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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

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ENROLLED

HOUSE BILL No. 4779

(By ~~Mr.~~ Del. Flanigan + White)

— ● —

Passed March 12, 1988

In Effect From Passage

ENROLLED
H. B. 4779

(By DELEGATES FLANIGAN and WHITE)

[Passed March 12, 1988; in effect from passage.]

AN ACT to amend and reenact section thirteen, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article five-b of said chapter; and to further amend said article by adding thereto a new section, designated section five-a; to amend and reenact sections two, three, five, six, nine and seventeen, article five-c of said chapter; to amend and reenact sections two and six, article five-e of said chapter; to amend and reenact sections one, two and three, article five-h of said chapter; and to further amend said article five-h by adding thereto a new section, designated section two-a, all relating to the disposition of moneys received by state director of health; report to auditor; noncompliance; establishment of health facility licensing account; expenditure of moneys; licensure fees for hospitals; accreditation reports to serve as inspections; ambulatory care facilities; ambulatory surgical facilities; nursing and personal care homes; nursing and personal care home definitions; powers, duties and rights of director; rules and regulations; licensure duration and renewal; inspections, licenses and regulations in force; definition for regulation of service providers in legally unlicensed health care facilities, enforcement, criminal penalties; license; application; regulations; revocation; assistance from department of human services; civil actions in circuit

court of Kanawha County or other counties; fire protection standards and residential board and care home definitions.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article one; section four, article five-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; to further amend said article by adding thereto a new section, designated section five-a; that sections two, three, five, six, nine and seventeen, article five-c; sections two and six, article five-e; and sections one, two and three, article five-h, all of chapter sixteen, be amended and reenacted; and to further amend article five-h by adding thereto a new section, designated section two-a, all to read as follows:

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-13. Disposition of moneys received by state director of health; report to auditor; noncompliance; establishment of health facility licensing account.

1 (a) The state director of health shall receive and
2 account for all moneys required to be paid as fees for
3 permits, licenses or registrations, pursuant to the
4 provisions of this code, and shall pay such moneys into
5 the state treasury monthly, on or before the tenth day
6 of the month succeeding the month in which such
7 moneys were received. The director of health shall, on
8 the first day of January and the first day of July in each
9 year, or within five days thereafter, certify to the state
10 auditor a detailed statement of all such moneys received
11 by him during the preceding six months. If the director
12 of health shall fail or refuse to comply with the
13 provisions of this section, he shall be guilty of a
14 misdemeanor, and, upon conviction thereof, shall be
15 fined for each offense not less than fifty dollars, nor
16 more than two hundred dollars.

17 (b) Subject to the provisions set forth in section two,
18 article two, chapter twelve of this code, there is
19 established in the state treasury a separate account
20 which shall be designated "the health facility licensing

21 account.”

22 After the effective date of this provision, the director
23 of health shall deposit to the health facility licensing
24 account all health facility licensing fees.

25 After the first day of July, one thousand nine hundred
26 eighty-eight, the director of health is authorized to
27 expend the moneys deposited in the health facility
28 licensing account in accordance with the laws of this
29 state as is necessary to implement activities of health
30 facility licensing. As part of the annual state budget, the
31 Legislature shall appropriate for health facility licen-
32 sure all moneys deposited in the health facilities
33 licensing account.

34 Any remaining balance including accrued interest in
35 said account at the end of any fiscal year shall not revert
36 to the general revenue fund, but shall remain in said
37 account, and such moneys shall be expendable after
38 appropriation by the Legislature in ensuing fiscal years.
39 The director shall make an annual report to the
40 Legislature on the health facility licensing account,
41 including the previous fiscal year’s expenditures and
42 projected expenditures for the next fiscal year.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-4. License fees.

1 The application of any person, partnership, associa-
2 tion, corporation, or local government unit for a license
3 to operate a hospital or extended care facility operated
4 in connection with a hospital, shall be accompanied by
5 a fee to be determined by the number of beds available
6 for patients, according to the following schedule of fees:
7 Those with five beds but less than fifty beds shall pay
8 a fee of five hundred dollars; those with fifty beds or
9 more and less than one hundred beds shall pay a fee of
10 seven hundred fifty dollars; those with one hundred beds
11 or more and less than two hundred beds shall pay a fee
12 of one thousand dollars; and those with two hundred
13 beds or more shall pay a fee of one thousand two
14 hundred fifty dollars. The director may annually adjust
15 the licensure fees for inflation based upon the consumer

