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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



## ENROLLED

Committee Substitute for  
**SENATE BILL NO. 308**

(By Senator Manchin)



PASSED March 11<sup>12</sup> 1994 *or 11/12*  
In Effect 90 days from Passage

**E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 308**

(SENATOR MANCHIN, *original sponsor*)

12 <sup>OK 3/17/94</sup> \_\_\_\_\_

[Passed March 11, 1994; in effect ninety days from passage.]

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AN ACT to amend and reenact sections two and nine, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and five, article five-e of said chapter; and to amend and reenact sections one and two-a, article five-h of said chapter, all relating to nursing, personal care and residential board and care homes; amending the definition of director; amending the definitions of facilities with respect to the number of persons who may be served by nursing homes, personal care homes and residential board and care homes; inserting a definition for "limited and intermittent nursing care" for licensed and unlicensed facilities; increasing the minimum number of persons served from three to four for classification as a nursing home; increasing from two to three the number of persons who may be served by a legally unlicensed health care facility; increasing from three to eight to four to ten the number of persons who may be served by residential board and care homes; requiring compliance with requirements of the fire commission;

deleting reference to the requirement that certain residential board and care homes have a specific type of sprinkler system; amending the definition of service provider to include the provision of limited and intermittent nursing care; eliminating reference to the residential board and care homes automatic sprinkler system requirement; requiring legally unlicensed health care facilities to provide consumers, orally and in writing, with certain information if limited and intermittent care is provided by a facility; and requiring residential board and care homes to comply with regulations of the state fire commission and requiring the fire marshal to make fire and safety inspections.

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

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

**ARTICLE 5C. NURSING AND PERSONAL CARE HOMES AND RESIDENTIAL BOARD AND CARE HOMES.**

**§16-5C-2. Definitions.**

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

3 (a) The term "director" means the secretary of the  
4 department of health and human resources or his or  
5 her designee;

6 (b) The term "facility" means any nursing home,  
7 personal care home or residential board and care  
8 home as defined in subdivisions (d), (e) and (f) of this  
9 section: *Provided*, That the care or treatment in a  
10 household, whether for compensation or not, of any  
11 person related by blood or marriage, within the degree  
12 of consanguinity of second cousin to the head of the  
13 household, or his or her spouse, may not be deemed to  
14 constitute a nursing home, personal care home, or  
15 residential board and care home within the meaning

16 of this article. Nothing contained in this article shall  
17 apply to hospitals, as defined under section one, article  
18 five-b of this chapter, or state institutions as defined  
19 under section six, article one, chapter twenty-seven of  
20 this code or section three, article one, chapter twenty-  
21 five of this code, or nursing homes operated by the  
22 federal government or the state government, or  
23 institutions operated for the treatment and care of  
24 alcoholic patients, or offices of physicians, or hotels,  
25 boarding homes or other similar places that furnish to  
26 their guests only room and board, or extended care  
27 facilities operated in conjunction with a hospital;

28 (c) The term "limited and intermittent nursing  
29 care" means care which may only be provided when  
30 the need for such care meets these factors: (1) The  
31 resident requests to remain in the facility; (2) the  
32 resident is advised of the availability of other special-  
33 ized health care facilities to treat his or her condition;  
34 and (3) the need for such care is the result of a  
35 medical pathology or a result of the normal aging  
36 process. Limited and intermittent nursing care shall  
37 only be provided by or under the direct supervision of  
38 a registered professional nurse and in accordance with  
39 rules promulgated by the board of health;

40 (d) The term "nursing home" means any institution,  
41 residence or place, or any part or unit thereof,  
42 however named, in this state which is advertised,  
43 offered, maintained or operated by the ownership or  
44 management, whether for a consideration or not, for  
45 the express or implied purpose of providing accommo-  
46 dations and care, for a period of more than twenty-  
47 four hours, for four or more persons who are ill or  
48 otherwise incapacitated and in need of extensive, on-  
49 going nursing care due to physical or mental impair-  
50 ment, or which provides services for the rehabilitation  
51 of persons who are convalescing from illness or  
52 incapacitation;

