

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 399

BY SENATOR MARONEY

[Introduced February 23, 2021; referred to the
Committee on Health and Human Resources]

1 A BILL to amend and reenact §16-5N-3 of the Code of West Virginia, 1931, as amended, relating
 2 to residential care communities that encourage and promote the development and
 3 utilization of quality residential communities for persons who desire to live independently
 4 or who may require limited and intermittent nursing care in a normal home environment;
 5 and amending the requirement of an annual report to the Legislature providing specified
 6 information being continuously available to the public at all times on the Office of Health
 7 Facility Licensure and Certification's website.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5N. RESIDENTIAL CARE COMMUNITIES.

§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 (a) To enforce rules and standards for residential care communities as adopted, proposed,
3 amended, or modified by the secretary;

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

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

12 (e) To receive and disburse funds appropriated by the Legislature to the division for any
13 authorized purpose;

14 (f) To 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 (g) To 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 (h) To appoint officers, agents, employees, and other personnel and establish the duties
21 and fix the compensation thereof;

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

24 (j) To 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 (k) To 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 (l) To 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 (m) To 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 (n) To subpoena witnesses and documents, administer oaths and affirmations, and
36 examine witnesses. Upon the failure of any person without lawful excuse to obey a subpoena to
37 give testimony and upon reasonable notice to all persons affected thereby, the director may apply
38 to 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 (o) To make a complaint or cause proceedings to be instituted against any person or
41 persons for the violation of the provisions of this article or of the rules promulgated hereunder.

42 An action may be taken by the director in the absence of concurrence or participation by the

43 prosecuting attorney of the county in which the proceedings are instituted. The circuit court of
44 Kanawha County or the circuit court of the county in which the violation has occurred has
45 jurisdiction in any civil enforcement action brought pursuant to this article and may order equitable
46 relief. In these cases, the court may not require that a bond be posted, nor may the director or
47 any person acting under his or her authority be required to give security for costs;

48 (p) To 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 (q) To submit a report to the ~~governor and the~~ Legislature on or before ~~the first day of~~
52 ~~December, one thousand nine hundred ninety-seven,~~ December 1, 1997, and annually thereafter,
53 which report shall review the residential care community licensing and investigatory activities of
54 the division during the preceding year and the nature, scope and status of any other activities of
55 the division. This report may include comment on the actions, policies, practices or procedures
56 of any public or private agency that may affect the rights, health or welfare of residents of
57 residential care communities. These annual reports shall also include a listing of all licensed
58 residential care communities in the state together with the following information: Whether a
59 community is proprietary or nonproprietary; how the community is or should be classified; the
60 name of the owner or owners; the total number of apartments contained therein; the monthly costs
61 for residents; the number and profession of full-time employees; the number and types of
62 recreational programs available to residents; and other services and programs available to
63 residents, and the costs thereof; and whether the residential care community listed accepted
64 medicare or medicaid residents. These reports shall also contain the division's recommendations
65 with regard to changes in law or policy which it considers necessary or proper for the protection
66 of the rights, health or welfare of the residents of residential care communities within the state.

67 To make available to the Governor, the Legislature, and the public at all times online
68 access through the Office of Health Facility Licensure and Certification website the following

69 information. The online information will describe the residential care community licensing and
70 investigatory activities of the division. The online information will include a list of all residential
71 care communities in the state and such of the following information as the secretary determines
72 to apply: 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 amend the reporting to the Governor and the Legislature to have information continuously available on the Office of Health Facility Licensure and Certification's website and to have this information include a list of all residential care communities in the state, whether the residential care community is proprietary or nonproprietary, the name of the administrator or administrators, the total number of beds, license type, license number, license expiration date, health investigations information and reports, life safety investigations information and reports, and whether those residential care communities listed accept Medicare or Medicaid residents.

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