

FILED

2005 MAY -3 P 4: 07

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005

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**SECOND  
ENROLLMENT**

COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 2381**

(By Delegates Amores, Webster, Palumbo and Kominar)

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Passed April 16, 2005

In Effect Ninety Days from Passage

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# **S E C O N D E N R O L L M E N T**

COMMITTEE SUBSTITUTE

FOR

## **H. B. 2381**

(BY DELEGATES AMORES, WEBSTER, PALUMBO AND KOMINAR)

[Amended and Again Passed April 16, 2005, as a result of the objections of the Governor;  
in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5B-14; to amend and reenact §16-5C-5 of said code; to amend and reenact §16-5D-5 of said code; to amend and reenact §16-5E-1a of said code; and to amend and reenact §16-5N-5 of said code, all relating to patient or resident visitation rights; requiring public or private hospitals to permit patient visitation privileges for nonrelatives under certain circumstances; and requiring the director to propose legislative rules for certain resident visitation rights at nursing homes, assisted living residences, legally unlicensed health care homes and residential care communities.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-5B-14; that §16-5C-5 of said code be amended and reenacted; that 16-5D-5 of said code be amended and reenacted; that §16-5E-1a of said code be amended and reenacted; and that § 16-5N-5 of said code be amended and reenacted, all to read as follows:

**ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.**

**§16-5B-14. Hospital visitation.**

1 (a) A public or private hospital licensed pursuant to the  
2 provisions of section two of this article is required to permit  
3 patient visitation privileges for nonrelatives unless otherwise  
4 requested by the patient or legal designee. For purposes of this  
5 section, the term “legal designee” means and includes those  
6 persons eighteen years of age or older, appointed by the patient  
7 to make health care decisions for the patient pursuant to the  
8 provisions of section six, article thirty of this chapter.

9 (b) It is the intent of the Legislature that this section  
10 facilitate a patient’s visitation with nonrelative individuals, and  
11 may not, in any way, restrict or limit allowable uses and  
12 disclosures of protected health information pursuant to the  
13 Health Insurance Portability and Accountability Act, 42 U.S.C.  
14 §1320d-2 and the accompanying regulations in 45 CFR  
15 164.500.

16 (c) No provision of this section may be construed to prevent  
17 a hospital from otherwise restricting visitation privileges in  
18 order to prevent harm to the patient or disruption to the facility.

**ARTICLE 5C. NURSING HOMES.**

**§16-5C-5. Rules; minimum standards for nursing homes.**

1 (a) All rules shall be proposed for legislative approval in  
2 accordance with the provisions of article three, chapter

3 twenty-nine-a of this code. The director shall recommend the  
4 adoption, amendment or repeal of such rules as may be neces-  
5 sary or proper to carry out the purposes and intent of this  
6 article. (b) The director shall recommend rules establishing  
7 minimum standards of operation of nursing homes including,  
8 but not limited to, the following:

9 (1) Administrative policies, including: (A) An affirmative  
10 statement of the right of access to nursing homes by members  
11 of recognized community organizations and community legal  
12 services programs whose purposes include rendering assistance  
13 without charge to residents, consistent with the right of resi-  
14 dents to privacy; and (B) a statement of the rights and responsi-  
15 bilities of residents in nursing homes which prescribe, as a  
16 minimum, such a statement of residents' rights as included in  
17 the United States Department of Health and Human Services  
18 regulations, in force on the effective date of this article,  
19 governing participation of nursing homes in the Medicare and  
20 Medicaid programs pursuant to titles eighteen and nineteen of  
21 the Social Security Act;

22 (2) Minimum numbers of administrators, medical directors,  
23 nurses, aides and other personnel according to the occupancy of  
24 the facility;

25 (3) Qualifications of facility's administrators, medical  
26 directors, nurses, aides, and other personnel;

27 (4) Safety requirements;

28 (5) Sanitation requirements;

29 (6) Personal services to be provided;

30 (7) Dietary services to be provided;

31 (8) Medical records;

- 32 (9) Social and recreational activities to be made available;
- 33 (10) Pharmacy services;
- 34 (11) Nursing services;
- 35 (12) Medical services;
- 36 (13) Physical facility;
- 37 (14) Resident rights;
- 38 (15) Visitation privileges that:
  - 39 (A) Permit immediate access to a resident, subject to the
  - 40 resident's right to deny or withdraw consent at any time, by
  - 41 immediate family or other relatives of the resident;
  - 42 (B) Permit immediate access to a resident, subject to
  - 43 reasonable restrictions and the resident's right to deny or
  - 44 withdraw consent at any time, by others who are visiting with
  - 45 the consent of the resident; and
  - 46 (C) Permit access to other specific persons or classes of
  - 47 persons consistent with state and federal law.
- 48 (16) Admission, transfer and discharge rights.