16 price index. The application of any person, partnership,
17 association, corporation, or local governmental unit for
18 a license to operate an ambulatory health care facility
19 or ambulatory surgical facility shall be accompanied by
20 a reasonable fee to be determined by the director, based
21 on the number of patients served by the facility. No such
22 fee shall be refunded. All licenses issued under this
23 article shall expire on the thirtieth day of June following
24 their issuance, shall be on a form prescribed by the state
25 department of health, shall not be described in the
26 application, shall be posted in a conspicuous place on the
27 licensed premises, and may be renewed from year to
28 year upon application, investigation and payment of the
29 license fee, as in the case of the procurement of an
30 original license: *Provided*, That any such license in
31 effect on the thirtieth day of June of any year, for which
32 timely application for renewal, together with payment
33 of the proper fee, has been made to the state department
34 of health in conformance with the provisions of this
35 article and the rules and regulations issued thereunder,
36 and prior to the expiration date of such license, shall
37 continue in effect until (a) the thirtieth day of June next
38 following the expiration date of such license, or (b) the
39 date of the revocation or suspension of such license
40 pursuant to the provisions of this article, or (c) the date
41 of issuance of a new license, whichever date first occurs:
42 *Provided, however*, That in the case of the transfer of
43 ownership of a facility with an unexpired license, the
44 application of the new owner for a license shall have the
45 effect of a license for a period of three months when filed
46 with the director. All fees received by the state
47 department of health under the provisions of this article
48 shall be deposited in accordance with section thirteen,
49 article one of this chapter.

**§16-5B-5a. Accreditation reports accepted for periodic
license inspections.**

1 Notwithstanding any other provision of this article, a
2 periodic license inspection shall not be conducted by the
3 state department of health for a hospital if the hospital
4 has applied for and received an exemption from such
5 requirement: *Provided*, That no exemption so granted

6 shall diminish the right of the state department of
7 health to conduct complaint inspections: *Provided,*
8 *however,* That no exemption so granted shall relieve a
9 hospital from compliance with section six-a of this
10 article.

11 The state department of health shall grant an
12 exemption from a periodic license inspection during the
13 year following accreditation if a hospital applies by
14 submitting evidence of its accreditation by the joint
15 commission on accreditation of healthcare organizations
16 or the American osteopathic association and submits a
17 complete copy of such commission's accreditation report.

18 If the accreditation of a hospital is for a period longer
19 than one year, the state department of health shall
20 conduct at least one license inspection of the hospital
21 after the first year of accreditation and before the
22 accreditation has expired and may conduct additional
23 license inspections if needed.

24 Accreditation reports filed with the state department
25 of health shall be treated as confidential in accordance
26 with section ten of this article.

**ARTICLE 5C. NURSING, AND PERSONAL CARE HOMES AND
RESIDENTIAL BOARD AND CARE HOMES.**

§16-5C-2. Definitions.

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

3 (a) The term "director" means the director of the West
4 Virginia state department of health or his designee;

5 (b) The term "facility" means any nursing home,
6 personal care home, or residential board and care home
7 as defined in subdivisions (c), (d) and (e) of this section:
8 *Provided,* That the care or treatment in a household,
9 whether for compensation or not, of any person related
10 by blood or marriage, within the degree of consanguin-
11 ity of second cousin to the head of the household, or his
12 or her spouse, may not be deemed to constitute a nursing
13 home, personal care home or residential board and care
14 home within the meaning of this article. Nothing
15 contained in this article shall apply to hospitals, as

16 defined under section one, article five-B of this chapter,
17 or state institutions as defined under section six, article
18 one, chapter twenty-seven or section three, article one,
19 chapter twenty-five, all of this code, or nursing homes
20 operated by the federal government or the state
21 government, or institutions operated for the treatment
22 and care of alcoholic patients, or offices of physicians,
23 or hotels, boarding homes or other similar places that
24 furnish to their guests only room and board, or extended
25 care facilities operated in conjunction with a hospital;

26 (c) The term "nursing home" means any institution,
27 residence or place, or any part or unit thereof, however
28 named, in this state which is advertised, offered,
29 maintained or operated by the ownership or manage-
30 ment, whether for a consideration or not, for the express
31 or implied purpose of providing accommodations and
32 care, for a period of more than twenty-four hours, for
33 three or more persons who are ill or otherwise incapac-
34 itated and in need of extensive, on-going nursing care
35 due to physical or mental impairment, or which
36 provides services for the rehabilitation of persons who
37 are convalescing from illness or incapacitation;

