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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 295

(By Senators Minard, Snyder, Prezioso,
Unger, Boley and K. Facemyer)

[Originating in the Committee on the Judiciary;
reported February 23, 2011.]

A BILL to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Health and Human Resources; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various

1 modifications presented to and recommended by the Legislative
2 Rule-Making Review Committee; authorizing certain of the
3 agencies to promulgate certain legislative rules with various
4 modifications presented to and recommended by the Legislative
5 Rule-Making Review Committee and as amended by the
6 Legislature; authorizing the Department of Health and Human
7 Resources to promulgate a legislative rule relating to public
8 water systems; authorizing the Department of Health and Human
9 Resources to promulgate a legislative rule relating to
10 specialized multipatient medical transport; authorizing the
11 Department of Health and Human Resources to promulgate a
12 legislative rule relating to food manufacturing facilities;
13 authorizing the Department of Health and Human Resources to
14 promulgate a legislative rule relating to fire department
15 rapid response services licensure; authorizing the Department
16 of Health and Human Resources to promulgate a legislative rule
17 relating to emergency medical services; authorizing the
18 Department of Health and Human Resources to promulgate a
19 legislative rule relating to cancer registry; authorizing the
20 Department of Health and Human Resources to promulgate a
21 legislative rule relating to safety and treatment programs;
22 authorizing the Department of Health and Human Resources to

1 promulgate a legislative rule relating to requirements for
2 licensure of nonprofit corporations for conservator service;
3 and authorizing the Health Care Authority to promulgate a
4 legislative rule relating to certificates of need.

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

6 That article 5, chapter 64 of the Code of West Virginia, 1931,
7 as amended, be amended and reenacted to read as follows:

8 **ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN**
9 **RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

10 **§64-5-1. Department of Health and Human Resources.**

11 (a) The legislative rule filed in the state register on the
12 twenty-ninth day of July, two thousand ten, authorized under the
13 authority of section four, article one, chapter sixteen, of this
14 code, relating to the Department of Health and Human Resources
15 (public water systems, 64 CSR 3), is authorized.

16 (b) The legislative rule filed in the state register on the
17 thirtieth day of July, two thousand ten, authorized under the
18 authority of section six, article four-c, chapter sixteen, of this
19 code, relating to the Department of Health and Human Resources
20 (specialized multipatient medical transport, 64 CSR 29), is
21 authorized.

22 (c) The legislative rule filed in the state register on the

1 twenty-ninth day of July, two thousand ten, authorized under the
2 authority of section four, article one, chapter sixteen, of this
3 code, modified by the Department of Health and Human Resources to
4 meet the objections of the Legislative Rule-Making Review Committee
5 and refiled in the state register on the third day of January, two
6 thousand eleven, relating to the Department of Health and Human
7 Resources (food manufacturing facilities, 64 CSR 43), is
8 authorized.

9 (d) The legislative rule filed in the state register on the
10 thirtieth day of July, two thousand ten, authorized under the
11 authority of section six, article four-c, chapter sixteen, of this
12 code, relating to the Department of Health and Human Resources
13 (fire department rapid response services licensure, 64 CSR 44), is
14 authorized.

15 (e) The legislative rule filed in the state register on the
16 thirtieth day of July, two thousand ten, authorized under the
17 authority of section six, article four-c, chapter sixteen, of this
18 code, modified by the Department of Health and Human Resources to
19 meet the objections of the Legislative Rule-Making Review Committee
20 and refiled in the state register on the twenty-fourth day of
21 January, two thousand eleven, relating to the Department of Health
22 and Human Resources (emergency medical services, 64 CSR 48), is

1 authorized with the following amendments:

2 On page four, subsection 2.12., by striking out the word
3 "commissioner" and inserting in lieu thereof the word
4 "Commissioner";

5 On page seven, subsection 2.46., by striking out all of
6 subsection 2.46.;

7 On page eight, subsection 3.1.d., by striking out the word
8 "Commissions" and inserting in lieu thereof the word "commission";

9 On page eight, subdivision 3.2.b., by striking out all of
10 subdivision 3.2.b. and inserting in lieu thereof a new subdivision
11 3.2.b. to read as follows:

12 "3.2.b. EMS agencies shall collect, maintain and report
13 accurate patient data for all EMS incidents. Agencies shall
14 complete a patient care report (PCR) for all EMS incidents. PCRs
15 shall be complete and submitted to the West Virginia Prehospital
16 Information System (PreMIS) following the conclusion of providing
17 EMS services to a patient, in accordance with policies and
18 guidelines established by OEMS.";