**ARTICLE 5D. ASSISTED LIVING RESIDENCES.**

**§16-5D-5. Rules; minimum standards for assisted living residences.**

- 1 (a) The secretary shall propose rules for legislative approval
- 2 in accordance with the provisions of article three, chapter
- 3 twenty-nine-a of this code to carry out the purposes and intent
- 4 of this article and to enable the secretary to exercise the powers
- 5 and perform the duties conferred upon the secretary by this
- 6 article.

7 (b) The secretary shall propose rules establishing minimum  
8 standards of operation of assisted living residences, including,  
9 but not limited to, the following:

10 (1) Administrative policies, including:

11 (A) An affirmative statement of the right of access to  
12 assisted living residences by members of recognized commu-  
13 nity organizations and community legal services programs  
14 whose purposes include rendering assistance without charge to  
15 residents, consistent with the right of residents to privacy; and

16 (B) A statement of the rights and responsibilities of  
17 residents;

18 (2) Minimum numbers and qualifications of personnel,  
19 including management, medical and nursing, aides, orderlies  
20 and support personnel, according to the size and classification  
21 of the assisted living residence;

22 (3) Safety requirements;

23 (4) Sanitation requirements;

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

25 (6) Dietary services to be provided;

26 (7) Maintenance of health records;

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

28 (9) Physical facilities;

29 (10) Requirements related to provision of limited and  
30 intermittent nursing;

31 (11) Visitation privileges governing access to a resident by  
32 immediate family or other relatives of the resident and by other  
33 persons who are visiting with the consent of the resident; and

34 (12) Such other categories as the secretary determines to be  
35 appropriate to ensure resident's health, safety and welfare.

36 (c) The secretary shall include in rules detailed standards  
37 for each of the categories of standards established pursuant to  
38 subsections (b) and (d) of this section and shall classify such  
39 standards as follows:

40 (1) Class I standards are standards the violation of which,  
41 as the secretary determines, would present either an imminent  
42 danger to the health, safety or welfare of any resident or a  
43 substantial probability that death or serious physical harm  
44 would result;

45 (2) Class II standards are standards which the secretary  
46 determines have a direct or immediate relationship to the  
47 health, safety or welfare of any resident, but which do not  
48 create imminent danger;

49 (3) Class III standards are standards which the secretary  
50 determines have an indirect or a potential impact on the health,  
51 safety or welfare of any resident.

52 (d) An assisted living residence shall attain substantial  
53 compliance with standards established pursuant to this section  
54 and such other requirements for a license as may be established  
55 by rule under this article.

**ARTICLE 5E. REGISTRATION AND INSPECTION OF SERVICE PROVIDERS IN LEGALLY UNLICENSED HEALTH CARE HOMES.**

**§16-5E-1a. Powers, rights and duties of the director.**

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

3 (a) To promulgate and enforce rules governing complaint  
4 investigations within the homes of legally unlicensed health  
5 care providers registered under this article. Such rules shall  
6 include the minimum health, safety and welfare standards in the  
7 following areas:

8 (1) Physical environment;

9 (2) Nutrition;

10 (3) Requirements related to limited and intermittent nursing  
11 care;

12 (4) Medication administration;

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

14 (6) Treatment;

15 (7) Visitation privileges governing access to a resident by  
16 immediate family or other relatives of the resident and by other  
17 persons who are visiting with the consent of the resident;

18 (8) Such other categories as the director determines to be  
19 appropriate to ensure residents' health, safety and welfare.

20 (b) To exercise as sole authority all powers relating to  
21 issuance, suspension and revocation of registration of legally  
22 unlicensed homes providing health care;

23 (c) To issue directed plans of correction for deficiencies  
24 identified during complaint investigations;

25 (d) To order closure of any home for failure to comply with  
26 a directed plan of corrections;



27 (e) To take all actions required under the provisions of  
28 sections three, four, five and six of this article; and

29 (f) To deny registration to any operator of a legally unli-  
30 censed home who is listed on the state abuse registry.