38 (d) The term "personal care home" means any insti-
39 tution, residence or place, or any part or unit thereof,
40 however named, in this state which is advertised,
41 offered, maintained or operated by the ownership or
42 management, whether for a consideration or not, for the
43 express or implied purpose of providing accommoda-
44 tions and personal assistance, for a period of more than
45 twenty-four hours, to three or more persons who are
46 dependent upon the services of others by reason of
47 physical or mental impairment but who do not require
48 extensive, on-going nursing care;

49 (e) The term "residential board and care home" means
50 any institution, residence or place, or any part thereof,
51 however named, in this state which is advertised,
52 offered, maintained or operated by the ownership or
53 management, whether for consideration or not, for the
54 express or implied purpose of providing accommoda-
55 tions and personal assistance, for a period of more than
56 twenty-four hours, to no fewer than three and no more

57 than eight persons who are dependent upon the services
58 of others by reason of physical or mental impairment
59 but who are capable of self-preservation and do not
60 require nursing care;

61 (f) The term "nursing care" means those procedures
62 commonly employed in providing for the physical,
63 emotional and rehabilitational needs of the ill or
64 otherwise incapacitated which require technical skills
65 and knowledge beyond that which the untrained person
66 possesses, including, but not limited to, such procedures
67 as: irrigations, catheterizations, special procedure
68 contributing to rehabilitation, and administration of
69 medication by any method which involves a level of
70 complexity and skill in administration not possessed by
71 the untrained person;

72 (g) The term "personal assistance" means personal
73 services, including, but not limited to, the following:
74 Help in walking, bathing, dressing, feeding, or getting
75 in or out of bed, or supervision required because of the
76 age or mental impairment of the resident;

77 (h) The term "patient" means an individual under
78 care in a nursing home;

79 (i) The term "resident" means an individual living in
80 a personal care home or a residential board and care
81 home;

82 (j) The term "sponsor" means the person or agency
83 legally responsible for the welfare and support of a
84 patient; or resident;

85 (k) The term "person" means an individual and every
86 form of organization, whether incorporated or unincor-
87 porated, including any partnership, corporation, trust,
88 association or political subdivision of the state.

89 The director may define in regulations any term used
90 herein which is not expressly defined.

§16-5C-3. Powers, duties and rights of director.

1 In the administration of this article, the director shall
2 have the following powers, duties and rights:

3 (a) To enforce rules, regulations and standards for
4 nursing homes, personal care homes, and residential
5 board and care homes which are adopted, promulgated,
6 amended or modified by the board of health;

7 (b) To exercise as sole authority all powers relating
8 to the issuance, suspension and revocation of licenses of
9 nursing homes, personal care homes and residential
10 board and care homes;

11 (c) To enforce rules adopted, promulgated, amended
12 or modified by the board of health governing the
13 qualification of applicants for nursing home, personal
14 care home, or residential board and care home licenses,
15 including, but not limited to, educational requirements,
16 financial requirements, personal and ethical
17 requirements;

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

22 (e) To receive and disburse for authorized purposes
23 any moneys appropriated to the department of health by
24 the Legislature;

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

30 (g) To make contracts, and to execute all instruments
31 necessary or convenient in carrying out the director's
32 functions and duties; and all such contracts, agreements
33 and instruments shall be executed by the director;

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

36 (i) To offer and sponsor educational and training
37 programs for nursing homes, personal care home, and
38 residential board and care home administrative, man-
39 agement and operational personnel;

40 (j) To undertake survey, research and planning

41 projects and programs relating to administration and
42 operation of nursing homes, personal care homes, and
43 residential board and care homes, and to the health,
44 care, treatment and service in general of patients and
45 residents of such homes;

46 (k) To assess civil penalties for violations of facility
47 standards, in accordance with section ten of this article;

48 (l) To classify nursing homes into care categories such
49 as skilled nursing facilities, intermediate care facilities,
50 and other comparable categories under the terms of this
51 article if, in the opinion of the director, the best interest
52 of the public is served by doing so;

53 (m) To inspect any facility and any records main-
54 tained therein, subject to the provisions of section ten of
55 this article;

56 (n) To establish and implement procedures, including
57 informal conferences, investigations and hearings,
58 subject to applicable provisions of article three, chapter
59 twenty-nine-a of this code, and to enforce compliance
60 with the provisions of this article and with regulations
61 issued hereunder, by the board of health;

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

71 (p) To make complaint or cause proceedings to be
72 instituted against any person or persons for the violation
73 of the provisions of this article or of regulations issued
74 hereunder, by the board of health. Such action may be
75 taken by the director without the sanction of the
76 prosecuting attorney of the county in which proceedings
77 are instituted, if said officer fails or refuses to discharge
78 his duty. The circuit court of Kanawha County or the
79 circuit court of the county in which the conduct has

