

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **for**

4 **H. B. 2731**

5 (By Delegates Fleischauer, Marshall, Barill,  
6 Manypenny, Campbell, Pasdon, Fragale,  
7 Iaquinta, Staggers, Miley and Perry)

8 [Passed April 13, 2103; in effect from passage.]

9  
10 AN ACT to amend and reenact §16-50-1, §16-50-2, §16-50-3, §16-50-4,  
11 §16-50-5, §16-50-6, §16-50-7, §16-50-8, §16-50-10 and  
12 §16-50-11 of the Code of West Virginia, 1931, as amended; and  
13 to amend said code by adding thereto a new section, designated  
14 §16-50-12, all relating to regulating the performance of  
15 health maintenance tasks by unlicensed personnel in certain  
16 personal care facilities; providing exceptions; identifying  
17 who may perform health maintenance tasks; requiring record  
18 keeping; requiring the administrative monitoring system to  
19 have input from registered professional nurses; requiring  
20 liability insurance; changing the short title; defining terms  
21 including health maintenance tasks; requiring legislative  
22 rules necessary to implement the article; and the creation of  
23 an advisory committee to review definition of health  
24 maintenance tasks, along with polices and procedures  
25 authorized by the article.

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

1           That §16-50-1, §16-50-2, §16-50-3, §16-50-4, §16-50-5,  
2 §16-50-6, §16-50-7, §16-50-8, §16-50-10 and §16-50-11 of the Code  
3 of West Virginia, 1931, as amended, be amended and reenacted, and  
4 that said code be amended by adding thereto a new section,  
5 designated §16-50-12, all to read as follows:

6 **ARTICLE 50.           ADMINISTRATION OF MEDICATION AND PERFORMANCE OF**  
7 **HEALTH MAINTENANCE TASKS BY UNLICENSED PERSONNEL.**

8 **§16-50-1.   Short title.**

9           This article may be cited as the "Ken Ervin Community Living  
10 Act."

11 **§16-50-2.   Definitions.**

12           As used in this article the following definitions apply:

13           (a) "Administration of medication" means:

14           (1) Assisting a person in the ingestion, application or  
15 inhalation of medications, including prescription drugs, or in the  
16 use of universal precautions or rectal or vaginal insertion of  
17 medication, according to the legibly written or printed directions  
18 of the attending physician or authorized practitioner, or as  
19 written on the prescription label; and

20           (2) Making a written record of such assistance with regard to  
21 each medication administered, including the time, route and amount  
22 taken. However, for purposes of this article, "administration"  
23 does not include judgment, evaluation, assessments, injections of  
24 medication, or monitoring of medication or self-administration of  
25 medications, such as prescription drugs and self-injection of

1 medication by the resident.

2 (b) "Authorizing agency" means the Office of Health Facility  
3 Licensure and Certification within the Department of Health and  
4 Human Resources.

5 (c) "Department" means the Department of Health and Human  
6 Resources.

7 (d) "Facility" means an intermediate care facility for  
8 individuals with an intellectual disability, assisted living,  
9 behavioral health group home, private residence in which health  
10 care services and health maintenance tasks are provided under the  
11 supervision of a registered professional nurse as defined in  
12 article seven, chapter thirty of this code.

13 (e) "Facility staff member" means an individual employed by a  
14 facility but does not include a health care professional acting  
15 within his or her scope of practice.

16 (f) "Health care professional" means a medical doctor or  
17 doctor of osteopathy, a podiatrist, registered professional nurse,  
18 practical nurse, advanced practice registered nurse, physician's  
19 assistant, dentist, optometrist or respiratory care professional  
20 licensed under chapter thirty of this code.

