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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2003

ENROLLED

Committee Substitute for

SENATE BILL NO. 405

(By Senator Plymale, et al)

PASSED March 8, 2003

In Effect from **Passage**

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 405

(SENATORS PLYMALE, HELMICK, PREZIOSO, LOVE,
HUNTER, ROWE, JENKINS, ROSS, OLIVERIO, DEMPSEY,
MINARD AND SMITH, *original sponsors*)

[Passed March 8, 2003; in effect from passage.]

AN ACT to repeal article five-h, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact articles five-d and five-t of said chapter, all relating to the changing of personal care homes and residential board and care homes to assisted living residences; defining assisted living; defining limited and intermittent nursing care; establishing limitations and exceptions to definitions; clarifying licensure requirements; specifying duties of licensees; providing for residents to contract for additional services; clarifying responsibilities of property owners; providing for emergency rules; extending

the care home advisory board for an additional six months;
and making technical changes throughout.

Be it enacted by the Legislature of West Virginia:

That article five-h, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that articles five-d and five-t of said chapter be amended and reenacted, all to read as follows:

ARTICLE 5D. ASSISTED LIVING RESIDENCES.

§16-5D-1. Purpose.

1 (a) It is the policy of this state to encourage and promote
2 the development and utilization of resources to ensure the
3 effective care and treatment of persons who are dependent
4 upon the services of others by reason of physical or mental
5 impairment who may require limited and intermittent
6 nursing care, including those individuals who qualify for
7 and are receiving services coordinated by a licensed
8 hospice. Such care and treatment requires a living envi-
9 ronment for such persons which, to the extent practicable,
10 will approximate a normal home environment. To this
11 end, the guiding principle for administration of the laws of
12 the state is that such persons shall be encouraged and
13 assisted in securing necessary care and treatment in
14 noninstitutional surroundings.

15 (b) In recognition that for many such persons effective
16 care and treatment can only be secured from proprietary,
17 voluntary and governmental assisted living residences, it
18 is the policy of this state to encourage, promote and
19 require the maintenance of assisted living residences so as
20 to ensure protection of the rights and dignity of those
21 using the services of assisted living residences.

22 (c) The provisions of this article are hereby declared to
23 be remedial and shall be liberally construed to effectuate
24 its purposes and intents.

§16-5D-2. Definitions.

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

3 (1) "Assisted living residence" means any living facility,
4 residence or place of accommodation, however named,
5 available for four or more residents, in this state which is
6 advertised, offered, maintained or operated by the owner-
7 ship or management, whether for a consideration or not,
8 for the express or implied purpose of having personal
9 assistance or supervision, or both, provided to any resi-
10 dents therein who are dependent upon the services of
11 others by reason of physical or mental impairment and
12 who may also require nursing care at a level that is not
13 greater than limited and intermittent nursing care: *Pro-*
14 *vided*, That the care or treatment in a household, whether
15 for compensation or not, of any person related by blood or
16 marriage, within the degree of consanguinity of second
17 cousin to the head of the household, or his or her spouse,
18 may not be deemed to constitute an assisted living resi-
19 dence within the meaning of this article. Nothing con-
20 tained in this article applies to hospitals, as defined under
21 section one, article five-b of this chapter; or state institu-
22 tions, as defined under section three, article one, chapter
23 twenty-five of this code or section six, article one, chapter
24 twenty-seven of this code; or personal care homes operated
25 by the federal government or the state; or institutions
26 operated for the treatment and care of alcoholic patients;
27 or offices of physicians; or hotels, boarding homes or other
28 similar places that furnish to their guests only room and
29 board; or to homes or asylums operated by fraternal orders
30 pursuant to article three, chapter thirty-five of this code;

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

34 (3) "Department" means the state department of health
35 and human resources;

36 (4) "Division" means the bureau for public health of the
37 state department of health and human resources;

38 (5) "Limited and intermittent nursing care" means direct
39 hands on nursing care of an individual who needs no more
40 than two hours of nursing care per day for a period of time
41 no longer than ninety consecutive days per episode:
42 *Provided*, That such time limitations shall not apply to an
43 individual who, after having established a residence in an
44 assisted living residence, subsequently qualifies for and
45 receives services coordinated by a licensed hospice and
46 such time limitations shall not apply to home health
47 services provided by a medicare-certified home health
48 agency. Limited and intermittent nursing care may only
49 be provided by or under the supervision of a registered
50 professional nurse and in accordance with rules proposed
51 by the secretary for legislative approval in accordance
52 with the provisions of article three, chapter twenty-nine-a
53 of this code;

54 (6) "Nursing care" means those procedures commonly
55 employed in providing for the physical, emotional and
56 rehabilitational needs of the ill or otherwise incapacitated
57 which require technical skills and knowledge beyond that
58 which the untrained person possesses, including, but not
59 limited to, such procedures as: Irrigations, catheterization,
60 special procedures contributing to rehabilitation and
61 administration of medication by any method which
62 involves a level of complexity and skill in administration
63 not possessed by the untrained person;

64 (7) "Person" means an individual and every form of
65 organization, whether incorporated or unincorporated,
66 including any partnership, corporation, trust, association
67 or political subdivision of the state;

68 (8) "Personal assistance" means personal services, includ-
69 ing, but not limited to, the following: Help in walking,
70 bathing, dressing, feeding or getting in or out of bed, or
71 supervision required because of the age or mental impair-
72 ment of the resident;

73 (9) "Resident" means an individual living in an assisted
74 living residence for the purpose of receiving personal
75 assistance or limited and intermittent nursing services;

76 (10) "Secretary" means the secretary of the state depart-
77 ment of health and human resources or his or her designee;
78 and

79 (11) "Substantial compliance" means a level of compli-
80 ance with the rules such that identified deficiencies pose
81 no greater risk to resident health or safety than the
82 potential for causing minimal harm.

83 (b) The secretary may define in rules any term used
84 herein which is not expressly defined.

§16-5D-3. Powers, duties and rights of secretary.

