

1 **H. B. 2021**

2
3 (By Delegates Staggers and Fleischauer)
4 [Introduced January 12, 2011; referred to the
5 Committee on Health and Human Resources then the
6 Judiciary.]
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10 A BILL to amend and reenact §16-50-2, §16-50-3 and §16-50-4 of the
11 Code of West Virginia, 1931, as amended, all relating to
12 permitting unlicensed personnel to administer medications in
13 certain circumstances; defining terms; and exemptions from
14 licensure.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §16-50-2, §16-50-3 and §16-50-4 of the Code of West
17 Virginia, 1931, as amended, be amended and reenacted, all to read
18 as follows:

19 **ARTICLE 50. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL.**

20 **§16-50-2. Definitions.**

21 As used in this article, unless a different meaning appears
22 from the context, the following definitions apply:

23 (a) "Administration of medication" means:

1 (1) Assisting a person in the ingestion, application or
2 inhalation of medications, including prescription drugs, or in the
3 use of universal precautions or rectal or vaginal insertion of
4 medication, according to the legibly written or printed directions
5 of the attending physician or authorized practitioner, or as
6 written on the prescription label; and

7 (2) Making a written record of such assistance with regard to
8 each medication administered, including the time, route and amount
9 taken. ~~Provided, That~~ However, for purposes of this article,
10 "administration" does not include judgment, evaluation,
11 assessments, injections of medication, monitoring of medication or
12 self-administration of medications, including prescription drugs
13 and self-injection of medication by the resident.

14 (b) "Authorizing agency" means the department's office of
15 health facility licensure and certification.

16 (c) "Department" means the Department of Health and Human
17 Resources.

18 (d) "Facility" means an ICF/MR, a personal care home,
19 residential board and care home, behavioral health group home,
20 private residence in which health care services are provided under
21 the supervision of a registered nurse or an adult family care home
22 that is licensed by or approved by the department. Nursing
23 delegation protocols are not intended to regulate the settings in

1 which delegation may occur, but are intended to ensure that nursing
2 services have a consistent standard of practice to rely, and to
3 safeguard the authority of the nurse to make independent
4 professional decisions regarding the delegation of the task.

5 (e) "Facility staff member" means an individual employed by a
6 facility but does not include a health care professional acting
7 within the scope of a professional license or certificate.

8 (f) "Health care professional" means a medical doctor or
9 doctor of osteopathy, a podiatrist, registered nurse, practical
10 nurse, registered nurse practitioner, physician's assistant,
11 dentist, optometrist or respiratory care professional licensed
12 under chapter thirty of this code.

13 (g) "ICF/MR" means an intermediate care facility for the
14 mentally retarded which is certified by the department.

15 (h) "Medication" means a drug, as defined in section one
16 hundred one, article one, chapter sixty-a of this code, which has
17 been prescribed by a duly authorized health care professional to be
18 ingested through the mouth, applied to the outer skin, eye or ear,
19 or applied through nose drops, vaginal or rectal suppositories.

20 (i) "Registered professional nurse" means a person who holds
21 a valid license pursuant to article seven, chapter thirty of this
22 code.

23 (j) "Resident" means a resident of a facility.

1 (k) "Secretary" means the Secretary of the Department of
2 Health and Human Resources or his or her designee.

3 (l) "Self-administration of medication" means the act of a
4 resident, who is independently capable of reading and understanding
5 the labels of drugs ordered by a physician, in opening and
6 accessing prepackaged drug containers, accurately identifying and
7 taking the correct dosage of the drugs as ordered by the physician,
8 at the correct time and under the correct circumstances. If the
9 resident is physically unable to place a dose of medication in
10 his/her own mouth without spilling or dropping it, an unlicensed
11 person may place the dose in another container and place that
12 container to the mouth of the individual.

13 (m) "Supervision of self-administration of medication" means
14 a personal service which includes reminding residents to take
15 medications, opening medication containers for residents, reading
16 the medication label to residents, observing residents while they
17 take medication, checking the self administered dosage against the
18 label on the container and reassuring residents that they have
19 obtained and are taking the dosage as prescribed.

20 **§16-50-3. Administration of medications in facilities.**

21 (a) The secretary is authorized to establish and implement a
22 program for the administration of medications in facilities or
23 other setting where services are received. The program shall be

1 developed and conducted in cooperation with the appropriate
2 agencies, advisory bodies and boards.

3 (b) Administration of medication pursuant to this article
4 shall be performed only by:

5 (1) Registered professional nurses;

6 (2) Other licensed health care professionals; or

7 (3) Facility staff members who have been trained and retrained
8 every two years and who are subject to the supervision of and
9 approval by a registered professional nurse.

10 (c) Subsequent to assessing the health status of an individual
11 resident, a registered professional nurse, in collaboration with
12 the resident's attending physician and the facility staff member,
13 may recommend that the facility authorize a facility staff member
14 to administer medication if the staff member:

15 (1) Has been trained pursuant to the requirements of this
16 article;

17 (2) Is considered by the registered professional nurse to be
18 competent;

19 (3) Consults with the registered professional nurse or
20 attending physician on a regular basis; and

21 (4) Is monitored or supervised by the registered professional
22 nurse.

1 (d) Nothing in this article may be construed to prohibit any
2 facility staff member from administering medications or providing
3 any other prudent emergency assistance to aid any person who is in
4 acute physical distress or requires emergency assistance.

5 (e) Supervision of self-administration of medication by
6 facility staff members who are not licensed health care
7 professionals may be permitted in certain circumstances, when the
8 substantial purpose of the setting is other than the provision of
9 health care.

10 **§16-50-4. Exemption from licensure; statutory construction.**

11 (a) Any individual who is not otherwise authorized by law to
12 administer medication may administer medication in a facility or
13 other setting where services are received if he or she meets the
14 requirements and provisions of this article. Any person who
15 administers medication pursuant to the provisions of this article
16 shall be exempt from the licensing requirements of chapter thirty
17 of this code.

18 (b) All licensed health care professionals as defined in this
19 article remain subject to the provisions of their respective
20 licensing laws.

21 (c) Notwithstanding any other provision of law to the
22 contrary, ~~the provisions of~~ this article shall not be construed to

1 violate or be in conflict with any of the provisions of articles
2 seven or seven-a, chapter thirty of this code.

3 (d) Any individual who is employed to provide community-based
4 services at the direction of the individual receiving services, or
5 their legally responsible representative, may administer medication
6 if he or she meets the requirements and provisions of this article.

NOTE: The purpose of this bill is to permit unlicensed personnel to administer medications in certain circumstances. The bill also defining terms and provides exemptions from licensure.

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