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2 **ENROLLED**

3 COMMITTEE SUBSTITUTE

4 FOR

5 **Senate Bill No. 295**

6 (SENATORS MINARD, SNYDER, PREZIOSO, UNGER, BOLEY AND K. FACEMYER, *original*  
7 *sponsors*)

8 \_\_\_\_\_  
9 [Passed March 18, 2011; in effect from passage.]  
10 \_\_\_\_\_

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12  
13 AN ACT to amend and reenact article 5, chapter 64 of the Code of  
14 West Virginia, 1931, as amended, all relating generally to the  
15 promulgation of administrative rules by the Department of  
16 Health and Human Resources; legislative mandate or  
17 authorization for the promulgation of certain legislative  
18 rules by various executive or administrative agencies of the  
19 state; authorizing certain of the agencies to promulgate  
20 certain legislative rules in the form that the rules were  
21 filed in the State Register; authorizing certain of the  
22 agencies to promulgate certain legislative rules with various

1 modifications presented to and recommended by the Legislative  
2 Rule-Making Review Committee; authorizing certain of the  
3 agencies to promulgate certain legislative rules with various  
4 modifications presented to and recommended by the Legislative  
5 Rule-Making Review Committee and as amended by the  
6 Legislature; authorizing the Department of Health and Human  
7 Resources to promulgate a legislative rule relating to public  
8 water systems; authorizing the Department of Health and Human  
9 Resources to promulgate a legislative rule relating to  
10 specialized multipatient medical transport; authorizing the  
11 Department of Health and Human Resources to promulgate a  
12 legislative rule relating to food manufacturing facilities;  
13 authorizing the Department of Health and Human Resources to  
14 promulgate a legislative rule relating to fire department  
15 rapid response services licensure; authorizing the Department  
16 of Health and Human Resources to promulgate a legislative rule  
17 relating to emergency medical services; authorizing the  
18 Department of Health and Human Resources to promulgate a  
19 legislative rule relating to cancer registry; authorizing the  
20 Department of Health and Human Resources to promulgate a  
21 legislative rule relating to maternal risk screening;  
22 authorizing the Department of Health and Human Resources to

1 promulgate a legislative rule relating to safety and treatment  
2 programs; authorizing the Department of Health and Human  
3 Resources to promulgate a legislative rule relating to  
4 requirements for licensure of nonprofit corporations for  
5 conservator service; and authorizing the Health Care Authority  
6 to promulgate a legislative rule relating to certificates of  
7 need.

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

9 That article 5, chapter 64 of the Code of West Virginia, 1931,  
10 as amended, be amended and reenacted to read as follows:

11 **ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN**  
12 **RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

13 **§64-5-1. Department of Health and Human Resources.**

14 (a) The legislative rule filed in the state register on the  
15 twenty-ninth day of July, two thousand ten, authorized under the  
16 authority of section four, article one, chapter sixteen, of this  
17 code, relating to the Department of Health and Human Resources  
18 (public water systems, 64 CSR 3), is authorized.

19 (b) The legislative rule filed in the state register on the  
20 thirtieth day of July, two thousand ten, authorized under the  
21 authority of section six, article four-c, chapter sixteen, of this  
22 code, relating to the Department of Health and Human Resources

1 (specialized multipatient medical transport, 64 CSR 29), is  
2 authorized.

3 (c) The legislative rule filed in the state register on the  
4 twenty-ninth day of July, two thousand ten, authorized under the  
5 authority of section four, article one, chapter sixteen, of this  
6 code, modified by the Department of Health and Human Resources to  
7 meet the objections of the Legislative Rule-Making Review Committee  
8 and refiled in the state register on the third day of January, two  
9 thousand eleven, relating to the Department of Health and Human  
10 Resources (food manufacturing facilities, 64 CSR 43), is  
11 authorized.

12 (d) The legislative rule filed in the state register on the  
13 thirtieth day of July, two thousand ten, authorized under the  
14 authority of section six, article four-c, chapter sixteen, of this  
15 code, relating to the Department of Health and Human Resources  
16 (fire department rapid response services licensure, 64 CSR 44), is  
17 authorized.