1 In the administration of this article, the secretary has the
2 following powers, duties and rights:

3 (a) To enforce rules and standards for assisted living
4 residences which are adopted, promulgated, amended or
5 modified by the secretary;

6 (b) To exercise as sole authority all powers relating to
7 the issuance, suspension and revocation of licenses of
8 assisted living residences;

9 (c) To enforce rules adopted, promulgated, amended or
10 modified by the secretary governing the qualification of
11 applicants for assisted living residences, including, but not
12 limited to, educational requirements, financial require-
13 ments, personal and ethical requirements;

14 (d) To receive and disburse federal funds and to take
15 whatever action not contrary to law as may be proper and
16 necessary to comply with the requirements and conditions
17 for the receipt of federal funds;

18 (e) To receive and disburse for authorized purposes any
19 moneys appropriated for the division by the Legislature;

20 (f) To receive and disburse for purposes authorized by
21 this article, any funds that may come to the division by
22 gift, grant, donation, bequest or devise, according to the

23 terms thereof, as well as funds derived from the division's
24 operation or otherwise;

25 (g) To make contracts and to execute all instruments
26 necessary or convenient in carrying out the secretary's
27 functions and duties; and all such contracts, agreements
28 and instruments shall be executed by the secretary;

29 (h) To appoint officers, agents, employees and other
30 personnel and fix their compensation;

31 (i) To offer and sponsor educational and training pro-
32 grams for assisted living residences' administrative,
33 management and operational personnel;

34 (j) To undertake survey, research and planning projects
35 and programs relating to administration and operation of
36 assisted living residences and to the health, care, treatment
37 and service in general of residents of assisted living
38 residences;

39 (k) To assess civil penalties for violations of assisted
40 living residence standards in accordance with section ten
41 of this article;

42 (l) To inspect any assisted living residence and any
43 records maintained therein subject to the provisions of
44 section ten of this article;

45 (m) To establish and implement procedures, including
46 informal conferences, investigations and hearings, subject
47 to applicable provisions of article three, chapter twenty-
48 nine-a of this code, and to enforce compliance with the
49 provisions of this article and with rules issued hereunder
50 by the secretary;

51 (n) To subpoena witnesses and documents, administer
52 oaths and affirmations and to examine witnesses under
53 oath for the conduct of any investigation or hearing. Upon
54 failure of a person without lawful excuse to obey a sub-
55 poena to give testimony and upon reasonable notice to all
56 persons affected thereby, the secretary may apply to the

57 circuit court of the county in which the hearing is to be
58 held or to the circuit court of Kanawha County for an
59 order compelling compliance;

60 (o) To make complaint or cause proceedings to be
61 instituted against any person for the violation of the
62 provisions of this article or of rules issued hereunder by
63 the secretary. Such action may be taken by the secretary
64 without the sanction of the prosecuting attorney of the
65 county in which proceedings are instituted if the prosecut-
66 ing attorney fails or refuses to discharge his or her duty.
67 The circuit court of Kanawha County or the circuit court
68 of the county in which the conduct has occurred shall have
69 jurisdiction in all civil enforcement actions brought under
70 this article and may order equitable relief without bond.
71 In no such case may the secretary or any person acting
72 under the secretary's direction be required to give security
73 for costs;

74 (p) To delegate authority to the secretary's employees
75 and agents to perform all functions of the secretary except
76 the making of final decisions in adjudications; and

77 (q) To submit an annual report to the governor, the
78 Legislature and the public. The report shall describe the
79 assisted living residence licensing and investigatory
80 activities of the division during the year and the nature
81 and status of other activities of the division and may
82 include comment on the acts, policies, practices or proce-
83 dures of any public or private agency that affect the rights,
84 health or welfare of residents of assisted living residences.
85 The annual report shall include a list of all assisted living
86 residences in the state and such of the following informa-
87 tion as the secretary determines to apply: Whether the
88 assisted living residences are proprietary or nonpropri-
89 etary; the classification of each assisted living residence;
90 the name of the owner or owners; the total number of beds;
91 the number of private and semiprivate rooms; the costs per
92 diem for private residents; the number of full-time em-
93 ployees and their professions; recreational programs;

94 services and programs available as well as the costs
95 thereof; and whether or not those assisted living residences
96 listed accept medicare and medicaid residents. The report
97 shall also contain the division's recommendations as to
98 changes in law or policy which it deems necessary or
99 appropriate for the protection of the rights, health or
100 welfare of residents of assisted living residences in the
101 state.

§16-5D-4. Administrative and inspection staff.

1 The secretary may, as he or she determines necessary,
2 employ administrative employees, inspectors or other
3 persons as may be necessary to properly carry out the
4 provisions of this article. All employees of the division
5 shall be members of the state civil service system. Inspec-
6 tors and other employees as may be duly designated by the
7 secretary shall act as the secretary's representatives and,
8 under the direction of the secretary, shall enforce the
9 provisions of this article and all duly promulgated rules of
10 the secretary and, in the discharge of official duties, shall
11 have the right of entry into any place maintained as an
12 assisted living residence at any time.

**§16-5D-5. Rules; minimum standards for assisted living resi-
dences.**

1 (a) The secretary shall propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code to carry out the pur-
4 poses and intent of this article and to enable the secretary
5 to exercise the powers and perform the duties conferred
6 upon the secretary by this article.

7 (b) The secretary shall propose rules establishing mini-
8 mum standards of operation of assisted living residences,
9 including, but not limited to, the following:

10 (1) Administrative policies, including:

11 (A) An affirmative statement of the right of access to
12 assisted living residences by members of recognized

13 community organizations and community legal services
14 programs whose purposes include rendering assistance
15 without charge to residents, consistent with the right of
16 residents to privacy; and

17 (B) A statement of the rights and responsibilities of
18 residents;

19 (2) Minimum numbers and qualifications of personnel,
20 including management, medical and nursing, aides,
21 orderlies and support personnel, according to the size and
22 classification of the assisted living residence;

23 (3) Safety requirements;

24 (4) Sanitation requirements;

25 (5) Protective and personal services to be provided;

26 (6) Dietary services to be provided;

27 (7) Maintenance of health records;

28 (8) Social and recreational activities to be made avail-
29 able;

30 (9) Physical facilities;

31 (10) Requirements related to provision of limited and
32 intermittent nursing; and

33 (11) Such other categories as the secretary determines to
34 be appropriate to ensure resident's health, safety and
35 welfare.

36 (c) The secretary shall include in rules detailed standards
37 for each of the categories of standards established pursu-
38 ant to subsections (b) and (d) of this section and shall
39 classify such standards as follows:

40 (1) Class I standards are standards the violation of
41 which, as the secretary determines, would present either
42 an imminent danger to the health, safety or welfare of any
43 resident or a substantial probability that death or serious
44 physical harm would result;

45 (2) Class II standards are standards which the secretary
46 determines have a direct or immediate relationship to the

47 health, safety or welfare of any resident, but which do not
48 create imminent danger;

49 (3) Class III standards are standards which the secretary
50 determines have an indirect or a potential impact on the
51 health, safety or welfare of any resident.

