

COMMITTEE SUBSTITUTE

for

H. B. 2731

(BY DELEGATE(S) FLEISCHAUER, MARSHALL, BARILL,
MANYPENNY, CAMPBELL, PASDON, FRAGALE,
IAQUINTA, STAGGERS, MILEY AND PERRY)

(Originating in the Committee on the Judiciary)

[March 29, 2013]

A BILL to amend and reenact §16-5O-1, §16-5O-2, §16-5O-3, §16-5O-4, §16-5O-5, §16-5O-6, §16-5O-7, §16-5O-8, §16-5O-10 and §16-5O-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-5O-12, all relating to regulating the performance of health maintenance tasks by unlicensed personnel in certain personal care facilities; providing exceptions; identifying who may perform health maintenance tasks; requiring record keeping; requiring the administrative monitoring system to have input from

registered professional nurses; requiring liability insurance; changing the short title; defining terms including health maintenance tasks; requiring legislative rules necessary to implement the article; and the creation of an advisory committee to review definition of health maintenance tasks, along with polices and procedures authorized by the article.

Be it enacted by the Legislature of West Virginia:

That §16-50-1, §16-50-2, §16-50-3, §16-50-4, §16-50-5, §16-50-6, §16-50-7, §16-50-8, §16-50-10 and §16-50-11 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 §16-50-12, all to read as follows:

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

§16-50-1. Short title.

1 This article may be cited as the ~~“Medication Administration~~
2 ~~by Unlicensed Personnel Act.”~~ “Ken Ervin Community Living
3 Act.”

§16-50-2. Definitions.

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

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

18 (b) “Authorizing agency” means the ~~department’s office~~
19 Office of Health Facility Licensure and Certification within the
20 Department of Health and Human Resources.

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

23 (d) “Facility” means an ~~ICF/ID~~ intermediate care facility for
24 individuals with an intellectual disability, assisted living,
25 behavioral health group home, private residence in which health
26 care services and health maintenance tasks are provided under
27 the supervision of a registered professional nurse as defined in
28 article seven, chapter thirty of this code ~~or an adult family care~~
29 ~~home that is licensed by or approved by the department.~~

30 (e) “Facility staff member” means an individual employed
31 by a facility but does not include a health care professional
32 acting within ~~the~~ his or her scope of practice. ~~a professional~~
33 ~~license or certificate.~~

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

40 (g) “Health maintenance tasks” means performing the
41 following tasks according to the legibly written or printed
42 directions of a physician licensed under the provisions of article

43 two-A, chapter thirty of this code or article fourteen, chapter
44 thirty of this code, or other authorized practitioner, or as written
45 on the prescription label, and making a written record of that
46 assistance with regard to each health maintenance task
47 administered, including the time, route and amount taken:

48 (1) Administering glucometer tests;

49 (2) Administering gastrostomy tube feedings;

50 (3) Administering enemas; and

51 (4) Performing ostomy care which includes skin care and
52 changing appliances;

53 “Health maintenance tasks” do not include judgment,
54 evaluation, assessments, injections of medication, or monitoring
55 of medication or self-administration of medications, such as
56 prescription drugs and self-injection of medication by the
57 resident.

58 ~~(g) “ICF/ID” means an intermediate care facility for~~
59 ~~individuals with an intellectual disability which is certified by~~
60 ~~the department.~~

61 (h) “Location of medication administration or location where
62 health maintenance tasks are performed” means a facility or

63 location where the resident requires administration of medication
64 or assistance in taking medications or the performance of health
65 maintenance tasks.

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

72 (j) “Registered professional nurse” means a person who
73 holds a valid license pursuant to article seven, chapter thirty of
74 this code.

75 (k) “Resident” means a resident of a facility who for
76 purposes of this article, is in a stable condition.

77 (l) “Secretary” means the Secretary of the Department of
78 Health and Human Resources or his or her designee.

79 (m) “Self-administration of medication” means the act of a
80 resident, who is independently capable of reading and
81 understanding the labels of drugs ordered by a physician, in
82 opening and accessing prepackaged drug containers, accurately
83 identifying and taking the correct dosage of the drugs as ordered

84 by the physician, at the correct time and under the correct
85 circumstances.

86 (n) “Self-administration of medication with assistance”
87 means assisting residents who are otherwise able to self
88 administer their own medications except their physical
89 disabilities prevent them from completing one or more steps in
90 the process.

91 (p) “Stable” means the individual’s medical condition is
92 predictable and consistent as determined by the registered
93 professional nurse.

94 (q) “Supervision of self-administration of medication”
95 means a personal service which includes reminding residents to
96 take medications, opening medication containers for residents,
97 reading the medication label to residents, observing residents
98 while they take medication, checking the self administered
99 dosage against the label on the container and reassuring residents
100 that they have obtained and are taking the dosage as prescribed.

