

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 265

(By Senator Snyder)

[Originating in the Committee on the Judiciary;
reported March 22, 2013.]

A BILL 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 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 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 the Department of Health and Human Resources to promulgate a legislative rule relating to reportable diseases, events and conditions; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to general sanitation; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to Grade A pasturized milk; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to fees for services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to

the regulation of opioid treatment programs; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to pulse oximetry newborn testing; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the regulation of opioid treatment programs; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to chronic pain management clinic licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults in West Virginia; authorizing the Health Care Authority to promulgate a legislative rule relating to the West Virginia Health Information Network; and authorizing the Bureau of Senior Services to promulgate a legislative rule relating to the in-home care worker registry.

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 LEGISLATIVE RULES.**

§64-5-1. Bureau for Public Health.

1 (a) The legislative rule filed in the state register on
2 August 31, 2012, authorized under the authority of section
3 four, article one, chapter sixteen, of this code, modified by
4 the Department of Health and Human Resources to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the state register on January 10,
7 2013, relating to the Department of Health and Human
8 Resources (reportable diseases, events and conditions, 64
9 CSR 7), is authorized with the following amendments:

10 On page twenty-four, subsection 9.1., by striking out the
11 words “the reporting” and inserting in lieu thereof the words
12 “the access”;

13 On page twenty-five, subsection 9.2., by striking out the
14 words “be reported” and inserting in lieu thereof the words
15 “be made available”;

16 On page twenty-five, subsection 9.2., by striking out the
17 words “the reporting” and inserting in lieu thereof the words
18 “the access”;

19 On page twenty-five, subsection 9.2., after the word
20 “activities” by inserting the following: “consistent with the
21 mission of the Bureau. The responsibility for communication
22 with healthcare facilities regarding data collection, data
23 quality and completeness rests with the Office of
24 Epidemiology and Prevention Services within the Bureau for
25 Public Health”;

26 And,

27 On page twenty-five, by striking out all of subsection 9.3.
28 and renumbering the remaining subsection.

29 (b) The legislative rule filed in the State Register on June
30 29, 2012, authorized under the authority of section four,
31 article one, chapter sixteen, of this code, modified by the
32 Department of Health and Human Resources to meet the
33 objections of the Legislative Rule-Making Review

34 Committee and refiled in the State Register on November 15,
35 2012, relating to the Department of Health and Human
36 Resources (general sanitation, 64 CSR 18), is authorized.

37 (c) The legislative rule filed in the State Register on
38 August 27, 2012, authorized under the authority of section
39 five, article seven, chapter sixteen, of this code, relating to
40 the Department of Health and Human Resources (Grade A
41 pasturized milk, 64 CSR 34), is authorized.

42 (d) The legislative rule filed in the State Register on
43 August 31, 2012, authorized under the authority of section
44 one, article eleven, chapter sixteen, of this code, modified by
45 the Department of Health and Human Resources to meet the
46 objections of the Legislative Rule-Making Review
47 committee and refiled in the State Register on January 10,
48 2013, relating to the Department of Health and Human
49 Resources (fees for services, 64 CSR 51), is authorized.

50 (e) The legislative rule filed in the State Register on
51 October 11, 2012, authorized under the authority of section

52 four, article one, chapter sixteen, of this code, relating to the
53 Department of Health and Human Resources (regulation of
54 opioid treatment programs, 64 CSR 90), is authorized.

55 (f) The legislative rule filed in the State Register on
56 August 27, 2012, authorized under the authority of section
57 four, article one, chapter sixteen, of this code, modified by
58 the Department of Health and Human Resources to meet the
59 objections of the Legislative Rule-Making Review
60 Committee and refiled in the State Register on January 10,
61 2013, relating to the Department of Health and Human
62 Resources (pulse oximetry newborn testing, 64 CSR 100), is
63 authorized with the following amendment:

64 On page two, subdivision 5.3, by striking out the words
65 “the closest” and inserting in lieu thereof the word “an”.

§64-5-2. Department of Health and Human Resources.