52 (d) An assisted living residence shall attain substantial
53 compliance with standards established pursuant to section
54 five of this article and such other requirements for a
55 license as may be established by rule under this article.

§16-5D-6. License required; application; fees; duration; renewal.

1 (a) There shall be one assisted living residence license for
2 each assisted living residence. Subject to the provisions of
3 section seventeen of this article, no person may establish,
4 operate, maintain, offer or advertise an assisted living
5 residence within this state unless and until he or she
6 obtains a valid license therefor as provided in this article,
7 which license remains unsuspended, unrevoked and
8 unexpired. No public official or employee may place any
9 person in, or recommend that any person be placed in, or
10 directly or indirectly cause any person to be placed in, any
11 assisted living residence, as defined in section two of this
12 article, which is being operated without a valid license
13 from the secretary. The licensee shall be responsible for,
14 and shall have complete control of, the operation and
15 premises of the assisted living residence and the personal
16 assistance and supervision provided to the residents:
17 *Provided*, That the secretary may review any leases or any
18 contracts, subcontracts, agreements or arrangements for
19 the provision of on-site services to the residents of an
20 assisted living residence to ensure the proper care, safety
21 and welfare of current or potential residents. Nothing in
22 this article shall be construed to prevent or prohibit the
23 ability of a resident of an assisted living residence to
24 contract or arrange for, and to receive, privately paid
25 nursing care or personal assistance in addition to those
26 services provided by the licensee, subject to the consent
27 and cooperation of the licensee and consistent with the
28 duties and responsibilities imposed by this section.

29 (b) Nothing in this article shall be construed to require
30 the licensing of landlords or property owners who are not
31 involved in the provision of supervision, personal assis-
32 tance, limited and intermittent nursing care or other on-
33 site professional services for the residents of an assisted
34 living residence or in the advertising, recruitment of
35 residents, transportation of residents or other substantial
36 and ongoing services for the operation or maintenance of
37 the assisted living residence.

38 (c) The procedure for obtaining a license shall be as
39 follows:

40 (1) The applicant shall submit an application to the
41 secretary on a form to be prescribed by the secretary,
42 containing such information as may be necessary to show
43 that the applicant is in compliance with the standards for
44 assisted living residences as established by this article and
45 the rules lawfully promulgated by the secretary hereunder.
46 The application and any exhibits thereto shall provide the
47 following information:

48 (A) The name and address of the applicant;

49 (B) The name, address and principal occupation:

50 (i) Of each person who, as a stockholder or otherwise,
51 has a proprietary interest of ten percent or more in the
52 applicant;

53 (ii) Of each officer and director of a corporate applicant;

54 (iii) Of each trustee and beneficiary of an applicant
55 which is a trust; and

56 (iv) Where a corporation has a proprietary interest of
57 twenty-five percent or more in an applicant, the name,
58 address and principal occupation of each officer and
59 director of the corporation;

60 (C) The name and address of the owner of the premises
61 of the assisted living residence or proposed assisted living
62 residence, if he or she is a different person from the
63 applicant, and in such case, the name and address:

64 (i) Of each person who, as a stockholder or otherwise,
65 has a proprietary interest of ten percent or more in the
66 owner;

67 (ii) Of each officer and director of a corporate applicant;

68 (iii) Of each trustee and beneficiary of the owner if it is
69 a trust; and

70 (iv) Where a corporation has a proprietary interest of
71 twenty-five percent or more in the owner, the name and
72 address of each officer and director of the corporation;

73 (D) Where the applicant is the lessee or the assignee of
74 the assisted living residence or the premises of the pro-
75 posed assisted living residence, a signed copy of the lease
76 and any assignment thereof;

77 (E) The name and address of the assisted living residence
78 or the premises of the proposed assisted living residence;

79 (F) The proposed bed quota of the assisted living resi-
80 dence and the proposed bed quota of each unit thereof;

81 (G) An organizational plan for the assisted living
82 residence indicating the number of persons employed or to
83 be employed, the positions and duties of all employees;

84 (H) The name and address of the individual who is to
85 serve as administrator;

86 (I) Such evidence of compliance with applicable laws
87 and rules governing zoning, buildings, safety, fire preven-
88 tion and sanitation as the secretary may require; and

89 (J) Such additional information as the secretary may
90 require.

91 (d) Upon receipt and review of an application for license
92 made pursuant to subsection (a) of this section and inspec-
93 tion of the applicant assisted living residence pursuant to
94 section ten of this article, the secretary shall issue a license
95 if he or she finds:

96 (1) That an individual applicant, and every partner,
97 trustee, officer, secretary and controlling person of an

98 applicant which is not an individual, is a person responsi-
99 ble and suitable to operate or to direct or participate in the
100 operation of an assisted living residence by virtue of
101 financial capacity, appropriate business or professional
102 experience, a record of compliance with lawful orders of
103 the department, if any, and lack of revocation of a license
104 during the previous five years;

105 (2) That the assisted living residence is under the super-
106 vision of an administrator who is qualified by training and
107 experience; or

108 (3) That the assisted living residence is in substantial
109 compliance with standards established pursuant to section
110 five of this article and such other requirements for a
111 license as the secretary may establish by rule under this
112 article.

113 (e) The secretary may deny an initial or renewal license
114 if the information provided in an application or report is
115 known by the applicant to be false or the applicant fails to
116 report required information or for any other reason
117 permitted by law or rules promulgated pursuant to this
118 article.

119 (f) Any license granted by the secretary shall state the
120 maximum bed capacity for which it is granted, the date
121 the license was issued and the expiration date. Licenses
122 shall be issued for a period not to exceed one year for
123 assisted living residences: *Provided*, That any such license
124 in effect for which timely application for renewal, together
125 with payment of the proper fee has been made to the state
126 division of health in conformance with the provisions of
127 this article and the rules issued thereunder and prior to the
128 expiration date of the license shall continue in effect until:
129 (1) One year following the expiration date of the license; or
130 (2) the date of the revocation or suspension of the license
131 pursuant to the provisions of this article; or (3) the date of
132 issuance of a new license, whichever date first occurs.
133 Each license shall be issued only for the premises and
134 persons named in the application and is not transferable

135 or assignable: *Provided, however,* That in the case of the
136 transfer of ownership of an assisted living residence with
137 an unexpired license, the application of the new owner for
138 a license shall have the effect of a license for a period of
139 three months when filed with the secretary. Every license
140 shall be posted in a conspicuous place in the assisted living
141 residence for which it is issued so as to be accessible to and
142 in plain view of all residents and visitors of the assisted
143 living residence.

