

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 109**

4 (By Senators Jenkins and Foster)

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6 [Originating in the Committee on the Judiciary;

7 reported February 24, 2012.]

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11 A BILL to amend and reenact §16-50-2, §16-50-3 and §16-50-4 of the
12 Code of West Virginia, 1931, as amended; and to amend said
13 code by adding thereto a new section, designated §16-50-3a,
14 all relating to permitting unlicensed personnel to administer
15 or assist with administration of medications in certain
16 circumstances; defining terms; providing exemptions from
17 licensure; and limitation of liability for registered nurses.

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

19 That §16-50-2, §16-50-3 and §16-50-4 of the Code of West
20 Virginia, 1931, as amended, be amended and reenacted; and that said
21 code be amended by adding thereto a new section, designated §16-50-
22 3a, all to read as follows:

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

24 **§16-50-2. Definitions.**

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

3 (a) "Administration of medication" means:

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

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

17 (b) "Authorizing agency" means the department's office of
18 Health Facility Licensure and Certification.

19 (c) "Department" means the Department of Health and Human
20 Resources.

21 (d) "Facility" means an ICF/ID, a personal care home,
22 residential board and care home, behavioral health group home,
23 private residence in which health care services are provided under
24 the supervision of a registered nurse or an adult family care home

1 that is licensed by or approved by the department.

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

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

10 (g) "ICF/ID" means an intermediate care facility for
11 individuals with an intellectual disability which is certified by
12 the department.

13 (h) "Location of medication administration" means a facility
14 or location where the resident requires administration of
15 medication or assistance in taking medications.

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

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

24 ~~(j)~~ (k) "Resident" means a resident of a facility.

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

3 ~~(i)~~ (m) "Self-administration of medication" means the act of
4 a resident, who is independently capable of reading and
5 understanding the labels of drugs ordered by a physician, in
6 opening and accessing prepackaged drug containers, accurately
7 identifying and taking the correct dosage of the drugs as ordered
8 by the physician, at the correct time and under the correct
9 circumstances.

10 (n) "Self-administration of medication with assistance" means
11 assisting residents who are otherwise able to self administer their
12 own medications except their physical disabilities prevent them
13 from completing one or more steps in the process.

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

21 **§16-50-3. Administration of medications in facilities.**

22 (a) The secretary is authorized to establish and implement a
23 program for the administration of medications ~~in facilities~~ in
24 locations of medication administration where the resident requires

1 administration of or assistance in taking medications. The program
2 shall be developed and conducted in cooperation with the
3 appropriate agencies, advisory bodies and boards.

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

6 (1) Registered professional nurses;

7 (2) Other licensed health care professionals; or

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

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

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

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

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

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

24 (d) Nothing in this article may be construed to prohibit any

1 facility staff member from administering medications or providing
2 any other prudent emergency assistance to aid any person who is in
3 acute physical distress or requires emergency assistance.

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

9 **§16-50-3a. Limitation of registered nurse's liability.**

10 A registered nurse who delegates the provisions of nursing
11 care to another pursuant to this article shall not be subject to an
12 action for civil damages for the performance of the person to whom
13 nursing care is delegated unless the person is acting pursuant to
14 specific instructions from the registered nurse.

15 **§16-50-4. Exemption from licensure; statutory construction.**

16 (a) Any individual who is not otherwise authorized by law to
17 administer medication may administer medication in ~~a facility~~
18 locations covered by this article if he or she meets the
19 requirements and provisions of this article. Any person who
20 administers medication pursuant to the provisions of this article
21 shall be exempt from the licensing requirements of chapter thirty
22 of this code.

23 (b) All licensed health care professionals as defined in this
24 article remain subject to the provisions of their respective

1 licensing laws.

2 (c) Notwithstanding any other provision of law to the
3 contrary, ~~the provisions of~~ this article shall not be construed to
4 violate or be in conflict with any of the provisions of articles
5 seven or seven-a, chapter thirty of this code.

6 (d) Residents participating in a department-approved self-
7 direction program may choose to self direct their medication
8 administration by those personnel that they hire and train to
9 perform activities of daily living, including medication
10 administration.

11 (e) Any parent or guardian may administer medication to his or
12 her adult or minor child regardless of whether or not the parent or
13 guardian receives compensation for caring for said child.

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