53 (e) The term "personal care home" means any  
54 institution, residence or place, or any part or unit  
55 thereof, however named, in this state which is adver-  
56 tised, offered, maintained or operated by the owner-

57 ship or management, whether for a consideration or  
58 not, for the express or implied purpose of providing  
59 accommodations and personal assistance and supervi-  
60 sion, for a period of more than twenty-four hours, to  
61 four or more persons who are dependent upon the  
62 services of others by reason of physical or mental  
63 impairment who may require limited and intermittent  
64 nursing care, including those individuals who qualify  
65 for and are receiving services coordinated by a  
66 licensed hospice: *Provided*, That services utilizing  
67 equipment which requires auxiliary electrical power  
68 in the event of a power failure shall not be used unless  
69 the personal care home has a backup power generator;

70 (f) The term "residential board and care home"  
71 means any residence or place, or any part or unit  
72 thereof, however named, in this state which is adver-  
73 tised, offered, maintained or operated by the owner-  
74 ship or management, whether for consideration or not,  
75 for the express or implied purpose of providing  
76 accommodations and personal assistance and supervi-  
77 sion, for a period of more than twenty-four hours, to  
78 four to ten persons who are not related to the owner  
79 or manager by blood or marriage within the degree of  
80 consanguinity of second cousin and are dependent  
81 upon the services of others by reason of physical or  
82 mental impairment or who may require limited and  
83 intermittent nursing care but are capable of self-  
84 preservation and are not bedfast, including those  
85 individuals who qualify for and are receiving services  
86 coordinated by a licensed hospice: *Provided*, That  
87 services utilizing equipment which requires auxiliary  
88 electrical power in the event of a power failure shall  
89 not be used unless the residential board and care  
90 home has a backup power generator;

91 (g) The term "nursing care" means those procedures  
92 commonly employed in providing for the physical,  
93 emotional and rehabilitational needs of the ill or  
94 otherwise incapacitated which require technical skills  
95 and knowledge beyond that which the untrained  
96 person possesses, including, but not limited to, such  
97 procedures as: Irrigations, catheterizations, special

98 procedure contributing to rehabilitation and adminis-  
99 tration of medication by any method which involves a  
100 level of complexity and skill in administration not  
101 possessed by the untrained person;

102 (h) The term "personal assistance" means personal  
103 services, including, but not limited to, the following:  
104 Help in walking, bathing, dressing, feeding or getting  
105 in or out of bed, or supervision required because of the  
106 age or mental impairment of the resident;

107 (i) The term "patient" means an individual under  
108 care in a nursing home;

109 (j) The term "resident" means an individual living  
110 in a personal care home or a residential board and  
111 care home;

112 (k) The term "sponsor" means the person or agency  
113 legally responsible for the welfare and support of a  
114 patient or resident;

115 (l) The term "person" means an individual and  
116 every form of organization, whether incorporated or  
117 unincorporated, including any partnership, corpora-  
118 tion, trust, association or political subdivision of the  
119 state.

120 The director may define in regulations any term  
121 used herein which is not expressly defined.

**§16-5C-9. Inspections.**

1 The director and any duly designated employee or  
2 agent thereof shall have the right to enter upon and  
3 into the premises of any facility for which a license  
4 has been issued, for which an application for license  
5 has been filed with the director, or which the director  
6 has reason to believe is being operated or maintained  
7 as a nursing home, personal care home or residential  
8 board and care home without a license. If such entry  
9 is refused by the owner or person in charge of any  
10 such facility, the director shall apply to the circuit  
11 court of the county in which the facility is located or  
12 the circuit court of Kanawha county for a warrant  
13 authorizing inspection, and such court shall issue an

14 appropriate warrant if it finds good cause for  
15 inspection.