18 (e) The legislative rule filed in the state register on the  
19 thirtieth day of July, two thousand ten, authorized under the  
20 authority of section six, article four-c, chapter sixteen, of this  
21 code, modified by the Department of Health and Human Resources to  
22 meet the objections of the Legislative Rule-Making Review Committee

1 and refiled in the state register on the twenty-fourth day of  
2 January, two thousand eleven, relating to the Department of Health  
3 and Human Resources (emergency medical services, 64 CSR 48), is  
4 authorized with the following amendments:

5 On page four, subsection 2.12., by striking out the word  
6 "commissioner" and inserting in lieu thereof the word  
7 "Commissioner";

8 On page seven, subsection 2.46., by striking out all of  
9 subsection 2.46.;

10 On page eight, subsection 3.1.d., by striking out the word  
11 "Commissions" and inserting in lieu thereof the word "commission";

12 On page eight, subdivision 3.2.b., by striking out all of  
13 subdivision 3.2.b. and inserting in lieu thereof a new subdivision  
14 3.2.b. to read as follows:

15 "3.2.b. EMS agencies shall collect, maintain and report  
16 accurate patient data for all EMS incidents. Agencies shall  
17 complete a patient care report (PCR) for all EMS incidents. PCRs  
18 shall be complete and submitted to the West Virginia Prehospital  
19 Information System (PreMIS) following the conclusion of providing  
20 EMS services to a patient, in accordance with policies and  
21 guidelines established by OEMS.";

22 On page nine, subdivision 3.2.c., by striking out the words "a

1 minimum written patient handoff report," and inserting in lieu  
2 thereof the words "at a minimum a patient handoff report";

3 On page fourteen, subdivision 4.23.a., by striking out all of  
4 subdivision 4.23.a. and inserting in lieu thereof a new subdivision  
5 4.23.a. to read as follows:

6 "4.23.a. The EMS agency has a rapid response program which  
7 routinely places trained and equipped personnel on the scene of  
8 potential life-threatening emergencies prior to the arrival of an  
9 ambulance in accordance with policies and guidelines established by  
10 OEMS. Five (5) points; or";

11 On page fifteen, subdivision 4.27.d., by striking out "of . .  
12 .";

13 On page eighteen, paragraph 4.36.b.2., after the word "action"  
14 by inserting the word "to";

15 On page nineteen, subdivision 4.37.h., by striking out the  
16 words "event of" and inserting in lieu thereof the words "the  
17 event";

18 On page nineteen, subdivision 4.38.a., by striking out the  
19 word "state" and inserting in lieu thereof the word "State";

20 On page twenty, subdivision 5.1.a., by striking out the words  
21 "Ground ambulances shall meet applicable US Government Services  
22 Agency KKK-A-1822" and inserting in lieu thereof the words "Unless

1 specified differently herein, ground ambulances shall meet US  
2 Government Services Agency KKK-A-1822 or subsequent federally  
3 approved”;

4 On page twenty, subdivision 5.1.c., by striking the word  
5 “Unites” and inserting in lieu thereof the word “United”;

6 On page twenty-one, subdivison 5.1.i., by striking out the  
7 word “be”;

8 On page twenty-one, subdivision 5.1.j., by striking out the  
9 words “medication kit and its supplies” and inserting in lieu  
10 thereof the words “medications in accordance with policies and  
11 guidelines established by OEMS”;

12 On page twenty-two, paragraph 5.1.k.5., by striking out the  
13 words “accordance with applicable US Government Services Agency  
14 KKK-A-1822 specifications at the time of vehicle manufacture”;

15 On page twenty-three, subdivision 5.3.b., by striking out the  
16 words “requirements are” and inserting in lieu thereof the word  
17 “is”;

18 On page twenty-three, subdivision 5.3.b., after the words  
19 “practice and” by inserting the words “appropriate staff”;

20 On page twenty-three, subsection 5.4., by striking out the  
21 words “be a Federal Aviation Administration (FAA) Part 135 air  
22 carrier certificate holder” and inserting in lieu thereof the words

1 "operate under Federal Aviation Administration (FAA) Part 135  
2 rules";

3 On page twenty-six, paragraph 5.5.b.7., by striking out the  
4 words "requirements are" and inserting the word "is";

5 On page twenty-six, subsection 5.5.b.7., after the words  
6 "practice and" by inserting the words "appropriate staff";

7 On page twenty-seven, subdivision 6.1.a., by striking out the  
8 word "aprimary" and inserting in lieu thereof the word "primary";

9 On page thirty-three, subdivision 6.9., by striking out the  
10 word "establish" and inserting in lieu thereof the word  
11 "established";

12 On page thirty-five, subdivision 7.2.e., by striking out the  
13 word "Other" and inserting in lieu thereof the word "other";

14 On page forty-five, paragraph 8.4.a.1., by striking out  
15 "STEMS" and inserting in lieu thereof "OEMS";

16 On page forty-five, paragraph 8.4.a.2., by striking out  
17 "STEMS" and inserting in lieu thereof "OEMS";

18 On page forty-six, subparagraph 8.4.c.1.A., by striking out  
19 "STEMS" and inserting in lieu thereof "OEMS";

20 On page forty-six, subparagraph 8.4.c.2.E., by striking out  
21 "STEMS" and inserting in lieu thereof "OEMS";

22 On page forty-eight, paragraph 8.5.b.1., by striking out



1 "STEMS" and inserting in lieu thereof "OEMS";

