

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 109**

(SENATORS JENKINS AND FOSTER, *original sponsors*)

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[Passed March 10, 2012; in effect from passage.]

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AN ACT to amend and reenact §16-5O-2, §16-5O-3 and §16-5O-4 of the Code of West Virginia, 1931, as amended, all relating to permitting unlicensed personnel to administer or assist with administration of medications in certain circumstances; defining terms; and providing exemptions from licensure.

*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, all to read as follows:

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

**§16-5O-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. However, for purposes of this  
13 article, “administration” does not include judgment, evalua-  
14 tion, assessments, injections of medication, monitoring of  
15 medication or self-administration of medications, including  
16 prescription drugs and self-injection of medication by the  
17 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, assisted living, behav-  
23 ioral health group home, private residence in which health  
24 care services are provided under the supervision of a regis-  
25 tered nurse or an adult family care home that is licensed by  
26 or approved by the department.

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

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

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

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

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

48 (j) "Registered professional nurse" means a person who  
49 holds a valid license pursuant to article seven, chapter thirty  
50 of this code.

51 (k) "Resident" means a resident of a facility.

52 (l) "Secretary" means the Secretary of the Department of  
53 Health and Human Resources or his or her designee.

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

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

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

**§16-50-3. 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 locations of medication administration where the resident  
4 requires administration of or assistance in taking medica-  
5 tions. The program shall be developed and conducted in  
6 cooperation with the appropriate agencies, advisory bodies  
7 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.

**§16-50-4. 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 locations covered by this article if he or she meets the  
4 requirements and provisions of this article. Any person who  
5 administers medication pursuant to the provisions of this  
6 article shall be exempt from the licensing requirements of  
7 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, this article shall not be construed to violate or be  
13 in conflict with any of the provisions of articles seven or  
14 seven-a, chapter thirty of this code.

15 (d) Any parent or guardian may administer medication to  
16 his or her adult or minor child regardless of whether or not  
17 the parent or guardian receives compensation for caring for  
18 said child.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman Senate Committee*

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*Chairman House Committee*

Originated in the Senate.

In effect from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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Day of ....., 2012.

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*Governor*