144 (g) An original license shall be renewable, conditioned
145 upon the licensee filing timely application for the exten-
146 sion of the term of the license accompanied by the fee and
147 contingent upon evidence of compliance with the provi-
148 sions of this article and rules promulgated by the secretary
149 hereunder; the application shall be accompanied by:

150 (1) The information required in paragraphs (A), (B) and
151 (C), subdivision (1) of this subsection.

152 (2) A balance sheet of the assisted living residence as of
153 the end of its fiscal year, setting forth assets and liabilities
154 at such date, including all capital, surplus, reserve,
155 depreciation and similar accounts;

156 (3) A statement of operations of the assisted living
157 residence as of the end of its fiscal year, setting forth all
158 revenues, expenses, taxes, extraordinary items and other
159 credits or charges; and

160 (4) A statement of any changes in the name, address,
161 management or ownership information on file with the
162 secretary.

163 (h) In the case of an application for a renewal license, if
164 all requirements of section five of this article are not met,
165 the secretary may in his or her discretion issue a provi-
166 sional license, provided that care given in the assisted
167 living residence is adequate for resident needs and the
168 assisted living residence has demonstrated improvement
169 and evidences potential for substantial compliance within
170 the term of the license: *Provided,* That a provisional

171 renewal may not be issued for a period greater than one
172 year, may not be renewed and may not be issued to any
173 assisted living residence with uncorrected violations of any
174 Class I standard, as defined in subsection (c), section five
175 of this article.

176 (i) A nonrefundable application fee in the amount of
177 sixty-five dollars for an original assisted living residence
178 license shall be paid at the time application is made for the
179 license. An average cost of all direct costs for the initial
180 licensure for the preceding ten facilities based on the size
181 of the facility's licensed bed capacity shall be borne by the
182 applicant and shall be received by the secretary prior to
183 the issuance of an initial or amended license. The license
184 fee for renewal of a license shall be at the rate of six
185 dollars per bed per year for assisted living residences
186 except the annual rate per bed may be assessed for licenses
187 issued for less than one year. The secretary may annually
188 adjust the licensure fees for inflation based upon the
189 consumer price index. The bed capacity for the holder of
190 each license shall be determined by the secretary. All
191 license fees shall be due and payable to the secretary,
192 annually, and in the manner set forth in the rules promul-
193 gated by the secretary. The fee and application shall be
194 submitted to the secretary who shall retain both the
195 application and fee pending final action on the applica-
196 tion. All fees received by the secretary under the provi-
197 sions of this article shall be deposited in accordance with
198 section thirteen, article one of this chapter.

§16-5D-7. Cost disclosure; surety for residents' funds.

1 (a) Each assisted living residence shall disclose in
2 writing to all prospective residents a complete and accu-
3 rate list of all costs which may be incurred by them.
4 Residents are not liable for any cost not so disclosed.

5 (b) If the assisted living residence handles any money for
6 residents within the assisted living residence, the licensee
7 or his or her authorized representative shall give a bond in
8 an amount consistent with this subsection and with such

9 surety as the secretary shall approve. The bond shall be
10 upon condition that the licensee shall hold separately and
11 in trust all residents' funds deposited with the licensee,
12 shall administer the funds on behalf of the resident in the
13 manner directed by the depositor, shall render a true and
14 complete account to the depositor and the secretary when
15 requested, and at least quarterly to the resident, and upon
16 termination of the deposit, shall account for all funds
17 received, expended and held on hand. The licensee shall
18 file a bond in a sum to be fixed by the secretary based
19 upon the magnitude of the operations of the applicant, but
20 which sum may not be less than two thousand five hun-
21 dred dollars.

22 (c) Every person injured as a result of any improper or
23 unlawful handling of the money of a resident of a assisted
24 living residence may bring an action in a proper court on
25 the bond required to be posted by the licensee pursuant to
26 this subsection for the amount of damage suffered as a
27 result thereof to the extent covered by the bond. When-
28 ever the secretary determines that the amount of any bond
29 which is filed pursuant to this subsection is insufficient to
30 adequately protect the money of residents which is being
31 handled or whenever the amount of any bond is impaired
32 by any recovery against the bond, the secretary may
33 require the licensee to file an additional bond in such
34 amount as necessary to adequately protect the money of
35 residents being handled.

36 (d) The provisions of subsection (b) of this section do not
37 apply if the licensee handles less than twenty-five dollars
38 per resident and less than five hundred dollars for all
39 residents in any month.

§16-5D-8. Investigation of complaints.

1 (a) The secretary shall establish by rule procedures for
2 prompt investigation of all complaints of alleged viola-
3 tions by assisted living residences of applicable require-
4 ments of state law or rules, except for such complaints that
5 the secretary determines are willfully intended to harass

6 a licensee or are without any reasonable basis. Such
7 procedures shall include provisions for ensuring the
8 confidentiality of the complainant and of any other person
9 so named in the complaint and for promptly informing the
10 complainant and the assisted living residence involved of
11 the results of the investigation.

12 (b) If, after its investigation, the secretary determines
13 that the complaint has merit, the secretary shall take
14 appropriate disciplinary action and shall advise any
15 injured party of the possibility of a civil remedy under this
16 article.

17 (c) No assisted living residence may discharge or in any
18 manner discriminate against any resident or employee for
19 the reason that the resident or employee has filed a
20 complaint or participated in any proceeding specified in
21 this article. Violation of this prohibition by any assisted
22 living residence constitutes ground for the suspension or
23 revocation of the license of the assisted living residence as
24 provided in section eleven of this article. Any type of
25 discriminatory treatment of a resident or employee by
26 whom, or upon whose behalf, a complaint has been
27 submitted to the secretary, or any proceeding instituted
28 under this article, within one hundred twenty days of the
29 filing of the complaint or the institution of the action,
30 shall raise a rebuttable presumption that the action was
31 taken by the assisted living residence in retaliation for the
32 complaint or action.

§16-5D-9. Inspections.

1 (a) The secretary and any duly designated employee or
2 agent thereof shall have the right to enter upon and into
3 the premises of any assisted living residence at any time
4 for which a license has been issued, for which an applica-
5 tion for license has been filed with the secretary, or which
6 the secretary has reason to believe is being operated or
7 maintained as an assisted living residence without a
8 license. If entry is refused by the owner or person in
9 charge of the assisted living residence, the secretary shall

10 apply to the circuit court of the county in which the
11 assisted living residence is located or the circuit court of
12 Kanawha County for an order authorizing inspection and
13 the court shall issue an appropriate order if it finds good
14 cause.

