

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 modifications presented to and recommended by the Legislative Rule-Making

Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to specialized multipatient medical transport; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to food manufacturing facilities; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to fire department rapid response services licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to cancer registry; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to safety and treatment programs; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to requirements for licensure of

nonprofit corporations for conservator service; and authorizing the Health Care Authority to promulgate a legislative rule relating to certificates of need.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

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

13 (c) The legislative rule filed in the state register on the
14 twenty-ninth day of July, two thousand ten, authorized
15 under the authority of section four, article one, chapter
16 sixteen, of this code, modified by the Department of Health
17 and Human Resources to meet the objections of the Legisla-
18 tive Rule-Making Review Committee and refiled in the state
19 register on the third day of January, two thousand eleven,
20 relating to the Department of Health and Human Resources
21 (food manufacturing facilities, 64 CSR 43), is authorized.

22 (d) The legislative rule filed in the state register on the
23 thirtieth day of July, two thousand ten, authorized under the
24 authority of section six, article four-c, chapter sixteen, of
25 this code, relating to the Department of Health and Human
26 Resources (fire department rapid response services licensure,
27 64 CSR 44), is authorized.

28 (e) The legislative rule filed in the state register on the
29 thirtieth day of July, two thousand ten, authorized under the
30 authority of section six, article four-c, chapter sixteen, of
31 this code, modified by the Department of Health and Human
32 Resources to meet the objections of the Legislative Rule-
33 Making Review Committee and refiled in the state register
34 on the twenty-fourth day of January, two thousand eleven,

35 relating to the Department of Health and Human Resources
36 (emergency medical services, 64 CSR 48), is authorized with
37 the following amendments:

38 On page four, subsection 2.12., by striking out the word
39 “commissioner” and inserting in lieu thereof the word
40 “Commissioner”;

41 On page seven, subsection 2.46., by striking out all of
42 subsection 2.46.;

43 On page eight, subsection 3.1.d., by striking out the word
44 “Commissions” and inserting in lieu thereof the word
45 “commission”;

46 On page eight, subdivision 3.2.b., by striking out all of
47 subdivision 3.2.b. and inserting in lieu thereof a new subdivi-
48 sion 3.2.b. to read as follows:

49 “3.2.b. EMS agencies shall collect, maintain and report
50 accurate patient data for all EMS incidents. Agencies shall
51 complete a patient care report (PCR) for all EMS incidents.
52 PCRs shall be complete and submitted to the West Virginia
53 Prehospital Information System (PreMIS) following the
54 conclusion of providing EMS services to a patient, in
55 accordance with policies and guidelines established by
56 OEMS.”;

57 On page nine, subdivision 3.2.c., by striking out the words
58 “a minimum written patient handoff report,” and inserting
59 in lieu thereof the words “at a minimum a patient handoff
60 report”;

61 On page fourteen, subdivision 4.23.a., by striking out all of
62 subdivision 4.23.a. and inserting in lieu thereof a new
63 subdivision 4.23.a. to read as follows:

64 “4.23.a. The EMS agency has a rapid response program
65 which routinely places trained and equipped personnel on
66 the scene of potential life-threatening emergencies prior to
67 the arrival of an ambulance in accordance with policies and
68 guidelines established by OEMS. Five (5) points; or”;

69 On page fifteen, subdivision 4.27.d., by striking out “of ...”;

70 On page eighteen, paragraph 4.36.b.2., after the word
71 “action” by inserting the word “to”;

72 On page nineteen, subdivision 4.37.h., by striking out the
73 words “event of” and inserting in lieu thereof the words “the
74 event”;

75 On page nineteen, subdivision 4.38.a., by striking out the
76 word “state” and inserting in lieu thereof the word “State”;

