WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 531

(By Senator Unger)

PASSED April 7, 2005

In Effect ninety days from Passage
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Senate Bill No. 531

(BY SENATOR UNGER)

[Passed April 7, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §§16-5I-1, §§16-5I-2, §§16-5I-3, §§16-5I-4, §§16-5I-5 and §§16-5I-6 of the Code of West Virginia, 1931, as amended, all relating to the Hospice Licensure Act; requiring compliance with the Centers for Medicare and Medicaid Services; and penalties.

Be it enacted by the Legislature of West Virginia:

That §§16-5I-1, §§16-5I-2, §§16-5I-3, §§16-5I-4, §§16-5I-5 and §§16-5I-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5I. HOSPICE LICENSURE ACT.

§16-5I-1. Purpose and short title.

1 This article shall be known as the Hospice Licensure Act.
2 The purpose of this Act is to establish licensing requirements for hospices. It is the intent of the Legislature to establish, promote and make available within this state a comprehensive hospice care program for the treatment of
physical, emotional and mental symptoms of terminal illness.

§16-51-2. Definitions.

(a) “Bereavement services” means support services designed to assist individuals to experience, respond emotionally to and adjust to the death of another person.

(b) “Hospice” means a coordinated program of home and inpatient care provided directly or through an agreement under the direction of an identifiable hospice administration which provides palliative and supportive medical and other health services to terminally ill individuals and their families. Hospice utilizes a medically directed interdisciplinary team. A hospice program of care provides care to meet the physical, psychological, social, spiritual and other special needs which are experienced during the final stages of illness and during dying and bereavement.

(c) “Interdisciplinary team” means the hospice patient and the patient’s family, the attending physician and the following hospice personnel: Physician, nurse, social worker, clergy and trained volunteer. Providers of supportive services such as mental health, pharmaceutical and any other appropriate allied health services may also be included on the team as the needs of the individual dictate.

(d) “Palliative services” means treatment directed at controlling pain, relieving other symptoms and focusing on the special needs of the individual and family as they experience the stress of the dying process, rather than treatment designed for investigation and intervention for the purpose of cure or prolongation of life.

(e) “Terminally ill” means that an individual has a medical prognosis that his or her life expectancy is six months or less or another length of time determined by the centers for medicare and medicaid services and designated in federal hospice regulations.
(f) "Secretary" means the Secretary of the West Virginia Department of Health and Human Resources. The Secretary may define in regulation any term or phrase used in this article which is not expressly defined.

§16-5I-3. Hospices to obtain license; application; fees and inspections.

(a) No person, partnership, association or corporation or any governmental unit or any division, department, board or agency thereof may operate a hospice without first obtaining a license from the Secretary in accordance with the provisions of this article and the rules lawfully promulgated hereunder.

(b) Any person, partnership, association or corporation or any governmental unit or any division, department, board or agency thereof desiring a license hereunder shall file with the Secretary an application in such form as the Secretary shall prescribe and furnish accompanied by a fee to be determined by the Board of Health, based upon the number of persons served by the hospice. The Secretary shall inspect the hospice prior to issuing a license. Upon receipt and review of an application for license, the Secretary shall issue a license if the hospice is in compliance with the provisions of this article and with the rules lawfully promulgated hereunder. The license is not transferable or assignable.

(c) A license shall expire one year from the date of issuance. Sixty days prior to the expiration date, an application for renewal shall be submitted on forms furnished by the Secretary. A license shall be renewed if the Secretary determines that the applicant is in compliance with this article and with all rules promulgated hereunder.

(d) The Secretary or his or her designee shall inspect all hospices that are subject to rules adopted pursuant to this article periodically and at least as often as required by the
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30 Centers for Medicare and Medicaid Services in order to
31 determine compliance with the provisions of this article
32 and with rules adopted hereunder, and regulations pro-
33 mulgated by the Centers for Medicare and Medicaid
34 Services.

§16-51-4. Suspension; revocation.

1 (a) The Secretary is authorized to suspend or revoke a
2 license issued hereunder if the provisions of this article or
3 of the rules are violated.

4 (b) Before any such license is suspended or revoked,
5 however, written notice shall be given the licensee, stating
6 the grounds of the complaint, and the date, time and place
7 set for the hearing on the complaint, which date shall not
8 be less than thirty days from the time notice is given. Such
9 notice shall be sent by registered mail to the licensee at the
10 address where the hospice concerned is located. The
11 licensee shall be entitled to be represented by legal counsel
12 at the hearing.

13 (c) If a license is revoked as herein provided, a new
14 application for a license shall be considered by the Secre-
15 tary if, when and after the conditions upon which revoca-
16 tion was based have been corrected and evidence of this
17 fact has been furnished. A new license shall then be
18 granted after proper inspection has been made and all
19 provisions of this article and rules promulgated hereunder
20 have been satisfied.

21 (d) All of the pertinent provisions of article five, chapter
22 twenty-nine-a of this code shall apply to and govern any
23 hearing authorized and required by the provisions of this
24 article and the administrative procedure in connection
25 with and following any such hearing, with like effect as if
26 the provisions of said article five were set forth in extenso
27 in this section.

28 (e) Any applicant or licensee who is dissatisfied with the
29 decision of the Secretary as a result of the hearing pro-
vided in this section may, within thirty days after receiv-
ing notice of the decision, appeal to the circuit court, in
term or in vacation, of Kanawha County for judicial
review of the decision.

(f) The court may affirm, modify or reverse the decision
of the Secretary and either the applicant or licensee or the
Secretary may appeal from the court’s decision to the
Supreme Court of Appeals.

§16-5I-5. Secretary of Health and Human Resources to establish
rules.

The Secretary of the Department of Health and Human
Resources may promulgate rules in accordance with the
provisions of chapter twenty-nine-a of this code for the
licensure of hospice programs to ensure adequate care,
treatment, health, safety, welfare and comfort of hospice
patients. Such rules shall include, but not be limited to:

(a) The qualifications and supervision of licensed and
nonlicensed personnel;

(b) The provision and coordination of inpatient care and
in-home treatment services, including the development of
a written plan of care;

(c) The management, operation, staffing and equipping
of the hospice program;

(d) The clinical and business records kept by the hospice;

(e) The procedures for the review of utilization and
quality of patient care; and

(f) Such other requirements as the Secretary determines
to be appropriate.

§16-5I-6. Violations; penalties; injunction.

(a) Any person, partnership, association or corporation
and any local governmental unit or any division, depart-
ment, board or agency thereof which establishes, conducts,
manages or operates a hospice without first obtaining a license therefor as herein provided, or which violates any provisions of this article or any rule or regulation lawfully promulgated thereunder, shall be assessed a civil penalty by the Secretary not to exceed fifty dollars for each violation. Each day of continuing violation after conviction shall be considered a separate violation.

(b) Notwithstanding the existence or pursuit of any other remedy, the Secretary may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, corporation or any governmental unit or any division, department, board or agency thereof to restrain or prevent the establishment, conduct, management or operation of any hospice or violation of any provisions of this article or any rule or regulation lawfully promulgated thereunder without first obtaining a license therefor in the manner hereinbefore provided.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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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 is approved this the 21st day of April, 2005. Governor