16 The director, by the director's authorized employees  
17 or agents, shall conduct at least one inspection prior to  
18 issuance of a license pursuant to section six of this  
19 article, and shall conduct periodic unannounced  
20 inspections thereafter, to determine compliance by the  
21 facility with applicable statutes and regulations pro-  
22 mulgated thereunder. All facilities shall comply with  
23 regulations of the state fire commission. The state fire  
24 marshal, by his employees or authorized agents, shall  
25 make all fire, safety and like inspections. The director  
26 may provide for such other inspections as the director  
27 may deem necessary to carry out the intent and  
28 purpose of this article. If after investigating a com-  
29 plaint, the director determines that the complaint is  
30 substantiated and that an immediate and serious  
31 threat to a consumer's health or safety exists, the  
32 director may invoke any remedies available pursuant  
33 to section eleven of this article. Any facility aggrieved  
34 by a determination or assessment made pursuant to  
35 this section shall have the right to an administrative  
36 appeal as set forth in section twelve of this article.

**ARTICLE 5E. REGISTRATION OF SERVICE PROVIDERS IN LEGALLY  
UNLICENSED HEALTH CARE FACILITIES.**

**§16-5E-2. Definitions.**

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

3 (a) The term "consumer" means an individual who  
4 is provided services, whether or not for a fee, by a  
5 service provider, but consumer does not include a  
6 person receiving services provided by another who is  
7 related to him or her or the spouse thereof by blood  
8 or marriage, within the degree of consanguinity of  
9 second cousin. Limited and intermittent nursing care  
10 may only be provided when the need for such care: (1)  
11 Arises from the consumer's desire to remain in the  
12 facility; (2) the consumer is advised of the availability  
13 of other specialized health care facilities to treat his or  
14 her condition; and (3) the need for such care is the

15 result of a medical pathology or a result of the normal  
16 aging process. Limited and intermittent nursing care  
17 shall only be provided by or under the direct supervi-  
18 sion of a registered professional nurse and in accor-  
19 dance with rules promulgated by the secretary of the  
20 department of health and human resources. If limited  
21 and intermittent nursing care is provided in an  
22 unlicensed health care facility, the facility shall: (1)  
23 Provide consumers, at the time of admission, with the  
24 name, address and telephone number of the offices of  
25 health facility licensure and certification, the state  
26 long-term care ombudsman, and adult protective  
27 services, all within the department of health and  
28 human resources; and (2) advise consumers both orally  
29 and in writing of their right to file a complaint with  
30 the aforementioned entities;

31 (b) The term "director" means the secretary of the  
32 department of health and human resources or his or  
33 her designee;

34 (c) The term "nursing care" means those procedures  
35 commonly employed in providing for the physical,  
36 emotional and rehabilitational needs of the ill or  
37 otherwise incapacitated which require technical skills  
38 and knowledge beyond that which the untrained  
39 person possesses, including, but not limited to, such  
40 procedures as: Irrigations; catheterization; special  
41 procedures contributing to rehabilitation; and adminis-  
42 tration of medication by any method prescribed by a  
43 physician which involves a level of complexity and  
44 skill in administration not possessed by the untrained  
45 person;

46 (d) The term "personal assistance" means personal  
47 services, including, but not limited to, the following:  
48 Help in walking, bathing, dressing, feeding or getting  
49 in or out of bed, or supervision required because of the  
50 age or physical or mental impairment of the resident;

51 (e) The term "service provider" means the individ-  
52 ual administratively responsible for providing to  
53 consumers for a period of more than twenty-four  
54 hours, whether for compensation or not, services of



55 personal assistance for one to three consumers and  
56 who may require limited and intermittent nursing  
57 care, including those individuals who qualify for and  
58 are receiving services coordinated by a licensed  
59 hospice: *Provided*, That services utilizing equipment  
60 which requires auxiliary electrical power in the event  
61 of a power failure shall not be used unless the health  
62 care facility has a backup power generator.

**§16-5E-5. Inspections; right of entry.**

1 The director may employ inspectors to enforce the  
2 provisions of this article. These inspectors shall have  
3 the right of entry into any place where services are  
4 provided by a service provider, to determine the  
5 number of consumers therein and the adequacy of  
6 services being provided to them. The director may  
7 obtain a search warrant to inspect those premises that  
8 the director has reason to believe are being used to  
9 provide services.