15 (b) The secretary, by the secretary's authorized employ-
16 ees or agents, shall conduct at least one inspection prior to
17 issuance of a license pursuant to section six of this article
18 and shall conduct periodic unannounced inspections
19 thereafter to determine compliance by the assisted living
20 residence with applicable statutes and rules promulgated
21 thereunder. All assisted living residences shall comply
22 with rules of the state fire commission. The state fire
23 marshal, by his or her employees or authorized agents,
24 shall make all fire, safety and like inspections. The
25 secretary may provide for such other inspections as the
26 secretary may deem necessary to carry out the intent and
27 purpose of this article. If after investigating a complaint
28 the secretary determines that the complaint is substanti-
29 ated and that an immediate and serious threat to a resi-
30 dent's health or safety exists, the secretary may invoke any
31 remedies available pursuant to section eleven of this
32 article. Any assisted living residence aggrieved by a
33 determination or assessment made pursuant to this section
34 shall have the right to an administrative appeal as set
35 forth in section twelve of this article.

**§16-5D-10. Reports of inspections; plans of correction; assess-
ment of penalties and use of funds derived there-
from; hearings.**

1 (a) Reports of all inspections made pursuant to section
2 nine of this article shall be in writing and filed with the
3 secretary and shall list all deficiencies in the assisted
4 living residence's compliance with the provisions of this
5 article and the rules adopted by the secretary hereunder.
6 The secretary shall send a copy of the report to the assisted
7 living residence by certified mail, return receipt requested,
8 and shall specify a time within which the assisted living

9 residence shall submit a plan for correction of deficiencies,
10 which plan shall be approved, rejected or modified by the
11 secretary. The surveyors shall allow audio taping of the
12 exit conference for licensure inspections with all costs
13 directly associated with the taping to be paid by the
14 assisted living residence provided that an original tape is
15 provided to surveyors at the end of taping.

16 (b) Upon an assisted living residence's failure to submit
17 a plan of correction which is approved by the secretary or
18 to correct any deficiency within the time specified in an
19 approved plan of correction, the secretary may assess civil
20 penalties as hereinafter provided or may initiate any other
21 legal or disciplinary action as provided by this article.

22 (c) Nothing in this section may be construed to prohibit
23 the secretary from enforcing a rule, administratively or in
24 court, without first affording formal opportunity to make
25 correction under this section, where, in the opinion of the
26 secretary, the violation of the rule jeopardizes the health
27 or safety of residents or where the violation of the rule is
28 the second or subsequent violation occurring during a
29 period of twelve full months.

30 (d) Civil penalties assessed against assisted living
31 residences shall be classified according to the nature of the
32 violation as defined in subsection (c), section five of this
33 article and rules promulgated thereunder by the secretary,
34 as follows: For each violation of a Class I standard, a civil
35 penalty of not less than fifty nor more than five hundred
36 dollars shall be imposed; for each violation of a Class II
37 standard, a civil penalty of not less than twenty-five nor
38 more than fifty dollars shall be imposed; for each violation
39 of a Class III standard, a civil penalty of not less than ten
40 nor more than twenty-five dollars shall be imposed. Each
41 day a violation continues, after the date of citation, shall
42 constitute a separate violation. The date of citation is the
43 date the facility receives the written statement of deficien-
44 cies.

45 (e) The secretary shall assess a civil penalty not to exceed
46 two thousand dollars against any individual who notifies,
47 or causes to be notified, an assisted living residence of the
48 time or date on which an inspection is scheduled to be
49 conducted under this article.

50 (f) If the secretary assesses a penalty under this section,
51 the secretary shall cause delivery of notice of the penalty
52 by personal service or by certified mail. The notice shall
53 state the amount of the penalty, the action or circumstance
54 for which the penalty is assessed, the requirement that the
55 action or circumstance violates and the basis upon which
56 the secretary assessed the penalty and selected the amount
57 of the penalty.

58 (g) The secretary shall, in a civil judicial proceeding,
59 recover any unpaid assessment which has not been con-
60 tested under section twelve of this article within thirty
61 days of receipt of notice of the assessment or which has
62 been affirmed under the provisions of that section and not
63 appealed within thirty days of receipt of the secretary's
64 final order or which has been affirmed on judicial review,
65 as provided in section thirteen of this article. All money
66 collected by assessments of civil penalties or interest shall
67 be paid into a special resident benefit account and shall be
68 applied by the secretary only for the protection of the
69 health or property of residents of assisted living residences
70 operated within the state that the secretary finds to be
71 deficient, including payment for the costs of relocation of
72 residents to other facilities, operation of an assisted living
73 residence pending correction of deficiencies or closure and
74 reimbursement of residents for personal funds lost.

75 (h) The opportunity for a hearing on an action taken
76 under this section shall be as provided in section twelve of
77 this article. In addition to any other rights of appeal
78 conferred upon an assisted living residence pursuant to
79 this section, an assisted living residence shall have the
80 right to request a hearing and seek judicial review pursu-
81 ant to sections twelve and thirteen of this article to contest

82 the citing by the secretary of a deficiency on an inspection
83 report, irrespective of whether the deficiency results in the
84 imposition of a civil penalty.

§16-5D-11. License limitation, suspension, revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearings.

1 (a) The secretary shall, by order, impose a ban on the
2 admission of residents or reduce the bed quota of the
3 assisted living residence, or any combination thereof,
4 where he or she finds upon inspection of the assisted living
5 residence that the licensee is not providing adequate care
6 under the assisted living residence's existing bed quota
7 and that reduction in quota or imposition of a ban on
8 admissions, or any combination thereof, would place the
9 licensee in a position to render adequate care. Any notice
10 to a licensee of reduction in quota or ban on new admis-
11 sions shall include the terms of the order, the reasons
12 therefor and the date set for compliance.

13 (b) The secretary may suspend or revoke a license issued
14 under this article if he or she finds upon inspection that
15 there has been a substantial failure to comply with the
16 provisions of this article or the standards or rules promul-
17 gated pursuant hereto.

