

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2616

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[Originating in the Committee on Health and Human
Resources; Reported on February 23, 2021]

1 A BILL 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 ~~(a)~~ (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 ~~(b)~~ (2) “Deficiency” means a statement of the rule and the fact that compliance has not
5 been established and the reasons therefor;

6 ~~(c)~~ (3) “Department” means the ~~state~~ Department of Health and Human Resources;

7 ~~(d)~~ (4) “Director” means the director of the ~~division of health~~ Office of Health Facility
8 Licensure and Certification;

9 ~~(e)~~ (5) “Division” means the ~~division of health of the state~~ Department of Health and Human
10 Resources Office of Health Facility Licensure and Certification;

11 ~~(f)~~ (6) “Limited and intermittent nursing care” means direct hands-on nursing care of a
12 resident who needs no more than two hours of nursing care per day for a period of time no longer
13 than ninety consecutive days per episode, which care may be provided only when the need for it
14 meets these requirements: ~~(1)~~ The resident requests that he or she remain in the residential care
15 community; ~~(2)~~ the resident is advised of the availability of other specialized health care facilities
16 to treat his or her condition; and ~~(3)~~ the need for care results from a medical pathology or the
17 normal aging process. Limited and intermittent nursing care may be provided only by or under the
18 supervision of a registered professional nurse and in accordance with legislative rules proposed
19 by the secretary;

20 ~~(g)~~ (7) “Nursing care” means those procedures commonly employed in providing for the
21 physical, emotional and rehabilitation needs of the ill or otherwise incapacitated and which require
22 technical skills and knowledge beyond those that untrained persons possess, including,
23 irrigations, catheterizations, special procedures that contribute to rehabilitation and administration
24 of medication by any method involving a level of complexity and skill not possessed by untrained
25 persons;

26 ~~(h)~~ (8) “Person” means a natural person and every form of organization, whether
27 incorporated or unincorporated, including partnerships, corporations, trusts, associations and
28 political subdivisions of the state;

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

32 ~~(j)~~ (10) “Resident” means an individual who lives in a residential care community for the
33 purpose of receiving personal assistance or limited and intermittent nursing services from the
34 community;

35 ~~(k)~~ (11) “Residential care community” means any group of seventeen or more residential
36 apartments, however named, which are part of a larger independent living community and which
37 are advertised, offered, maintained or operated by an owner or manager, regardless of
38 consideration or the absence thereof, for the express or implied purpose of providing residential
39 accommodations, personal assistance and supervision on a monthly basis to seventeen or more
40 persons who are or may be dependent upon the services of others by reason of physical or mental
41 impairment or who may require limited and intermittent nursing care but who are capable of self-
42 preservation and are not bedfast. Individuals may not be disqualified for residency solely because
43 they qualify for or receive services coordinated by a licensed hospice. Each apartment in a
44 residential care community shall be at least three hundred square feet in size, have doors capable
45 of being locked and contain at least: ~~(4)~~ One bedroom; ~~(2)~~ one kitchenette that includes a sink

46 and a refrigerator; and ~~(3)~~ one full bathroom that includes a bathing area, toilet and sink. Services
47 utilizing equipment which requires auxiliary electrical power in the event of a power failure may
48 not be used unless the residential care community has a backup power generator. Nothing
49 contained in this article applies to hospitals, as defined under §16-5B-1, state institutions, as
50 defined under §25-1-3 or §27-1-6, residential care communities operated as continuing care
51 retirement communities or housing programs operated under rules of the federal department of
52 housing and urban development and/or the office of rural economic development, residential care
53 communities operated by the federal government or the state government, institutions operated
54 for the treatment and care of alcoholic patients, offices of physicians, hotels, boarding homes or
55 other similar places that furnish only room and board, or to homes or asylums operated by
56 fraternal orders pursuant to §35-3-1 of this code;

57 ~~(l)~~ (12) "Secretary" means the Secretary of the ~~state~~ Department of Health and Human
58 Resources or his or her designee; and

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

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

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

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

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

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

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

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

13 ~~(e) To~~ (5) Receive and disburse funds appropriated by the Legislature to the division for
14 any authorized purpose;

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

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

21 ~~(h) To~~ (8) Appoint officers, agents, employees, and other personnel and establish the
22 duties and fix the compensation thereof;

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

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

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

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

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

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

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

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

52 ~~(q) To submit a report to the governor and the Legislature on or before the first day of~~
53 ~~December, one thousand nine hundred ninety-seven, and annually thereafter, which report shall~~
54 ~~review the residential care community licensing and investigatory activities of the division during~~
55 ~~the preceding year and the nature, scope and status of any other activities of the division. This~~
56 ~~report may include comment on the actions, policies, practices or procedures of any public or~~
57 ~~private agency that may affect the rights, health or welfare of residents of residential care~~

58 ~~communities. These annual reports shall also include a listing of all licensed residential care~~
59 ~~communities in the state together with the following information: Whether a community is~~
60 ~~proprietary or nonproprietary; how the community is or should be classified; the name of the owner~~
61 ~~or owners; the total number of apartments contained therein; the monthly costs for residents; the~~
62 ~~number and profession of full-time employees; the number and types of recreational programs~~
63 ~~available to residents; and other services and programs available to residents, and the costs~~
64 ~~thereof; and whether the residential care community listed accepted medicare or medicaid~~
65 ~~residents. These reports shall also contain the division's recommendations with regard to~~
66 ~~changes in law or policy which it considers necessary or proper for the protection of the rights,~~
67 ~~health or welfare of the residents of residential care communities within the state~~

68 (17) Make available at all times online access through the Office of Health Facility
69 Licensure and Certification website the following information. The online information shall
70 describe the residential care community licensing and investigatory activities of the division. The
71 online information shall include a list of all residential care communities and the following
72 information: Whether the residential care communities are proprietary or nonproprietary; the name
73 of the administrator or administrators; the total number of beds; license type; license number;
74 license expiration date; health investigations information and reports; life safety investigations
75 information and reports; and whether those residential care communities listed accept Medicare
76 or Medicaid residents.

NOTE: The purpose of this bill is to eliminate the submission of a report to the Governor and the Legislature, but require that information to be continuously available on the Office of Health Facility Licensure and Certification's website.

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