

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 245

(SENATOR MINARD, *original sponsor*)

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

AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, 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 in the form that the rules were filed in the State Register and as amended by the Legislature; 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 credentialing verification organiza-

tions; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to a safety and treatment program; authorizing the Secretary of the Department of Health and Human Resources, the Insurance Commissioner and the Chair of the West Virginia Health Care Authority to promulgate a legislative rule relating to an all-payer claims database—data submission requirements; authorizing the Secretary of the Department of Health and Human Resources, the Insurance Commissioner and the Chair of the West Virginia Health Care Authority to promulgate a legislative rule relating to the all-payer claims database program’s privacy and security; 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 public water systems operators; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to wastewater systems and operations; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to vital statistics; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to manufactured home communities; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to AIDS-related medical testing and confidentiality; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems design standards; authorizing the Division of Human Services to promulgate a legislative rule relating to family child care facility licensing requirements; authorizing the Division of Human Services to promulgate a legislative rule relating to family child care home registration requirements; authorizing the Division of Human Services to promulgate a legislative rule relating to a child care quality rating and improvement system; authorizing the Commission for the Deaf and Hard of Hearing to promulgate a legislative rule relating to fees for qualified interpreters; and authorizing the Commission for the Deaf and Hard of Hearing to promulgate a legislative rule relating to the establishment of required qualifications and ethical standards for interpreters and transliterators.

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 LEGISLA-
TIVE RULES.**

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

1 (a) The legislative rule filed in the State Register on July
2 28, 2011, authorized under the authority of section three,
3 article two, chapter thirty-three of this code, modified by the
4 Department of Health and Human Resources to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on December 9, 2011,
7 relating to the Department of Health and Human Resources
8 (credentialing verification organizations, 64 CSR 89B), is
9 authorized.

10 (b) The legislative rule filed in the State Register on July
11 29, 2011, authorized under the authority of section three,
12 article five-a, chapter seventeen-c of this code, modified by
13 the Department of Health and Human Resources to meet the
14 objections of the Legislative Rule-Making Review Committee
15 and refiled in the State Register on December 14, 2011,
16 relating to the Department of Health and Human Resources
17 (safety and treatment program, 64 CSR 98), is authorized.

18 (c) The legislative rule filed in the State Register on July
19 28, 2011, authorized under the authority of section eight,
20 article four-a, chapter thirty-three of this code, modified by
21 the Secretary of the Department of Health and Human
22 Resources, the Insurance Commissioner and the Chair of the
23 West Virginia Health Care Authority to meet the objections
24 of the Legislative Rule-Making Review Committee and
25 refiled in the State Register on October 21, 2011, relating to
26 the Secretary of the Department of Health and Human
27 Resources, the Insurance Commissioner and the Chair of the
28 West Virginia Health Care Authority (all-payer claims
29 database — data submission requirements, 114A CSR 1), is
30 authorized with the following amendments:

31 On page four, subsection 3.2., by striking out “OIC” and
32 inserting in lieu thereof the words “Offices of the Insurance
33 Commissioner”;

34 On page four, subdivision 3.2.a., by striking out “OIC”
35 and inserting in lieu thereof the words “Offices of the
36 Insurance Commissioner”;

37 And,

38 On page seven, by striking out all of subdivision 7.1.e.
39 and inserting in lieu thereof a new subdivision 7.1.e., to read
40 as follows:

41 “7.1.e. The Director of the Public Employees Insurance
42 Agency or his or her designee, the Commissioner of the
43 Bureau for Medical Services or his or her designee and the
44 Director of the Children’s Health Insurance Program or his
45 or her designee.”.

46 (d) The legislative rule filed in the State Register on July
47 28, 2011, authorized under the authority of section eight,
48 article four-a, chapter thirty-three of this code, relating to
49 the Secretary of the Department of Health and Human
50 Resources, the Insurance Commissioner and the Chair of the
51 West Virginia Health Care Authority (all-payer claims
52 database program’s privacy and security, 114A CSR 2), is
53 authorized.

§64-5-2. Bureau for Public Health.

1 (a) The legislative rule filed in the State Register on July
2 29, 2011, authorized under the authority of section four,
3 article one, chapter sixteen of this code, modified by the
4 Department of Health and Human Resources to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on December 1, 2011,
7 relating to the Department of Health and Human Resources
8 (public water systems, 64 CSR 3), is authorized.

