

1 **H. B. 4287**

2  
3 (By Delegates Fleischauer, Marshall, Barill,  
4 Manypenny, Fragale, Campbell, Pasdon,  
5 Mr. Speaker (Mr. Miley), White,  
6 Pethtel and Tomblin)

7 [Introduced January 24, 2014; referred to the Committee  
8 on Health and Human Resources.]

9  
10 A BILL to amend and reenact §16-50-2, §16-50-3, §16-50-5, §16-50-6,  
11 §16-50-7, §16-50-8, §16-50-10 and §16-50-12, of the Code of  
12 West Virginia, 1931, as amended, relating to the performance  
13 of certain functions by approved medication assistive  
14 personnel.

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

16 That §16-50-2, §16-50-3, §16-50-5, §16-50-6, §16-50-7, §16-50-  
17 8, §16-50-10 and §16-50-12, of the Code of West Virginia, 1931, as  
18 amended, be amended and reenacted to read as follows:

19 **ARTICLE 50. Approved medication assistive personnel.**

20 **§16-50-2. Definitions.**

21 As used in this article the following definitions apply:

22 (a) "Administration of medication" means:

23 (1) Assisting a person in the ingestion, application or  
24 inhalation of medications, including prescription drugs, or in the  
25 use of universal precautions or rectal or vaginal insertion of

1 medication, according to the legibly written or printed directions  
2 of the attending physician or authorized practitioner in accordance  
3 with section four, article five, chapter thirty of this code, or as  
4 written on the prescription label; and

5 (2) Making a written record of such assistance with regard to  
6 each medication administered, including the time, route and amount  
7 taken. However, for purposes of this article, "administration" does  
8 not include judgment, evaluation, assessments, injections of  
9 medication (except for prefilled insulin or insulin pens), or  
10 monitoring of medication or self-administration of medications,  
11 such as prescription drugs and self-injection of medication by the  
12 resident.

13 (b) "Approved medication assistive personnel (AMAP)" means  
14 unlicensed facility staff member, who meets eligibility  
15 requirements, has successfully completed the required training and  
16 competency testing, and is considered competent by the authorized  
17 registered professional nurse to administer medications or perform  
18 health maintenance tasks, or both, to residents of the facility in  
19 accordance with W. Va. Code § 16-50-1 et seq.

20 (c) "Authorized registered professional nurse" means a person  
21 who holds an unencumbered license pursuant to W. Va. Code § 30-7-1  
22 et seq., and meets the requirements to train and supervise approved  
23 medication assistive personnel pursuant to this article and W.Va.  
24 Code §16-50-1 et seq., and has completed and passed the facility

1 trainer/instructor course developed by the authorizing agency.

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

5 (e) "Delegation" means transferring to a competent individual,  
6 as determined by the registered professional nurse, the authority  
7 to perform a selected task in a selected situation.

8 (f) "Delegation decision model" means the process the  
9 authorized registered professional nurse must follow to determine  
10 whether or not to delegate a nursing task to an approved medication  
11 assistive personnel. The delegation decision model is approved by  
12 the West Virginia Board of Examiners for Registered Professional  
13 Nurses.

14 ~~(c)~~ (g) "Department" means the Department of Health and Human  
15 Resources.

16 ~~(d)~~ (h) "Facility" means an intermediate care facility for  
17 individuals with an intellectual disability, assisted living,  
18 behavioral health group home, private residence in which health  
19 care services and health maintenance tasks are provided under the  
20 supervision of a registered professional nurse as defined in  
21 article seven, chapter thirty of this code.

22 ~~(e)~~ (i) "Facility staff member" means an individual employed  
23 by a facility but does not include a health care professional  
24 acting within his or her scope of practice.

1        (j) "Family" means biological parents, adoptive parents,  
2 foster parents, or other immediate family members living within the  
3 same household.

4        ~~(f)~~ (k) "Health care professional" means a medical doctor or  
5 doctor of osteopathy, a podiatrist, registered professional nurse,  
6 practical nurse, advanced practice registered nurse, physician's  
7 assistant, dentist, optometrist or respiratory care professional  
8 licensed under chapter thirty of this code.

9        ~~(g)~~ (1) "Health maintenance tasks" means performing the  
10 following tasks according to the legibly written or printed  
11 directions of ~~a physician licensed under the provisions of article~~  
12 ~~two-A, chapter thirty of this code or article fourteen, chapter~~  
13 ~~thirty of this code, or other~~ an authorized practitioner, or as  
14 written on the prescription label, and making a written record of  
15 that assistance with regard to each health maintenance task  
16 administered, including the time, route and amount taken:

17        (1) Administering glucometer tests;

18        (2) Administering gastrostomy tube feedings;

19        (3) Administering enemas; ~~and~~

20        (4) Performing ostomy care which includes skin care and  
21 changing appliances; and

22        (5) Performing tracheostomy and ventilator care for residents  
23 in a private residence who are living with family and/or natural  
24 supports.

