WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2381

(By Delegates Amores, Webster, Palumbo and Kominar)

Passed April 5, 2005

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; and to amend said code by amending and reenacting §16-5C-5, §16-5D-5, §16-5E-1a, and §16-5N-5, 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 §16B-5B-14; and that
§16-5C-5, §16-5E-1a and §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.

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

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

(c) No provision of this section may be construed to prevent a hospital from otherwise restricting visitation privileges in 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.

(a) All rules shall be proposed for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. The director shall recommend the adoption, amendment or repeal of such rules as may be necessary or proper to carry out the purposes and intent of this article. (b) The director shall recommend rules establishing
minimum standards of operation of nursing homes including, but not limited to, the following:

(1) Administrative policies, including: (A) An affirmative statement of the right of access to nursing homes by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy; and (B) a statement of the rights and responsibilities of residents in nursing homes which prescribe, as a minimum, such a statement of residents’ rights as included in the United States Department of Health and Human Services regulations, in force on the effective date of this article, governing participation of nursing homes in the Medicare and Medicaid programs pursuant to titles eighteen and nineteen of the Social Security Act;

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

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

(4) Safety requirements;

(5) Sanitation requirements;

(6) Personal services to be provided;

(7) Dietary services to be provided;

(8) Medical records;

(9) Social and recreational activities to be made available;

(10) Pharmacy services;
(11) Nursing services;

(12) Medical services;

(13) Physical facility;

(14) Resident rights;

(15) Visitation privileges that:

(A) Permit immediate access to a resident, subject to the resident’s right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(B) Permit immediate access to a resident, subject to reasonable restrictions and the resident’s right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident; and

(C) Permit access to other specific persons or classes of persons consistent with state and federal law.

(16) Admission, transfer and discharge rights.

ARTICLE 5D. ASSISTED LIVING RESIDENCES.

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

(a) The secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the purposes and intent of this article and to enable the secretary to exercise the powers and perform the duties conferred upon the secretary by this article.
(b) The secretary shall propose rules establishing minimum standards of operation of assisted living residences, including, but not limited to, the following:

1. Administrative policies, including:
   A. An affirmative statement of the right of access to assisted living residences by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy; and
   B. A statement of the rights and responsibilities of residents;

2. Minimum numbers and qualifications of personnel, including management, medical and nursing, aides, orderlies and support personnel, according to the size and classification of the assisted living residence;

3. Safety requirements;

4. Sanitation requirements;

5. Protective and personal services to be provided;

6. Dietary services to be provided;

7. Maintenance of health records;

8. Social and recreational activities to be made available;

9. Physical facilities;

10. Requirements related to provision of limited and intermittent nursing;
(11) Visitation privileges governing access to a resident by immediate family or other relatives of the resident and by other persons who are visiting with the consent of the resident;

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

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

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

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

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

(d) An assisted living residence shall attain substantial compliance with standards established pursuant to this section and such other requirements for a license as may be established 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.
In the administration of this article, the director shall have the following powers, duties and rights:

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

(1) Physical environment;

(2) Nutrition;

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

(4) Medication administration;

(5) Protective and personal services to be provided;

(6) Treatment;

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

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

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

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

(d) To order closure of any home for failure to comply with a directed plan of corrections;
(e) To take all actions required under the provisions of sections three, four, five and six of this article; and

(f) To deny registration to any operator of a legally unlicensed home who is listed on the state abuse registry.

ARTICLE 5N. RESIDENTIAL CARE COMMUNITIES.

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

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

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

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

(2) Minimum numbers and qualifications of residential care community personnel according to the size, classification and health care needs of the residential care community;
(3) Safety requirements, except for those fire and life safety requirements under the jurisdiction of the State Fire Marshal;

(4) Sanitation requirements;

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

(6) Dietary services required to be provided;

(7) Maintenance of health records, including confidentiality;

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

(9) Physical facilities;

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

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

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

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

(1) Class I standards, the violation of which presents either an imminent danger to the health, safety or welfare of a resident or a substantial probability that death or serious physical harm may result;
(2) Class II standards, the violation of which directly implicates the health, safety or welfare of a resident, but which does not present imminent danger thereto; and

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

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

(e) Until such time as the secretary proposes rules governing residential care communities under this section, existing rules governing residential board and care homes shall apply to residential care communities and shall be construed so as to conform with the provisions of this article in their application to residential care communities: Provided, That to the extent any provisions of the rule governing residential board and care homes conflict with the provisions of this article, the provisions of this article shall govern.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is disapproved this the 16th day of April, 2005.

Governor
PRESENTED TO THE GOVERNOR

Date 4/21/05

Time 2:57