9 (b) The legislative rule filed in the State Register on July
10 29, 2011, authorized under the authority of section four,

11 article one, chapter sixteen of this code, modified by the
12 Department of Health and Human Resources to meet the
13 objections of the Legislative Rule-Making Review Committee
14 and refiled in the State Register on December 30, 2011,
15 relating to the Department of Health and Human Resources
16 (public water systems operators, 64 CSR 4), is authorized
17 with the following amendments:

18 On page three, subsection 3.23., after the words “Water
19 Distribution” by inserting the word “System”;

20 And,

21 On page six, subdivision 5.5.c., by striking out the word
22 “subsection” and inserting in lieu thereof the word “subdi-
23 vision”.

24 (c) The legislative rule filed in the State Register on July
25 29, 2011, authorized under the authority of section four,
26 article one, chapter sixteen of this code, modified by the
27 Department of Health and Human Resources to meet the
28 objections of the Legislative Rule-Making Review Committee
29 and refiled in the State Register on December 30, 2011,
30 relating to the Department of Health and Human Resources
31 (wastewater systems and operations, 64 CSR 5), is authorized
32 with the following amendments:

33 On page three, subsection 3.26., by striking out the words
34 “West Virginia Department of Environmental Protection
35 (WVDEP)” and inserting in lieu thereof “WV DEP”;

36 On page four, subdivision 4.1.e., by striking out the word
37 “Extended” and inserting in lieu thereof the words “This
38 class includes extended”;

39 On page five, by striking out “5.4.a.2.” and inserting in
40 lieu thereof “5.4.a.1.A.”;

41 On page five, by striking out “5.4.a.3.” and inserting in
42 lieu thereof “5.4.a.1.B.”;

43 On page seven, subsection 6.2., after the words “based
44 on” by inserting the words “his or her”;

45 On page nine, subdivision 7.7.a., by striking out the word
46 “requirement” and inserting in lieu thereof the word
47 “requirements”;

48 On page ten, subsection 10.1., by striking out the word
49 “applications” and inserting in lieu thereof the word
50 “application”;

51 On page ten, subsection 10.4., by striking out the word
52 “Applicant” and inserting in lieu thereof the words “An
53 applicant”;

54 On page eleven, subdivision 12.1.d., after the word “one”
55 by inserting “(1)”;

56 On page twelve, subdivision 12.1.g., after the word
57 “three” by inserting “(3)”;

58 On page twelve, subdivision 12.1.h., after the words
59 “with this rule,” by inserting the word “an”;

60 On page twelve, subdivision 12.1.h., line eight, following
61 the words “under this rule shall”, by striking out the word
62 “take” and inserting in lieu thereof “complete”;

63 On page twelve, subdivision 12.1.h., line ten, following
64 the words “advanced certified operator”,by inserting the
65 words “without examination”;

66 And,

67 On page fifteen, Table 64-5B, in the row beginning with
68 the word “Advanced”, under the column heading labeled
69 “Education”, following the words “Commissioner-approved
70 training course” by striking out the words “& passing the
71 Advanced exam”.

72 (d) The legislative rule filed in the State Register on July
73 29, 2011, authorized under the authority of section three,
74 article five, chapter sixteen of this code, modified by the

75 Department of Health and Human Resources to meet the
76 objections of the Legislative Rule-Making Review Committee
77 and refiled in the State Register on December 1, 2011,
78 relating to the Department of Health and Human Resources
79 (vital statistics, 64 CSR 32), is authorized.

80 (e) The legislative rule filed in the State Register on July
81 29, 2011, authorized under the authority of section four,
82 article one, chapter sixteen of this code, modified by the
83 Department of Health and Human Resources to meet the
84 objections of the Legislative Rule-Making Review Committee
85 and refiled in the State Register on December 1, 2011,
86 relating to the Department of Health and Human Resources
87 (manufactured home communities, 64 CSR 40), is authorized
88 with the following amendments:

89 On page four, by striking out all of subdivision 5.1.5. and
90 inserting in lieu thereof a new subdivision 5.1.5., to read as
91 follows:

92 “5.1.5. The Commissioner shall deny a permit if the
93 information on the application form, plans or specifications
94 is incomplete, inaccurate, false or misleading, or indicates
95 that the application provisions of this rule cannot be met. A
96 permit to construct shall be issued or denied within forty-
97 five (45) days of receipt of the completed application.
98 Reasons for denial shall be in writing.”;

99 And,

100 On page four, by striking out all of paragraph 5.1.5.a.

101 (f) The legislative rule filed in the State Register on July
102 29, 2011, authorized under the authority of section four,
103 article one, chapter sixteen of this code, modified by the
104 Department of Health and Human Resources to meet the
105 objections of the Legislative Rule-Making Review Committee
106 and refiled in the State Register on December 1, 2011,
107 relating to the Department of Health and Human Resources
108 (AIDS-related medical testing and confidentiality, 64 CSR
109 64), is authorized with the following amendments:

110 On page four, by striking out all of paragraph 4.1.d.4.
111 and inserting in lieu thereof a new paragraph 4.1.d.4., to read
112 as follows:

113 “4.1.d.4. It is recommended that health care providers
114 test women as early as possible during each pregnancy.
115 Women who decline the test early in prenatal care may be
116 encouraged to be tested at subsequent visits.”;

117 On page five, by striking out all of subdivision 4.2.c. and
118 inserting in lieu thereof a new subdivision 4.2.c. to read as
119 follows:

120 “4.2.c. If the pregnant woman’s HIV status is unknown at
121 the time she presents for delivery, an HIV test shall be
122 offered and if she refuses the test, the infant may be tested
123 and the mother shall be informed of the testing and the
124 results.”;

125 On page six, by striking out all of paragraph 4.2.c.1.;

126 On page six, by striking out all of paragraph 4.2.c.2.;

127 On page six, by striking out “4.2.c.3.” and inserting in
128 lieu thereof “4.2.c.1.”;

129 On page six, by striking out “4.2.c.4.” and inserting in
130 lieu thereof “4.2.c.2.”;

131 On page six, by striking out all of paragraph 4.3.b.1. and
132 inserting in lieu thereof a new paragraph 4.3.b.1, to read as
133 follows:

134 “4.3.b.1. A court shall order a defendant charged with an
135 offense set forth in subdivision two, subsection f, section two,
136 article three-c, chapter sixteen of the code, to undergo an
137 oral test for HIV test not later than 48 hours after the date on
138 which the information or indictment is presented”;

139 On page six, by striking out all of paragraph 4.3.b.3. and
140 inserting in lieu thereof a new paragraph 4.3.b.3, to read as
141 follows:

142 “4.3.b.3. Follow-up tests for HIV are authorized as may
143 be medically appropriate, and the results of any follow-up
144 tests shall be made available in accordance with paragraph
145 4.3.b.2, as soon as practicable.”;

146 And,

147 On page seven, by striking out all of subsection 5.3.

148 (g) The legislative rule filed in the State Register on July
149 29, 2011, authorized under the authority of section four,
150 article one, chapter sixteen of this code, relating to the
151 Department of Health and Human Resources (public water
152 systems design standards, 64 CSR 77), is authorized with the
153 following amendments:

154 On page seven, after subdivision 3.3.d., by inserting a
155 new subsection, designated subsection 3.4., to read as
156 follows:

157 “3.4. Specifications – The applicant or the applicant’s
158 engineer shall supply complete, detailed technical specifica-
159 tions for the proposed project, including: pipe, valves and
160 other building materials; a program for keeping existing
161 public water system facilities in operation during construc-
162 tion of additional facilities so as to minimize interruption of
163 service; laboratory facilities and equipment; the number and
164 design of chemical feeding equipment; and materials or
165 proprietary equipment for sanitary or other facilities
166 including any necessary backflow or backsiphonage protec-
167 tion.”;

168 On page eleven, by striking out “§65-77-5.” and inserting
169 in lieu thereof “§64-77-5.”;

170 On page thirty-five, paragraph 6.3.h.2., after the words
171 “at a minimum,” by inserting the word “of”;

172 On page forty, paragraph 6.4.g.1., by striking out the
173 word “led” and inserting in lieu thereof the word “lead”;

174 On page forty-five, paragraph 6.4.i.2., by striking out the
175 word “devise” and inserting in lieu thereof the word
176 “device”;

177 On page sixty-seven, paragraph 7.5.d.2., by striking out
178 the word “shallbe” and inserting in lieu thereof the words
179 “shall be”;

180 And,

181 On page sixty-seven, paragraph 7.5.e.3., by striking out
182 the word “serve” and inserting in lieu thereof the word
183 “severe”.