77 On page twenty, subdivision 5.1.a., by striking out the
78 words “Ground ambulances shall meet applicable US
79 Government Services Agency KKK-A-1822” and inserting in
80 lieu thereof the words “Unless specified differently herein,
81 ground ambulances shall meet US Government Services
82 Agency KKK-A-1822 or subsequent federally approved”;

83 On page twenty, subdivision 5.1.c., by striking the word
84 “Unites” and inserting in lieu thereof the word “United”;

85 On page twenty-one, subdivison 5.1.i., by striking out the
86 word “be”;

87 On page twenty-one, subdivision 5.1.j., by striking out the
88 words “medication kit and its supplies” and inserting in lieu
89 thereof the words “medications in accordance with policies
90 and guidelines established by OEMS”;

91 On page twenty-two, paragraph 5.1.k.5., by striking out the
92 words “accordance with applicable US Government Services
93 Agency KKK-A-1822 specifications at the time of vehicle
94 manufacture”;

95 On page twenty-three, subdivision 5.3.b., by striking out
96 the words “requirements are” and inserting in lieu thereof
97 the word “is”;

98 On page twenty-three, subdivision 5.3.b., after the words
99 “practice and” by inserting the words “appropriate staff”;

100 On page twenty-three, subsection 5.4., by striking out the
101 words “be a Federal Aviation Administration (FAA) Part 135
102 air carrier certificate holder” and inserting in lieu thereof
103 the words “operate under Federal Aviation Administration
104 (FAA) Part 135 rules”;

105 On page twenty-six, paragraph 5.5.b.7., by striking out the
106 words “requirements are” and inserting the word “is”;

107 On page twenty-six, subsection 5.5.b.7., after the words
108 “practice and” by inserting the words “appropriate staff”;

109 On page twenty-seven, subdivision 6.1.a., by striking out
110 the word “aprimary” and inserting in lieu thereof the word
111 “primary”;

112 On page thirty-three, subdivision 6.9., by striking out the
113 word “establish” and inserting in lieu thereof the word
114 “established”;

115 On page thirty-five, subdivision 7.2.e., by striking out the
116 word “Other” and inserting in lieu thereof the word “other”;

117 On page forty-five, paragraph 8.4.a.1., by striking out
118 “STEMS” and inserting in lieu thereof “OEMS”;

119 On page forty-five, paragraph 8.4.a.2., by striking out
120 “STEMS” and inserting in lieu thereof “OEMS”;

121 On page forty-six, subparagraph 8.4.c.1.A., by striking out
122 “STEMS” and inserting in lieu thereof “OEMS”;

123 On page forty-six, subparagraph 8.4.c.2.E., by striking out
124 “STEMS” and inserting in lieu thereof “OEMS”;

125 On page forty-eight, paragraph 8.5.b.1., by striking out
126 “STEMS” and inserting in lieu thereof “OEMS”;

127 On page fifty, subparagraph 9.1.a.3.A., by striking out
128 “STEMS” and inserting in lieu thereof “OEMS”;

129 On page fifty-one, subparagraph 9.1.b.1.B., by striking out
130 “STEMS” and inserting in lieu thereof “OEMS”;

131 On page fifty-two, subparagraph 9.1.c.2.J., by striking out
132 the words “Assist STEMS in ensuring” and inserting in lieu
133 thereof the word “Ensure”;

134 On page fifty-two, subparagraph 9.1.c.2.N., by striking out
135 “STEMS” and inserting in lieu thereof “OEMS”;

136 On page fifty-two, paragraph 9.1.c.3., by striking out
137 “STEMS” and inserting in lieu thereof “OEMS”;

138 On page fifty-three, subdivision 9.2.a., by striking out
139 “STEMS” and inserting in lieu thereof “OEMS”;

140 On page fifty-four, subparagraph 9.2.a.1.A., striking out
141 both references to “STEMS” and inserting in lieu thereof
142 “OEMS”;

