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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 245

(By Senator Minard)

[Originating in the Committee on the Judiciary;
reported February 10, 2012.]

A BILL to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Health and Human Resources; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative

1 Rule-Making Review Committee; authorizing certain of the
2 agencies to promulgate certain legislative rules with various
3 modifications presented to and recommended by the Legislative
4 Rule-Making Review Committee and as amended by the
5 Legislature; authorizing the Department of Health and Human
6 Resources to promulgate a legislative rule relating to
7 credentialing verification organizations; authorizing the
8 Department of Health and Human Resources to promulgate a
9 legislative rule relating to a safety and treatment program;
10 authorizing the Secretary of the Department of Health and
11 Human Resources, the Insurance Commissioner and the Chair of
12 the West Virginia Health Care Authority to promulgate a
13 legislative rule relating to an all-payer claims database --
14 data submission requirements; authorizing the Secretary of the
15 Department of Health and Human Resources, the Insurance
16 Commissioner and the Chair of the West Virginia Health Care
17 Authority to promulgate a legislative rule relating to the
18 all-payer claims database program's privacy and security;
19 authorizing the Department of Health and Human Resources to
20 promulgate a legislative rule relating to public water
21 systems; authorizing the Department of Health and Human
22 Resources to promulgate a legislative rule relating to public
23 water systems operators; authorizing the Department of Health
24 and Human Resources to promulgate a legislative rule relating
25 to wastewater systems and operations; authorizing the

1 Department of Health and Human Resources to promulgate a
2 legislative rule relating to vital statistics; authorizing the
3 Department of Health and Human Resources to promulgate a
4 legislative rule relating to manufactured home communities;
5 authorizing the Department of Health and Human Resources to
6 promulgate a legislative rule relating to AIDS-related medical
7 testing and confidentiality; authorizing the Department of
8 Health and Human Resources to promulgate a legislative rule
9 relating to public water systems design standards; authorizing
10 the Division of Human Services to promulgate a legislative
11 rule relating to family child care facility licensing
12 requirements; authorizing the Division of Human Services to
13 promulgate a legislative rule relating to family child care
14 home registration requirements; authorizing the Division of
15 Human Services to promulgate a legislative rule relating to a
16 child care quality rating and improvement system; authorizing
17 the Commission for the Deaf and Hard of Hearing to promulgate
18 a legislative rule relating to fees for qualified
19 interpreters; authorizing the Commission for the Deaf and Hard
20 of Hearing to promulgate a legislative rule relating to the
21 establishment of required qualifications and ethical standards
22 for interpreters and transliterators; and authorizing the
23 Board of Directors of the West Virginia Health Insurance Plan
24 to promulgate a legislative rule relating to a premium
25 subsidy.

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

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

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

6 **§64-5-1. Department of Health and Human Resources.**

7 (a) The legislative rule filed in the State Register on July
8 28, 2011, authorized under the authority of section three, article
9 two, chapter thirty-three of this code, modified by the Department
10 of Health and Human Resources to meet the objections of the
11 Legislative Rule-Making Review Committee and refiled in the State
12 Register on December 9, 2011, relating to the Department of Health
13 and Human Resources (credentialing verification organizations, 64
14 CSR 89B), is authorized.

15 (b) The legislative rule filed in the State Register on July
16 29, 2011, authorized under the authority of section three, article
17 five-a, chapter seventeen-c of this code, modified by the
18 Department of Health and Human Resources to meet the objections of
19 the Legislative Rule-Making Review Committee and refiled in the
20 State Register on December 14, 2011, relating to the Department of
21 Health and Human Resources (safety and treatment program, 64 CSR
22 98), is authorized.

23 (c) The legislative rule filed in the State Register on July
24 28, 2011, authorized under the authority of section three, article
25 two, chapter thirty-three of this code, modified by the Secretary

1 of the Department of Health and Human Resources, the Insurance
2 Commissioner and the Chair of the West Virginia Health Care
3 Authority to meet the objections of the Legislative Rule-Making
4 Review Committee and refiled in the State Register on October 21,
5 2011, relating to the Secretary of the Department of Health and
6 Human Resources, the Insurance Commissioner and the Chair of the
7 West Virginia Health Care Authority (all-payer claims database --
8 data submission requirements, 114A CSR 1), is authorized with the
9 following amendments:

10 On page four, subsection 3.2., by striking out "OIC" and
11 inserting in lieu thereof the words "Offices of the Insurance
12 Commissioner";

13 On page four, subdivision 3.2.a., by striking out "OIC" and
14 inserting in lieu thereof the words "Offices of the Insurance
15 Commissioner";

16 And,

17 On page seven, by striking out all of subdivision 7.1.e. and
18 inserting in lieu thereof a new subdivision 7.1.e., to read as
19 follows:

20 7.1.e. The Director of the Public Employees Insurance Agency
21 or his or her designee, the Commissioner of the Bureau for Medical
22 Services or his or her designee and the Director of the Children's
23 Health Insurance Program or his or her designee.

24 (d) The legislative rule filed in the State Register on July
25 28, 2011, authorized under the authority of section three, article

1 two, chapter thirty-three of this code, relating to the Secretary
2 of the Department of Health and Human Resources, the Insurance
3 Commissioner and the Chair of the West Virginia Health Care
4 Authority (all-payer claims database program's privacy and
5 security, 114A CSR 2), is authorized.

