

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENROLLED

House Bill 4178

BY DELEGATES SUMMERS, LONGSTRETH, ELLINGTON,

ESPINOSA AND HOUSEHOLDER

[Passed March 6, 2018; in effect ninety days from passage.]

1 AN ACT to amend and reenact §16-5C-2 and §16-5C-5 of the Code of West Virginia, 1931, as
2 amended, all relating to permitting certain portions of certified nurse aide training to be
3 provided through distance learning technologies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5C. NURSING HOMES.

§16-5C-2. Definitions.

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

2 “Deficiency” means a nursing home’s failure to meet the requirements specified in §16-
3 5C-1 *et seq.* of this code and rules promulgated thereunder.

4 “Director” means the secretary of the Department of Health and Human Resources or his
5 or her designee.

6 “Distance learning technologies” means computer-centered technologies delivered over
7 the internet, broadcasts, recordings, instructional videos, or videoconferencing.

8 “Household” means a private home or residence which is separate from or unattached to
9 a nursing home.

10 “Immediate jeopardy” means a situation in which the nursing home’s noncompliance with
11 one or more of the provisions of this article or rules promulgated thereunder has caused or is
12 likely to cause serious harm, impairment or death to a resident.

13 “Nursing home” or “facility” means any institution, residence or place, or any part or unit
14 thereof, however named, in this state which is advertised, offered, maintained or operated by the
15 ownership or management, whether for a consideration or not, for the express or implied purpose
16 of providing accommodations and care, for a period of more than twenty-four hours, for four or
17 more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing
18 care due to physical or mental impairment or which provides services for the rehabilitation of
19 persons who are convalescing from illness or incapacitation.

20 The care or treatment in a household, whether for compensation or not, of any person
21 related by blood or marriage, within the degree of consanguinity of second cousin to the head of
22 the household, or his or her spouse, may not be deemed to constitute a nursing home within the
23 meaning of this article. Nothing contained in this article applies to nursing homes operated by the
24 federal government; or extended care facilities operated in conjunction with a hospital; or
25 institutions operated for the treatment and care of alcoholic patients; or offices of physicians; or
26 hotels, boarding homes or other similar places that furnish to their guests only room and board;
27 or to homes or asylums operated by fraternal orders pursuant to §35-3-1 *et seq.* of this code.

28 “Nursing care” means those procedures commonly employed in providing for the physical,
29 emotional and rehabilitational needs of the ill or otherwise incapacitated which require technical
30 skills and knowledge beyond that which the untrained person possesses, including, but not limited
31 to, such procedures as: Irrigations, catheterization, special procedure contributing to
32 rehabilitation, and administration of medication by any method which involves a level of
33 complexity and skill in administration not possessed by the untrained person.

34 “Resident” means an individual living in a nursing home.

35 “Review organization” means any committee or organization engaging in peer review or
36 quality assurance, including, but not limited to, a medical audit committee, a health insurance
37 review committee, a professional health service plan review committee or organization, a dental
38 review committee, a physician’s advisory committee, a podiatry advisory committee, a nursing
39 advisory committee, any committee or organization established pursuant to a medical assistance
40 program, any committee or organization established or required under state or federal statutes,
41 rules or regulations, and any committee established by one or more state or local professional
42 societies or institutes, to gather and review information relating to the care and treatment of
43 residents for the purposes of:

44 Evaluating and improving the quality of health care rendered; reducing morbidity or
45 mortality; or establishing and enforcing guidelines designed to keep within reasonable bounds the
46 cost of health care.

47 “Sponsor” means the person or agency legally responsible for the welfare and support of
48 a resident.

49 “Person” means an individual and every form of organization, whether incorporated or
50 unincorporated, including any partnership, corporation, trust, association or political subdivision
51 of the state.

52 “Substantial compliance” means a level of compliance with the rules such that no
53 deficiencies exist or such that identified deficiencies pose no greater risk to resident health or
54 safety than the potential for causing minimal harm.

55 The director may define in the rules any term used herein which is not expressly defined.

§16-5C-5. Rules; minimum standards for nursing homes.

1 (a) All rules shall be proposed for legislative approval in accordance with the provisions of
2 §29A-3-1 *et seq.* of this code. The director shall recommend the adoption, amendment or repeal
3 of such rules as may be necessary or proper to carry out the purposes and intent of this article.

4 (b) The director shall recommend rules establishing minimum standards of operation of
5 nursing homes including, but not limited to, the following:

6 (1) Administrative policies, including: (A) An affirmative statement of the right of access to
7 nursing homes by members of recognized community organizations and community legal
8 services programs whose purposes include rendering assistance without charge to residents,
9 consistent with the right of residents to privacy; and (B) a statement of the rights and
10 responsibilities of residents in nursing homes which prescribe, as a minimum, such a statement
11 of residents’ rights as included in the United States Department of Health and Human Services
12 regulations, in force on the effective date of this article, governing participation of nursing homes
13 in the Medicare and Medicaid programs pursuant to titles eighteen and nineteen of the Social
14 Security Act;

15 (2) Minimum numbers of administrators, medical directors, nurses, aides and other
16 personnel according to the occupancy of the facility;

17 (3) Qualifications of facility's administrators, medical directors, nurses, aides, and other
18 personnel;

19 (4) Safety requirements;

20 (5) Sanitation requirements;

21 (6) Personal services to be provided;

22 (7) Dietary services to be provided;

23 (8) Medical records;

24 (9) Social and recreational activities to be made available;

25 (10) Pharmacy services;

26 (11) Nursing services;

27 (12) Medical services;

28 (13) Physical facility;

29 (14) Resident rights;

30 (15) Visitation privileges that:

31 (A) Permit immediate access to a resident, subject to the resident's right to deny or
32 withdraw consent at any time, by immediate family or other relatives of the resident;

33 (B) Permit immediate access to a resident, subject to reasonable restrictions and the
34 resident's right to deny or withdraw consent at any time, by others who are visiting with the
35 consent of the resident; and

36 (C) Permit access to other specific persons or classes of persons consistent with state
37 and federal law.

38 (16) Admission, transfer and discharge rights.

39 (c) The director shall permit the nonclinical instruction portions of a nurse aide training
40 program approved by the Office of Health Facility Licensure and Certification to be provided
41 through distance learning technologies.

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, 2018.

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Governor