

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2731**

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

7 (Originating in the Committee on the Judiciary)

8 [March 29, 2013]

9
10 A BILL 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:*

27 That §16-50-1, §16-50-2, §16-50-3, §16-50-4, §16-50-5,

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

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

7 **§16-50-1. Short title.**

8 This article may be cited as the ~~"Medication Administration by~~
9 ~~Unlicensed Personnel Act."~~ "Ken Ervin Community Living Act."

10 **§16-50-2. Definitions.**

11 As used in this article ~~unless a different meaning appears~~
12 ~~from the context,~~ 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, ~~including~~ such as prescription drugs and self-

1 injection of medication by the resident.

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

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

7 (d) "Facility" means an ~~ICF/ID~~ 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 ~~or an adult family care~~
13 ~~home that is licensed by or approved by the department.~~

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

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

24 (g) "Health maintenance tasks" means performing the following
25 tasks according to the legibly written or printed directions of a
26 physician licensed under the provisions of article two-A, chapter

1 thirty of this code or article fourteen, chapter thirty of this
2 code, or other authorized practitioner, or as written on the
3 prescription label, and making a written record of that assistance
4 with regard to each health maintenance task administered, including
5 the time, route and amount taken:

6 (1) Administering glucometer tests;

7 (2) Administering gastrostomy tube feedings;

8 (3) Administering enemas; and

9 (4) Performing ostomy care which includes skin care and
10 changing appliances;

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

16 ~~(g) "ICF/ID" means an intermediate care facility for~~
17 ~~individuals with an intellectual disability which is certified by~~
18 ~~the department.~~

19 (h) "Location of medication administration or location where
20 health maintenance tasks are performed" means a facility or
21 location where the resident requires administration of medication
22 or assistance in taking medications or the performance of health
23 maintenance tasks.

24 (i) "Medication" means a drug, as defined in section one
25 hundred one, article one, chapter sixty-a of this code, which has
26 been prescribed by a ~~duly~~ authorized health care professional to be

1 ingested through the mouth, applied to the outer skin, eye or ear,
2 or applied through nose drops, vaginal or rectal suppositories.

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

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

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

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

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

20 (p) "Stable" means the individual's medical condition is
21 predictable and consistent as determined by the registered
22 professional nurse.

23 ~~(o)~~ (q) "Supervision of self-administration of medication"
24 means a personal service which includes reminding residents to take
25 medications, opening medication containers for residents, reading
26 the medication label to residents, observing residents while they

1 take medication, checking the self administered dosage against the
2 label on the container and reassuring residents that they have
3 obtained and are taking the dosage as prescribed.

4 **§16-50-3. Administration of medications; performance of health**
5 **maintenance tasks; maintenance of liability insurance in**
6 **facilities.**

7 (a) The secretary ~~is authorized to~~ shall establish and
8 implement a program for the administration of medications and
9 performance of health maintenance tasks in locations covered by
10 this article. ~~in locations of medication administration where the~~
11 ~~resident requires administration of or assistance in taking~~
12 ~~medications or performance of health maintenance tasks.~~ The
13 program shall be developed and conducted in cooperation with the
14 appropriate agencies, advisory bodies and boards.

15 (b) Administration of medication or performance of health
16 maintenance tasks pursuant to this article shall be performed only
17 by:

- 18 ~~(1) Registered professional nurses;~~
19 ~~(2) Other~~ (1) Licensed health care professionals; or
20 ~~(3)~~ (2) Facility staff members who have been trained and
21 retrained every two years and who are subject to the supervision of
22 and approval by a registered professional nurse.

23 (c) ~~Subsequent to~~ After assessing the health status of an
24 individual resident, a registered professional nurse, in
25 collaboration with the resident's attending physician and the

1 facility staff member, may recommend that the facility authorize a
2 facility staff member to administer medication or perform health
3 maintenance tasks if the staff member:

4 (1) Has been trained pursuant to the requirements of this
5 article;

6 (2) Is considered by the registered professional nurse to be
7 competent;

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

10 (4) Is monitored or supervised by the registered professional
11 nurse.

12 (d) An agency or facility employing a health care provider
13 licensed pursuant to the provisions of chapter thirty of this code
14 for the purposes of supervising the administration of medication or
15 performance of health maintenance tasks shall maintain liability
16 insurance for the licensed health care provider and any facility
17 staff member who has been trained and is employed to administer
18 medication or perform health maintenance tasks pursuant to this
19 article.