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

1 (a) The secretary ~~is authorized to~~ shall establish and
2 implement a program for the administration of medications and

3 performance of health maintenance tasks in locations covered by
4 this article. ~~in locations of medication administration where the~~
5 ~~resident requires administration of or assistance in taking~~
6 ~~medications or performance of health maintenance tasks.~~ The
7 program shall be developed and conducted in cooperation with
8 the appropriate agencies, advisory bodies and boards.

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

12 ~~(1) Registered professional nurses;~~

13 ~~(2) Other~~ (1) Licensed health care professionals; or

14 ~~(3)~~ (2) Facility staff members who have been trained and
15 retrained every two years and who are subject to the supervision
16 of and approval by a registered professional nurse.

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

23 (1) Has been trained pursuant to the requirements of this
24 article;

25 (2) Is considered by the registered professional nurse to be
26 competent;

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

29 (4) Is monitored or supervised by the registered professional
30 nurse.

31 (d) An agency or facility employing a health care provider
32 licensed pursuant to the provisions of chapter thirty of this code
33 for the purposes of supervising the administration of medication
34 or performance of health maintenance tasks shall maintain
35 liability insurance for the licensed health care provider and any
36 facility staff member who has been trained and is employed to
37 administer medication or perform health maintenance tasks
38 pursuant to this article.

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

44 (⊖) (f) Supervision of self-administration of medication by
45 facility staff members who are not licensed health care
46 professionals may be permitted in certain circumstances, when
47 the substantial purpose of the setting is other than the provision
48 of health care.

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

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

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

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

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

§16-50-5. Instruction and training.

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

11 (b) The department shall develop and approve training
12 curricula and competency evaluation procedures for facility staff
13 members who administer medication or perform health
14 maintenance tasks pursuant to ~~the provisions of~~ this article. The
15 department shall consider the recommendations of the council of

16 ~~nurses~~ and shall consult with the West Virginia Board of
17 Examiners for Registered Nurses in developing the training
18 curricula and competency evaluation procedures.

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

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

25 (2) Be trained or certified in cardiopulmonary resuscitation
26 and first aid;

27 (3) Participate in the initial training program developed by
28 the department;

29 (4) Pass a competency evaluation developed by the
30 department; and

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

33 (d) Any facility may offer the training and competency
34 evaluation program developed by the department to its facility
35 staff members. The training and competency programs shall be
36 provided by the facility through a registered professional nurse.

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

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

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

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

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

1 (a) Any facility which authorizes unlicensed staff members
2 to administer medications or perform health maintenance tasks
3 pursuant to ~~the provisions of~~ this article shall make available to
4 the authorizing agency a list of the individual facility staff
5 members authorized to administer medications or perform health
6 maintenance tasks.

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

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

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

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

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

27 (5) The facility staff member has complied with all other
28 applicable requirements of this article, the legislative rules
29 adopted pursuant to this article and ~~such~~ other criteria, including
30 minimum competency requirements, as are specified by the
31 authorizing agency.

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

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

14 which may create a risk to the resident's health and safety. These
15 rules shall also include the type and frequency of monitoring and
16 training requirements for management of these occurrences.

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

§16-50-8. Withdrawal of authorization.

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

10 remove the facility staff member from the list of authorized
11 individuals.

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

1 The following limitations apply to the administration of
2 medication or performance of health maintenance tasks by
3 facility staff members:

4 (a) Injections or any parenteral medications may not be
5 administered, except that prefilled insulin or insulin pens may be
6 administered;

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

9 (c) No verbal medication orders may be accepted, no new
10 medication orders shall be transcribed and no drug dosages may
11 be converted and calculated; and

12 (d) No medications ordered by the physician or a health care
13 professional with legal prescriptive authority to be given “as
14 needed” may be administered unless the order is written with
15 specific parameters which preclude independent judgment.

§16-50-11. Rules.

1 ~~(a) The department shall promulgate emergency rules~~
2 ~~pursuant to the provisions of section fifteen, article three, chapter~~

3 ~~twenty-nine-a of this code as may be necessary to implement the~~
4 ~~provisions changes of this article.~~

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

§16-50-12. Advisory Committee.

1 (a) There is hereby established an advisory committee to
2 assist the Legislature in the development of the definition of
3 health maintenance care and associated tasks, along with polices
4 and procedures, in order to safeguard the well-being, preserve
5 the dignity of persons who need assistance to live in their
6 communities and avoid institutionalization in this state or out of
7 state.

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

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

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

13 (C) One representative of the West Virginia Statewide
14 Independent Living Council;

15 (D) One representative of the West Virginia Developmental
16 Disability Council;

17 (E) One representative of the West Virginia Board of
18 Respiratory Care; and

19 (F) One representative of the West Virginia Society for
20 Respiratory Care.

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

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

25 (B) One representative of the West Virginia Nurses
26 Association; and

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

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

33 (d) Members of the committee shall be reimbursed their
34 reasonable expenses pursuant to the rules promulgated by the

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35 department of administration for the reimbursement of expenses
36 of state officials and employees and shall receive no other
37 compensation for their services.