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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

ENROLLED
SENATE BILL NO. 679

(By Mr. Tucker)

PASSED March 10, 1984
In Effect thirty days from Passage
AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-i, relating to the licensing of hospices; purpose; definitions; application; fees; inspections; suspension; revocation; rules and regulations; violations; penalties and injunctions.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-i, to read as follows:

ARTICLE 51. HOSPICE LICENSURE ACT.

§16-5I-1. Purpose and short title.

1 This act shall be known as the “Hospice Licensure Act.”
2 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, as described in article five-d, chapter sixteen of this code.
§16-51-2. Definitions.

1. (a) "Bereavement services" means support services designed to assist individuals to experience, respond emotionally to and adjust to the death of another person.

2. (b) "Director" means the director of the West Virginia department of health.

3. (c) "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.

4. (d) "Interdisciplinary team" means the hospice client and the client'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.

5. (e) "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.

6. (f) "Terminally ill" means that an individual has a medical prognosis that his life expectancy is six months or less.

7. (g) The board of health may define in regulation any term or phrase used in this article which is not expressly defined.

§16-51-3. Hospices to obtain license; application; fees and inspections.

1. (a) No person, partnership, association or corporation, or any governmental unit or any division, department,
board or agency thereof may operate a hospice unless such operation first obtains a license from the state director of health in accordance with the provisions of this article and the rules and regulations lawfully promulgated hereunder: Provided, That this section shall not prevent any hospice which has been or is granted a certificate of need, as defined in article two-d of this chapter from operating until such time as the rules and regulations required by section four of this article become effective and the director grants or denies an application for a license filed by such hospice. Any hospice in operation prior to the effective date of such rules and regulations which desires to continue operating as a hospice shall apply for a license under this article within thirty days after the date such rules and regulations become effective.

(b) 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 board of health, 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 and regulations lawfully promulgated hereunder. The license is not transferable or assignable.

(c) 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.

(d) The director shall inspect all hospices that are subject to rules adopted pursuant to this article no less than annually in order to determine compliance with the provisions of this article and with rules and regulations adopted hereunder.

§16-51-4. Suspension; revocation.

(a) The director is authorized to suspend or revoke a
(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 thirty 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 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.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a 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 director as a result of the hearing provided in this section may, within thirty days after receiving notice of the decision, appeal to the circuit court, in term or in vacation, of Kanawha County for judicial review of the decision.

(f) The court may affirm, modify or reverse the decision of the director and either the applicant or licensee or the director may appeal from the court's decision to the supreme court of appeals.

§16-51-5. State board of health to establish rules and regulations.

The state board of health, after soliciting the advice and recommendations of the West Virginia continuum of care board, shall promulgate reasonable rules and regulations
for the licensure of hospice programs as it finds necessary in order to ensure adequate care, treatment, health, safety, welfare and comfort of hospice patients. These rules and regulations 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 board of health determines to be appropriate.

§16-51-6. 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 guilty of a misdemeanor, and, upon conviction thereof, shall for the first offense be fined not more than one hundred dollars, or imprisoned in the county jail for not more than ninety days, or both fined and imprisoned. For each subsequent offense the fine may be increased to not more than five hundred dollars, with imprisonment in the county jail for not more than ninety days, or by such fine and imprisonment. Each day of continuing violation after conviction shall be considered a separate offense.

(b) Notwithstanding the existence or pursuit of any other remedy, the director 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 31

day of March 1984.}

Governor