80 occurred shall have jurisdiction in all civil enforcement
81 actions brought under this article and may order
82 equitable relief without bond. In no such case shall the
83 director or any person acting under the director's
84 direction be required to give security for costs;

85 (q) To delegate authority to the director's employees
86 and agents to perform all functions of the director
87 except the making of final decisions in adjudications;

88 (r) To submit a report to the governor, the Legislature
89 and the public, on or before the first day of December,
90 one thousand nine hundred seventy-eight, and annually
91 thereafter. The report shall describe the licensing and
92 investigatory activities of the department during the
93 year, and the nature and status of other activities of the
94 department, and may include comment on the acts,
95 policies, practices or procedures of any public or private
96 agency that affect the rights, health or welfare of
97 patients or residents of nursing homes and personal care
98 homes. The annual report shall include a list of all
99 nursing homes, personal care homes, and residential
100 board and care homes, in the state, whether such homes
101 are proprietary or nonproprietary, the classification of
102 each such home; the name of the owner or owners; the
103 total number of beds, the number of private and semi-
104 private rooms, the costs per diem for private patients;
105 the number of full-time employees and their professions,
106 recreational programs; services and programs available
107 as well as the costs thereof, the rating assigned to the
108 home by the department pursuant to section five of this
109 article, and whether or not those nursing homes listed
110 accept medicare and medicaid patients. The report shall
111 also contain the department's recommendations as to
112 changes in law or policy which it deems necessary or
113 appropriate for the protection of the rights, health or
114 welfare of patients of nursing homes and personal care
115 homes in the state; and

116 (s) The director shall determine which of those
117 requirements listed in subsection (r) will apply to
118 personal care homes and residential board and care
119 homes.

§16-5C-5. Rules and regulations; minimum standards for facilities; rating of facilities.

1 (a) All rules and regulations shall be approved by the
2 board of health and promulgated in the manner
3 provided by the provisions of article three, chapter
4 twenty-nine-a of this code. The board of health shall
5 adopt, amend or repeal such rules and regulations as
6 may be necessary or proper to carry out the purposes
7 and intent of this article and to enable the director to
8 exercise the powers and perform the duties conferred
9 upon the director by this article.

10 (b) The board of health shall promulgate regulations
11 establishing minimum standards of operation of facili-
12 ties including, but not limited to, the following:

13 (1) Administrative policies, including (i) an affirma-
14 tive statement of the right of access to facilities by
15 members of recognized community organizations and
16 community legal services programs whose purposes
17 include rendering assistance without charge to patients,
18 consistent with the right of patients to privacy, and (ii)
19 a statement of the rights and responsibilities of patients
20 in facilities which prescribe, as a minimum, such a
21 statement of patients' rights as included in the United
22 States department of health, education and welfare
23 regulations, in force on the effective date of this article,
24 governing participation of intermediate care facilities in
25 the medicare and medicaid programs pursuant to titles
26 eighteen and nineteen of the Social Security Act;

27 (2) Minimum numbers and qualifications of person-
28 nel, including management, medical and nursing, aides,
29 orderlies and support personnel, according to the size
30 and classification of the facility;

31 (3) Safety requirements;

32 (4) Sanitation requirements;

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

34 (6) Dietary services to be provided;

35 (7) Maintenance of health records;

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

38 (9) Such other categories as the board of health
39 determines to be appropriate to ensure patient's health,
40 safety and welfare;

41 (c) The board of health shall include in its regulations
42 detailed standards for each of the categories of stand-
43 ards established pursuant to subsections (b) and (d) of
44 this section, and shall classify such standards as follows:
45 Class I standards are standards the violation of which,
46 the board of health determines, would present either an
47 imminent danger to the health, safety or welfare of any
48 patient or a substantial probability that death or serious
49 physical harm would result; Class II standards are
50 standards which the board of health determines have a
51 direct or immediate relationship to the health, safety or
52 welfare of any patient, but which do not create immi-
53 nent danger; Class III standards are standards which
54 the board of health determines have an indirect or a
55 potential impact on the health, safety or welfare of any
56 patient.

57 (d) The board of health shall establish:

58 (1) Standards grouped into broad general categories
59 including but not limited to nursing services, dietetic
60 services, medical services, the physical facility and
61 patient rights. Standards within each category shall be
62 assigned a numerical value based on its classification
63 according to subsection (c) of this section to represent
64 full compliance with the standard. The board of health
65 shall also determine numerical values for a standard to
66 represent an acceptable level or levels of partial but
67 substantial compliance with the standard, if applicable.

