

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 109

(By Senators Jenkins and Foster)

[Originating in the Committee on the Judiciary;
reported February 24, 2012.]

A BILL to amend and reenact §16-5O-2, §16-5O-3 and §16-5O-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-5O-3a, all relating to permitting unlicensed personnel to administer or assist with administration of medications in certain circumstances; defining terms; providing exemptions from licensure; and limitation of liability for registered nurses.

Be it enacted by the Legislature of West Virginia:

That §16-5O-2, §16-5O-3 and §16-5O-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-5O-3a, all to read as follows:

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

§16-50-2. Definitions.

1 As used in this article, unless a different meaning
2 appears 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
6 the use of universal precautions or rectal or vaginal insertion
7 of medication, according to the legibly written or printed
8 directions of the attending physician or authorized practitio-
9 ner, or as written on the prescription label; and

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

18 (b) “Authorizing agency” means the department’s office
19 of Health Facility Licensure and Certification.

20 (c) “Department” means the Department of Health and
21 Human Resources.

22 (d) “Facility” means an ICF/ID, a personal care home,
23 residential board and care home, behavioral health group
24 home, private residence in which health care services are
25 provided under the supervision of a registered nurse or an
26 adult family care home that is licensed by or approved by the
27 department.

28 (e) “Facility staff member” means an individual em-
29 ployed by a facility but does not include a health care
30 professional acting within the scope of a professional license
31 or certificate.

32 (f) “Health care professional” means a medical doctor or
33 doctor of osteopathy, a podiatrist, registered nurse, practical
34 nurse, registered nurse practitioner, physician’s assistant,
35 dentist, optometrist or respiratory care professional licensed
36 under chapter thirty of this code.

37 (g) “ICF/ID” means an intermediate care facility for
38 individuals with an intellectual disability which is certified
39 by the department.

40 (h) “Location of medication administration” means a
41 facility or location where the resident requires administra-
42 tion of medication or assistance in taking medications.

43 ~~(h)~~ (i) “Medication” means a drug, as defined in section
44 one hundred one, article one, chapter sixty-a of this code,
45 which has been prescribed by a duly authorized health care
46 professional to be ingested through the mouth, applied to the
47 outer skin, eye or ear, or applied through nose drops, vaginal
48 or rectal suppositories.

49 ~~(i)~~ (j) “Registered professional nurse” means a person
50 who holds a valid license pursuant to article seven, chapter
51 thirty of this code.

52 ~~(j)~~ (k) “Resident” means a resident of a facility.

53 ~~(k)~~ (l) “Secretary” means the Secretary of the Depart-
54 ment of Health and Human Resources or his or her designee.

55 ~~(l)~~ (m) “Self-administration of medication” means the act
56 of a resident, who is independently capable of reading and
57 understanding the labels of drugs ordered by a physician, in
58 opening and accessing prepackaged drug containers, accu-
59 rately identifying and taking the correct dosage of the drugs
60 as ordered by the physician, at the correct time and under
61 the correct circumstances.

62 (n) “Self-administration of medication with assistance”
63 means assisting residents who are otherwise able to self
64 administer their own medications except their physical

65 disabilities prevent them from completing one or more steps
66 in the process.

67 ~~(m)~~ (o) “Supervision of self-administration of medica-
68 tion” means a personal service which includes reminding
69 residents to take medications, opening medication containers
70 for residents, reading the medication label to residents,
71 observing residents while they take medication, checking the
72 self administered dosage against the label on the container
73 and reassuring residents that they have obtained and are
74 taking the dosage as prescribed.

§16-5O-3. Administration of medications in facilities.

1 (a) The secretary is authorized to establish and imple-
2 ment a program for the administration of medications ~~in~~
3 facilities in locations of medication administration where the
4 resident requires administration of or assistance in taking
5 medications. The program shall be developed and conducted
6 in cooperation with the appropriate agencies, advisory
7 bodies and boards.

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

10 (1) Registered professional nurses;

11 (2) Other licensed health care professionals; or

12 (3) Facility staff members who have been trained and
13 retrained every two years and who are subject to the supervi-
14 sion of and approval by a registered professional nurse.

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

21 (1) Has been trained pursuant to the requirements of this
22 article;

23 (2) Is considered by the registered professional nurse to
24 be competent;

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

27 (4) Is monitored or supervised by the registered profes-
28 sional nurse.

29 (d) Nothing in this article may be construed to prohibit
30 any facility staff member from administering medications or
31 providing any other prudent emergency assistance to aid any
32 person who is in acute physical distress or requires emer-
33 gency assistance.

34 (e) Supervision of self-administration of medication by
35 facility staff members who are not licensed health care
36 professionals may be permitted in certain circumstances,
37 when the substantial purpose of the setting is other than the
38 provision of health care.

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

1 A registered nurse who delegates the provisions of
2 nursing care to another pursuant to this article shall not be
3 subject to an action for civil damages for the performance of
4 the person to whom nursing care is delegated unless the
5 person is acting pursuant to specific instructions from the
6 registered nurse.

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

1 (a) Any individual who is not otherwise authorized by
2 law to administer medication may administer medication in
3 ~~a facility~~ locations covered by this article if he or she meets
4 the requirements and provisions of this article. Any person
5 who administers medication pursuant to the provisions of
6 this article shall be exempt from the licensing requirements
7 of chapter thirty of this code.

8 (b) All licensed health care professionals as defined in
9 this article remain subject to the provisions of their respec-
10 tive licensing laws.

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

15 (d) Residents participating in a department-approved
16 self-direction program may choose to self direct their
17 medication administration by those personnel that they hire
18 and train to perform activities of daily living, including
19 medication administration.

20 (e) Any parent or guardian may administer medication to
21 his or her adult or minor child regardless of whether or not
22 the parent of guardian receives compensation for caring for
23 said child.

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