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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984



ENROLLED

SENATE BILL NO. 679

(By Mr. Tucker)



PASSED March 10, 1984

In Effect ninety days from Passage



ENROLLED
Senate Bill No. 679

(BY MR. TUCKER)

[Passed March 10, 1984; in effect ninety 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 5I. 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
3 requirements for hospices. It is the intent of the Legislature
4 to establish, promote and make available within this state a
5 comprehensive hospice care program for the treatment of
6 physical, emotional and mental symptoms of terminal
7 illness, as described in article five-d, chapter sixteen of this
8 code.

§16-5I-2. Definitions.

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

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

6 (c) "Hospice" means a coordinated program of home
7 and inpatient care provided directly or through an
8 agreement under the direction of an identifiable hospice
9 administration which provides palliative and supportive
10 medical and other health services to terminally ill
11 individuals and their families. Hospice utilizes a medically
12 directed interdisciplinary team. A hospice program of care
13 provides care to meet the physical, psychological, social,
14 spiritual and other special needs which are experienced
15 during the final stages of illness, and during dying and
16 bereavement.

17 (d) "Interdisciplinary team" means the hospice client
18 and the client's family, the attending physician and the
19 following hospice personnel: Physician, nurse, social
20 worker, clergy and trained volunteer. Providers of
21 supportive services such as mental health, pharmaceutical,
22 and any other appropriate allied health services may also be
23 included on the team as the needs of the individual dictate.

24 (e) "Palliative services" means treatment directed at
25 controlling pain, relieving other symptoms and focusing on
26 the special needs of the individual and family as they
27 experience the stress of the dying process, rather than
28 treatment designed for investigation and intervention for
29 the purpose of cure or prolongation of life.

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

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

§16-5I-3. Hospices to obtain license; application; fees and inspections.

1 (a) No person, partnership, association or corporation,
2 or any governmental unit or any division, department,

3 board or agency thereof may operate a hospice unless such
4 operation first obtains a license from the state director of
5 health in accordance with the provisions of this article and
6 the rules and regulations lawfully promulgated hereunder:
7 *Provided*, That this section shall not prevent any hospice
8 which has been or is granted a certificate of need, as defined
9 in article two-d of this chapter from operating until such
10 time as the rules and regulations required by section four of
11 this article become effective and the director grants or
12 denies an application for a license filed by such hospice.
13 Any hospice in operation prior to the effective date of such
14 rules and regulations which desires to continue operating as
15 a hospice shall apply for a license under this article within
16 thirty days after the date such rules and regulations become
17 effective.

18 (b) Any person, partnership, association or corporation
19 or any governmental unit or any division, department,
20 board or agency thereof desiring a license hereunder shall
21 file with the director an application in such form as the
22 director shall prescribe and furnish accompanied by a fee to
23 be determined by the board of health, based upon the
24 number of persons served by the hospice. The director shall
25 inspect the hospice prior to issuing a license. Upon receipt
26 and review of an application for license, the director shall
27 issue a license if the hospice is in compliance with the
28 provisions of this article and with the rules and regulations
29 lawfully promulgated hereunder. The license is not
30 transferable or assignable.

31 (c) A license shall expire one year from the date of
32 issuance. Sixty days prior to the expiration date, an
33 application for renewal shall be submitted on forms
34 furnished by the director. A license shall be renewed if the
35 director determines that the applicant is in compliance with
36 this article and with all rules promulgated hereunder.

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

§16-5I-4. Suspension; revocation.

1 (a) The director is authorized to suspend or revoke a

2 license issued hereunder if the provisions of this article or of
3 the rules and regulations are violated.

4 (b) Before any such license is suspended or revoked,
5 however, written notice shall be given the licensee, stating
6 the grounds of the complaint, and the date, time and place
7 set for the hearing on the complaint, which date shall not be
8 less than thirty days from the time notice is given. Such
9 notice shall be sent by registered mail to the licensee at the
10 address where the hospice concerned is located. The
11 licensee shall be entitled to be represented by legal counsel
12 at the hearing.

13 (c) If a license is revoked as herein provided, a new
14 application for a license shall be considered by the director
15 if, when and after, the conditions upon which revocation
16 was based have been corrected and evidence of this fact has
17 been furnished. A new license shall then be granted after
18 proper inspection has been made and all provisions of this
19 article and rules and regulations promulgated hereunder
20 have been satisfied.

21 (d) All of the pertinent provisions of article five, chapter
22 twenty-nine-a of this code shall apply to and govern any
23 hearing authorized and required by the provisions of this
24 article, and the administrative procedure in connection
25 with and following any such hearing, with like effect as if
26 the provisions of said article five were set forth in extenso in
27 this section.

28 (e) Any applicant or licensee who is dissatisfied with the
29 decision of the director as a result of the hearing provided in
30 this section may, within thirty days after receiving notice of
31 the decision, appeal to the circuit court, in term or in
32 vacation, of Kanawha County for judicial review of the
33 decision.

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

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

1 The state board of health, after soliciting the advice and
2 recommendations of the West Virginia continuum of care
3 board, shall promulgate reasonable rules and regulations

4 for the licensure of hospice programs as it finds necessary in
5 order to ensure adequate care, treatment, health, safety,
6 welfare and comfort of hospice patients. These rules and
7 regulations shall include, but not be limited to:

8 (a) The qualifications and supervision of licensed and
9 nonlicensed personnel;

10 (b) The provision and coordination of inpatient care and
11 in-home treatment services, including the development of a
12 written plan of care;

13 (c) The management, operation, staffing and equipping
14 of the hospice program;

15 (d) The clinical and business records kept by the
16 hospice;

17 (e) The procedures for the review of utilization and
18 quality of patient care; and

19 (f) Such other requirements as the board of health
20 determines to be appropriate.

§16-5I-6. Violations; penalties; injunction.

1 (a) Any person, partnership, association or corporation
2 and any local governmental unit or any division,
3 department, board or agency thereof which establishes,
4 conducts, manages or operates a hospice without first
5 obtaining a license therefor as herein provided, or which
6 violates any provisions of this article or any rule or
7 regulation lawfully promulgated thereunder, shall be guilty
8 of a misdemeanor, and, upon conviction thereof, shall for
9 the first offense be fined not more than one hundred dollars,
10 or imprisoned in the county jail for not more than ninety
11 days, or both fined and imprisoned. For each subsequent
12 offense the fine may be increased to not more than five
13 hundred dollars, with imprisonment in the county jail for
14 not more than ninety days, or by such fine and
15 imprisonment. Each day of continuing violation after
16 conviction shall be considered a separate offense.

17 (b) Notwithstanding the existence or pursuit of any
18 other remedy, the director may, in the manner provided by
19 law, maintain an action in the name of the state for an
20 injunction against any person, partnership, association,
21 corporation or any governmental unit or any division,
22 department, board or agency thereof, to restrain or prevent
23 the establishment, conduct, management or operation of

24 any hospice or violation of any provisions of this article or
25 any rule or regulation lawfully promulgated thereunder,
26 without first obtaining a license therefor in the manner
27 hereinbefore provided.

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

Narril Estlin
.....
Chairman Senate Committee

Ronald Anello
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Paul C. Kelly
.....
Clerk of the Senate

Donald L. Kepp
.....
Clerk of the House of Delegates

Walter R. Nolan
.....
President of the Senate

William M. See, Jr.
.....
Speaker House of Delegates

The within *is approved* this the *31*
day of *March* 1984.

John A. Rhymer
.....
Governor

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