§64-5-3. Division of Human Services.

1 (a) The legislative rule filed in the State Register on July
2 29, 2011, authorized under the authority of section four,
3 article two-b, chapter forty-nine of this code, modified by
4 the Division of Human Services to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on November 23, 2011, relating to the
7 Division of Human Services (family child care facility
8 licensing requirements, 78 CSR 18), is authorized.

9 (b) The legislative rule filed in the State Register on July
10 29, 2011, authorized under the authority of section four,
11 article two-b, chapter forty-nine of this code, modified by
12 the Division of Human Services to meet the objections of the
13 Legislative Rule-Making Review Committee and refiled in
14 the State Register on November 23, 2011, relating to the
15 Division of Human Services (family child care home registra-
16 tion requirements, 78 CSR 19), is authorized.

17 (c) The legislative rule filed in the State Register on July
18 29, 2011, authorized under the authority of section two,
19 article two-e, chapter forty-nine of this code, modified by the
20 Division of Human Services to meet the objections of the
21 Legislative Rule-Making Review Committee and refiled in
22 the State Register on November 23, 2011, relating to the
23 Division of Human Services (child care quality rating and

24 improvement system, 78 CSR 22), is authorized, with the
25 following amendment:

26 On page one, subsection 1.4, line six, by striking out the
27 words “July 1, 2012” and inserting in lieu thereof the words
28 “This rule is effective upon the date specified in an emer-
29 gency rule promulgated by the Department of Health and
30 Human Resources as being the date funding for implementa-
31 tion of the Child Care Quality Rating and Improvement
32 System will become available pursuant to a duly enacted
33 appropriation bill authorizing the expenditure of funds for
34 that purpose.”;

35 And,

36 On page one, beginning on line thirteen, by striking out
37 subsection 2.3 in its entirety and inserting in lieu thereof a
38 new subsection 2.3, to read as follows:

39 “2.3 Pursuant to W.Va. Code §49-2E-4, no provision of
40 this rule may be construed to require implementation of a
41 quality rating and improvement system unless funds are
42 appropriated therefor. The ‘Quality Rating and Improvement
43 System Cost Implementation Study’ dated July 31, 2011,
44 prepared and published by the Marshall University Center
45 for Business and Economic Research for the Department of
46 Health and Human Resources and accessible on-line at
47 [http://www.marshall.edu/cber/research/QualityRatingImp](http://www.marshall.edu/cber/research/QualityRatingImprovementSystemFINAL.pdf)
48 [rovementSystemFINAL.pdf](http://www.marshall.edu/cber/research/QualityRatingImprovementSystemFINAL.pdf), is the financial plan submitted
49 by the Secretary of the Department of Health and Human
50 Resources pursuant to Chapter §49-2E-3, and is hereby
51 attached by reference and incorporated into this rule as if
52 fully set forth herein. The financial plan prioritizes the
53 components of the system for implementation and provides
54 for gradual implementation over a period of several years in
55 the event that funding is not sufficient to implement all
56 requirements in code.”.

§64-5-4. Commission for the Deaf and Hard of Hearing.

1 (a) The legislative rule filed in the State Register on July
2 29, 2011, authorized under the authority of section nine,

3 article fourteen-a, chapter five of this code, relating to the
4 Commission for the Deaf and Hard of Hearing (fees for
5 qualified interpreters, 192 CSR 1), is authorized, with the
6 following amendment:

7 On page four, subsection 2.24, by striking out the words
8 “spoken translating” and inserting in lieu thereof the words
9 “translating spoken”.

10 (b) The legislative rule filed in the State Register on July
11 29, 2011, authorized under the authority of section five,
12 article fourteen-a, chapter five of this code, modified by the
13 Commission for the Deaf and Hard of Hearing to meet the
14 objections of the Legislative Rule-Making Review Committee
15 and refiled in the State Register on December 1, 2011,
16 relating to the Commission for the Deaf and Hard of Hearing
17 (establishment of required qualifications and ethical stan-
18 dards for interpreters and transliterators, 192 CSR 3), is
19 authorized.

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