

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1970



ENROLLED

HOUSE BILL No. 7

(By Mr. Bisovsky and Mr. Seibert)



PASSED June 19, 1970

In Effect from Passage



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 6-23-70

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ENROLLED

House Bill No. 7

(By MR. SPEAKER, MR. BOLARSKY, and MR. SEIBERT)

[Passed June 19, 1970; in effect from passage.]

AN ACT to amend and reenact section two, article five-c, and section one, article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter sixteen by adding thereto a new article, designated article five-e, all relating to the regulation and licensing of nursing homes and personal care facilities by the West Virginia nursing home licensing board in order to comply with federal law so the state may receive federal moneys for its citizens pursuant to federal programs for nursing and related care; distinguishing personal care facilities from nursing homes; defining nursing homes, personal care facilities and other terms; relating to types of services

offered by nursing homes and personal care facilities; requiring a nursing home administrator for the operation of a nursing home; relating to certain exclusions from the definition of nursing homes and other terms; incorporating in said article five-e all of the provisions of article five-c concerning the powers, duties and rights vested in the West Virginia nursing home licensing board and all of the administrative and enforcement provisions, judicial review provisions and confidentiality provisions; relating to licensing fees; prescribing certain unlawful acts and imposing criminal penalties; authorizing injunctive relief; providing for the treatment of licenses heretofore issued for personal care homes and personal care facilities as licenses for personal care facilities under said article five-e; repealing certain inconsistent provisions and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That section two, article five-c, and section one, article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter sixteen be further

amended by adding thereto a new article, designated article five-e, all to read as follows:

ARTICLE 5C. NURSING HOMES.

§16-5C-2. Definitions.

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

3 (a) The term "nursing home" means and shall be
4 construed to include any building, structure, agency,
5 institution, or other place, for the reception, accommo-
6 dation, board, care or treatment of not less than twenty-
7 four hours in any week in which an accommodation
8 of three or more beds is maintained, furnished or
9 offered for patients or individuals, who are unable suffi-
10 ciently or properly to care for themselves, and for which
11 reception, accommodation, board, care or treatment a
12 charge is made: *Provided*, That the reception, accom-
13 modation, board, care or treatment in a household or
14 family, for compensation, of a person or persons related
15 by blood or marriage to the head of such household
16 or family, or to his or her spouse or family, within
17 the degree of consanguinity of first cousins, shall not

18 be deemed to be a nursing home. A "nursing home"
19 is a home for chronic or convalescent patients who, on
20 admission, are not as a rule, acutely ill and who do not
21 usually require special facilities, such as an operating
22 room, X-ray facilities, laboratory facilities and obstet-
23 rical facilities. A "nursing home" provides care for
24 persons who have remedial ailments or other ailments,
25 for which medical and nursing care are indicated; who,
26 however, are not sick enough to require general hospital
27 care. Nursing care is their primary need, but they will
28 require continuing medical supervision. Professional
29 nursing skills must be offered. All nursing homes shall
30 be operated by a nursing home administrator, licensed,
31 pursuant to article five-d of this chapter. The term
32 "nursing home" shall not include institutions licensed
33 as hospitals or institutions operated for the treatment
34 and care of alcoholic patients, boarding homes for chil-
35 dren, day nurseries, child-care institutions, children's
36 homes and child-placing agencies, as defined under
37 the laws of this state, nor hotels or offices of physi-
38 cians.

39 (b) The term "person" means any individual, firm,
40 partnership, corporation, company, association or joint-
41 stock association and the legal successor thereof.

42 (c) The term "board" shall mean the West Virginia
43 nursing home licensing board as herein created.

44 (d) The term "aged" relates to any individual who
45 has attained the age of sixty-five years.

ARTICLE 5D. NURSING HOME ADMINISTRATORS.

§16-5D-1. Definitions.

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

3 (1) The term "nursing home" means a nursing home
4 as that term is defined in subdivision (a), section two,
5 article five-c of this chapter.

6 (2) The term "nursing home administrator" means
7 an individual responsible for planning, organizing, di-
8 recting and controlling a nursing home, or who in fact
9 performs such functions, whether or not such individual
10 has an ownership interest in the nursing home and
11 whether or not such functions are shared with one or
12 more other persons.

13 (3) The word "board" shall mean the West Virginia
14 nursing home licensing board created by section three,
15 article five-c of this chapter.

16 (4) The word "person" or "applicant" shall mean
17 an individual.

18 (5) The word "council" shall mean the state nursing
19 home advisory council created by section eleven of this
20 article.

ARTICLE 5E. PERSONAL CARE FACILITIES.

§16-5E-1. Definitions.

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

3 (a) The term "personal care facility" shall include,
4 but not be limited to, homes for the aged, convalescent
5 homes and other facilities not offering medical and
6 nursing care on a full-time basis. A "personal care
7 facility," as distinguished from a "nursing home" is a
8 place for the care of aged or infirm persons whose prin-
9 cipal need is a home with such sheltered and custodial
10 care as their age or infirmities require. In such homes,
11 medical care is only occasional or incidental, such as

12 may be required in the home of any individual or
13 family for persons who are aged or infirm. The resident
14 of such homes will not, as a rule, have remedial ail-
15 ments or other ailments for which continuing skilled
16 planned medical and nursing care is indicated. The term
17 "personal care facility" shall not include boarding homes
18 or hotels.