19 On page nine, subdivision 3.2.c., by striking out the words "a
20 minimum written patient handoff report," and inserting in lieu
21 thereof the words "at a minimum a patient handoff report";

22 On page fourteen, subdivision 4.23.a., by striking out all of

1 subdivision 4.23.a. and inserting in lieu thereof a new subdivision
2 4.23.a. to read as follows:

3 "4.23.a. The EMS agency has a rapid response program which
4 routinely places trained and equipped personnel on the scene of
5 potential life-threatening emergencies prior to the arrival of an
6 ambulance in accordance with policies and guidelines established by
7 OEMS. Five (5) points; or";

8 On page fifteen, subdivision 4.27.d., by striking out "of . .
9 .";

10 On page eighteen, paragraph 4.36.b.2., after the word "action"
11 by inserting the word "to";

12 On page nineteen, subdivision 4.37.h., by striking out the
13 words "event of" and inserting in lieu thereof the words "the
14 event";

15 On page nineteen, subdivision 4.38.a., by striking out the
16 word "state" and inserting in lieu thereof the word "State";

17 On page twenty, subdivision 5.1.a., by striking out the words
18 "Ground ambulances shall meet applicable US Government Services
19 Agency KKK-A-1822" and inserting in lieu thereof the words "Unless
20 specified differently herein, ground ambulances shall meet US
21 Government Services Agency KKK-A-1822 or subsequent federally
22 approved";

1 On page twenty, subdivision 5.1.c., by striking the word
2 "Unites" and inserting in lieu thereof the word "United";

3 On page twenty-one, subdivison 5.1.i., by striking out the
4 word "be";

5 On page twenty-one, subdivision 5.1.j., by striking out the
6 words "medication kit and its supplies" and inserting in lieu
7 thereof the words "medications in accordance with policies and
8 guidelines established by OEMS";

9 On page twenty-two, paragraph 5.1.k.5., by striking out the
10 words "accordance with applicable US Government Services Agency
11 KKK-A-1822 specifications at the time of vehicle manufacture";

12 On page twenty-three, subdivision 5.3.b., by striking out the
13 words "requirements are" and inserting in lieu thereof the word
14 "is";

15 On page twenty-three, subdivision 5.3.b., after the words
16 "practice and" by inserting the words "appropriate staff";

17 On page twenty-three, subsection 5.4., by striking out the
18 words "be a Federal Aviation Administration (FAA) Part 135 air
19 carrier certificate holder" and inserting in lieu thereof the words
20 "operate under Federal Aviation Administration (FAA) Part 135
21 rules";

22 On page twenty-six, paragraph 5.5.b.7., by striking out the

1 words "requirements are" and inserting the word "is";

2 On page twenty-six, subsection 5.5.b.7., after the words
3 "practice and" by inserting the words "appropriate staff";

4 On page twenty-seven, subdivision 6.1.a., by striking out the
5 word "aprimary" and inserting in lieu thereof the word "primary";

6 On page thirty-three, subdivision 6.9., by striking out the
7 word "establish" and inserting in lieu thereof the word
8 "established";

9 On page thirty-five, subdivision 7.2.e., by striking out the
10 word "Other" and inserting in lieu thereof the word "other";

11 On page forty-five, paragraph 8.4.a.1., by striking out
12 "STEMS" and inserting in lieu thereof "OEMS";

13 On page forty-five, paragraph 8.4.a.2., by striking out
14 "STEMS" and inserting in lieu thereof "OEMS";

15 On page forty-six, subparagraph 8.4.c.1.A., by striking out
16 "STEMS" and inserting in lieu thereof "OEMS";

17 On page forty-six, subparagraph 8.4.c.2.E., by striking out
18 "STEMS" and inserting in lieu thereof "OEMS";

19 On page forty-eight, paragraph 8.5.b.1., by striking out
20 "STEMS" and inserting in lieu thereof "OEMS";

21 On page fifty, subparagraph 9.1.a.3.A., by striking out
22 "STEMS" and inserting in lieu thereof "OEMS";

1 On page fifty-one, subparagraph 9.1.b.1.B., by striking out
2 "STEMS" and inserting in lieu thereof "OEMS";

3 On page fifty-two, subparagraph 9.1.c.2.J., by striking out
4 the words "Assist STEMS in ensuring" and inserting in lieu thereof
5 the word "Ensure";