10 If after investigating a complaint, the director  
11 determines that the complaint is substantiated and  
12 that an immediate and serious threat to a resident's  
13 health or safety exists, the director may petition the  
14 circuit court for an injunction, order of abatement or  
15 other appropriate action or proceeding to: (1) Close the  
16 facility; (2) transfer consumers in the facility to other  
17 facilities; or (3) appoint temporary management to  
18 oversee the operation of the facility to assure the  
19 health, safety, welfare and rights of the facility's  
20 consumers where there is a need for temporary  
21 management to ensure compliance with the court's  
22 order. Any facility aggrieved by a determination or  
23 assessment made pursuant to this section shall have  
24 the right to an administrative appeal as set forth in  
25 section twelve, article five-c of this chapter.

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

**§16-5H-1. Definitions.**

1 (a) The term "residential board and care home"  
2 means any residence or place or any part or unit  
3 thereof, however named, in this state which is adver-

4 tised, offered, maintained or operated by the owner-  
5 ship or management, whether for a consideration or  
6 not, for the express or implied purpose of providing  
7 accommodations, personal assistance and supervision,  
8 for a period of more than twenty-four hours, to four  
9 to ten persons who are not related to the owner or  
10 manager by blood or marriage, within the degree of  
11 consanguinity of second cousin, and who are depen-  
12 dent upon the services of others by reason of physical  
13 or mental impairment or who may require limited  
14 and intermittent nursing care but who are capable of  
15 self-preservation and are not bedfast including those  
16 individuals who qualify for and are receiving services  
17 coordinated by a licensed hospice: *Provided*, That  
18 services utilizing equipment which requires auxiliary  
19 electrical power in the event of a power failure shall  
20 not be used unless the residential board and care  
21 home has a backup power generator.

22 (b) The term "self-preservation" means that a  
23 person is, at least, capable of removing his or her  
24 physical self from situations involving imminent  
25 danger, such as fire.

26 (c) The term "limited and intermittent nursing  
27 care" means care which may only be provided when:  
28 (1) The resident desires to remain in the facility; (2)  
29 the resident is advised of the availability of other  
30 specialized health care facilities to treat his or her  
31 condition; and (3) the need for such care is the result  
32 of a medical pathology or a result of the normal aging  
33 process. Limited and intermittent nursing care shall  
34 only be provided by or under the direct supervision of  
35 a registered professional nurse and in accordance with  
36 rules promulgated by the secretary of the department  
37 of health and human resources.

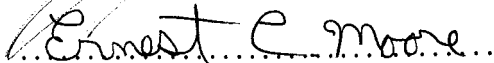
**§16-5H-2a. Fire protection.**

1 All residential board and care homes shall comply  
2 with regulations of the state fire commission. The state  
3 fire marshal, by his or her employees or authorized  
4 agents, shall make regular fire and safety inspections  
5 of board and care homes.

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



Chairman Senate Committee



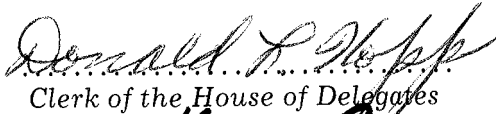
Chairman House Committee

Originated in the Senate.

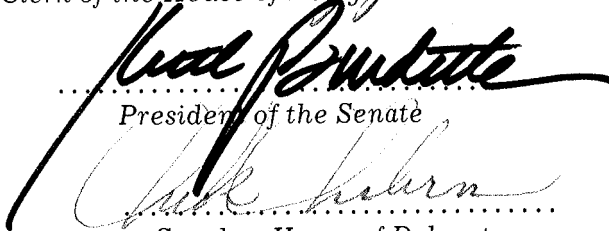
In effect ninety days from passage.



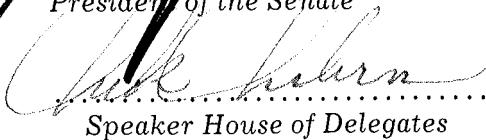
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker House of Delegates

The within to appear this the 30<sup>th</sup> day of March, 1994.



Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/74

Time 1:04 PM