

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 109**

5 (SENATORS JENKINS AND FOSTER, *original sponsors*)

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7 [Passed March 10, 2012; in effect from passage.]  
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11 AN ACT 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 providing 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:

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. However, for purposes of this article, "administration"  
10 does not include judgment, evaluation, assessments, injections of  
11 medication, monitoring of medication or self-administration of  
12 medications, including prescription drugs and self-injection of  
13 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/ID, assisted living, behavioral  
19 health group home, private residence in which health care services  
20 are provided under the supervision of a registered nurse or an  
21 adult family care home that is licensed by or approved by the  
22 department.

23           (e) "Facility staff member" means an individual employed by a  
24 facility but does not include a health care professional acting

1 within the scope of a professional license or certificate.

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

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

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

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

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

21 (k) "Resident" means a resident of a facility.

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

24 (m) "Self-administration of medication" means the act of a

1 resident, who is independently capable of reading and understanding  
2 the labels of drugs ordered by a physician, in opening and  
3 accessing prepackaged drug containers, accurately identifying and  
4 taking the correct dosage of the drugs as ordered by the physician,  
5 at the correct time and under the correct circumstances.

6 (n) "Self-administration of medication with assistance" means  
7 assisting residents who are otherwise able to self administer their  
8 own medications except their physical disabilities prevent them  
9 from completing one or more steps in the process.

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

17 **§16-50-3. Administration of medications in facilities.**

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

24 (b) Administration of medication pursuant to this article

1 shall be performed only by:

2 (1) Registered professional nurses;

3 (2) Other licensed health care professionals; or

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

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

12 (1) Has been trained pursuant to the requirements of this  
13 article;

14 (2) Is considered by the registered professional nurse to be  
15 competent;

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

18 (4) Is monitored or supervised by the registered professional  
19 nurse.

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

24 (e) Supervision of self-administration of medication by

1 facility staff members who are not licensed health care  
2 professionals may be permitted in certain circumstances, when the  
3 substantial purpose of the setting is other than the provision of  
4 health care.

5 **§16-50-4. Exemption from licensure; statutory construction.**

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

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

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

19 (d) Any parent or guardian may administer medication to his or  
20 her adult or minor child regardless of whether or not the parent or  
21 guardian receives compensation for caring for said child.