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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998

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STATE OF WEST VIRGINIA

## ENROLLED

SENATE BILL NO. 627

(By Senators ROSS AND HELWICK)

PASSED MARCH 14, 1998

In Effect NINETY DAYS FROM Passage

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SPEAKER OF THE  
HOUSE OF DELEGATES

**ENROLLED**

**Senate Bill No. 627**

(BY SENATORS ROSS AND HELMICK)

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[Passed March 14, 1998; in effect ninety days from passage.]

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AN ACT to amend and reenact sections one and two, article five-h, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the licensure of residential board and care homes; and defining terms.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 5H. RESIDENTIAL BOARD AND CARE HOMES.**

**§16-5H-1. Purpose.**

1 It is the policy of this state to encourage and promote  
2 the development and utilization of resources to ensure the  
3 effective care and treatment of persons who are dependent  
4 upon the services of others by reason of physical or mental  
5 impairment or who may require limited and intermittent  
6 nursing care, including those individuals who qualify for  
7 and are receiving services coordinated by a licensed  
8 hospice. Such care and treatment requires a living envi-  
9 ronment for such persons which, to the extent practicable,  
10 will approximate a normal home environment. To this  
11 end, the guiding principle for administration of the laws  
12 of the state is that such persons shall be encouraged and  
13 assisted in securing necessary care and treatment in  
14 noninstitutional surroundings. In recognition that for  
15 many such persons effective care and treatment can only  
16 be secured from proprietary and voluntary residential  
17 board and care homes, it is the policy of this state to  
18 encourage, promote and require the maintenance of  
19 residential board and care homes so as to ensure protec-  
20 tion of the rights and dignity of those using the services of  
21 such residential board and care homes.

22 The provisions of this article are hereby declared to be  
23 remedial and shall be liberally construed to effectuate its  
24 purposes and intents.

**§16-5H-2. Definitions.**

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

3 (a) "Deficiency" means a statement of the rule and the  
4 fact that compliance has not been established and the  
5 reasons therefor;

6 (b) "Department" means the state department of health  
7 and human resources;

8 (c) "Director" means the secretary of the department of  
9 health and human resources or his or her designee;

10 (d) "Division" means the division of health of the state  
11 department of health and human resources;

12 (e) "Limited and intermittent nursing care" means direct  
13 hands on nursing care of an individual who needs no more  
14 than two hours of nursing care per day for a period of time  
15 no longer than ninety consecutive days per episode which  
16 may only be provided when the need for such care meets  
17 these factors: (1) The resident requests to remain in the  
18 residential board and care home; (2) the resident is advised  
19 of the availability of other specialized health care facili-  
20 ties to treat his or her condition; and (3) the need for such  
21 care is the result of a medical pathology or a result of the  
22 normal aging process. Limited and intermittent nursing  
23 care shall only be provided by or under the supervision of  
24 a registered professional nurse and in accordance with  
25 rules promulgated by the secretary;

26 (f) "Nursing care" means those procedures commonly  
27 employed in providing for the physical, emotional and  
28 rehabilitational needs of the ill or otherwise incapacitated  
29 which require technical skills and knowledge beyond that  
30 which the untrained person possesses, including, but not  
31 limited to, such procedures as: Irrigations, catheter-  
32 ization, special procedures contributing to rehabilitation  
33 and administration of medication by any method which  
34 involves a level of complexity and skill in administration  
35 not possessed by the untrained person;

36 (g) "Person" means an individual and every form of  
37 organization, whether incorporated or unincorporated,  
38 including any partnership, corporation, trust, association  
39 or political subdivision of the state;

40 (h) "Personal assistance" means personal services,  
41 including, but not limited to, the following: Help in  
42 walking, bathing, dressing, feeding or getting in or out of  
43 bed, or supervision required because of the age or mental  
44 impairment of the resident;

45 (i) "Resident" means an individual living in a residential  
46 board and care home for the purpose of receiving personal  
47 assistance or limited and intermittent nursing services  
48 from the home;

49 (j) "Residential board and care home" means any resi-  
50 dence or place or any part or unit thereof, however named,  
51 in this state which is advertised, offered, maintained or  
52 operated by the ownership or management, whether for a  
53 consideration or not, for the express or implied purpose of  
54 providing accommodations, personal assistance and  
55 supervision, for a period of more than twenty-four hours,  
56 to four or more persons who are dependent upon the  
57 services of others by reason of physical or mental impair-  
58 ment or who may require limited and intermittent nursing  
59 care, including those individuals who qualify for and are  
60 receiving services coordinated by a licensed hospice:  
61 *Provided*, That services utilizing equipment which re-  
62 quires auxiliary electrical power in the event of a power  
63 failure may not be used unless the residential board and  
64 care home has a backup power generator: *Provided*,  
65 *however*, That the care or treatment in a household,  
66 whether for compensation or not, of any person related by  
67 blood or marriage, within the degree of consanguinity of  
68 second cousin to the head of the household, or his or her  
69 spouse, may not be deemed to constitute a residential  
70 board and care home within the meaning of this article.  
71 Nothing contained in this article applies to hospitals, as  
72 defined under section one, article five-b of this chapter; or  
73 state institutions, as defined under section three, article  
74 one, chapter twenty-five of this code or section six, article  
75 one, chapter twenty-seven of this code; or residential  
76 board and care homes operated by the federal government  
77 or the state government; or institutions operated for the  
78 treatment and care of alcoholic patients; or offices of  
79 physicians; or hotels, boarding homes or other similar  
80 places that furnish to their guests only room and board; or  
81 to homes or asylums operated by fraternal orders pursuant

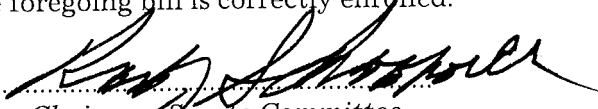
82 to article three, chapter thirty-five of this code;

83 (k) "Secretary" means the secretary of the state depart-  
84 ment of health and human resources or his or her designee;  
85 and

86 (l) The term "substantial compliance" means a level of  
87 compliance with the rules such that identified deficiencies  
88 pose no greater risk to resident health or safety than the  
89 potential for causing minimal harm.

90 The secretary may define in rules any term used herein  
91 which is not expressly defined.

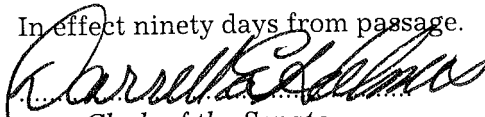
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

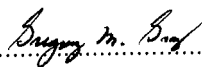
  
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Chairman Senate Committee.

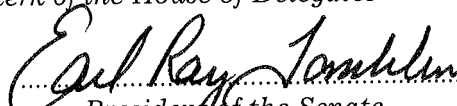
  
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Chairman House Committee

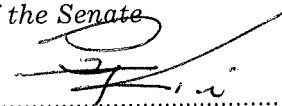
Originated in the Senate.

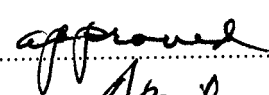
In effect ninety days from passage.

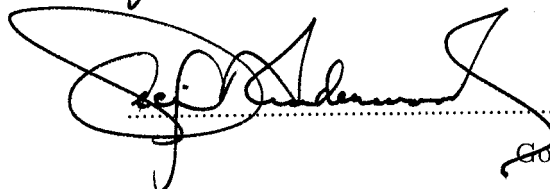
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker House of Delegates

The within  approved this the 6th  
day of April, 1998.

  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/26/98

Time

12:08pm