

# **E N R O L L E D**

COMMITTEE SUBSTITUTE

for

**H. B. 2731**

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

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[Passed April 13, 2013; in effect from passage.]

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AN ACT 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 §16-5O-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, be amended and reenacted, and that said code be amended by adding thereto a new section, designated §16-5O-12, all to read as follows:

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

**§16-5O-1. Short title.**

1        This article may be cited as the “Ken Ervin Community  
2        Living Act.”

**§16-5O-2. Definitions.**

1        As used in this article the following definitions apply:

2        (a) “Administration of medication” means:

3            (1) Assisting a person in the ingestion, application or  
4        inhalation of medications, including prescription drugs, or in the  
5        use of universal precautions or rectal or vaginal insertion of  
6        medication, according to the legibly written or printed directions  
7        of the attending physician or authorized practitioner, or as  
8        written on the prescription label; and

9            (2) Making a written record of such assistance with regard  
10      to each medication administered, including the time, route and  
11      amount taken. However, for purposes of this article,  
12      “administration” does not include judgment, evaluation,  
13      assessments, injections of medication, or monitoring of

14 medication or self-administration of medications, such as  
15 prescription drugs and self-injection of medication by the  
16 resident.

17 (b) “Authorizing agency” means the office of Health Facility  
18 Licensure and Certification within the Department of Health and  
19 Human Resources.

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

22 (d) “Facility” means an intermediate care facility for  
23 individuals with an intellectual disability, assisted living,  
24 behavioral health group home, private residence in which health  
25 care services and health maintenance tasks are provided under  
26 the supervision of a registered professional nurse as defined in  
27 article seven, chapter thirty of this code.

28 (e) “Facility staff member” means an individual employed  
29 by a facility but does not include a health care professional  
30 acting within his or her scope of practice.

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

36 (g) “Health maintenance tasks” means performing the  
37 following tasks according to the legibly written or printed  
38 directions of a physician licensed under the provisions of article  
39 two-A, chapter thirty of this code or article fourteen, chapter  
40 thirty of this code, or other authorized practitioner, or as written  
41 on the prescription label, and making a written record of that  
42 assistance with regard to each health maintenance task  
43 administered, including the time, route and amount taken:

44 (1) Administering glucometer tests;

45       (2) Administering gastrostomy tube feedings;

46       (3) Administering enemas; and

47       (4) Performing ostomy care which includes skin care and  
48       changing appliances;

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

54       (h) “Location of medication administration or location where  
55       health maintenance tasks are performed” means a facility or  
56       location where the resident requires administration of medication  
57       or assistance in taking medications or the performance of health  
58       maintenance tasks.

59       (i) “Medication” means a drug, as defined in section one  
60       hundred one, article one, chapter sixty-a of this code, which has  
61       been prescribed by a authorized health care professional to be  
62       ingested through the mouth, applied to the outer skin, eye or ear,  
63       or applied through nose drops, vaginal or rectal suppositories.

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

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

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

71       (m) “Self-administration of medication” means the act of a  
72       resident, who is independently capable of reading and  
73       understanding the labels of drugs ordered by a physician, in

74 opening and accessing prepackaged drug containers, accurately  
75 identifying and taking the correct dosage of the drugs as ordered  
76 by the physician, at the correct time and under the correct  
77 circumstances.

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

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

86 (q) “Supervision of self-administration of medication”  
87 means a personal service which includes reminding residents to  
88 take medications, opening medication containers for residents,  
89 reading the medication label to residents, observing residents  
90 while they take medication, checking the self administered  
91 dosage against the label on the container and reassuring residents  
92 that they have obtained and are taking the dosage as prescribed.

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

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

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

9 (1) Licensed health care professionals; or

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

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

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

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

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

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

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

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

40       (f) Supervision of self-administration of medication by

41 facility staff members who are not licensed health care  
42 professionals may be permitted in certain circumstances, when  
43 the substantial purpose of the setting is other than the provision  
44 of health care.

**§16-5O-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 of this article and is exempt from the licensing  
6 requirements of chapter thirty of this code.

7       (b) Licensed health care professionals remain subject to  
8 their respective licensing laws.

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

**§16-5O-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 this article. The  
4 council shall prepare a procedural manual and recommendations  
5 regarding a training course to the secretary. The council shall  
6 meet every two years to review the training curricula,  
7 competency evaluation procedures and rules implemented by the  
8 secretary, and shall make recommendations as deemed  
9 necessary.

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

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

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

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

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

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

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

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

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

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

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

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

**§16-5O-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 this article shall make available to the authorizing  
4 agency a list of the individual facility staff members authorized  
5 to administer medications or perform health maintenance tasks.

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

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

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

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

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

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

**§16-5O-7. Oversight of medication administration and performance of health maintenance tasks by unlicensed personnel.**

1       (a) Any facility in which medication is administered or  
2 health maintenance tasks performed by unlicensed personnel  
3 shall establish 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. These rules shall be developed in  
7 consultation with the West Virginia Board of Examiners for  
8 Registered Nurses, the West Virginia Nurses Association, the  
9 West Virginia Statewide Independent Living Council, and the  
10 West Virginia Board of Respiratory Care. These rules are  
11 required to include, at a minimum, instructions on protocols for  
12 contacting an appropriate healthcare professional in situations  
13 where a condition arises which may create a risk to the resident's  
14 health and safety. These rules shall also include the type and  
15 frequency of monitoring and training requirements for  
16 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.

**§16-5O-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 may withdraw  
4 authorization for a facility staff member if the nurse determines  
5 that the facility staff member is not performing medication  
6 administration or health maintenance tasks in accordance with  
7 the training and written instructions. The withdrawal of the  
8 authorization shall be documented and shall be relayed to the  
9 facility and the department in order to remove the facility staff  
10 member from the list of authorized individuals.

**§16-5O-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.

**§16-5O-11. Rules.**

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

**§16-5O-12. Advisory Committee.**

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

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

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

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

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

14       (D) A representative chosen by the West Virginia Statewide  
15 Independent Living Council;

16       (E) A representative chosen by the West Virginia  
17 Developmental Disability Council;

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

20       (G) A representative chosen by the West Virginia Society for  
21 Respiratory Care.

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

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

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

28       (C) One representative of the West Virginia Nurses  
29 Association;

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

31       (E) The Office Director of the Office of Health Facility  
32 License and Certification within the Department of Health and  
33 Human Resources;

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

36       (d) The advisory committee shall meet at least four times  
37 annually and upon the call of the chairman. A simple majority of  
38 the members shall constitute a quorum.

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

44       (f) All members of the committee shall be reimbursed  
45 reasonable expenses pursuant to the rules promulgated by the  
46 Department of Administration for the reimbursement of  
47 expenses of state officials and employees and shall receive no  
48 other compensation for their services.



15 [Enr. Com. Sub. For H. B. No. 2731

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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2013.

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*Governor*