20 ~~(d)~~ (e) Nothing in this article may be construed to prohibit
21 any facility staff member from administering medications or
22 performing health maintenance tasks, or providing any other prudent
23 emergency assistance to aid any person who is in acute physical
24 distress or requires emergency assistance.

25 ~~(e)~~ (f) Supervision of self-administration of medication by
26 facility staff members who are not licensed health care

1 professionals may be permitted in certain circumstances, when the
2 substantial purpose of the setting is other than the provision of
3 health care.

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

5 (a) Any individual who is not otherwise authorized by law to
6 administer medication or perform health maintenance tasks may
7 administer medication or perform health maintenance tasks in
8 locations covered by this article if he or she meets the
9 requirements ~~and provisions~~ of this article ~~Any person who~~
10 ~~administers medication pursuant to the provisions of this article~~
11 ~~shall be~~ and is exempt from the licensing requirements of chapter
12 thirty of this code.

13 (b) ~~All~~ Licensed health care professionals ~~as defined in this~~
14 ~~article~~ remain subject to ~~the provisions of~~ their respective
15 licensing laws.

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

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

24 **§16-50-5. Instruction and training.**

25 (a) The Office of Health Facility Licensure and Certification
26 shall establish a council of nurses to represent the facilities and

1 registered professional nurses affected by ~~the provisions of this~~
2 article. The council ~~of nurses~~ shall prepare a procedural manual
3 and recommendations regarding a training course to the secretary.
4 ~~of the Department of Health and Human Resources.~~ The council shall
5 meet every two years to review the training curricula, competency
6 evaluation procedures and rules implemented by the secretary, and
7 shall make recommendations as deemed necessary.

8 (b) The department shall develop and approve training
9 curricula and competency evaluation procedures for facility staff
10 members who administer medication or perform health maintenance
11 tasks pursuant to ~~the provisions of~~ this article. The department
12 shall consider the recommendations of the council ~~of nurses~~ and
13 shall consult with the West Virginia Board of Examiners for
14 Registered Nurses in developing the training curricula and
15 competency evaluation procedures.

16 (c) The program developed by the department shall require that
17 any person who applies to act as a facility staff member authorized
18 to administer medications or perform health maintenance tasks
19 pursuant to ~~the provisions of~~ this article shall:

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

21 (2) Be trained or certified in cardiopulmonary resuscitation
22 and first aid;

23 (3) Participate in the initial training program developed by
24 the department;

25 (4) Pass a competency evaluation developed by the department;

26 and

1 (5) ~~Subsequent to initial training and evaluation,~~ Participate
2 in a retraining program every two years.

3 (d) Any facility may offer the training and competency
4 evaluation program developed by the department to its facility
5 staff members. The training and competency programs shall be
6 provided by the facility through a registered professional nurse.

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

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

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

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

19 **§16-50-6. Availability of records; eligibility requirements of**
20 **facility staff.**

21 (a) Any facility which authorizes unlicensed staff members to
22 administer medications or perform health maintenance tasks pursuant
23 to ~~the provisions of~~ this article shall make available to the
24 authorizing agency a list of the individual facility staff members
25 authorized to administer medications or perform health maintenance
26 tasks.

1 (b) ~~Any~~ Any facility may permit a facility staff member to
2 administer medications or perform health maintenance tasks in a
3 single specific agency only after compliance with all of the
4 following:

5 (1) The staff member has successfully completed a training
6 program and received a satisfactory competency evaluation as
7 required by ~~the provisions of~~ this article;

8 (2) The facility determines there is no statement on the state
9 administered nurse aide registry indicating that the staff member
10 has been the subject of finding of abuse or neglect of a long-term
11 care facility resident or convicted of the misappropriation of ~~such~~
12 a resident's property;

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

17 (4) The medication to be administered is received and
18 maintained by the facility staff member in the original container
19 in which it was dispensed by a pharmacist or the prescribing health
20 care professional; and

21 (5) The facility staff member has complied with all other
22 applicable requirements of this article, the legislative rules
23 adopted pursuant to this article and ~~such~~ other criteria, including
24 minimum competency requirements, as are specified by the
25 authorizing agency.

