

**Senate Bill No. 64**

(By Senator Jenkins)

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[Introduced January 12, 2011; referred to the Committee on Health and Human Resources; and then to the Committee on the Judiciary.]

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

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

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

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

**§16-50-2. Definitions.**

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

(a) "Administration of medication" means:

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

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

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

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

18 (d) "Facility" means an ICF/MR, a personal care home,  
19 residential board and care home, behavioral health group home,  
20 private residence in which health care services are provided under  
21 the supervision of a registered nurse or an adult family care home  
22 that is licensed by or approved by the department. Nursing  
23 delegation protocols are not intended to regulate the settings in

1 which delegation may occur, but are intended to ensure that nursing  
2 services have a consistent standard of practice to rely, and to  
3 safeguard the authority of the nurse to make independent  
4 professional decisions regarding the delegation of the task.

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

8 (f) "Health care professional" means a medical doctor or doctor  
9 of osteopathy, a podiatrist, registered nurse, practical nurse,  
10 registered nurse practitioner, physician's assistant, dentist,  
11 optometrist or respiratory care professional licensed under chapter  
12 thirty of this code.

13 (g) "ICF/MR" means an intermediate care facility for the  
14 mentally retarded which is certified by the department.

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

20 (i) "Registered professional nurse" means a person who holds  
21 a valid license pursuant to article seven, chapter thirty of this  
22 code.

23 (j) "Resident" means a resident of a facility.

1 (k) "Secretary" means the Secretary of the Department of Health  
2 and Human Resources or his or her designee.

3 (l) "Self-administration of medication" means the act of a  
4 resident, who is independently capable of reading and understanding  
5 the labels of drugs ordered by a physician, in opening and accessing  
6 prepackaged drug containers, accurately identifying and taking the  
7 correct dosage of the drugs as ordered by the physician, at the  
8 correct time and under the correct circumstances. If the resident  
9 is physically unable to place a dose of medication in his/her own  
10 mouth without spilling or dropping it, an unlicensed person may  
11 place the dose in another container and place that container to the  
12 mouth of the individual.

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

20 **§16-50-3. Administration of medications in facilities.**

21 (a) The secretary is authorized to establish and implement a  
22 program for the administration of medications in facilities or other  
23 setting where services are received. The program shall be developed

1 and conducted in cooperation with the appropriate agencies, advisory  
2 bodies and boards.

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

5 (1) Registered professional nurses;

6 (2) Other licensed health care professionals; or

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

10 (c) Subsequent to assessing the health status of an individual  
11 resident, a registered professional nurse, in collaboration with the  
12 resident's attending physician and the facility staff member, may  
13 recommend that the facility authorize a facility staff member to  
14 administer medication if the staff member:

15 (1) Has been trained pursuant to the requirements of this  
16 article;

17 (2) Is considered by the registered professional nurse to be  
18 competent;

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

21 (4) Is monitored or supervised by the registered professional  
22 nurse.

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

5 (e) Supervision of self-administration of medication by  
6 facility staff members who are not licensed health care  
7 professionals may be permitted in certain circumstances, when the  
8 substantial purpose of the setting is other than the provision of  
9 health care.

10 **§16-50-4. Exemption from licensure; statutory construction.**

11 (a) Any individual who is not otherwise authorized by law to  
12 administer medication may administer medication in a facility or  
13 other setting where services are received if he or she meets the  
14 requirements and provisions of this article. Any person who  
15 administers medication pursuant to the provisions of this article  
16 shall be exempt from the licensing requirements of chapter thirty  
17 of this code.

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

21 (c) Notwithstanding any other provision of law to the contrary,  
22 ~~the provisions of~~ this article shall not be construed to violate or

1 be in conflict with any of the provisions of articles seven or  
2 seven-a, chapter thirty of this code.

3       (d) Any individual who is employed to provide community-based  
4 services at the direction of the individual receiving services, or  
5 their legally responsible representative, may administer medication  
6 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.