

1 **H. B. 2350**

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3 (By Delegates Caputo and Longstreth)

4 [Introduced January 12, 2011; referred to the
5 Committee on Senior Citizen Issues then Health and Human
6 Resources.]

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10 A BILL to amend and reenact §16-5E-2 and §16-5E-6 of the Code of
11 West Virginia, 1931, as amended, all relating to providing
12 that a legally unlicensed personal care home may house up to
13 four unrelated residents if there is at least one full-time
14 employee working at the home.

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

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

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

20 **§16-5E-2. Definitions.**

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

23 (a) "Director" means the Secretary of the Department of Health
24 and Human Resources or his or her designee.

1 (b) "Limited and intermittent nursing care" means direct hands
2 on nursing care of an individual who needs no more than two hours
3 of nursing care per day for a period of no longer than 90
4 consecutive days per episode, which may only be provided when the
5 need for such care meets the following factors: (1) The resident
6 requests to remain in the home; (2) the resident is advised of the
7 availability of other specialized health care facilities to treat
8 his or her condition; and (3) the need for such care is the result
9 of a medical pathology or a result of normal aging process.
10 Limited and intermittent nursing care shall be provided under the
11 supervision of a registered professional nurse and in accordance
12 with rules promulgated by the director.

13 (c) "Nursing care" means those procedures commonly employed in
14 providing for the physical, emotional and rehabilitational needs of
15 the ill or otherwise incapacitated which require technical skills
16 and knowledge beyond that which the untrained person possesses,
17 including, but not limited to, such procedures as: Irrigations;
18 catheterization; special procedures contributing to rehabilitation;
19 and administration of medication by any method prescribed by a
20 physician which involves a level of complexity and skill in
21 administration not possessed by the untrained person.

22 (d) "Personal assistance" means personal services, including,
23 but not limited to, the following: Help in walking, bathing,
24 dressing, feeding or getting in or out of bed, or supervision

1 required because of the age or physical or mental impairment of the
2 resident.

3 (e) "Resident" means an individual who is provided services,
4 whether or not for a fee, by a service provider, but resident does
5 not include a person receiving services provided by another who is
6 related to him or her or the spouse thereof by blood or marriage,
7 within the degree of consanguinity of the second cousin.
8 Residents, who are incapable of self-preservation, shall be housed
9 only on a ground floor level of the home with direct egress to the
10 outside. A registered unlicensed health care home shall: (1)
11 Provide residents at the time of admission with the name, address
12 and telephone number of the offices of health facility licensure
13 and certification, the state long-term care ombudsman, and adult
14 protective services, all within the Department of Health and Human
15 Resources; and (2) advise residents both orally and in writing of
16 their right to file a complaint with the aforementioned entities.

17 (f) "Self-preservation" means that a person is at least
18 capable of removing him or her self from situations involving
19 imminent danger, such as fire.

20 (g) "Service provider" means the individual administratively
21 responsible for providing to consumers for a period of more than
22 twenty-four hours, whether for compensation or not, services of
23 personal assistance for one to three residents and who may require
24 limited and intermittent nursing care, including those individuals

1 who qualify for and are receiving services coordinated by a
2 licensed hospice: *Provided*, That services utilizing equipment
3 which requires auxiliary electrical power in the event of a power
4 failure may not be used unless the home has a backup power
5 generator: *Provided, however, That a service provider may house*
6 *one to four unrelated residents if the service provider has at*
7 *least one full-time employee working at the home.*

8 **§16-5E-6. Enforcement; criminal penalties.**

9 (a) Any service provider who fails to register with the
10 director shall be guilty of a misdemeanor and, upon conviction
11 thereof, shall be fined not less than \$500 or more than \$2,500 or
12 imprisoned in jail not less than ten days, or more than thirty-days
13 after notice by certified mail by the director to such service
14 provider of the requirements of this article.

15 (b) Any person who interferes with or impedes in any way the
16 lawful enforcement of the provisions of this article is guilty of
17 a misdemeanor and, upon conviction thereof, shall be fined not less
18 than \$500 or more than \$2,500 or imprisoned in the jail not less
19 than ten days, or more than thirty: *Provided*, That prior to July
20 1, 1989, no such penalty may be imposed upon a service provider
21 until thirty days after notice by certified mail by the director to
22 the service provider at the requirements of this article.

23 (c) If after investigating a complaint, the director
24 determines that the home is housing more than ~~three~~ four residents,

1 the director shall assess a civil penalty of \$50 per day per the
2 number of residents exceeding ~~three~~ four. Each day the violation
3 continues, after the date of citation shall constitute a separate
4 violation. The date of citation is the date the facility receives
5 the written statement of deficiencies.

6 (d) The director may in his or her discretion bring an action
7 to enforce compliance with the provisions of this article.

8 (e) The circuit court of Kanawha County or the circuit court
9 of the county in which the conduct occurred shall have jurisdiction
10 in all civil enforcement actions brought under this article and may
11 order equitable relief without bond.

NOTE: The purpose of this bill is to provide that a legally
unlicensed personal care home may house up to four unrelated
residents if there is at least one full-time employee working at
the home.

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.