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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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)

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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 require-
- 3 ments for hospices. It is the intent of the Legislature to
- 4 establish, promote and make available within this state a
- 5 comprehensive hospice care program for the treatment of

6 physical, emotional and mental symptoms of terminal
7 illness.

§16-5I-2. Definitions.

1 (a) "Bereavement services" means support services
2 designed to assist individuals to experience, respond
3 emotionally to and adjust to the death of another person.

4 (b) "Hospice" means a coordinated program of home and
5 inpatient care provided directly or through an agreement
6 under the direction of an identifiable hospice administra-
7 tion which provides palliative and supportive medical and
8 other health services to terminally ill individuals and their
9 families. Hospice utilizes a medically directed interdisci-
10 plinary team. A hospice program of care provides care to
11 meet the physical, psychological, social, spiritual and other
12 special needs which are experienced during the final stages
13 of illness and during dying and bereavement.

14 (c) "Interdisciplinary team" means the hospice patient
15 and the patient's family, the attending physician and the
16 following hospice personnel: Physician, nurse, social
17 worker, clergy and trained volunteer. Providers of sup-
18 portive services such as mental health, pharmaceutical and
19 any other appropriate allied health services may also be
20 included on the team as the needs of the individual dictate.

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

27 (e) "Terminally ill" means that an individual has a
28 medical prognosis that his or her life expectancy is six
29 months or less or another length of time determined by the
30 centers for medicare and medicaid services and designated
31 in federal hospice regulations.

32 (f) "Secretary" means the Secretary of the West Virginia
33 Department of Health and Human Resources. The Secre-
34 tary may define in regulation any term or phrase used in
35 this article which is not expressly defined.

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

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

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

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

27 (d) The Secretary or his or her designee shall inspect all
28 hospices that are subject to rules adopted pursuant to this
29 article periodically and at least as often as required by the

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.

§16-5I-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-

30 vided in this section may, within thirty days after receiv-
31 ing notice of the decision, appeal to the circuit court, in
32 term or in vacation, of Kanawha County for judicial
33 review of the decision.

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

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

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

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

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

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

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

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

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

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

1 (a) Any person, partnership, association or corporation
2 and any local governmental unit or any division, depart-
3 ment, board or agency thereof which establishes, conducts,

4 manages or operates a hospice without first obtaining a
5 license therefor as herein provided, or which violates any
6 provisions of this article or any rule or regulation lawfully
7 promulgated thereunder, shall be assessed a civil penalty
8 by the Secretary not to exceed fifty dollars for each
9 violation. Each day of continuing violation after conviction
10 shall be considered a separate violation.

11 (b) Notwithstanding the existence or pursuit of any
12 other remedy, the Secretary may, in the manner provided
13 by law, maintain an action in the name of the state for an
14 injunction against any person, partnership, association,
15 corporation or any governmental unit or any division,
16 department, board or agency thereof to restrain or prevent
17 the establishment, conduct, management or operation of
18 any hospice or violation of any provisions of this article or
19 any rule or regulation lawfully promulgated thereunder
20 without first obtaining a license therefor in the manner
21 hereinbefore provided.

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

Randy White
.....
Chairman Senate Committee

H. Richard Brown
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell Glavin
.....
Clerk of the Senate

Gregory M. Ems
.....
Clerk of the House of Delegates

Carl Roy Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *21st*
Day of *April*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 15 2005

Time 4:00 pm