amount not exceeding $100,000 for any subsequent violation.

(2) In a civil action under this section, the court, in its discretion, may allow a prevailing complainant a reasonable attorney's fee and costs.

(e) Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) of this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such

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appropriate relief to any such intervening party as is authorized to be granted to a complainant in a civil action under section fourteen of this article.

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§16B-18-16. Interference, coercion, or intimidation; enforcement by civil action.

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section §16B-18-4 of this code, §16B-18-5 of this code, §16B-18-6, of this code or §16B-18-7 of this code of this article.

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§16B-18-17. Cooperation with local agencies administering fairhousing laws; utilization of services and personnel; reimbursement; written agreements; publication instate register.

The commission may cooperate with local agencies charged with the administration of local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, to the extent permitted by law, may reimburse such agencies and their employees for services rendered to assist it in carrying out this article. In furtherance of such cooperative efforts, the commission may enter into written agreements with such local agencies. All agreements and terminations thereof shall be published in the state register.

WV Legislature

§16B-18-18. Effect on other laws.

Nothing in this article shall be construed to invalidate or limit any law of this state or of any political subdivision of this state, that grants, guarantees or protects the same rights as are granted by this article; but any law of this state or any political subdivision hereof that purports to require or permit any action that would be a discriminatory housing practice under this article shall to that extent be invalid.

WV Legislature

§16B-18-19. Severability of provisions.

If any provision of this article or the application thereof to any person or circumstances is held invalid, the remainder of the article and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

WV Legislature

§16B-18-20. Rules to implement article.

In consultation with other appropriate agencies, the commission shall, not later than the one hundred eightieth day after the date of the enactment of this article, issue rules to implement it. Such rules may include provision for the collection, maintenance, and analysis of appropriate data to carry out this article. The commission shall comply with §29A-3-1 *et seq*. of this code when promulgating rules.

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§16B-19-1. Short title.

This article may be cited as the Pregnant Workers' Fairness Act.

WV Legislature

§16B-19-2. Nondiscrimination with regard to reasonable accommodations related to pregnancy.

It shall be an unlawful employment practice for a covered entity to:

(1) Not make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a job applicant or employee, following delivery by the applicant or employee of written documentation from the applicant's or employee's health care provider that specifies the applicant's or employee's limitations and suggesting what accommodations would address those limitations, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;

(2) Deny employment opportunities to a job applicant or employee, if such denial is based on the refusal of the covered entity to make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of an employee or applicant;

(3) Require a job applicant or employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation that such applicant or employee chooses not to accept; or

(4) Require an employee to take leave under any leave law or policy of the covered entity if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of an employee.

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§16B-19-3. Remedies and enforcement.

(a) The powers, procedures, and remedies provided in §16B-19-11 of this code to the Commission, the Attorney General, or any person, alleging a violation of the West Virginia Human Rights Act shall be the powers, procedures, and remedies this article provides to the Commission, the Attorney General, or any person, respectively, alleging an unlawful employment practice in violation of this article against an employee or job applicant.

(b) No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this article or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this article. The remedies and procedures otherwise provided for under this section shall be available to aggrieved individuals with respect to violations of this subsection.

WV Legislature

§16B-19-4. Rule-making.

Not later than two years after the date of enactment of this article, the Commission shall propose legislative rules in accordance with §29A-3-1 of this code, to carry out this article. Such rules shall identify some reasonable accommodations addressing known limitations related to pregnancy, childbirth, or related medical conditions that shall be provided to a job applicant or employee affected by such known limitations unless the covered entity can demonstrate that doing so would impose an undue hardship.

WV Legislature

§16B-19-5. Definitions.

As used in this article:

(1) "Attorney General" means the West Virginia Attorney General;

(2) "Commission" means the West Virginia Human Rights Commission;

(3) "Covered entity" has the meaning given the word employer in §16B-17-3 of this code;

(4) "Person" has the meaning given the word in section three, article eleven of this chapter; and

(5) "Reasonable accommodation" and "undue hardship" have the meanings given those terms in section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111) and shall be construed as such terms have been construed under such Act and as set forth in the rules required by this article.

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§16B-19-6. Reports.

The Commission shall on October 1 of each year report to the Joint Committee on Government and Finance on the number of complaints filed under this article during the previous year and their resolution. The report shall be transmitted to the members of the committee electronically. Further, the report shall be provided to the legislative librarian to be posted to the legislative website. No hard copy of the report shall be issued; however, a member shall be provided a hard copy upon request.

WV Legislature

§16B-19-7. Relationship to other laws.

Nothing in this article shall be construed to invalidate or limit the remedies, rights, and procedures that provides greater or equal protection for workers affected by pregnancy, childbirth, or related medical conditions.

WV Legislature

§16B-20-1. Definitions.

For the purpose of this article:

"Birthing center" means a type of facility which is a building, house or the equivalent organized to provide facilities and staff to support a birthing service for pregnant clients.

"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.

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

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§16B-20-2. Birthing centers to obtain license, application, fees, suspension, or revocation.

The Inspector General designates the director of the Office of Health Facilities Licensure and Certification to enforce the provisions of this article, except as otherwise stated.

No person, partnership, association, or corporation, or any local governmental unit or any division, department, board or agency thereof may operate a birthing center unless such operation shall have been approved and licensed by the director in accordance with the provisions of this article and the rules and regulations lawfully promulgated hereunder provided that all birthing centers which are in operation or which have received a certificate of need valid as of the date of passage of this act shall be deemed to have been so approved and shall be issued a license within 30 days of passage of this act.