68 (2) A range of values for each category based on the
69 values for individual standards to represent full
70 compliance and various levels of acceptable partial but
71 substantial compliance with the category. A facility
72 must attain an acceptable substantial level of com-
73 pliance for each and every individual category to be
74 deemed in substantial compliance with this article and
75 the regulations promulgated hereunder.

76 (3) Standards for which extra numerical credit may
77 be earned. Such extra credit shall not be used to
78 counterbalance unacceptable levels of compliance with
79 other standards, but may be used to raise a score where
80 the facility is already in partial compliance.

81 (e) Not later than the first day of March, one thousand
82 nine hundred eighty-nine, the board of health shall
83 establish a system of rating facilities, as part of the
84 licensing procedure, in accordance with the criteria
85 established pursuant to this section. Such system shall
86 include four rating categories entitled, from the highest
87 to lowest, "A," "B," "C" and "F." A rating of "F" shall
88 be assigned to those facilities whose performance is not
89 in substantial compliance with this article and regula-
90 tions promulgated hereunder, and shall be the basis for
91 issuance of a provisional license pursuant to subsection
92 (d), section six of this article, or the limitation,
93 suspension, revocation or denial of a license. The rating
94 assigned to each facility shall be on the basis of its
95 immediately prior inspection, and shall be deemed a
96 part of the results and findings of that inspection, and
97 shall be included on the license issued to the facility
98 pursuant to section six of this article.

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

1 Subject to the provisions of section seventeen of this
2 article, no person may establish, operate, maintain, offer
3 or advertise a nursing home, personal care home, or
4 residential board and care home within this state unless
5 and until he obtains a valid license therefor as hereinaf-
6 ter provided, which license remains unsuspended,
7 unrevoked and unexpired. No public official or em-
8 ployee may place any person in, or recommend that any
9 person be placed in, or directly or indirectly cause any
10 person to be placed in any facility, as defined in section
11 two of this article, which is being operated without a
12 valid license from the director. The procedure for
13 obtaining a license shall be as follows:

14 (a) The applicant shall submit an application to the
15 director on a form to be prescribed by the director,

16 containing such information as may be necessary to
17 show that the applicant is in compliance with the
18 standards for nursing homes, personal care homes, or
19 residential board and care homes as established by this
20 article and the rules and regulations lawfully promul-
21 gated by the board of health hereunder. The application
22 and any exhibits thereto shall provide the following
23 information:

24 (1) The name and address of the applicant;

25 (2) The name, address and principal occupation (i) of
26 each person who, as a stockholder or otherwise, has a
27 proprietary interest of ten percent or more in the
28 applicant, (ii) of each officer and director of a corporate
29 applicant, (iii) of each trustee and beneficiary of an
30 applicant which is a trust, and (iv) where a corporation
31 has a proprietary interest of fifty percent or more in an
32 applicant, the name, address and principal occupation
33 of each officer and director of such corporation;

34 (3) The name and address of the owner of the
35 premises of the facility or proposed facility, if he is a
36 different person from the applicant, and in such case,
37 the name and address (i) of each person who, as a
38 stockholder or otherwise, has a proprietary interest of
39 ten percent or more in such owner, (ii) of each officer
40 and director of a corporate applicant, (iii) of each trustee
41 and beneficiary of such owner if he is a trust, and (iv)
42 where a corporation has a proprietary interest of fifty
43 percent or more in such owner, the name and address
44 of each officer and director of such corporation;

45 (4) Where the applicant is the lessee or the assignee
46 of the facility or the premises of the proposed facility,
47 a signed copy of the lease and any assignment thereof;

48 (5) The name and address of the facility or the
49 premises of the proposed facility;

50 (6) The type of institution to be operated;

51 (7) The proposed bed quota of the facility and the
52 proposed bed quota of each unit thereof;

53 (8) (i) An organizational plan for the facility indicat-

54 ing the number of persons employed or to be employed,
55 the positions and duties of all employees, (ii) the name
56 and address of the individual who is to serve as
57 administrator, and (iii) such evidence of compliance
58 with applicable laws and regulations governing zoning,
59 buildings, safety, fire prevention and sanitation as the
60 director may require;

61 (9) Such additional information as the director may
62 require; and

63 (10) Assurances that the nursing home was reviewed
64 and found to be needed under the provisions of article
65 two-d of this chapter.