**ARTICLE 5N. RESIDENTIAL CARE COMMUNITIES.**

**§16-5N-5. Rules; minimum standards for residential care communities.**

1 (a) The secretary shall, by the first day of July, one thou-  
2 sand nine hundred ninety-eight, propose all rules that may be  
3 necessary or proper to implement or effectuate the purposes and  
4 intent of this article and to enable the director to exercise the  
5 powers and perform the duties conferred herein. All rules  
6 authorized or required pursuant to this article shall be proposed  
7 by the secretary and promulgated in accordance with the  
8 provisions governing legislative rules, contained in article three,  
9 chapter twenty-nine-a of this code.

10 (b) The secretary shall propose rules establishing minimum  
11 standards for the operation of residential care communities,  
12 including, but not limited to, the following:

13 (1) Administrative policies, including: (i) An affirmative  
14 statement of the right of access to residential care communities  
15 by members of recognized community organizations and  
16 community legal services programs whose purposes include  
17 rendering assistance without charge to residents, consistent with  
18 the right of residents to privacy; and (ii) a statement of the  
19 rights and responsibilities of residents;

20 (2) Minimum numbers and qualifications of residential care  
21 community personnel according to the size, classification and  
22 health care needs of the residential care community;

23 (3) Safety requirements, except for those fire and life safety  
24 requirements under the jurisdiction of the State Fire Marshal;

25 (4) Sanitation requirements;

26 (5) Protective and personal services required to be pro-  
27 vided;

28 (6) Dietary services required to be provided;

29 (7) Maintenance of health records, including confidential-  
30 ity;

31 (8) Social and recreational activities required to be made  
32 available;

33 (9) Physical facilities;

34 (10) Requirements related to limited and intermittent  
35 nursing care;

36 (11) Visitation privileges governing access to a resident by  
37 immediate family or other relatives of the resident and by other  
38 persons who are visiting with the consent of the resident; and

39 (12) Other items or considerations that the secretary  
40 considers appropriate to ensure the health, safety and welfare of  
41 residents of residential care communities.

42 (c) The secretary shall propose rules that include detailed  
43 specifications for each category of standards required under  
44 subsections (b) and (d) of this section, and shall classify these  
45 standards as follows:

46 (1) Class I standards, the violation of which presents either  
47 an imminent danger to the health, safety or welfare of a resident  
48 or a substantial probability that death or serious physical harm  
49 may result;


50 (2) Class II standards, the violation of which directly  
51 implicates the health, safety or welfare of a resident, but which  
52 does not present imminent danger thereto; and

53 (3) Class III standards, the violation of which has an  
54 indirect or potential impact on the health, safety or welfare of  
55 any resident.

56 (d) A residential care community shall attain substantial  
57 compliance in every category of standard enumerated in this  
58 section in order to be considered as being in substantial  
59 compliance with the requirements of this article and the rules  
60 promulgated hereunder.

61 (e) Until such time as the secretary proposes rules govern-  
62 ing residential care communities under this section, existing  
63 rules governing residential board and care homes shall apply to  
64 residential care communities and shall be construed so as to  
65 conform with the provisions of this article in their application  
66 to residential care communities: *Provided*, That to the extent  
67 any provisions of the rule governing residential board and care  
68 homes conflict with the provisions of this article, the provisions  
69 of this article shall govern.

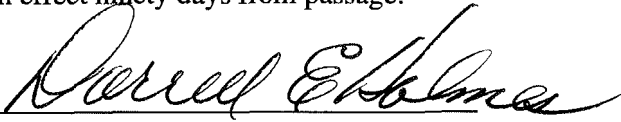
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

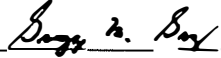
  
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Chairman Senate Committee

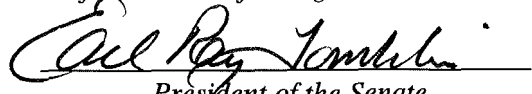
  
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Chairman House Committee


Originating in the House.

In effect ninety days from passage.

  
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Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 3rd  
day of May, 2005.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAY 2 2005

Time 4:50 pm