1 "Health maintenance tasks" do not include judgment,  
2 evaluation, assessments, injections of medication, except for  
3 prefilled insulin or insulin pens, or monitoring of medication or  
4 self-administration of medications, such as prescription drugs and  
5 self-injection of medication by the resident.

6 (m) "Immediate family" means mother, stepmother, father,  
7 stepfather, sister, stepsister, brother, stepbrother, spouse, child  
8 grandparent and grandchildren.

9 ~~(h)~~ (n) "Location of medication administration or location  
10 where health maintenance tasks are performed" means a facility or  
11 location where the resident requires administration of medication  
12 or assistance in taking medications or the performance of health  
13 maintenance tasks.

14 ~~(i)~~ (o) "Medication" means a drug, as defined in section one  
15 hundred one, article one, chapter sixty-a of this code, which has  
16 been prescribed by ~~a authorized health care professional~~ an  
17 authorized practitioner to be ingested through the mouth, inhaled  
18 through the nose or mouth, administered through a gastrostomy tube,  
19 applied to the outer skin, eye or ear, or applied through nose  
20 drops, vaginal or rectal suppositories.

21 (p) "Natural supports" means family, friends, neighbors or  
22 anyone who provides assistance and support to a resident but is not  
23 reimbursed.

24 ~~(j)~~ (q) "Registered professional nurse" means a person who

1 holds a valid license pursuant to article seven, chapter thirty of  
2 this code.

3 ~~(k)~~ (r) "Resident" means a resident of a facility who for  
4 purposes of this article, is in a stable condition.

5 ~~(l)~~ (s) "Secretary" means the Secretary of the department of  
6 ~~Health and Human Resources~~ or his or her designee.

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

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

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

22 ~~(q)~~ (w) "Supervision of self-administration of medication"  
23 means a personal service which includes reminding residents to take  
24 medications, opening medication containers for residents, reading

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

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

8 (a) The secretary shall establish and implement a program for  
9 the administration of medications and performance of health  
10 maintenance tasks in locations covered by this article. The  
11 program shall be developed and conducted in cooperation with the  
12 appropriate agencies, advisory bodies and boards.

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

16 (1) Licensed health care professionals; or

17 (2) Facility staff members who have been trained and retrained  
18 every two years and who are subject to the supervision of and  
19 approval by ~~a~~ an authorized registered professional nurse.

20 (c) After assessing the health status of an individual  
21 resident, a registered professional nurse, in collaboration with  
22 the resident's ~~attending physician~~ authorized practitioner and the  
23 facility staff member, may recommend that the facility authorize a  
24 facility staff member to administer medication or perform health

1 maintenance tasks if the staff member:

2 (1) Has been trained pursuant to the requirements of this  
3 article;

4 (2) Is considered by the authorized registered professional  
5 nurse to be competent;

6 (3) Consults with the authorized registered professional nurse  
7 ~~or attending physician~~ on a regular basis; and

8 (4) Is monitored or supervised by the authorized registered  
9 professional nurse.

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

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

23 (f) Supervision of self-administration of medication by  
24 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 **§16-50-5. Instruction and training.**

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

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

21 (c) The authorizing agency shall coordinate and collaborate  
22 with the Board of Respiratory Care to develop training and testing  
23 component for health maintenance tasks related to respiratory care,  
24 including but not limited to inhaled medications, tracheostomy care

1 and ventilator care. This includes modifying and updating the  
2 existing curriculum for RN AMAP delegators and AMAPs.

3 (1) The authorizing agency shall develop and approve training  
4 curricula and competency evaluation. The authorizing agency shall  
5 establish a council of nurses to assist with the development of the  
6 training and evaluation process.

7 (2) The curriculum, training competency and testing components  
8 related to respiratory care must be approved by the WV Respiratory  
9 Care Board per §30-34-15(e).

10 ~~(c)~~ (d) The program developed by the department shall require  
11 that any person who applies to act as a facility staff member  
12 authorized to administer medications or perform health maintenance  
13 tasks pursuant to this article shall:

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

15 (2) Be ~~trained or~~ certified in cardiopulmonary resuscitation  
16 and first aid;

17 (3) Participate in the initial training program developed by  
18 the department;

19 (4) Pass a competency evaluation developed by the department;  
20 and

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

22 ~~(d)~~ (e) Any facility may offer the training and competency  
23 evaluation program developed by the department to its facility  
24 staff members. The training and competency programs shall be

1 provided by the facility through a registered professional nurse.

2 ~~(e)~~ (f) A registered professional nurse who is authorized to  
3 train facility staff members to administer medications or perform  
4 health maintenance tasks in facilities shall:

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

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

12 (3) Be familiar with the nursing care needs of residents of  
13 facilities as described in this article; and

14 (4) Have completed and passed the facility trainer/instructor  
15 course developed by the authorizing agency.

16 (g) After successfully completing the initial training and  
17 testing for the AMAP program, registered professional nurses and  
18 AMAPS shall have competencies for health maintenance tasks  
19 reassessed and documented annually by the employer of record to  
20 ensure continued competence.