2 On page fifty, subparagraph 9.1.a.3.A., by striking out  
3 "STEMS" and inserting in lieu thereof "OEMS";

4 On page fifty-one, subparagraph 9.1.b.1.B., by striking out  
5 "STEMS" and inserting in lieu thereof "OEMS";

6 On page fifty-two, subparagraph 9.1.c.2.J., by striking out  
7 the words "Assist STEMS in ensuring" and inserting in lieu thereof  
8 the word "Ensure";

9 On page fifty-two, subparagraph 9.1.c.2.N., by striking out  
10 "STEMS" and inserting in lieu thereof "OEMS";

11 On page fifty-two, paragraph 9.1.c.3., by striking out  
12 "STEMS" and inserting in lieu thereof "OEMS";

13 On page fifty-three, subdivision 9.2.a., by striking out  
14 "STEMS" and inserting in lieu thereof "OEMS";

15 On page fifty-four, subparagraph 9.2.a.1.A., striking out both  
16 references to "STEMS" and inserting in lieu thereof "OEMS";

17 On page fifty-four, subparagraph 9.2.a.1.C., by striking out  
18 "STEMS" and inserting in lieu thereof "OEMS";

19 On page fifty-four, subparagraph 9.2.a.1.D., by striking out  
20 "STEMS" and inserting in lieu thereof "OEMS";

21 On page fifty-four, subparagraph 9.2.a.3.E., by striking out  
22 "STEMS" and inserting in lieu thereof "OEMS";

1           On page fifty-four, subparagraph 9.2.a.3.F., by striking out  
2 both references to "STEMS" and inserting in lieu thereof "OEMS";

3           On page fifty-five, paragraph 9.2.a.4, by striking out  
4 "STEMS" and inserting in lieu thereof "OEMS";

5           On page fifty-five, subdivision 10.3.d, by striking out  
6 "STEMS" and inserting in lieu thereof "OEMS";

7           And,

8           On page fifty-six, subsection 10.6, by striking out "STEMS"  
9 and inserting in lieu thereof "OEMS".

10           (f) The legislative rule filed in the state register on the  
11 twenty-ninth day of July, two thousand ten, authorized under the  
12 authority of section four, article one, chapter sixteen, of this  
13 code, relating to the Department of Health and Human Resources  
14 (cancer registry, 64 CSR 68), is authorized.

15           (g) The legislative rule filed in the state register on the  
16 twenty-ninth day of July, two thousand ten, authorized under the  
17 authority of section four, article four-e, chapter sixteen, of this  
18 code, modified by the Department of Health and Human Resources to  
19 meet the objections of the Legislative Rule-Making Review Committee  
20 and refiled in the state register on the third day of January, two  
21 thousand eleven, relating to the Department of Health and Human  
22 Resources (maternal risk screening, 64 CSR 97), is authorized with

1 the following amendments:

2 On page two, subsection 5.3., after the words "Family Health"  
3 by inserting the words "by FAX to (304)957-0176";

4 And,

5 On page two, subsection 5.3., by deleting the words  
6 "BPH/OM/CFH Maternal Risk Screening 350 Capitol Street, Room 427  
7 Charleston, WV 25301".

8 (h) The legislative rule filed in the state register on the  
9 thirtieth day of July, two thousand ten, authorized under the  
10 authority of section three, article five-a, chapter seventeen-c, of  
11 this code, modified by the Department of Health and Human Resources  
12 to meet the objections of the Legislative Rule-Making Review  
13 Committee and refiled in the state register on the third day of  
14 December, two thousand ten, relating to the Department of Health  
15 and Human Resources (safety and treatment program, 64 CSR 98), is  
16 authorized with the following amendments:

17 On page one, subsection 1.2., by striking out "17C-SA-3" and  
18 inserting in lieu thereof "17C-5A-3";

19 On page one, after subsection 3.4., by inserting a new  
20 subsection 3.5. to read as follows:

21 "3.5. DUI-Any act which would constitute a violation of §17C-  
22 5-2." and renumbering the remaining subsections;

1           On page one, subsection 3.7., by striking out "17C-SA-3" and  
2 inserting in lieu thereof "17C-5A-3";

3           On page two, subsection 4.2., striking out the words "shall  
4 first approve any program curriculum used in the program." and  
5 inserting in lieu thereof the words "is also responsible for the  
6 development of program standards for individuals involved in the  
7 service delivery, for approval of program curriculum and for  
8 monitoring of compliance by providers with the standards.";

9           On page three, subsection 6.1., by striking out the words "in  
10 the field of substance abuse" and inserting in lieu thereof the  
11 words "who meet requirements as established in the Program  
12 Standards published by the Department";