21 (g) "Health maintenance tasks" means performing the following  
22 tasks according to the legibly written or printed directions of a  
23 physician licensed under the provisions of article two-A, chapter  
24 thirty of this code or article fourteen, chapter thirty of this  
25 code, or other authorized practitioner, or as written on the  
26 prescription label, and making a written record of that assistance

1 with regard to each health maintenance task administered, including  
2 the time, route and amount taken:

3 (1) Administering glucometer tests;

4 (2) Administering gastrostomy tube feedings;

5 (3) Administering enemas; and

6 (4) Performing ostomy care which includes skin care and  
7 changing appliances;

8 "Health maintenance tasks" do not include judgment,  
9 evaluation, assessments, injections of medication, or monitoring of  
10 medication or self-administration of medications, such as  
11 prescription drugs and self-injection of medication by the  
12 resident.

13

14 (h) "Location of medication administration or location where  
15 health maintenance tasks are performed" means a facility or  
16 location where the resident requires administration of medication  
17 or assistance in taking medications or the performance of health  
18 maintenance tasks.

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

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

1 (k) "Resident" means a resident of a facility who for purposes  
2 of this article, is in a stable condition.

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

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

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

15 (p) "Stable" means the individual's medical condition is  
16 predictable and consistent as determined by the registered  
17 professional nurse.

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

25 **§16-50-3. Administration of medications; performance of health**  
26 **maintenance tasks; maintenance of liability insurance in**

1           **facilities.**

2           (a) The secretary shall establish and implement a program for  
3 the administration of medications and performance of health  
4 maintenance tasks in locations covered by this article. The  
5 program shall be developed and conducted in cooperation with the  
6 appropriate agencies, advisory bodies and boards.

7           (b) Administration of medication or performance of health  
8 maintenance tasks pursuant to this article shall be performed only  
9 by:

10                 (1) Licensed health care professionals; or

11                 (2) Facility staff members who have been trained and retrained  
12 every two years and who are subject to the supervision of and  
13 approval by a registered professional nurse.

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

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

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

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

26                 (4) Is monitored or supervised by the registered professional

1 nurse.

2 (d) An agency or facility employing a health care provider  
3 licensed pursuant to the provisions of chapter thirty of this code  
4 for the purposes of supervising the administration of medication or  
5 performance of health maintenance tasks shall maintain liability  
6 insurance for the licensed health care provider and any facility  
7 staff member who has been trained and is employed to administer  
8 medication or perform health maintenance tasks pursuant to this  
9 article.

10 (e) Nothing in this article may be construed to prohibit any  
11 facility staff member from administering medications or performing  
12 health maintenance tasks, or providing any other prudent emergency  
13 assistance to aid any person who is in acute physical distress or  
14 requires emergency assistance.

15 (f) Supervision of self-administration of medication by  
16 facility staff members who are not licensed health care  
17 professionals may be permitted in certain circumstances, when the  
18 substantial purpose of the setting is other than the provision of  
19 health care.

20 **§16-50-4. Exemption from licensure; statutory construction.**

21 (a) Any individual who is not otherwise authorized by law to  
22 administer medication or perform health maintenance tasks may  
23 administer medication or perform health maintenance tasks in  
24 locations covered by this article if he or she meets the  
25 requirements of this article and is exempt from the licensing  
26 requirements of chapter thirty of this code.

1 (b) Licensed health care professionals remain subject to their  
2 respective licensing laws.

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

7 (d) Any parent or guardian may administer medication to, or  
8 perform health maintenance tasks for, his or her adult or minor  
9 child regardless of whether or not the parent or guardian receives  
10 compensation for caring for said child.

11 **§16-50-5. Instruction and training.**

12 (a) The Office of Health Facility Licensure and Certification  
13 shall establish a council of nurses to represent the facilities and  
14 registered professional nurses affected by this article. The  
15 council shall prepare a procedural manual and recommendations  
16 regarding a training course to the secretary. The council shall  
17 meet every two years to review the training curricula, competency  
18 evaluation procedures and rules implemented by the secretary, and  
19 shall make recommendations as deemed necessary.

20 (b) The department shall develop and approve training  
21 curricula and competency evaluation procedures for facility staff  
22 members who administer medication or perform health maintenance  
23 tasks pursuant to this article. The department shall consider the  
24 recommendations of the council and shall consult with the West  
25 Virginia Board of Examiners for Registered Nurses in developing the  
26 training curricula and competency evaluation procedures.