18 (c) Whenever a license is limited, suspended or revoked
19 pursuant to this section, the secretary shall file an admin-
20 istrative complaint stating facts constituting a ground or
21 grounds for the limitation, suspension or revocation. Upon
22 the filing of the administrative complaint, the secretary
23 shall notify the licensee in writing of the filing of the
24 administrative complaint, enclosing a copy of the com-
25 plaint, and shall advise the licensee of the availability of
26 a hearing pursuant to section twelve of this article. The
27 notice and copy of the administrative complaint shall be
28 served on the licensee by certified mail, return receipt
29 requested.

30 (d) The suspension, expiration, forfeiture or cancellation
31 by operation of law or order of the secretary of a license
32 issued by the secretary or the withdrawal of an application
33 for a license after it has been filed with the secretary, may
34 not deprive the secretary of the secretary's authority to
35 institute or continue a disciplinary proceeding or a pro-
36 ceeding for the denial of a license application against the
37 licensee or applicant upon any ground provided by law or
38 to enter an order denying the license application or
39 suspending or revoking the license or otherwise taking
40 disciplinary action on any such ground.

41 (e) In addition to other remedies provided in this article,
42 upon petition from the secretary, the circuit court of the
43 county in which the conduct has occurred or is occurring,
44 or the circuit court of Kanawha County, may determine
45 that an assisted living residence's deficiencies under this
46 article constitute an emergency immediately jeopardizing
47 the health, safety, welfare or rights of its residents and
48 issue an order to:

49 (1) Close the assisted living residence;

50 (2) Transfer residents in the assisted living residence to
51 other facilities; or

52 (3) Appoint temporary management to oversee the
53 operation of the assisted living residence and to assure the
54 health, safety, welfare and rights of the assisted living
55 residence's residents where there is a need for temporary
56 management while:

57 (A) There is an orderly closure of the assisted living
58 residence; or

59 (B) Improvements are made in order to bring the assisted
60 living residence into compliance with all the applicable
61 requirements of this article.

62 (f) If the secretary petitions a circuit court for the closure
63 of an assisted living residence, the transfer of residents or
64 the appointment of a temporary management, the circuit
65 court shall hold a hearing no later than seven days thereaf-

66 ter, at which time the secretary and the licensee or opera-
67 tor of the assisted living residence may participate and
68 present evidence.

69 (g) A circuit court may divest the licensee or operator of
70 possession and control of an assisted living residence in
71 favor of temporary management. The temporary manage-
72 ment shall be responsible to the court and shall have such
73 powers and duties as the court may grant to direct all acts
74 necessary or appropriate to conserve the property and
75 promote the health, safety, welfare and rights of the
76 residents of the assisted living residence, including, but not
77 limited to, the replacement of management and staff, the
78 hiring of consultants, the making of any necessary expen-
79 ditures to close the assisted living residence or to repair or
80 improve the assisted living residence so as to return it to
81 compliance with applicable requirements and the power to
82 receive, conserve and expend funds, including payments on
83 behalf of the licensee or operator of the assisted living
84 residence. Priority shall be given to expenditures for
85 current direct resident care or the transfer of residents.

86 (h) The person charged with temporary management: (i)
87 Shall be an officer of the court; (ii) shall be paid by the
88 licensee; (iii) is not liable for conditions at the assisted
89 living residence which existed or originated prior to his or
90 her appointment; (iv) is not personally liable, except for
91 his or her own gross negligence and intentional acts which
92 result in injuries to persons or damage to property at the
93 assisted living residence during his or her temporary
94 management.

95 (i) No person may impede the operation of temporary
96 management. There shall be an automatic stay for a
97 ninety-day period subsequent to the establishment of
98 temporary management of any action that would interfere
99 with the functioning of the assisted living residence,
100 including, but not limited to, cancellation of insurance
101 policies, termination of utility services, attachments to
102 working capital accounts, foreclosures, evictions and

103 repossessions of equipment used in the assisted living
104 residence.

105 (j) A temporary management established for the purpose
106 of making improvements in order to bring the assisted
107 living residence into compliance with applicable require-
108 ments may not be terminated until the court has deter-
109 mined that the assisted living residence has the manage-
110 ment capability to ensure continued compliance with all
111 applicable requirements, except if the court has not made
112 such determination within six months of the establishment
113 of the temporary management, the temporary management
114 terminates by operation of law at that time and the
115 assisted living residence shall be closed. After the termi-
116 nation of the temporary management, the person who was
117 responsible for the temporary management shall make an
118 accounting to the court and after deducting from receipts
119 the costs of the temporary management, expenditures and
120 civil penalties and interest no longer subject to appeal, in
121 that order, any excess shall be paid to the licensee or
122 operator of the assisted living residence.

123 (k) The assessments for penalties and for costs of actions
124 taken under this article shall have interest assessed at five
125 percent per annum beginning thirty days after receipt of
126 notice of the assessment or thirty days after receipt of the
127 secretary's final order following a hearing, whichever is
128 later. All assessments against an assisted living residence
129 that are unpaid shall be added to the assisted living
130 residence's licensure fee and may be filed as a lien against
131 the property of the licensee or operator of the assisted
132 living residence. Funds received from assessments shall be
133 deposited as funds received as provided in section ten of
134 this article.

135 (l) The secretary shall have the power to promulgate
136 emergency rules that expand the power of the secretary in
137 excess of that provided in this article to the extent re-
138 quired to comply with federal requirements, but any such
139 rules shall expand the power of the secretary to the

140 minimum extent required by federal requirements. The
141 rules are subject to the provisions of article three, chapter
142 twenty-nine-a of this code.

143 (m) The opportunity for a hearing on an action by the
144 secretary taken under this section shall be as provided in
145 section twelve of this article.

**§16-5D-12. Administrative appeals for civil assessments, license
limitation, suspension or revocation.**

1 (a) Any licensee or applicant aggrieved by an order
2 issued pursuant to sections five, six, ten or eleven of this
3 article may request a formal or informal hearing with the
4 secretary or program manager in order to contest the order
5 as contrary to law or unwarranted by the facts or both. If
6 the contested matter is not resolved at the informal
7 hearing, the licensee or applicant may request a formal
8 hearing before the secretary. An informal hearing is not a
9 prerequisite for requesting a formal hearing.

