WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1998

ENROLLED

SENATE BILL NO. 627

(By Senators Ross and Kerweck)

PASSED March 11, 1998
In Effect Ninety Days From Passage
ENROLLED

Senate Bill No. 627

(BY SENATORS ROSS AND HELMICK)

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

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.
It is the policy of this state to encourage and promote the development and utilization of resources to ensure the effective care and treatment of persons who are dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice. Such care and treatment requires a living environment for such persons which, to the extent practicable, will approximate a normal home environment. To this end, the guiding principle for administration of the laws of the state is that such persons shall be encouraged and assisted in securing necessary care and treatment in noninstitutional surroundings. In recognition that for many such persons effective care and treatment can only be secured from proprietary and voluntary residential board and care homes, it is the policy of this state to encourage, promote and require the maintenance of residential board and care homes so as to ensure protection of the rights and dignity of those using the services of such residential board and care homes.

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


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

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

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

(c) "Director" means the secretary of the department of health and human resources or his or her designee;
(d) "Division" means the division of health of the state department of health and human resources;

(e) "Limited and intermittent nursing care" means direct hands on nursing care of an individual who needs no more than two hours of nursing care per day for a period of time no longer than ninety consecutive days per episode which may only be provided when the need for such care meets these factors: (1) The resident requests to remain in the residential board and care home; (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 supervision of a registered professional nurse and in accordance with rules promulgated by the secretary;

(f) "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 which involves a level of complexity and skill in administration not possessed by the untrained person;

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

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

(j) "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 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 or more persons who are dependent upon the services of others by reason of physical or mental impairment or 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 may not be used unless the residential board and care home has a backup power generator: Provided, however, 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 residential board and care home within the meaning of this article.

Nothing contained in this article applies to hospitals, as defined under section one, article five-b of this chapter; or state institutions, as defined under section three, article one, chapter twenty-five of this code or section six, article one, chapter twenty-seven of this code; or residential board and care 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 to homes or asylums operated by fraternal orders pursuant
to article three, chapter thirty-five of this code;

(k) "Secretary" means the secretary of the state department of health and human resources or his or her designee;

and

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

The secretary may define in rules any term used herein which is not expressly defined.
That 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 .......... approved this the .......... day of .........., 1998.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/26/48
Time 12:08 PM