6 On page fifty-two, subparagraph 9.1.c.2.N., by striking out
7 "STEMS" and inserting in lieu thereof "OEMS";

8 On page fifty-two, paragraph 9.1.c.3., by striking out
9 "STEMS" and inserting in lieu thereof "OEMS";

10 On page fifty-three, subdivision 9.2.a., by striking out
11 "STEMS" and inserting in lieu thereof "OEMS";

12 On page fifty-four, subparagraph 9.2.a.1.A., striking out both
13 references to "STEMS" and inserting in lieu thereof "OEMS";

14 On page fifty-four, subparagraph 9.2.a.1.C., by striking out
15 "STEMS" and inserting in lieu thereof "OEMS";

16 On page fifty-four, subparagraph 9.2.a.1.D., by striking out
17 "STEMS" and inserting in lieu thereof "OEMS";

18 On page fifty-four, subparagraph 9.2.a.3.E., by striking out
19 "STEMS" and inserting in lieu thereof "OEMS";

20 On page fifty-four, subparagraph 9.2.a.3.F., by striking out
21 both references to "STEMS" and inserting in lieu thereof "OEMS";

22 On page fifty-five, paragraph 9.2.a.4, by striking out

1 "STEMS" and inserting in lieu thereof "OEMS";

2 On page fifty-five, subdivision 10.3.d, by striking out
3 "STEMS" and inserting in lieu thereof "OEMS";

4 And,

5 On page fifty-six, subsection 10.6, by striking out "STEMS"
6 and inserting in lieu thereof "OEMS".

7 (f) The legislative rule filed in the state register on the
8 twenty-ninth day of July, two thousand ten, authorized under the
9 authority of section four, article one, chapter sixteen, of this
10 code, relating to the Department of Health and Human Resources
11 (cancer registry, 64 CSR 68), is authorized.

12 (g) The legislative rule filed in the state register on the
13 twenty-ninth day of July, two thousand ten, authorized under the
14 authority of section four, article four-e, chapter sixteen, of this
15 code, modified by the Department of Health and Human Resources to
16 meet the objections of the Legislative Rule-Making Review Committee
17 and refiled in the state register on the third day of January, two
18 thousand eleven, relating to the Department of Health and Human
19 Resources (maternal risk screening, 64 CSR 97), is authorized with
20 the following amendments:

21 On page two, subsection 5.3., after the words "Family Health"
22 by inserting the words "by FAX to (304)957-0176";

1 And,

2 On page two, subsection 5.3., by deleting the words
3 "BPH/OM/CFH Maternal Risk Screening 350 Capitol Street, Room 427
4 Charleston, WV 25301".

5 (h) The legislative rule filed in the state register on the
6 thirtieth day of July, two thousand ten, authorized under the
7 authority of section three, article five-a, chapter seventeen-c, of
8 this code, modified by the Department of Health and Human Resources
9 to meet the objections of the Legislative Rule-Making Review
10 Committee and refiled in the state register on the third day of
11 December, two thousand ten, relating to the Department of Health
12 and Human Resources (safety and treatment program, 64 CSR 98), is
13 authorized with the following amendments:

14 On page one, subsection 1.2., by striking out "17C-SA-3" and
15 inserting in lieu thereof "17C-5A-3";

16 On page one, after subsection 3.4., by inserting a new
17 subsection 3.5. to read as follows:

18 "3.5. DUI-Any act which would constitute a violation of
19 §17C-5-2." and renumbering the remaining subsections;

20 On page one, subsection 3.7., by striking out "17C-SA-3" and
21 inserting in lieu thereof "17C-5A-3";

22 On page two, subsection 4.2., striking out the words "shall

1 first approve any program curriculum used in the program.” and
2 inserting in lieu thereof the words “is also responsible for the
3 development of program standards for individuals involved in the
4 service delivery, for approval of program curriculum and for
5 monitoring of compliance by providers with the standards.”;

6 On page three, subsection 6.1., by striking out the words “in
7 the field of substance abuse” and inserting in lieu thereof the
8 words “who meet requirements as established in the Program
9 Standards published by the Department”;

10 On page three, subsection 6.5., following the word
11 “refinement.” by adding the following: “The Program Coordinator
12 shall, at a minimum, be a Clinical Certified Addictions
13 Counselor.”;

14 On page four, subsection 8.1., after the words “Program
15 Enrollment” by inserting the words “and Level I Component”;