66 (b) Upon receipt and review of an application for
67 license made pursuant to subdivision (a) of this section,
68 and inspection of the applicant facility pursuant to
69 section ten of this article, the director shall issue a
70 license if he finds:

71 (1) That an individual applicant, and every partner,
72 trustee, officer, director and controlling person of an
73 applicant which is not an individual, be a person
74 responsible and suitable to operate or to direct or
75 participate in the operation of a facility by virtue of
76 financial capacity, appropriate business or professional
77 experience, a record of compliance with lawful orders
78 of the department (if any) and lack of revocation of a
79 license during the previous five years;

80 (2) That the facility be under the supervision of an
81 administrator who is qualified by training and expe-
82 rience: *Provided*, That every facility classified as a
83 nursing home shall have an administrator licensed
84 pursuant to the provisions of article twenty-five, chapter
85 thirty of this code; and

86 (3) That the facility is in substantial compliance with
87 standards established pursuant to section five of this
88 article, and such other requirements for a license as the
89 board of health may establish by regulation under this
90 article;

91 Any license granted by the director shall state the
92 maximum bed capacity for which it is granted, the date

93 the license was issued, the expiration date, and the
94 rating assigned to the facility pursuant to section five
95 of this article. Such licenses shall be issued for a period
96 not to exceed fifteen months for nursing homes and for
97 a period of not to exceed one year for personal care
98 homes and residential board and care homes: *Provided,*
99 That any such license in effect for which timely
100 application for renewal, together with payment of the
101 proper fee has been made to the state department of
102 health in conformance with the provisions of this article
103 and the rules and regulations issued thereunder, and
104 prior to the expiration date of such license, shall
105 continue in effect until (a) one year following the
106 expiration date of such license, or (b) the date of the
107 revocation or suspension of such license pursuant to the
108 provisions of this article, or (c) the date of issuance of
109 a new license, whichever date first occurs. Each license
110 shall be issued only for the premises and persons named
111 in the application and shall not be transferable or
112 assignable: *Provided, however,* That in the case of the
113 transfer of ownership of a facility with an unexpired
114 license, the application of the new owner for a license
115 shall have the effect of a license for a period of three
116 months when filed with the director. Every license shall
117 be posted in a conspicuous place in the facility for which
118 it is issued so as to be accessible to and in plain view
119 of all patients and visitors of the facility.

120 (c) An original license shall be renewable, conditioned
121 upon the licensee filing timely application for the
122 extension of the term of the license accompanied by the
123 fee, and contingent upon evidence of compliance with
124 the provisions of this article and regulations promul-
125 gated by the board of health hereunder. Any such
126 application for renewal of a license shall include a
127 report by the licensee in such form and containing such
128 information as shall be prescribed by the director,
129 including the following:

130 (1) A balance sheet of the facility as of the end of its
131 fiscal year, setting forth assets and liabilities at such
132 date, including all capital, surplus, reserve, depreciation
133 and similar accounts;

134 (2) A statement of operations of the facility for such
135 licensing term, setting forth all revenues, expenses,
136 taxes, extraordinary items and other credits or charges;
137 and

138 (3) A statement of any changes in the name, address,
139 management or ownership information on file with the
140 director. All holders of facility licenses as of the effective
141 date of this article shall include, in the first application
142 for renewal filed thereafter, such information as is
143 required for initial applicants under the provisions of
144 subsection (a) of this section.

145 (d) In the case of an application for a renewal license,
146 if all requirements of section five of this article are not
147 met, the director may in his discretion issue a provi-
148 sional license, provided that care given in the facility is
149 adequate to patient needs and the facility has demon-
150 strated improvement and evidences potential for
151 substantial compliance within the term of said license:
152 *Provided*, That a provisional renewal may not be issued
153 for a period greater than one year, shall not be renewed,
154 and that no such license shall be issued to any facility
155 with uncorrected violations of any Class I standard, as
156 defined in subsection (c), section five of this article;

157 (e) A nonrefundable application fee in the amount of
158 one hundred dollars for an original nursing home license
159 or fifty dollars for an original personal care facility or
160 residential board and care home license shall be paid at
161 the time application is made for such license. Direct
162 costs of initial licensure inspections or inspections for
163 changes in licensed bed capacity shall be borne by the
164 applicant and shall be received by the director prior to
165 the issuance of an initial or amended license. The license
166 fee for renewal of a license shall be at the rate of eight
167 dollars per year per bed for nursing homes, and four
168 dollars per bed per year for personal care homes, and
169 two dollars per bed per year for residential board and
170 care homes, except the annual rate per bed may be
171 assessed for licenses issued for less than one year. The
172 director may annually adjust the licensure fees for
173 inflation based upon the consumer price index. The bed
174 capacity for the holder of each license shall be deter-

175 mined by the director. All such license fees shall be due
176 and payable to the director, annually, and in such
177 manner set forth in the rules and regulations promul-
178 gated by the board of health. Such fee and application
179 shall be submitted to the director who shall retain both
180 the application and fee pending final action on the
181 application. All fees received by the director under the
182 provisions of this article shall be deposited in accordance
183 with section thirteen, article one of this chapter.