1 (c) The program developed by the department shall require that  
2 any person who applies to act as a facility staff member authorized  
3 to administer medications or perform health maintenance tasks  
4 pursuant to this article shall:

5 (1) Hold a high school diploma or general education diploma;

6 (2) Be trained or certified in cardiopulmonary resuscitation  
7 and first aid;

8 (3) Participate in the initial training program developed by  
9 the department;

10 (4) Pass a competency evaluation developed by the department;  
11 and

12 (5) Participate in a retraining program every two years.

13 (d) Any facility may offer the training and competency  
14 evaluation program developed by the department to its facility  
15 staff members. The training and competency programs shall be  
16 provided by the facility through a registered professional nurse.

17 (e) A registered professional nurse who is authorized to train  
18 facility staff members to administer medications or perform health  
19 maintenance tasks in facilities shall:

20 (1) Possess a current active West Virginia license as set  
21 forth in article seven chapter thirty of this code in good standing  
22 to practice as a registered nurse;

23 (2) Have practiced as a registered professional nurse in a  
24 position or capacity requiring knowledge of medications and the  
25 performance of health maintenance tasks for the immediate two years  
26 prior to being authorized to train facility staff members; and

1 (3) Be familiar with the nursing care needs of residents of  
2 facilities as described in this article.

3 **§16-50-6. Availability of records; eligibility requirements of**  
4 **facility staff.**

5 (a) Any facility which authorizes unlicensed staff members to  
6 administer medications or perform health maintenance tasks pursuant  
7 to this article shall make available to the authorizing agency a  
8 list of the individual facility staff members authorized to  
9 administer medications or perform health maintenance tasks.

10 (b) Any facility may permit a facility staff member to  
11 administer medications or perform health maintenance tasks in a  
12 single specific agency only after compliance with all of the  
13 following:

14 (1) The staff member has successfully completed a training  
15 program and received a satisfactory competency evaluation as  
16 required by this article;

17 (2) The facility determines there is no statement on the state  
18 administered nurse aide registry indicating that the staff member  
19 has been the subject of finding of abuse or neglect of a long-term  
20 care facility resident or convicted of the misappropriation of a  
21 resident's property;

22 (3) The facility staff member has had a criminal background  
23 check or if applicable, a check of the State Police abuse registry,  
24 establishing that the individual has been convicted of no crimes  
25 against persons or drug related crimes;

26 (4) The medication to be administered is received and

1 maintained by the facility staff member in the original container  
2 in which it was dispensed by a pharmacist or the prescribing health  
3 care professional; and

4 (5) The facility staff member has complied with all other  
5 applicable requirements of this article, the legislative rules  
6 adopted pursuant to this article and other criteria, including  
7 minimum competency requirements, as are specified by the  
8 authorizing agency.

9 **§16-50-7. Oversight of medication administration and performance**  
10 **of health maintenance tasks by unlicensed personnel.**

11 (a) Any facility in which medication is administered or health  
12 maintenance tasks performed by unlicensed personnel shall establish  
13 an administrative monitoring system in administrative policy. The  
14 specific requirements of the administrative policy shall be  
15 established by the department, through legislative rules. These  
16 rules shall be developed in consultation with the West Virginia  
17 Board of Examiners for Registered Nurses, the West Virginia Nurses  
18 Association, the West Virginia Statewide Independent Living  
19 Council, and the West Virginia Board of Respiratory Care. These  
20 rules are required to include, at a minimum, instructions on  
21 protocols for contacting an appropriate healthcare professional in  
22 situations where a condition arises which may create a risk to the  
23 resident's health and safety. These rules shall also include the  
24 type and frequency of monitoring and training requirements for  
25 management of these occurrences.

26 (b) Monitoring of facility staff members authorized pursuant

1 to this article shall be performed by a registered professional  
2 nurse employed or contracted by the facility, who shall exercise  
3 judgment, evaluate and assess the patient, inject medicine, and  
4 monitor medications, self-administration of medications and self-  
5 injections by the resident in accordance with his or her scope of  
6 practice.