26 **§16-50-7. Oversight of medication administration and performance**

1 **of health maintenance tasks by unlicensed personnel.**

2 (a) ~~Each~~ Any facility in which medication is administered or
3 health maintenance tasks performed by unlicensed personnel shall
4 establish ~~in policy~~ an administrative monitoring system in
5 administrative policy. The specific requirements of the
6 administrative policy shall be established by the department,
7 through legislative rules. ~~proposed pursuant to section eleven of~~
8 ~~this article.~~ These rules shall be developed in consultation with
9 the West Virginia Board of Examiners for Registered Nurses, the
10 West Virginia Nurses Association, the West Virginia Statewide
11 Independent Living Council, and the West Virginia Board of
12 Respiratory Care. These rules are required to include, at a
13 minimum, instructions on protocols for contacting an appropriate
14 healthcare professional in situations where a condition arises
15 which may create a risk to the resident's health and safety. These
16 rules shall also include the type and frequency of monitoring and
17 training requirements for management of these occurrences.

18 (b) Monitoring of facility staff members authorized pursuant
19 to this article shall be performed by a registered professional
20 nurse employed or contracted by the facility, who shall exercise
21 judgment, evaluate and assess the patient, inject medicine, and
22 monitor medications, self-administration of medications and self-
23 injections by the resident in accordance with his or her scope of
24 practice.

25 **§16-50-8. Withdrawal of authorization.**

26 The registered professional nurse who monitors or supervises

1 the facility staff members authorized to administer medication or
2 perform health maintenance tasks ~~pursuant to this article~~ may
3 withdraw authorization for a facility staff member if the nurse
4 determines that the facility staff member is not performing
5 medication administration or health maintenance tasks in accordance
6 with the training and written instructions. The withdrawal of the
7 authorization shall be documented and shall be relayed to the
8 facility and the department in order to remove the facility staff
9 member from the list of authorized individuals.

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

12 The following limitations apply to the administration of
13 medication or performance of health maintenance tasks by facility
14 staff members:

15 (a) Injections or any parenteral medications may not be
16 administered, except that prefilled insulin or insulin pens may be
17 administered;

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

20 (c) No verbal medication orders may be accepted, no new
21 medication orders shall be transcribed and no drug dosages may be
22 converted and calculated; and

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

1 **§16-50-11. Rules.**

2 ~~(a) The department shall promulgate emergency rules pursuant~~
3 ~~to the provisions of section fifteen, article three, chapter~~
4 ~~twenty-nine-a of this code as may be necessary to implement the~~
5 ~~provisions changes of this article.~~

6 ~~— (b) Subsequently,~~ The department ~~may~~ shall propose rules for
7 legislative approval in accordance with the provisions of article
8 three, chapter twenty-nine-a of this code.

9 **§16-50-12. Advisory Committee.**

10 (a) There is hereby established an advisory committee to
11 assist the Legislature in the development of the definition of
12 health maintenance care and associated tasks, along with polices
13 and procedures, in order to safeguard the well-being, preserve the
14 dignity of persons who need assistance to live in their communities
15 and avoid institutionalization in this state or out of state.

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

18 (A) The chairs of the Senate and House Committees on Health
19 and Human Resources, who shall co-chair the committee.

20 (B) The Secretary or his or her designee;

21 (C) One representative of the West Virginia Statewide
22 Independent Living Council;

23 (D) One representative of the West Virginia Developmental
24 Disability Council;

25 (E) One representative of the West Virginia Board of
26 Respiratory Care; and

1 (F) One representative of the West Virginia Society for
2 Respiratory Care.

3 (2) The advisory committee shall also include three non-voting
4 members as follows:

5 (A) One representative of the West Virginia Board of Examiners
6 for Registered Professional Nurses;

7 (B) One representative of the West Virginia Nurses
8 Association; and

9 (C) One physician with expertise in respiratory medicine to be
10 chosen by the West Virginia Board of Respiratory Care.

11 (c) The advisory committee shall meet at least one time each
12 month and shall, on or before December 1, 2013, make
13 recommendations on the need for further legislation, policies or
14 procedures regarding health maintenance tasks.

15 (d) Members of the committee shall be reimbursed their
16 reasonable expenses pursuant to the rules promulgated by the
17 department of administration for the reimbursement of expenses of
18 state officials and employees and shall receive no other
19 compensation for their services.