1 (a) The legislative rule filed in the State Register on
2 August 31, 2012, authorized under the authority of section
3 one, article eleven, chapter sixteen, of this code, modified by

4 the Department of Health and Human Resources to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on February 5,
7 2013, relating to the Department of Health and Human
8 Resources (regulation of opioid treatment programs, 69 CSR
9 7), is authorized.

10 (b) The legislative rule filed in the State Register on
11 January 7, 2013, authorized under the authority of section
12 nine, article five-h, chapter sixteen, of this code, relating to
13 the Department of Health and Human Resources (chronic
14 pain management clinic licensure, 69 CSR 8), is authorized
15 with the following amendments:

16 On page four, subsection 3.1., by striking out all of
17 subdivisions 3.1.a., 3.1.b., 3.1.c. and 3.1.d. and inserting in
18 lieu thereof the following:

19 3.1.a. The primary component of the medical practice of
20 the clinic, facility or office is treatment of chronic pain for
21 non-malignant conditions;

22 3.1.b. More than fifty percent of patients in any one
23 month of the prescribers are provided treatment for chronic
24 pain for non-malignant conditions and are prescribed,
25 administered or dispensed tramadol, carisoprodol, opioid
26 drug products or other Schedule II or Schedule III controlled
27 substances for such diagnosis;

28 3.1.c. The calculation of more than fifty percent of
29 patients will be calculated by dividing the number of unique
30 patient encounters at the clinic, facility or office during any
31 one month for a diagnosis of chronic non-malignant pain and
32 pursuant to such diagnosis of chronic non-malignant pain
33 were prescribed, administered or dispensed tramadol,
34 carisoprodol, opioid drugs or other Scheduled II or
35 Scheduled III controlled substances by the total number of all
36 patient encounters at the clinic, facility or office during any
37 month; and

38 3.1.d. Patients receiving tramadol, carisoprodol, opioid
39 drug products or other Schedule II or Schedule III controlled

40 substances for treatment of an injury or illness that lasts or is
41 expected to last thirty days or less shall not be included in the
42 calculation of more than fifty percent of all patients.;

43 And renumbering the remaining subdivisions;

44 And,

45 On page thirteen, subparagraph 6.5.b.2.B., after the
46 words “Osteopathic Specialist;” by inserting the words “hold
47 Competency Certification in Controlled Substances
48 Management;”.

49 (c) The legislative rule filed in the State Register on
50 August 30, 2012, authorized under the authority of section
51 four, article two-b, chapter forty-nine, of this code, modified
52 by the Department of Health and Human Resources to meet
53 the objections of the Legislative Rule-Making Review
54 Committee and refiled in the State Register on January 15,
55 2013, relating to the Department of Health and Human
56 Resources (minimum licensing requirements for residential
57 child care and treatment facilities for children and

58 transitioning adults in West Virginia, 78 CSR 3), is
59 authorized.

§64-5-3. Health Care Authority.

1 The legislative rule filed in the State Register on May 14,
2 2012, authorized under the authority of section seven, article
3 twenty-nine-g, chapter sixteen, of this code, modified by the
4 Health Care Authority to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on July 19, 2012, relating to the Health
7 Care Authority to promulgate a legislative rule relating to
8 (West Virginia Health Information Network, 65 CSR 28), is
9 authorized.

§64-5-4. Bureau of Senior Services.

1 The legislative rule filed in the State Register on August
2 31, 2012, authorized under the authority of section fifteen,
3 article five-p, chapter sixteen, of this code, modified by the
4 Bureau of Senior Services to meet the objections of the
5 Legislative Rule-making Review Committee and refiled in

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6 the State Register on January 17, 2013, relating to the Bureau
7 of Senior Services (in-home care worker registry, 76 CSR 2),
8 is authorized.