143 On page fifty-four, subparagraph 9.2.a.1.C., by striking out
144 “STEMS” and inserting in lieu thereof “OEMS”;

145 On page fifty-four, subparagraph 9.2.a.1.D., by striking out
146 “STEMS” and inserting in lieu thereof “OEMS”;

147 On page fifty-four, subparagraph 9.2.a.3.E., by striking out
148 “STEMS” and inserting in lieu thereof “OEMS”;

149 On page fifty-four, subparagraph 9.2.a.3.F., by striking out
150 both references to “STEMS” and inserting in lieu thereof
151 “OEMS”;

152 On page fifty-five, paragraph 9.2.a.4, by striking out
153 “STEMS” and inserting in lieu thereof “OEMS”;

154 On page fifty-five, subdivision 10.3.d, by striking out
155 “STEMS” and inserting in lieu thereof “OEMS”;

156 And,

157 On page fifty-six, subsection 10.6, by striking out
158 “STEMS” and inserting in lieu thereof “OEMS”.

159 (f) The legislative rule filed in the state register on the
160 twenty-ninth day of July, two thousand ten, authorized
161 under the authority of section four, article one, chapter

162 sixteen, of this code, relating to the Department of Health
163 and Human Resources (cancer registry, 64 CSR 68), is
164 authorized.

165 (g) The legislative rule filed in the state register on the
166 twenty-ninth day of July, two thousand ten, authorized
167 under the authority of section four, article four-e, chapter
168 sixteen, of this code, modified by the Department of Health
169 and Human Resources to meet the objections of the Legisla-
170 tive Rule-Making Review Committee and refiled in the state
171 register on the third day of January, two thousand eleven,
172 relating to the Department of Health and Human Resources
173 (maternal risk screening, 64 CSR 97), is authorized with the
174 following amendments:

175 On page two, subsection 5.3., after the words “Family
176 Health” by inserting the words “by FAX to (304)957-0176”;

177 And,

178 On page two, subsection 5.3., by deleting the words
179 “BPH/OM/CFH Maternal Risk Screening 350 Capitol Street,
180 Room 427 Charleston, WV 25301”.

181 (h) The legislative rule filed in the state register on the
182 thirtieth day of July, two thousand ten, authorized under the
183 authority of section three, article five-a, chapter seventeen-c,

184 of this code, modified by the Department of Health and
185 Human Resources to meet the objections of the Legislative
186 Rule-Making Review Committee and refiled in the state
187 register on the third day of December, two thousand ten,
188 relating to the Department of Health and Human Resources
189 (safety and treatment program, 64 CSR 98), is authorized
190 with the following amendments:

191 On page one, subsection 1.2., by striking out “17C-SA-3”
192 and inserting in lieu thereof “17C-5A-3”;

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

195 “3.5. DUI-Any act which would constitute a violation of
196 §17C-5-2.” and renumbering the remaining subsections;

197 On page one, subsection 3.7., by striking out “17C-SA-3”
198 and inserting in lieu thereof “17C-5A-3”;

199 On page two, subsection 4.2., striking out the words “shall
200 first approve any program curriculum used in the program.”
201 and inserting in lieu thereof the words “is also responsible
202 for the development of program standards for individuals
203 involved in the service delivery, for approval of program
204 curriculum and for monitoring of compliance by providers
205 with the standards.”;

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

210 On page three, subsection 6.5., following the word
211 “refinement.” by adding the following: “The Program
212 Coordinator shall, at a minimum, be a Clinical Certified
213 Addictions Counselor.”;

214 On page four, subsection 8.1., after the words “Program
215 Enrollment” by inserting the words “and Level I Compo-
216 nent”;

217 On page four, subsection 8.1., by striking out the words
218 “Secretary fee for enrollment in the Program is established
219 by the Secretary.” and inserting in lieu thereof the words
220 “initial fee for enrollment in the Program shall be Four
221 Hundred Dollars (\$400.00).;