16 On page four, subsection 8.1., by striking out the words
17 “Secretary fee for enrollment in the Program is established by the
18 Secretary.” and inserting in lieu thereof the words “initial fee
19 for enrollment in the Program shall be Four Hundred Dollars
20 (\$400.00).”;

21 On page four, subdivision 8.3.a., by striking out the words
22 “at any level and participation in Safety and Treatment programming

1 which is not covered by private or public third-party sponsorship,
2 and which is not eligible for a Community Behavioral Health
3 Center's charity care funds" and inserting in lieu thereof the
4 words "in the Level 1, Prevention and Education Component as set
5 forth in 5.3 of this rule.";

6 On page four, subsection 8.4., by striking out all of
7 subsection 8.4. and inserting in lieu thereof a new subsection 8.4.
8 to read as follows:

9 "8.4. The Department of Health and Human Resources Safety and
10 Treatment Fund-Upon enrollment in the Program, the Participant
11 shall pay to the provider the sum of Four Hundred Dollars
12 (\$400.00), except for those Participants which are determined under
13 8.3 to be indigent. The provider shall remit to the Department the
14 sum of Two Hundred Twenty-Five Dollars (\$225.00) and the provider
15 shall retain Two Hundred Seventy-Five Dollars (\$275.00). The
16 Department shall deposit One Hundred Twenty-Five Dollars (\$125.00)
17 of this sum in the Department of Health and Human Resources Safety
18 and Treatment Fund, to be used to reimburse providers for their
19 portion of the enrollment fee for persons qualifying for indigent
20 status.";

21 And,

22 On page four, subsection 8.5., by striking out all of

1 subsection 8.5.

2 (i) The legislative rule filed in the state register on the
3 thirtieth day of July, two thousand ten, authorized under the
4 authority of section eight, article one, chapter forty-four-a, of
5 this code, modified by the Department of Health and Human Resources
6 to meet the objections of the Legislative Rule-Making Review
7 Committee and refiled in the state register on the third day of
8 December, two thousand ten, relating to the Department of Health
9 and Human Resources (requirements for licensure of nonprofit
10 corporations for conservator service, 64 CSR 99), is authorized
11 with the following amendments:

12 On page one, subsection 3.6., after the word "directors" by
13 inserting the words "of the Corporation";

14 On page two, subsection 3.7., after the word "directors" by
15 inserting the words "of the Corporation";

16 On page two, subsection 3.12., after the word "of" by
17 inserting the words "The Department of";

18 On page four, subdivision 4.2.5., after the word "if" by
19 inserting the words "he or";

20 On page five, subdivision 4.7.3., by striking out the words
21 "approved, modified or rejected" and inserting in lieu thereof the
22 words "approve, modify or reject";

1 On page six, subdivision 4.8.2, by striking out all of
2 subdivision 4.8.2.. and inserting in lieu thereof a new subsection
3 4.8.2., to read as follows:

4 "4.8.2. Reports of the Secretary of any inspection or
5 investigation shall, when appropriate, specify the nature of any
6 deficiency in compliance with this rule or law and specifically
7 indicate the rule or law violated.";

8 And,

9 On page seven, subsection 5.3., after the words "under this
10 rule," by striking out the word "the" and inserting in lieu thereof
11 the word "and".

12 **§64-5-2. Health Care Authority.**

13 The legislative rule filed in the state register on the
14 twenty-eighth day of July, two thousand ten, authorized under the
15 authority of section eight-c, article two-d, chapter sixteen, of
16 this code, modified by the Health Care Authority to meet the
17 objections of the Legislative Rule-Making Review Committee and
18 refiled in the state register on the eighth day of December, two
19 thousand ten, relating to the Health Care Authority to promulgate
20 a legislative rule relating to (certificates of need, 65 CSR 7), is
21 authorized with the following amendments:

22 On page three, subdivisions 2.14.e. and 2.14.f., by striking

1 out all of subdivisions 2.14.e. and 2.14.f. and inserting in lieu
2 thereof a new subdivision 2.14.e to read as follows:

3 "2.14.e. Notwithstanding anything in this subsection 2.14 to
4 the contrary, any practice granted a determination of
5 nonreviewability as a private office practice by the board on or
6 before July 1, 2010, is and shall remain a private office practice
7 under the Act; provided there has been no material change in the
8 facts and circumstances provided in the original request for
9 determination of reviewability."

10