

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2616

BY DELEGATES J. PACK AND ROHRBACH

[Passed March 19, 2021; in effect ninety days from passage.]

1 AN ACT to amend and reenact §16-5N-2 and §16-5N-3 of the Code of West Virginia, 1931, as
2 amended, all relating to residential care communities; updating definitions; requiring a
3 report to be published on a website; requiring specific information to be reported; and
4 making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5N. RESIDENTIAL CARE COMMUNITIES.

§16-5N-2. Definitions.

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

2 (1) "Capable of self-preservation" means that a person is, at a minimum, physically
3 capable of removing himself or herself from situations involving imminent danger such as fire;

4 (2) "Deficiency" means a statement of the rule and the fact that compliance has not been
5 established and the reasons therefor;

6 (3) "Department" means the Department of Health and Human Resources;

7 (4) "Director" means the director of the Office of Health Facility Licensure and Certification;

8 (5) "Division" means the Office of Health Facility Licensure and Certification;

9 (6) "Limited and intermittent nursing care" means direct hands-on nursing care of a
10 resident who needs no more than two hours of nursing care per day for a period of time no longer
11 than ninety consecutive days per episode, which care may be provided only when the need for it
12 meets these requirements: The resident requests that he or she remain in the residential care
13 community; the resident is advised of the availability of other specialized health care facilities to
14 treat his or her condition; and the need for care results from a medical pathology or the normal
15 aging process. Limited and intermittent nursing care may be provided only by or under the
16 supervision of a registered professional nurse and in accordance with legislative rules proposed
17 by the secretary;

18 (7) "Nursing care" means those procedures commonly employed in providing for the
19 physical, emotional and rehabilitation needs of the ill or otherwise incapacitated and which require

20 technical skills and knowledge beyond those that untrained persons possess, including,
21 irrigations, catheterizations, special procedures that contribute to rehabilitation and administration
22 of medication by any method involving a level of complexity and skill not possessed by untrained
23 persons;

24 (8) "Person" means a natural person and every form of organization, whether incorporated
25 or unincorporated, including partnerships, corporations, trusts, associations and political
26 subdivisions of the state;

27 (9) "Personal assistance" means services of a personal nature, including help in walking,
28 bathing, dressing, toileting, getting in or out of bed and supervision that is required because of
29 the age or mental impairment of a resident;

30 (10) "Resident" means an individual who lives in a residential care community for the
31 purpose of receiving personal assistance or limited and intermittent nursing services from the
32 community;

33 (11) "Residential care community" means any group of seventeen or more residential
34 apartments, however named, which are part of a larger independent living community and which
35 are advertised, offered, maintained or operated by an owner or manager, regardless of
36 consideration or the absence thereof, for the express or implied purpose of providing residential
37 accommodations, personal assistance and supervision on a monthly basis to seventeen or more
38 persons who are or may be dependent upon the services of others by reason of physical or mental
39 impairment or who may require limited and intermittent nursing care but who are capable of self-
40 preservation and are not bedfast. Individuals may not be disqualified for residency solely because
41 they qualify for or receive services coordinated by a licensed hospice. Each apartment in a
42 residential care community shall be at least three hundred square feet in size, have doors capable
43 of being locked and contain at least: One bedroom; one kitchenette that includes a sink and a
44 refrigerator; and one full bathroom that includes a bathing area, toilet and sink. Services utilizing
45 equipment which requires auxiliary electrical power in the event of a power failure may not be

46 used unless the residential care community has a backup power generator. Nothing contained in
47 this article applies to hospitals, as defined under §16-5B-1, state institutions, as defined under
48 §27-1-6, residential care communities operated as continuing care retirement communities or
49 housing programs operated under rules of the federal department of housing and urban
50 development and/or the office of rural economic development, residential care communities
51 operated by the federal government or the state government, institutions operated for the
52 treatment and care of alcoholic patients, offices of physicians, hotels, boarding homes or other
53 similar places that furnish only room and board, or to homes or asylums operated by fraternal
54 orders pursuant to §35-3-1 of this code;

55 (12) "Secretary" means the Secretary of the Department of Health and Human Resources
56 or his or her designee; and

57 (13) "Substantial compliance" means a level of compliance with the rules promulgated
58 hereunder that identified deficiencies pose a risk to resident health or safety no greater than a
59 potential for causing minimal harm.