Any person, partnership, association or corporation, or any local 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 of $10. Information received by the director under the provisions of this section shall be confidential. The director is authorized to issue licenses for the operation of birthing centers which are found to comply with the provisions of this article and with all rules and regulations promulgated by the Inspector General. The license issued shall not be transferred or assignable. 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 and regulations are violated.

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 institution concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

If a license is revoked as herein provided, a new application for a license shall be considered by the director 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 and regulations promulgated hereunder have been satisfied.

All of the pertinent provisions of §29A-5-1 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.

The West Virginia Intermediate Court of Appeals shall have the power to affirm, modify or reverse the decision of the Board of Review and either the applicant or licensee or the Office

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of Inspector General may appeal from the court's decision to the Supreme Court of Appeals. Pending the final disposition of the matter the status quo of the applicant or licensee shall be preserved.

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.

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§16B-20-3. Inspector General to establish rules and regulations; legislative findings; emergency filing.

The Inspector General shall promulgate rules and regulations not in conflict with any provision of this article, as he or she finds necessary in order to ensure adequate care and accommodations for consumers of birthing centers. In promulgating such regulations the Inspector General shall be limited to simple, necessary provisions which shall not have the effect of hampering the development and licensure of birthing centers. Such regulations shall not address acceptable site characteristics such as the number of minutes of travel time between a birthing center and a hospital, or physical environment, such as acceptable levels of temperature of any refrigerator found in a birthing center, or clinical equipment, such as the number and kind of clocks which a birthing center must have on the premises. Such regulations shall require that all birthing centers submit satisfactory evidence that the center has implemented the paternity program created pursuant to §16B-3-13 of this code along with any application for licensure.

The Legislature hereby finds and declares that it is in the public interest to encourage the development of birthing centers for the purpose of providing an alternative method of birth and therefore, in order to provide for the licensing of such birthing centers to prevent substantial harm to the public interest because of preexisting delay, within 60 days of passage of this article, the Inspector General shall proceed to promulgate such rules and regulations under the provisions of §29A-3-15 of this code.

WV Legislature

§16B-20-4. Insurance.

Not later than July 1, 1983, every policy or contract of individual accident and sickness insurance covered under the provision of §33-15-1 *et seq*. of this code, or policy or contract of group accident and sickness insurance covered under the provisions of §33-16-1 *et seq*. of this code, including, but not limited to, any subscriber contract issued by a corporation organized pursuant to §33-24-1 *et seq*. of this code , shall include benefits to all subscribers and members for birthing center service charges, and for care rendered therein by a licensed nurse midwife or midwife as this occupation is defined in §30-15-1 *et seq*. of this code, and which care is within the scope of duties for such licensed nurse midwife or midwife as permitted by the provisions of §30-15-7 of this code.

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§16B-20-5. Violations; penalties; injunction.

Any person, partnership, association or corporation, and any local governmental unit or any division, department, board, or agency thereof establishing, conducting, managing or operating a birthing center without first obtaining a license therefor as herein provided, or violating any provisions of this article or any rule or regulation lawfully promulgated thereunder, shall be 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 imprisonment in the county jail for a period of not more than 90 days, or by both such fine and imprisonment, in the discretion of the court. For each subsequent offense the fine may be increased to not more than $500, with imprisonment in the county jail for a period of not more than 90 days, or both such fine and imprisonment, in the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

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 local governmental unit, or any division, department, board or agency thereof, to restrain or prevent the establishment, conduct, management or operation of any birthing center without first obtaining a license therefor in the manner hereinbefore provided.

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§16B-21-1. Neonatal Abstinence Centers authorized; licensure required.

Neonatal abstinence centers are a distinct type of medical facility, providing unique medical services in the state. Neonatal abstinence centers may provide treatment for infants under one year of age suffering from Neonatal Abstinence Syndrome, including, but not limited to, the following services:

(1) Administration of medications;

(2) Pain management;

(3) Scoring, analysis and monitoring of symptoms;

(4) Nursing care;

(5) Plan of care;

(6) Therapeutic handling;

(7) Nutrition management;

(8) Doctor visits; and

(9) Parental training.

WV Legislature

§16B-21-2. Rules; minimum standards for neonatal abstinence centers.

(a) The Inspector General shall promulgate emergency rules pursuant to the provisions of section §29A-3-15 of this code to carry out the purpose of this article. These rules shall include at a minimum:

(1) Licensing procedures for neonatal abstinence centers. These procedures shall be in place by July 1, 2015;

(2) The minimum standards of operation for neonatal abstinence facilities including the following:

(A) Minimum numbers of administrators, medical directors, nurses, aides and other personnel according to the occupancy of the facility;

(B) Qualifications of facility's administrators, medical directors, nurses, aides and other personnel;

(C) Safety requirements;

(D) Sanitation requirements;

(E) Therapeutic services to be provided;

(F) Medical records;

(G) Pharmacy services;

(H) Nursing services;

(I) Medical services;

(J) Physical facility;

(K) Visitation privileges; and

(L) Admission, transfer and discharge policies.

(b) The provisions of the rules promulgated pursuant to this section shall apply only to those facilities regulated pursuant to §16-2D-1 *et seq*. of this code and shall not apply to a hospital-based acute care unit.

WV Legislature

§16B-21-3. Certificate of need; exemption from moratorium.

Notwithstanding any other provision of this code, the Health Care Authority shall consider neonatal abstinence services provided in neonatal abstinence care centers as a unique and distinct medical service in conducting a certificate of need review.

WV Legislature