§16-5C-9. Inspections.

1 The director and any duly designated employee or
2 agent thereof shall have the right to enter upon and into
3 the premises of any facility for which a license has been
4 issued, for which an application for license has been
5 filed with the director, or which the director has reason
6 to believe is being operated or maintained as a nursing
7 home or personal care home without a license. If such
8 entry is refused by the owner or person in charge of any
9 such facility, the director shall apply to the circuit court
10 of the county in which the facility is located or the
11 circuit court of Kanawha County for a warrant autho-
12 rizing inspection, and such court shall issue an appropri-
13 ate warrant if it finds good cause for inspection.

14 The director, by the director's authorized employees
15 or agents, shall conduct at least one inspection prior to
16 issuance of a license pursuant to section six of this
17 article, and shall conduct periodic unannounced inspec-
18 tions thereafter, to determine compliance by the facility
19 with applicable statutes and regulations promulgated
20 thereunder. The state fire marshal, by his employees or
21 authorized agents, shall make all fire, safety and like
22 inspections: *Provided*, That in facilities with less than
23 four beds, where all residents are capable of self-
24 preservation, the state fire marshal shall not require
25 sprinkler systems if such facilities conform with
26 alternative fire safety measures as adopted by the state
27 fire commission. The director may provide for such
28 other inspections as the director may deem necessary to
29 carry out the intent and purpose of this article.

§16-5C-17. Licenses and regulations in force.

1 All licenses for nursing homes and personal care
2 homes which are in force on the first day of July, one
3 thousand nine hundred eighty-eight, shall continue in
4 full force and effect during the period for which issued
5 unless sooner revoked as provided in this article.

6 All regulations in effect on the first day of July, one
7 thousand nine hundred eighty-eight, which were
8 adopted by the board relating to licensing nursing
9 homes or personal care homes, shall remain in full force
10 and effect until altered, amended or repealed by the
11 board of health.

**ARTICLE 5E. REGISTRATION OF SERVICE PROVIDERS IN
LEGALLY UNLICENSED HEALTH CARE
FACILITIES.**

§16-5E-2. Definitions.

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

3 (a) The term "consumer" means an individual who is
4 provided services, whether or not for a fee, by a service
5 provider, but consumer does not include a person
6 receiving services provided by another who is related to
7 him or her or the spouse thereof by blood or marriage,
8 within the degree of consanguinity of second cousin;

9 (b) The term "director" means the director of the
10 West Virginia state department of health or his
11 designee;

12 (c) The term "nursing care" means those procedures
13 commonly employed in providing for the physical,
14 emotional and rehabilitational needs of the ill or
15 otherwise incapacitated which require technical skills
16 and knowledge beyond that which the untrained person
17 possesses, including, but not limited to, such procedures
18 as: Irrigations; catheterization; special procedures
19 contributing to rehabilitation; and administration of
20 medication by any method prescribed by a physician
21 which involves a level of complexity and skill in
22 administration not possessed by the untrained person;

23 (d) The term "personal assistance" means personal
24 services, including, but not limited to, the following:

25 Help in walking, bathing, dressing, feeding or getting
26 in or out of bed, or supervision required because of the
27 age or physical or mental impairment of the resident;

28 (e) The term "service provider" means the individual
29 administratively responsible for providing to consumers
30 for a period of more than twenty-four hours, whether for
31 compensation or not, services of personal assistance for
32 one or two consumers.

§16-5E-6. Enforcement; criminal penalties.

1 (a) Any service provider who fails to register with the
2 director shall be guilty of a misdemeanor, and, upon
3 conviction thereof, shall be fined not less than five
4 hundred dollars or more than twenty-five hundred
5 dollars or imprisoned in the county jail not less than ten
6 days, or more than thirty days: *Provided*, That prior to
7 the first day of July, one thousand nine hundred eighty-
8 nine, no such penalty shall be imposed upon a service
9 provider until thirty days after notice by certified mail
10 by the director to such service provider at the require-
11 ments of this article.

12 (b) Any person who interferes with or impedes in any
13 way the lawful enforcement of the provisions of this
14 article is guilty of a misdemeanor, and, upon conviction
15 thereof, shall be fined not less than five hundred dollars
16 or more than twenty-five hundred dollars or imprisoned
17 in the county jail not less than ten days, or more than
18 thirty: *Provided*, That prior to the first day of July, one
19 thousand nine hundred eighty-nine, no such penalty
20 shall be imposed upon a service provider until thirty
21 days after notice by certified mail by the director to
22 such service provider at the requirements of this article.