60 (b) The secretary may by rule define terms pertinent to this article which are not defined.

§16-5N-3. Powers, duties, and rights of director.

1 In the administration of this article, the director may:

2 (1) Enforce rules and standards for residential care communities as adopted, proposed,
3 amended, or modified by the secretary;

4 (2) Exercise all powers granted herein relating to the issuance, suspension, and
5 revocation of licenses of residential care communities;

6 (3) Enforce rules governing the qualification of applicants for residential care community
7 licenses, including, but not limited to, educational, financial, personal, and ethical requirements,
8 as adopted, proposed, amended, or modified by the secretary;

9 (4) Receive and disburse federal funds and to take any lawful action that is necessary or
10 appropriate to comply with the requirements and conditions for the receipt or expenditure of
11 federal funds;

12 (5) Receive and disburse funds appropriated by the Legislature to the division for any
13 authorized purpose;

14 (6) Receive and disburse funds obtained by the division by way of gift, grant, donation,
15 bequest, or devise, according to the terms thereof, funds derived from the division's operation,
16 and funds from any other source, no matter how derived, for any authorized purpose;

17 (7) Negotiate and enter into contracts, and to execute all instruments necessary or
18 convenient in carrying out the functions and duties of the position of director; and all of these
19 contracts, agreements, and instruments shall be executed by the director;

20 (8) Appoint officers, agents, employees, and other personnel and establish the duties and
21 fix the compensation thereof;

22 (9) Offer and sponsor education and training programs for residential care communities'
23 administrative, managerial, and operations personnel;

24 (10) Undertake survey, research, and planning projects and programs relating to the
25 administration and operation of residential care communities and to the health, care, treatment,
26 and service in general of residents of these communities;

27 (11) Establish by legislative rule in accordance with §16-5N-10 of this code and to assess
28 reasonable civil penalties for violations of residential care community standards;

29 (12) Inspect any residential care community and any of the records maintained therein,
30 subject to the provisions of §16-5N-10 of this code;

31 (13) Establish legislative rules in accordance with §29A-3-1 *et seq.* of this code, setting
32 forth procedures for implementing the provisions of this article, including informal conferences,
33 investigations and hearings, and for enforcing compliance with the provisions of this article and
34 the rules promulgated hereunder;

35 (14) Subpoena witnesses and documents, administer oaths and affirmations, and examine
36 witnesses. Upon the failure of any person without lawful excuse to obey a subpoena to give
37 testimony and upon reasonable notice to all persons affected thereby, the director may apply to
38 the circuit court of the county in which the hearing is to be held or to the circuit court of Kanawha
39 County for an order compelling compliance;

40 (15) Make a complaint or cause proceedings to be instituted against any person or persons
41 for the violation of the provisions of this article or of the rules promulgated hereunder. An action
42 may be taken by the director in the absence of concurrence or participation by the prosecuting
43 attorney of the county in which the proceedings are instituted. The circuit court of Kanawha County
44 or the circuit court of the county in which the violation has occurred has jurisdiction in any civil
45 enforcement action brought pursuant to this article and may order equitable relief. In these cases,
46 the court may not require that a bond be posted, nor may the director or any person acting under
47 his or her authority be required to give security for costs;

48 (16) Delegate authority to his or her employees and agents in the performance of any
49 power or duty granted in this article, except the issuance of final decisions in any adjudicatory
50 matter; and

51 (17) Make available at all times online access through the Office of Health Facility
52 Licensure and Certification website the following information. The online information shall
53 describe the residential care community licensing and investigatory activities of the division. The
54 online information shall include a list of all residential care communities and the following
55 information: Whether the residential care communities are proprietary or nonproprietary; the name
56 of the administrator or administrators; the total number of beds; license type; license number;
57 license expiration date; health investigations information and reports; life safety investigations
58 information and reports; and whether those residential care communities listed accept Medicare
59 or Medicaid residents.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2021.

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Governor