21 **§16-50-6. Availability of records; eligibility requirements of**  
22 **facility staff.**

23 (a) Any facility which authorizes unlicensed staff members to  
24 administer medications or perform health maintenance tasks pursuant

1 to this article shall make available to the authorizing agency a  
2 list of the individual facility staff members authorized to  
3 administer medications or perform health maintenance tasks.

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

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

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

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

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

24 (5) The facility staff member has complied with all other

1 applicable requirements of this article, the legislative rules  
2 adopted pursuant to this article and other criteria, including  
3 minimum competency requirements, as are specified by the  
4 authorizing agency.

5 **§16-50-7. Oversight of medication administration and performance**  
6 **of health maintenance tasks by the approved**  
7 **medication assistive personnel.**

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

23 (b) Monitoring of facility staff members authorized pursuant  
24 to this article shall be performed by a registered professional

1 nurse employed or contracted by the facility, who shall exercise  
2 judgment, evaluate and assess the patient, inject medicine, except  
3 prefilled insulin and insulin pens if this task is delegated to an  
4 approved medication assistive person, and monitor medications,  
5 self-administration of medications and self-injections by the  
6 resident in accordance with his or her scope of 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. The department shall maintain a list of  
18 the names of persons whose authorization to administer medication  
19 or perform health maintenance tasks has been withdrawn, and the  
20 reasons for withdrawal of authorization. The list may be accessed  
21 by registered professional nurses or facilities.

22 **§16-50-10. Limitations on medication administration or performance**  
23 **of health maintenance tasks.**

24       The following limitations apply to the administration of

1 medication or performance of health maintenance tasks by facility  
2 staff members:

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

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

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

11 (d) No medications ordered by the ~~physician or a health care~~  
12 ~~professional with legal prescriptive authority~~ authorized  
13 practitioner to be given "as needed" may be administered unless the  
14 order is written with specific parameters which preclude  
15 independent judgment; and,

16 (e) Health maintenance tasks for the performance of  
17 tracheostomy care and ventilator care is not permitted in an  
18 intermediate care facility for individuals with an intellectual  
19 disability, assisted living, behavioral health group home, private  
20 residence where the resident is not residing with family and/or  
21 natural supports.

22 **§16-50-12. Advisory Committee.**

23 (a) There is ~~established~~ continued an advisory committee to  
24 assist with the development of polices and procedures regarding

1 health maintenance care in order to safeguard the well-being and to  
2 preserve the dignity of persons who need assistance to live in  
3 their communities and avoid institutionalization.

4 (b) (1) The advisory committee shall consist of ~~seven~~ eleven  
5 voting members as follows:

6 (A) The Olmstead Coordinator within the department ~~of Health~~  
7 ~~and Human Resources~~, Office of Inspector General;

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

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

12 (D) A representative chosen by the West Virginia Statewide  
13 Independent Living Council;

14 (E) A representative chosen by the West Virginia Developmental  
15 ~~Disability~~ Disabilities Council;

16 (F) A representative chosen by the West Virginia Board of  
17 Respiratory Care; ~~and~~

18 (G) A representative chosen by the West Virginia Society for  
19 Respiratory Care.

20 (H) One representative of the West Virginia Board of Examiners  
21 for Registered Professional Nurses;

22 (I) One representative of the West Virginia Nurses  
23 Association;

24 (J) One representative of the Fair Shake Network; and



1        (K) The Office Director of the Office of Health Facility  
2 Licensure and Certification within the Department of Health and  
3 Human Resources.

4        (2) The advisory committee shall also include the cochairs of  
5 the Joint Standing Committee on Health, or their designees as five  
6 nonvoting members. ~~as follows:~~

7        ~~(A) The cochairs of the Joint Standing Committee on Health, or~~  
8 ~~their designees;~~

9        ~~(B) One representative of the West Virginia Board of Examiners~~  
10 ~~for Registered Professional Nurses;~~

11        ~~(C) One representative of the West Virginia Nurses~~  
12 ~~Association;~~

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

14        ~~(E) The Office Director of the Office of Health Facility~~  
15 ~~License and Certification within the Department of Health and Human~~  
16 ~~Resources;~~

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

19        (d) The advisory committee shall meet at least four times  
20 annually, ~~and~~ upon the call of the chairman, or at the request of  
21 the authorizing agency. A simple majority of the members shall  
22 constitute a quorum.

23        ~~(e) On or before December 31, 2013, the advisory committee~~  
24 ~~shall prepare a report to the Legislative Oversight Commission on~~

1 ~~Health and Human Resources Accountability.~~ The report shall make  
2 ~~recommendations on the need for further legislation, policies or~~  
3 ~~procedures regarding health maintenance tasks.~~

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

NOTE: The purpose of this bill is to update the  
administration of medication and performance of health maintenance  
tasks by unlicensed personnel.

Strike-throughs indicate language that would be stricken from  
the present law, and underscoring indicates new language that would  
be added.