13           On page three, subsection 6.5., following the word  
14 "refinement." by adding the following: "The Program Coordinator  
15 shall, at a minimum, be a Clinical Certified Addictions  
16 Counselor.";

17           On page four, subsection 8.1., after the words "Program  
18 Enrollment" by inserting the words "and Level I Component";

19           On page four, subsection 8.1., by striking out the words  
20 "Secretary fee for enrollment in the Program is established by the  
21 Secretary." and inserting in lieu thereof the words "initial fee  
22 for enrollment in the Program shall be Four Hundred Dollars

1 (\$400.00).;

2 On page four, subdivision 8.3.a., by striking out the words  
3 "at any level and participation in Safety and Treatment programming  
4 which is not covered by private or public third-party sponsorship,  
5 and which is not eligible for a Community Behavioral Health  
6 Center's charity care funds" and inserting in lieu thereof the  
7 words "in the Level 1, Prevention and Education Component as set  
8 forth in 5.3 of this rule.";

9 On page four, subsection 8.4., by striking out all of  
10 subsection 8.4. and inserting in lieu thereof a new subsection 8.4.  
11 to read as follows:

12 "8.4. The Department of Health and Human Resources Safety and  
13 Treatment Fund-Upon enrollment in the Program, the Participant  
14 shall pay to the provider the sum of Four Hundred Dollars  
15 (\$400.00), except for those Participants which are determined under  
16 8.3 to be indigent. The provider shall remit to the Department the  
17 sum of Two Hundred Twenty-Five Dollars (\$225.00) and the provider  
18 shall retain One Hundred Seventy-Five Dollars (\$175.00). The  
19 Department shall deposit One Hundred Twenty-Five Dollars (\$125.00)  
20 of this sum in the Department of Health and Human Resources Safety  
21 and Treatment Fund, to be used to reimburse providers for their  
22 portion of the enrollment fee for persons qualifying for indigent

1 status.”;

2 And,

3 On page four, subsection 8.5., by striking out all of  
4 subsection 8.5.

5 (i) The legislative rule filed in the state register on the  
6 thirtieth day of July, two thousand ten, authorized under the  
7 authority of section eight, article one, chapter forty-four-a, of  
8 this code, modified by the Department of Health and Human Resources  
9 to meet the objections of the Legislative Rule-Making Review  
10 Committee and refiled in the state register on the third day of  
11 December, two thousand ten, relating to the Department of Health  
12 and Human Resources (requirements for licensure of nonprofit  
13 corporations for conservator service, 64 CSR 99), is authorized  
14 with the following amendments:

15 On page one, subsection 3.6., after the word “directors” by  
16 inserting the words “of the Corporation”;

17 On page two, subsection 3.7., after the word “directors” by  
18 inserting the words “of the Corporation”;

19 On page two, subsection 3.12., after the word “of” by  
20 inserting the words “The Department of”;

21 On page four, subdivision 4.2.5., after the word “if” by  
22 inserting the words “he or”;

1           On page five, subdivision 4.7.3., by striking out the words  
2 "approved, modified or rejected" and inserting in lieu thereof the  
3 words "approve, modify or reject";

4           On page six, subdivision 4.8.2, by striking out all of  
5 subdivision 4.8.2.. and inserting in lieu thereof a new subsection  
6 4.8.2., to read as follows:

7           "4.8.2. Reports of the Secretary of any inspection or  
8 investigation shall, when appropriate, specify the nature of any  
9 deficiency in compliance with this rule or law and specifically  
10 indicate the rule or law violated.";

11           And,

12           On page seven, subsection 5.3., after the words "under this  
13 rule," by striking out the word "the" and inserting in lieu thereof  
14 the word "and".

15           **§64-5-2. Health Care Authority.**

16           The legislative rule filed in the state register on the  
17 twenty-eighth day of July, two thousand ten, authorized under the  
18 authority of section eight-c, article two-d, chapter sixteen, of  
19 this code, modified by the Health Care Authority to meet the  
20 objections of the Legislative Rule-Making Review Committee and  
21 refiled in the state register on the eighth day of December, two  
22 thousand ten, relating to the Health Care Authority to promulgate

1 a legislative rule relating to (certificates of need, 65 CSR 7), is  
2 authorized with the following amendments:

3 On page three, subdivisions 2.14.e. and 2.14.f., by striking  
4 out all of subdivisions 2.14.e. and 2.14.f. and inserting in lieu  
5 thereof a new subdivision 2.14.e to read as follows:

6 "2.14.e. Notwithstanding anything in this subsection 2.14 to  
7 the contrary, any practice granted a determination of  
8 nonreviewability as a private office practice by the board on or  
9 before July 1, 2010, is and shall remain a private office practice  
10 under the Act; provided there has been no material change in the  
11 facts and circumstances provided in the original request for  
12 determination of reviewability."