10 (b) Informal hearings shall be held within twenty
11 business days of the secretary's receipt of timely request
12 for appeal unless the licensee or applicant consents to a
13 postponement or continuance. In no event may the
14 informal hearing occur more than thirty business days
15 after the secretary receives a timely request for appeal.
16 Neither the licensee or applicant nor the secretary may be
17 represented by an attorney at the informal hearing.
18 Within ten business days of the conclusion of the informal
19 hearing, the secretary, program manager or designee shall
20 issue an informal hearing order, including the basis for the
21 decision. If the order is not favorable to the licensee or
22 applicant, the licensee or applicant may request an appeal
23 and a formal hearing. The secretary shall notify the
24 administrative hearing examiner of the request for appeal
25 within five business days of receiving the request for an
26 appeal and a formal hearing.

27 (c) If the applicant or licensee requests a formal hearing
28 without a prior informal hearing or if an applicant or

29 licensee appeals the order issued as a result of the informal
30 hearing, the secretary shall proceed in accordance with the
31 department's rules of procedure for contested case hear-
32 ings and declaratory rulings and the pertinent provisions
33 of article five, chapter twenty-nine-a of this code.

34 (d) Following a formal hearing, the secretary shall make
35 and enter a written order either dismissing the complaint
36 or taking other action as is authorized in this article. The
37 written order of the secretary shall be accompanied by
38 findings of fact and conclusions of law as specified in
39 section three, article five, chapter twenty-nine-a of this
40 code and a copy of the order and accompanying findings
41 and conclusions shall be served upon the licensee and his
42 or her attorney of record, if any, by certified mail, return
43 receipt requested. If the secretary suspends an assisted
44 living residence's license, the order shall also specify the
45 conditions giving rise to the suspension to be corrected by
46 the licensee during the period of suspension in order to
47 entitle the licensee to reinstatement of the license. If the
48 secretary revokes a license, the secretary may stay the
49 effective date of revocation by not more than ninety days
50 upon a showing that the delay is necessary to assure
51 appropriate placement of residents. The order of the
52 secretary shall be final unless vacated or modified upon
53 judicial review of the order in accordance with the provi-
54 sions of section thirteen of this article.

55 (e) In addition to all other powers granted by this
56 chapter, the secretary may hold the case under advisement
57 and make a recommendation as to requirements to be met
58 by the licensee in order to avoid either suspension or
59 revocation. In such a case, the secretary shall enter an
60 order accordingly and so notify the licensee and his or her
61 attorney of record, if any, by certified mail, return receipt
62 requested. If the licensee meets the requirements of the
63 order, the secretary shall enter an order showing satisfac-
64 tory compliance and dismissing the complaint and shall so
65 notify the licensee and the licensee's attorney of record, if
66 any, by certified mail, return receipt requested.

§16-5D-13. Judicial review.

1 (a) Any licensee adversely affected by an order of the
2 secretary rendered after a hearing held in accordance with
3 the provisions of section twelve of this article is entitled to
4 judicial review thereof. All of the pertinent provisions of
5 section four, article five, chapter twenty-nine-a of this
6 code shall apply to and govern with like effect as if the
7 provisions of said section were set forth in extenso in this
8 section.

9 (b) The judgment of the circuit court shall be final unless
10 reversed, vacated or modified on appeal to the supreme
11 court of appeals in accordance with the provisions of
12 section one, articlesix, chapter twenty-nine-a of this code.

§16-5D-14. Legal counsel and services for the secretary.

1 (a) Legal counsel and services for the secretary in all
2 administrative hearings and all proceedings in any circuit
3 court and the supreme court of appeals shall be provided
4 by the attorney general, his or her assistants or an attorney
5 employed by the secretary in proceedings in any circuit
6 court by the prosecuting attorney of the county as well, all
7 without additional compensation.

8 (b) The governor may appoint counsel for the secretary
9 who shall perform such legal services in representing the
10 interests of residents in assisted living residences in
11 matters under the jurisdiction of the secretary as the
12 governor shall direct. It shall be the duty of such counsel
13 to appear for the residents in all cases where they are not
14 represented by counsel. The compensation of such counsel
15 shall be fixed by the governor.

**§16-5D-15. Unlawful acts; penalties; injunctions; private right
of action.**

1 (a) Whoever advertises, announces, establishes or
2 maintains or is engaged in establishing or maintaining an
3 assisted living residence without a license granted under
4 section six of this article, or who prevents, interferes with
5 or impedes in any way the lawful enforcement of this

6 article shall be guilty of a misdemeanor and, upon conviction
7 thereof, shall be punished for the first offense by a
8 fine of not more than one hundred dollars or by imprisonment
9 in jail for a period of not more than ninety days, or
10 by both such fine and imprisonment, at the discretion of
11 the court. For each subsequent offense, the fine may be
12 increased to not more than two hundred fifty dollars, with
13 imprisonment in jail for a period of not more than ninety
14 days, or both such fine and imprisonment at the discretion
15 of the court. Each day of a continuing violation after
16 conviction shall be considered a separate offense.

17 (b) The secretary may in his or her discretion bring an
18 action to enforce compliance with this article or any rule,
19 or order hereunder, whenever it appears to the secretary
20 that any person has engaged in, or is engaging in, an act or
21 practice in violation of this article or any rule or order
22 hereunder, or whenever it appears to the secretary that
23 any person has aided, abetted or caused or is aiding,
24 abetting or causing such an act or practice. Upon applica-
25 tion by the secretary, the circuit court of the county in
26 which the conduct has occurred or is occurring shall have
27 jurisdiction to grant without bond a permanent or tempo-
28 rary injunction, decree or restraining order.

29 (c) Whenever the secretary refuses to grant or renew a
30 license or revokes a license required by law to operate or
31 conduct an assisted living residence or orders a person to
32 refrain from conduct violating the rules of the secretary
33 and the person deeming himself aggrieved by the refusal,
34 revocation or order appeals the action of the secretary, the
35 court may, during pendency of the appeal, issue a restrain-
36 ing order or injunction upon proof that the operation of
37 the assisted living residence or its failure to comply with
38 the order of the secretary adversely affects the well-being
39 or safety of the residents of the assisted living residence.
40 Should a person who is refused a license or the renewal of
41 a license to operate or conduct an assisted living residence
42 or whose license to operate is revoked or who has been
43 ordered to refrain from conduct or activity which violates

44 the rules of the secretary, fail to appeal or should such
45 appeal be decided favorably to the secretary, then the
46 court shall issue a permanent injunction upon proof that
47 the person is operating or conducting an assisted living
48 residence without a license as required by law or has
49 continued to violate the rules of the secretary.