7 **§16-50-8. Withdrawal of authorization.**

8       The registered professional nurse who monitors or supervises  
9 the facility staff members authorized to administer medication or  
10 perform health maintenance tasks may withdraw authorization for a  
11 facility staff member if the nurse determines that the facility  
12 staff member is not performing medication administration or health  
13 maintenance tasks in accordance with the training and written  
14 instructions. The withdrawal of the authorization shall be  
15 documented and shall be relayed to the facility and the department  
16 in order to remove the facility staff member from the list of  
17 authorized individuals.

18 **§16-50-10. Limitations on medication administration or performance**  
19 **of health maintenance tasks.**

20       The following limitations apply to the administration of  
21 medication or performance of health maintenance tasks by facility  
22 staff members:

23       (a) Injections or any parenteral medications may not be  
24 administered, except that prefilled insulin or insulin pens may be  
25 administered;

1 (b) Irrigations or debriding agents used in the treatment of  
2 a skin condition or minor abrasions may not be administered;

3 (c) No verbal medication orders may be accepted, no new  
4 medication orders shall be transcribed and no drug dosages may be  
5 converted and calculated; and

6 (d) No medications ordered by the physician or a health care  
7 professional with legal prescriptive authority to be given "as  
8 needed" may be administered unless the order is written with  
9 specific parameters which preclude independent judgment.

10 **§16-50-11. Rules.**

11 The department shall propose rules for legislative approval in  
12 accordance with the provisions of article three, chapter  
13 twenty-nine-a of this code as may be necessary to implement the  
14 provision of this article.

15 **§16-50-12. Advisory Committee.**

16 (a) There is established an advisory committee to assist with  
17 the development polices and procedures regarding health maintenance  
18 care in order to safeguard the well-being and to preserve the  
19 dignity of persons who need assistance to live in their communities  
20 and avoid institutionalization.

21 (b) (1) The advisory committee shall consist of seven voting  
22 members as follows:

23 (A) The Olmstead Coordinator within the Department of Health  
24 and Human Resources, Office of Inspector General;

25 (B) One physician with expertise in respiratory medicine to be  
26 chosen by the West Virginia Board of Respiratory Care.

1 (C) The State Health Officer, as defined in section four,  
2 article three, chapter thirty of this code;

3 (D) A representative chosen by the West Virginia Statewide  
4 Independent Living Council;

5 (E) A representative chosen by the West Virginia Developmental  
6 Disability Council;

7 (F) A representative chosen by the West Virginia Board of  
8 Respiratory Care; and

9 (G) A representative chosen by the West Virginia Society for  
10 Respiratory Care.

11 (2) The advisory committee shall also include five non-voting  
12 members as follows:

13 (A) The co-chairs of the Joint Standing Committee on Health,  
14 or their designees;

15 (B) One representative of the West Virginia Board of Examiners  
16 for Registered Professional Nurses;

17 (C) One representative of the West Virginia Nurses  
18 Association;

19 (D) One representative of the Fair Shake Network; and

20 (E) The Office Director of the Office of Health Facility  
21 License and Certification within the Department of Health and Human  
22 Resources;

23 (c) A chairman shall be selected from the voting members of  
24 the advisory committee.

25 (d) The advisory committee shall meet at least four times  
26 annually and upon the call of the chairman. A simple majority of

1 the members shall constitute a quorum.

2 (e) On or before December 31, 2013, the advisory committee  
3 shall prepare a report to the Legislative Oversight Commission on  
4 Health and Human Resources Accountability. The report shall make  
5 recommendations on the need for further legislation, policies or  
6 procedures regarding health maintenance tasks.

7 (f) All members of the committee shall be reimbursed  
8 reasonable expenses pursuant to the rules promulgated by the  
9 Department of Administration for the reimbursement of expenses of  
10 state officials and employees and shall receive no other  
11 compensation for their services.