19 (b) The term "person" means any individual, firm,
20 partnership, corporation, company, association or joint-
21 stock association and the legal successor thereof.

22 (c) The term "board" shall mean the West Virginia
23 nursing home licensing board as created by section three,
24 article five-c of this chapter.

§16-5E-2. Administration of article.

1 The administration of this article shall be vested in
2 the West Virginia nursing home licensing board created
3 in section three, article five-c of this chapter, and in
4 the administration of this article, such board shall have
5 all the powers, duties and rights vested in it under said
6 article five-c with respect to nursing homes.

§16-5E-3. Licensing of personal care facilities.

1 All facilities coming within the definition of the term
2 "personal care facility" in which an accommodation of
3 four or more beds is maintained, furnished or offered
4 for patients or individuals for board and personal care
5 of not less than twenty-four hours in any week, shall
6 be licensed as a personal care facility and not as a
7 nursing home, and shall be subject to the rules and
8 regulations adopted by said board under the provisions
9 of this article and under the provisions of article five-c
10 of this chapter. All of the provisions of said article
11 five-c relating to the suspension or revocation of license,
12 notice, hearing, judicial review, appeal and the con-
13 fidentiality of certain information shall be as fully
14 applicable to personal care facilities under the provi-
15 sions of this article and to the administration of the
16 provisions of this article as if said provisions of said
17 article five-c were set forth in extenso herein.

§16-5E-4. License fees; amount, disposition.

1 An application fee in the amount of ten dollars for
2 an original personal care facility license shall be paid

3 at the time application is made for such license. The
4 license fee for renewal of license shall be two dollars
5 per bed. The bed capacity for the holder of each license
6 shall be determined by the board. All such license fees
7 shall be due and payable to the board on or before
8 June thirtieth of each year. Such fee and application
9 shall be submitted to the secretary of the board who
10 shall retain both the application and fee pending final
11 action on the application. Thereafter, upon order of the
12 auditor of the state, all such fees shall be transmitted to
13 the state treasurer to be deposited to the credit of the
14 general revenue fund: *Provided*, That the authorized
15 expenses of the board are to be paid out of such fees.

§16-5E-5. Unlawful acts; penalty.

1 It shall be unlawful for any person to conduct, main-
2 tain or operate, or permit to be conducted, maintained
3 or operated, or to participate in the conduct, maintenance
4 or operation of a personal care facility in this state, un-
5 less and until a license therefor is first issued in accord-
6 ance with this article, which license remains unexpired,
7 unsuspended and unrevoked.

8 Any person violating the provisions of this section
9 shall be guilty of a misdemeanor, and, upon conviction
10 thereof, shall be fined not more than one hundred dol-
11 lars for the first offense, and not less than fifty nor more
12 than one hundred dollars for each subsequent offense.
13 Each day a violation continues after conviction shall be
14 considered a separate offense.

§16-5E-6. Injunctions.

1 If any person conducts, manages or operates a personal
2 care facility without first having obtained a license there-
3 for, which license remains unexpired, unsuspended and
4 unrevoked, the circuit court, or the judge thereof in vaca-
5 tion, of the county in which such conduct, management
6 or operation occurred, shall upon proper application by the
7 board in the name of the state, and after ten days' writ-
8 ten notice thereof to such person, issue an injunction
9 prohibiting such person from managing or operating such
10 personal care facility until he has fully complied with the
11 provisions of this article. The remedy provided in this
12 section shall be in addition to all other penalties and
13 remedies provided by law.

§16-5E-7. License in force upon effective date of article.

1 All personal care facilities heretofore licensed as per-

2 sonal care homes under the provisions of article five-c
3 of this chapter, which licenses are still in force upon the
4 taking effect of this article, shall continue in full force
5 and effect during the period for which they were originally
6 issued but shall be treated as a personal care facility
7 license.

8 Furthermore, all personal care facilities heretofore
9 licensed as nursing homes under the provisions of article
10 five-c of this chapter, which licenses are still in force
11 upon the taking effect of this article, shall continue in
12 full force and effect during the period for which they
13 were originally issued but shall be treated as a personal
14 care facility license.

§16-5E-8. Repeal of conflicting laws; severability of article.

1 The provisions of all acts or parts of acts, or of this
2 code, which are inconsistent with the provisions of this
3 article are hereby repealed to the extent of such incon-
4 sistency. The provisions of this article are severable and
5 if any shall be held unconstitutional or invalid, such de-
6 termination shall not affect or impair any of the remaining
7 provisions thereof.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tamm
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect from passage.

Abund Meyer
Clerk of the Senate

Tom Blankenship
Clerk' of the House of Delegates

Hayd H. Jackson
President of the Senate

Gene F. Benally
Speaker House of Delegates

The within approved this the 22nd
day of June, 1970.

Arch Shreve Jr
Governor

PRESENTED TO THE
GOVERNOR

RECEIVED

Date 6/22/70

Time 7:40 p.m.

JUN 23 9 45 AM '70

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA