WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

ENROLLED
Committee Substitute for
SENATE BILL NO. 308

(By Senator Manchin)

PASSED March 18, 1994
In Effect 90 days from Passage
AN ACT to amend and reenact sections two and nine, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and five, article five-e of said chapter; and to amend and reenact sections one and two-a, article five-h of said chapter, all relating to nursing, personal care and residential board and care homes; amending the definition of director; amending the definitions of facilities with respect to the number of persons who may be served by nursing homes, personal care homes and residential board and care homes; inserting a definition for “limited and intermittent nursing care” for licensed and unlicensed facilities; increasing the minimum number of persons served from three to four for classification as a nursing home; increasing from two to three the number of persons who may be served by a legally unlicensed health care facility; increasing from three to eight to four to ten the number of persons who may be served by residential board and care homes; requiring compliance with requirements of the fire commission;
deleting reference to the requirement that certain residential board and care homes have a specific type of sprinkler system; amending the definition of service provider to include the provision of limited and intermittent nursing care; eliminating reference to the residential board and care homes automatic sprinkler system requirement; requiring legally unlicensed health care facilities to provide consumers, orally and in writing, with certain information if limited and intermittent care is provided by a facility; and requiring residential board and care homes to comply with regulations of the state fire commission and requiring the fire marshal to make fire and safety inspections.

Be it enacted by the Legislature of West Virginia:

That sections two and nine, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two and five, article five-e of said chapter be amended and reenacted; and that sections one and two-a, article five-h of said chapter be amended and reenacted, all to read as follows:

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 appears from the context:

2 (a) The term “director” means the secretary of the department of health and human resources or his or her designee;

3 (b) The term “facility” means any nursing home, personal care home or residential board and care home as defined in subdivisions (d), (e) and (f) of this section: 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 a nursing home, personal care home, or residential board and care home within the meaning
of this article. Nothing contained in this article shall apply to hospitals, as defined under section one, article five-b of this chapter, or state institutions as defined under section six, article one, chapter twenty-seven of this code or section three, article one, chapter twenty-five of this code, or nursing homes operated by the federal government or the state government, 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 extended care facilities operated in conjunction with a hospital;

(c) The term "limited and intermittent nursing care" means care which may only be provided when the need for such care meets these factors: (1) The resident requests to remain in the facility; (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 the normal aging process. Limited and intermittent nursing care shall only be provided by or under the direct supervision of a registered professional nurse and in accordance with rules promulgated by the board of health;

(d) The term "nursing home" 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 twenty-four 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 incapacity;

(e) The term "personal care home" 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 owner-
ship or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and personal assistance and supervision, for a period of more than twenty-four hours, to four or more 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: Provided, That services utilizing equipment which requires auxiliary electrical power in the event of a power failure shall not be used unless the personal care home has a backup power generator;

(f) The term "residential board and care home" means any 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 consideration or not, for the express or implied purpose of providing accommodations and personal assistance and supervision, for a period of more than twenty-four hours, to four to ten persons who are not related to the owner or manager by blood or marriage within the degree of consanguinity of second cousin and are dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care but are capable of self-preservation and are not bedfast, 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 shall not be used unless the residential board and care home has a backup power generator;

(g) The term "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, catheterizations, special
procedure contributing to rehabilitation and adminis-
tration of medication by any method which involves a
level of complexity and skill in administration not
possessed by the untrained person;
(h) The term “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;
(i) The term “patient” means an individual under
care in a nursing home;
(j) The term “resident” means an individual living
in a personal care home or a residential board and
care home;
(k) The term “sponsor” means the person or agency
legally responsible for the welfare and support of a
patient or resident;
(l) The term “person” means an individual and
every form of organization, whether incorporated or
unincorporated, including any partnership, corpora-
tion, trust, association or political subdivision of the
state.

The director may define in regulations any term
used herein which is not expressly defined.
§16-5C-9. Inspections.

The director and any duly designated employee or
agent thereof shall have the right to enter upon and
into the premises of any facility 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, personal care home or residential
board and care home without a license. If such entry
is refused by the owner or person in charge of any
such facility, the director shall apply to the circuit
court of the county in which the facility is located or
the circuit court of Kanawha county for a warrant
authorizing inspection, and such court shall issue an
appropriate warrant if it finds good cause for inspection.

The director, by the director's authorized employees or agents, shall conduct at least one inspection prior to issuance of a license pursuant to section six of this article, and shall conduct periodic unannounced inspections thereafter, to determine compliance by the facility with applicable statutes and regulations promulgated thereunder. All facilities shall comply with regulations of the state fire commission. The state fire marshal, by his 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 consumer's health or safety exists, the director may invoke any remedies available pursuant to section eleven of this article. Any facility aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in section twelve of this article.

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

§16-5E-2. Definitions.

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

(a) The term "consumer" means an individual who is provided services, whether or not for a fee, by a service provider, but consumer 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 second cousin. Limited and intermittent nursing care may only be provided when the need for such care: (1) Arises from the consumer's desire to remain in the facility; (2) the consumer 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 the normal aging process. Limited and intermittent nursing care shall only be provided by or under the direct supervision of a registered professional nurse and in accordance with rules promulgated by the secretary of the department of health and human resources. If limited and intermittent nursing care is provided in an unlicensed health care facility, the facility shall: (1) Provide consumers, 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, all within the department of health and human resources; and (2) advise consumers both orally and in writing of their right to file a complaint with the aforementioned entities;

(b) The term “director” means the secretary of the department of health and human resources or his or her designee;

(c) The term “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;

(d) The term “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;

(e) The term “service provider” means the individual administratively responsible for providing to consumers for a period of more than twenty-four hours, whether for compensation or not, services of
personal assistance for one to three consumers 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 shall not be used unless the health care facility has a backup power generator.

§16-5E-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 consumers 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.

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 facility; (2) transfer consumers in the facility to other facilities; or (3) appoint temporary management to oversee the operation of the facility to assure the health, safety, welfare and rights of the facility’s consumers where there is a need for temporary management to ensure compliance with the court’s order. Any facility aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in section twelve, article five-c of this chapter.

ARTICLE 5H. RESIDENTIAL BOARD AND CARE HOMES.

§16-5H-1. Definitions.

(a) The term “residential board and care home” means any residence or place or any part or unit thereof, however named, in this state which is adver-
tised, offered, maintained or operated by the owner-
ship or management, whether for a consideration or
not, for the express or implied purpose of providing
accommodations, personal assistance and supervision,
for a period of more than twenty-four hours, to four
to ten persons who are not related to the owner or
manager by blood or marriage, within the degree of
consanguinity of second cousin, and who are depen-
dent 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 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 shall
not be used unless the residential board and care
home has a backup power generator.

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

(o) The term “limited and intermittent nursing
care” means care which may only be provided when:
(1) The resident desires to remain in the facility; (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 the normal aging
process. Limited and intermittent nursing care shall
only be provided by or under the direct supervision of
a registered professional nurse and in accordance with
rules promulgated by the secretary of the department
of health and human resources.

§16-5H-2a. Fire protection.

All residential board and care homes shall comply
with regulations of the state fire commission. The state
fire marshal, by his or her employees or authorized
agents, shall make regular fire and safety inspections
of board and care homes.
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 day of ________ this the ________

day of March, 1994.

Governor