23 (c) The director may in his discretion bring an action
24 to enforce compliance with the provisions of this article.

25 (d) The circuit court of Kanawha County or the circuit
26 court of the county in which the conduct occurred shall
27 have jurisdiction in all civil enforcement actions brought
28 under this article and may order equitable relief
29 without bond.

ARTICLE 5H. RESIDENTIAL BOARD AND CARE HOMES.

§16-5H-1. Definitions.

1 (a) The term "residential board and care home"
2 means any residence or any part or unit thereof,
3 however named, in this state which is advertised,
4 offered, maintained or operated by the ownership or
5 management, whether for a consideration or not, for the
6 express or implied purpose of providing accommoda-
7 tions, personal assistance and supervision, for a period
8 of more than twenty-four hours, to three to eight persons
9 who are not related to the owner or manager by blood
10 or marriage, within the degree of consanguinity of
11 second cousin, and who are dependant upon the services
12 of others by reason of physical or mental impairment,
13 but who do not require nursing services and who are
14 capable of self-preservation.

15 (b) The term "self-preservation" means that a person
16 is, at least, capable of removing his or her physical self
17 from situations involving imminent danger, such as fire.

§16-5H-2. License from director of health; application; regulations; revocation, assistance from department of human services.

1 No residential board and care home shall be estab-
2 lished, maintained or operated unless a license therefor
3 shall be first obtained from the director of health. The
4 application for such license shall contain such data and
5 facts as the director may reasonably require. The
6 director may promulgate reasonable regulations for the
7 operation of such facilities, and to carry out the
8 requirements of this article, in accordance with the
9 requirements of article three, chapter twenty-nine-a of
10 this code. The director shall have the authority to
11 investigate and inspect any such facility and may revoke
12 the license of any such facility for good cause after
13 notice and hearing. The department of human services
14 shall cooperate with and assist the director of health in
15 carrying out any requirements of this section, upon
16 request of the director.

§16-5H-2A. Fire Protection.

1 Each residential board and care home shall install an

2 automatic fire sprinkler system which meets the
3 requirements of the national fire code standard thirteen-
4 d as adopted by the state fire commission: *Provided*,
5 That such systems shall not be required in homes with
6 four or less clients in residence where all such clients
7 all capable of self-preservation and the home conforms
8 with the alternative fire safety measures adopted by the
9 state fire commission for such homes. The requirements
10 of this section shall not be effective until the first day
11 of July, one thousand nine hundred and ninety.

§16-5H-3. Enforcement; criminal penalties; injunction.

1 (a) Whoever establishes, maintains or operates, or is
2 engaged in establishing, maintaining or operating a
3 residential board and care home without a license
4 granted under section two of this article, or who
5 prevents, interferes with or impedes in any way the
6 lawful enforcement of this article shall be guilty of a
7 misdemeanor, and, upon conviction thereof, shall be
8 punished for the first offense by a fine of not more than
9 one hundred dollars, or by imprisonment in the county
10 jail for a period of not more than ninety days, or by both
11 such fine and imprisonment, at the discretion of the
12 court. For each subsequent offense, the fine may be
13 increased to not more than two hundred fifty dollars,
14 with imprisonment in the county jail for a period of not
15 more than ninety days, or both such fine and imprison-
16 ment, at the discretion of the court. Each day of a
17 continuing violation after conviction shall be considered
18 a separate offense. No person shall be subject to
19 criminal liability under this section for establishing,
20 operation or maintaining a residential board and care
21 home without a license until the first day of January,
22 one thousand nine hundred eighty-nine: *Provided*, That
23 any person who files a complete license application with
24 the director for a residential board and care home
25 before the first day of January, one thousand nine
26 hundred eighty-nine, shall not be subject to any criminal
27 liability for establishing, operating or maintaining such
28 a home without a license until the first day of July, one
29 thousand nine hundred eighty-nine.

30 (b) The director may in his discretion bring an action

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

Bruce O. Allison
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect from passage.

Judd C. Walker
Clerk of the Senate

Donald J. Kopp
Clerk of the House of Delegates

Don Tolson
President of the Senate

Robt. McKel
Speaker of the House of Delegates

The within *approved* this the *28th*
March
day of _____, 1988.

Arch A. Moore Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/23/88

Time 4:00 p.m.

RECEIVED

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SECURITY OF STATE