222 On page four, subdivision 8.3.a., by striking out the words
223 “at any level and participation in Safety and Treatment
224 programming which is not covered by private or public
225 third-party sponsorship, and which is not eligible for a
226 Community Behavioral Health Center’s charity care funds”
227 and inserting in lieu thereof the words “in the Level 1,

228 Prevention and Education Component as set forth in 5.3 of
229 this rule.”;

230 On page four, subsection 8.4., by striking out all of subsec-
231 tion 8.4. and inserting in lieu thereof a new subsection 8.4. to
232 read as follows:

233 “8.4. The Department of Health and Human Resources
234 Safety and Treatment Fund-Upon enrollment in the Pro-
235 gram, the Participant shall pay to the provider the sum of
236 Four Hundred Dollars (\$400.00), except for those Partici-
237 pants which are determined under 8.3 to be indigent. The
238 provider shall remit to the Department the sum of Two
239 Hundred Twenty-Five Dollars (\$225.00) and the provider
240 shall retain Two Hundred Seventy-Five Dollars (\$275.00).
241 The Department shall deposit One Hundred Twenty-Five
242 Dollars (\$125.00) of this sum in the Department of Health
243 and Human Resources Safety and Treatment Fund, to be
244 used to reimburse providers for their portion of the enroll-
245 ment fee for persons qualifying for indigent status.”;

246 And,

247 On page four, subsection 8.5., by striking out all of subsec-
248 tion 8.5.

249 (i) The legislative rule filed in the state register on the
250 thirtieth day of July, two thousand ten, authorized under the
251 authority of section eight, article one, chapter forty-four-a,
252 of this code, modified by the Department of Health and
253 Human Resources to meet the objections of the Legislative
254 Rule-Making Review Committee and refiled in the state
255 register on the third day of December, two thousand ten,
256 relating to the Department of Health and Human Resources
257 (requirements for licensure of nonprofit corporations for
258 conservator service, 64 CSR 99), is authorized with the
259 following amendments:

260 On page one, subsection 3.6., after the word “directors” by
261 inserting the words “of the Corporation”;

262 On page two, subsection 3.7., after the word “directors” by
263 inserting the words “of the Corporation”;

264 On page two, subsection 3.12., after the word “of” by
265 inserting the words “The Department of”;

266 On page four, subdivision 4.2.5., after the word “if” by
267 inserting the words “he or”;

268 On page five, subdivision 4.7.3., by striking out the words
269 “approved, modified or rejected” and inserting in lieu
270 thereof the words “approve, modify or reject”;

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

274 “4.8.2. Reports of the Secretary of any inspection or
275 investigation shall, when appropriate, specify the nature of
276 any deficiency in compliance with this rule or law and
277 specifically indicate the rule or law violated.”;

278 And,

279 On page seven, subsection 5.3., after the words “under this
280 rule,” by striking out the word “the” and inserting in lieu
281 thereof the word “and”.

§64-5-2. Health Care Authority.

1 The legislative rule filed in the state register on the
2 twenty-eighth day of July, two thousand ten, authorized
3 under the authority of section eight-c, article two-d, chapter
4 sixteen, of this code, modified by the Health Care Authority
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the state register on the
7 eighth day of December, two thousand ten, relating to the
8 Health Care Authority to promulgate a legislative rule
9 relating to (certificates of need, 65 CSR 7), is authorized with
10 the following amendments:

11 On page three, subdivisions 2.14.e. and 2.14.f., by striking
12 out all of subdivisions 2.14.e. and 2.14.f. and inserting in lieu
13 thereof a new subdivision 2.14.e to read as follows:

14 “2.14.f. Notwithstanding anything in this subsection 2.14
15 to the contrary, any practice granted a determination of
16 nonreviewability as a private office practice by the board on
17 or before July 1, 2010, is and shall remain a private office
18 practice under the Act; provided there has been no material
19 change in the facts and circumstances provided in the
20 original request for determination of reviewability.”