50 (d) Any assisted living residence that deprives a resident
51 of any right or benefit created or established for the well-
52 being of the resident by the terms of any contract, by any
53 state statute or rule or by any applicable federal statute or
54 regulation shall be liable to the resident for injuries
55 suffered as a result of the deprivation. Upon a finding that
56 a resident has been deprived of such a right or benefit and
57 that the resident has been injured as a result of the depri-
58 vation and unless there is a finding that the assisted living
59 residence exercised all care reasonably necessary to
60 prevent and limit the deprivation and injury to the resi-
61 dent, compensatory damages shall be assessed in an
62 amount sufficient to compensate the resident for the
63 injury. In addition, where the deprivation of any right or
64 benefit is found to have been willful or in reckless disre-
65 gard of the lawful rights of the resident, punitive damages
66 may be assessed. A resident may also maintain an action
67 pursuant to this section for any other type of relief,
68 including injunctive and declaratory relief, permitted by
69 law. Exhaustion of any available administrative remedies
70 may not be required prior to commencement of suit
71 hereunder.

72 (e) The amount of damages recovered by a resident, in an
73 action brought pursuant to this section, are exempt for
74 purposes of determining initial or continuing eligibility for
75 medical assistance under article four, chapter nine of this
76 code and may neither be taken into consideration nor
77 required to be applied toward the payment or part pay-
78 ment of the cost of medical care or services available under
79 said article.

80 (f) Any waiver by a resident or his or her legal represen-
81 tative of the right to commence an action under this

82 section, whether oral or in writing, shall be null and void
83 as contrary to public policy.

84 (g) The penalties and remedies provided in this section
85 are cumulative and shall be in addition to all other penal-
86 ties and remedies provided by law.

§16-5D-16. Availability of reports and records.

1 The secretary shall make available for public inspection
2 and at a nominal cost provide copies of all inspections and
3 other reports of assisted living residences filed with or
4 issued by the secretary. Nothing contained in this section
5 may be construed or deemed to allow the public disclosure
6 of confidential medical, social, personal or financial
7 records of any resident. The secretary shall propose rules
8 for legislative approval in accordance with the provisions
9 of article three, chapter twenty-nine-a of this code as may
10 be necessary to give effect to the provisions of this section
11 and to preserve the confidentiality of medical, social,
12 personal or financial records of residents.

§16-5D-17. Licenses and rules in force.

1 (a) All licenses for personal care homes and residential
2 board and care homes which are in force on the first day
3 of July, two thousand three, shall continue in full force
4 and effect during the period for which issued unless sooner
5 revoked as provided in this article.

6 (b) All rules in effect on the first day of July, one thou-
7 sand nine hundred ninety-seven, which were adopted by
8 the secretary relating to licensing personal care homes and
9 residential board and care homes shall remain in full force
10 and effect until altered, amended or repealed by the
11 secretary.

12 (c) Notwithstanding any other provisions of this article,
13 the secretary shall promulgate emergency rules pursuant
14 to the provisions of section fifteen, article three, chapter
15 twenty-nine-a of this code by the first date of September,
16 two thousand three, to implement this program.

§16-5D-18. Separate accounts for residents' personal funds; consent for use; records; penalties.

1 (a) Each assisted living residence subject to the provi-
2 sions of this article shall hold in a separate account and in
3 trust each resident's personal funds deposited with the
4 assisted living residence.

5 (b) No person may use or cause to be used for any
6 purpose the personal funds of any resident admitted to any
7 assisted living residence unless consent for the use thereof
8 has been obtained from the resident or from a committee
9 or guardian or relative.

10 (c) Each assisted living residence shall maintain a true
11 and complete record of all receipts for any disbursements
12 from the personal funds account of each resident in the
13 assisted living residence, including the purpose and payee
14 of each disbursement, and shall render a true account of
15 the record to the resident or his or her representative upon
16 demand and upon termination of the resident's stay in the
17 assisted living residence.

18 (d) Any person or corporation who violates any provision
19 of this section is guilty of a misdemeanor and, upon
20 conviction thereof, shall be fined not more than one
21 thousand dollars or imprisoned in jail not more than one
22 year, or both fined and imprisoned.

ARTICLE 5T. CARE HOME ADVISORY BOARD.

§16-5T-1. Care home advisory board created; membership; terms; meetings; compensation; termination.

1 (a) The care home advisory board, as previously created
2 and constituted under this section, is hereby continued to
3 gather information concerning personal care homes, as
4 defined and regulated in article five-d of this chapter, and
5 residential board and care homes, as defined and regulated
6 in article five-h of this chapter, and make its findings and
7 recommendations to the governor and the Legislature.

8 (b) The care home advisory board shall have seven
9 members: The president of the Senate or his or her

10 designee; the speaker of the House of Delegates or his or
11 her designee; the secretary of the department of health and
12 human resources or his or her designee; an operator of a
13 facility originally licensed as a personal care home in this
14 state; an operator of a facility originally licensed as a
15 residential board and care home in this state; and two
16 members of the public at large, one of whom shall be an
17 advocate for consumer rights.

18 (c) The governor shall appoint the members to the board
19 by and with the advice and consent of the Senate. Ap-
20 pointments under the provision of this article shall be for
21 a three-year term or the unexpired term, except in the
22 initial appointments as follows: One citizen member shall
23 be appointed for a two-year term; one citizen member
24 shall be appointed for a three-year term; and the care
25 home operator members shall be appointed for a one-year
26 term. Subsequent appointments to the committee shall be
27 for three-year terms. No member shall serve more than
28 two successive terms.

29 (d) The advisory board shall meet at least four times
30 annually at the times and places in the state that it
31 determines. A majority of the members constitutes a
32 quorum for the purpose of conducting business. The
33 secretary of the department of health and human resources
34 or his or her designee shall serve as chair of the advisory
35 board.

36 (e) Members of the advisory board are not entitled to
37 compensation for services performed as members, but are
38 entitled to reimbursement for all reasonable and necessary
39 expenses actually incurred in the performance of their
40 duties, which shall be paid from the funds of the depart-
41 ment of health and human resources.

42 (f) The care home advisory board shall continue to exist
43 until the last day of December, two thousand three, unless
44 sooner terminated, continued or reestablished by act of the
45 Legislature.

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

Cammy [unclear]
.....
Chairman, Senate Committee

Greg Butcher
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Carroll Ebeland
.....
Clerk of the Senate

Bruce M. Bay
.....
Clerk of the House of Delegates

Carl Ray Jambelin
.....
President of the Senate

Robert Kiss
.....
Speaker House of Delegates

The within *is approved* this the *27th*
Day of *March*, 2003.

Bob Wise
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3.20.03

Time 9.50Am