

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 64**

4 (By Senator Jenkins)

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6 [Originating in the Committee on Health and Human Resources;
7 reported February 24, 2011.]

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11 A BILL to amend and reenact §16-50-2, §16-50-3 and §16-50-4 of the
12 Code of West Virginia, 1931, as amended, all relating to
13 permitting unlicensed personnel to administer or assist with
14 administration of medications in certain circumstances;
15 defining terms; and exemptions from licensure.

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

17 That §16-50-2, §16-50-3 and §16-50-4 of the Code of West
18 Virginia, 1931, as amended, be amended and reenacted, all to read
19 as follows:

20 **ARTICLE 50. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL.**

21 **§16-50-2. Definitions.**

22 As used in this article, unless a different meaning appears
23 from the context, the following definitions apply:

24 (a) "Administration of medication" means:

25 (1) Assisting a person in the ingestion, application or

1 inhalation of medications, including prescription drugs, or in the
2 use of universal precautions or rectal or vaginal insertion of
3 medication, according to the legibly written or printed directions
4 of the attending physician or authorized practitioner, or as
5 written on the prescription label; and

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

13 (b) "Authorizing agency" means the department's office of
14 Health Facility Licensure and Certification.

15 (c) "Department" means the Department of Health and Human
16 Resources.

17 (d) "Facility" means an ICF/ID, a personal care home,
18 residential board and care home, behavioral health group home,
19 private residence in which health care services are provided under
20 the supervision of a registered nurse or an adult family care home
21 that is licensed by or approved by the department.

22 (e) "Facility staff member" means an individual employed by a
23 facility but does not include a health care professional acting
24 within the scope of a professional license or certificate.

1 (f) "Health care professional" means a medical doctor or doctor
2 of osteopathy, a podiatrist, registered nurse, practical nurse,
3 registered nurse practitioner, physician's assistant, dentist,
4 optometrist or respiratory care professional licensed under chapter
5 thirty of this code.

6 (g) "ICF/ID" means an intermediate care facility for
7 individuals with an intellectual disability which is certified by
8 the department.

9 (h) "Location of medication administration" means a facility or
10 location where the resident requires administration of medication
11 or assistance in taking medications.

12 ~~(h)~~ (i) "Medication" means a drug, as defined in section one
13 hundred one, article one, chapter sixty-a of this code, which has
14 been prescribed by a duly authorized health care professional to be
15 ingested through the mouth, applied to the outer skin, eye or ear,
16 or applied through nose drops, vaginal or rectal suppositories.

17 ~~(i)~~ (j) "Registered professional nurse" means a person who holds
18 a valid license pursuant to article seven, chapter thirty of this
19 code.

20 ~~(j)~~ (k) "Resident" means a resident of a facility.

21 ~~(k)~~ (l) "Secretary" means the Secretary of the Department of
22 Health and Human Resources or his or her designee.

23 ~~(l)~~ (m) "Self-administration of medication" means the act of a
24 resident, who is independently capable of reading and understanding

1 the labels of drugs ordered by a physician, in opening and accessing
2 prepackaged drug containers, accurately identifying and taking the
3 correct dosage of the drugs as ordered by the physician, at the
4 correct time and under the correct circumstances. Provided, that
5 if the resident is physically unable to place a dose of medication
6 in his/her own mouth without spilling or dropping it, an unlicensed
7 person may place the dose in another container and place that
8 container to the mouth of the individual.

9 ~~(m)~~ (n) "Supervision of self-administration of medication" means
10 a personal service which includes reminding residents to take
11 medications, opening medication containers for residents, reading
12 the medication label to residents, observing residents while they
13 take medication, checking the self administered dosage against the
14 label on the container and reassuring residents that they have
15 obtained and are taking the dosage as prescribed.

16 **§16-50-3. Administration of medications in facilities.**

17 (a) The secretary is authorized to establish and implement a
18 program for the administration of medications ~~in facilities in~~
19 locations of medication administration where the resident requires
20 administration of or assistance in taking medications. The program
21 shall be developed and conducted in cooperation with the appropriate
22 agencies, advisory bodies and boards.

23 (b) Administration of medication pursuant to this article shall
24 be performed only by:

25 (1) Registered professional nurses;

1 (2) Other licensed health care professionals; or

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

5 (c) Subsequent to assessing the health status of an individual
6 resident, a registered professional nurse, in collaboration with the
7 resident's attending physician and the facility staff member, may
8 recommend that the facility authorize a facility staff member to
9 administer medication if the staff member:

10 (1) Has been trained pursuant to the requirements of this
11 article;

12 (2) Is considered by the registered professional nurse to be
13 competent;

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

16 (4) Is monitored or supervised by the registered professional
17 nurse.

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

22 (e) Supervision of self-administration of medication by
23 facility staff members who are not licensed health care
24 professionals may be permitted in certain circumstances, when the

1 substantial purpose of the setting is other than the provision of
2 health care.

3 **§16-50-4. Exemption from licensure; statutory construction.**

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

11 (b) All licensed health care professionals as defined in this
12 article remain subject to the provisions of their respective
13 licensing laws.

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

18 (d) Any individual who is employed to provide community-based
19 services at the direction of the individual receiving services, or
20 their legally responsible representative, may administer medication
21 if he or she meets the requirements and provisions of this article.

NOTE: The purpose of this bill is to permit unlicensed personnel to administer medications in certain circumstances. The bill also defines terms and provides exemptions from licensure.

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