6 **§64-5-2. Bureau for Public Health.**

7 (a) The legislative rule filed in the State Register on July
8 29, 2011, authorized under the authority of section four, article
9 one, chapter sixteen of this code, modified by the Department of
10 Health and Human Resources to meet the objections of the
11 Legislative Rule-Making Review Committee and refiled in the State
12 Register on December 1, 2011, relating to the Department of Health
13 and Human Resources (public water systems, 64 CSR 3), is
14 authorized.

15 (b) The legislative rule filed in the State Register on July
16 29, 2011, authorized under the authority of section four, article
17 one, chapter sixteen of this code, modified by the Department of
18 Health and Human Resources to meet the objections of the
19 Legislative Rule-Making Review Committee and refiled in the State
20 Register on December 30, 2011, relating to the Department of Health
21 and Human Resources (public water systems operators, 64 CSR 4), is
22 authorized with the following amendments:

23 On page three, subsection 3.23., after the words "Water
24 Distribution" by inserting the word "System";

25 And,

1 On page six, subdivision 5.5.c., by striking out the word
2 "subsection" and inserting in lieu thereof the word "subdivision".

3 (c) The legislative rule filed in the State Register on July
4 29, 2011, authorized under the authority of section four, article
5 one, chapter sixteen of this code, modified by the Department of
6 Health and Human Resources to meet the objections of the
7 Legislative Rule-Making Review Committee and refiled in the State
8 Register on December 30, 2011, relating to the Department of Health
9 and Human Resources (wastewater systems and operations, 64 CSR 5),
10 is authorized with the following amendments:

11 On page three, subsection 3.26., by striking out the words
12 "West Virginia Department of Environmental Protection (WVDEP)" and
13 inserting in lieu thereof "WV DEP";

14 On page four, subdivision 4.1.e., by striking out the word
15 "Extended" and inserting in lieu thereof the words "This class
16 includes extended";

17 On page five, by striking out "5.4.a.2." and inserting in lieu
18 thereof "5.4.a.1.A.";

19 On page five, by striking out "5.4.a.3." and inserting in lieu
20 thereof "5.4.a.1.B.";

21 On page seven, subsection 6.2., after the words "based on" by
22 inserting the words "his or her";

23 On page nine, subdivision 7.7.a., by striking out the word
24 "requirement" and inserting in lieu thereof the word
25 "requirements";

1 On page ten, subsection 10.1., by striking out the word
2 "applications" and inserting in lieu thereof the word
3 "application";

4 On page ten, subsection 10.4., by striking out the word
5 "Applicant" and inserting in lieu thereof the words "An applicant";

6 On page eleven, subdivision 12.1.d., after the word "one" by
7 inserting "(1)";

8 On page twelve, subdivision 12.1.g., after the word "three" by
9 inserting "(3)";

10 And,

11 On page twelve, subdivision 12.1.h., after the words "with
12 this rule," by inserting the word "an".

13 (d) The legislative rule filed in the State Register on July
14 29, 2011, authorized under the authority of section three, article
15 five, chapter sixteen of this code, modified by the Department of
16 Health and Human Resources to meet the objections of the
17 Legislative Rule-Making Review Committee and refiled in the State
18 Register on December 1, 2011, relating to the Department of Health
19 and Human Resources (vital statistics, 64 CSR 32), is authorized.

20 (e) The legislative rule filed in the State Register on July
21 29, 2011, authorized under the authority of section four, article
22 one, chapter sixteen of this code, modified by the Department of
23 Health and Human Resources to meet the objections of the
24 Legislative Rule-Making Review Committee and refiled in the State
25 Register on December 1, 2011, relating to the Department of Health

1 and Human Resources (manufactured home communities, 64 CSR 40), is
2 authorized with the following amendments:

3 On page four, by striking out all of subdivision 5.1.5. and
4 inserting in lieu thereof a new subdivision 5.1.5., to read as
5 follows:

6 5.1.5. The Commissioner shall deny a permit if the information
7 on the application form, plans or specifications is incomplete,
8 inaccurate, false or misleading, or indicates that the application
9 provisions of this rule cannot be met. A permit to construct shall
10 be issued or denied within forty-five (45) days of receipt of the
11 completed application. Reasons for denial shall be in writing.;

12 And,

13 On page four, by striking out all of paragraph 5.1.5.a.

14 (f) The legislative rule filed in the State Register on July
15 29, 2011, authorized under the authority of section four, article
16 one, chapter sixteen of this code, modified by the Department of
17 Health and Human Resources to meet the objections of the
18 Legislative Rule-Making Review Committee and refiled in the State
19 Register on December 1, 2011, relating to the Department of Health
20 and Human Resources (AIDS-related medical testing and
21 confidentiality, 64 CSR 64), is authorized with the following
22 amendments:

23 On page four, by striking out all of paragraph 4.1.d.4. and
24 inserting in lieu thereof a new paragraph 4.1.d.4., to read as
25 follows:

1 4.1.d.4. It is recommended that health care providers test
2 women as early as possible during each pregnancy. Women who decline
3 the test early in prenatal care may be encouraged to be tested at
4 subsequent visits.;

5 On page five, by striking out all of subdivision 4.2.c. and
6 inserting in lieu thereof a new subdivision 4.2.c. to read as
7 follows:

8 4.2.c. If the pregnant woman's HIV status is unknown at the
9 time she presents for delivery, an HIV test shall be offered and if
10 she refuses the test, the infant may be tested and the mother shall
11 be informed of the testing and the results.;

12 On page six, by striking out all of paragraph 4.2.c.1.;

13 On page six, by striking out all of paragraph 4.2.c.2.;

14 On page six, by striking out "4.2.c.3." and inserting in lieu
15 thereof "4.2.c.1.";

16 On page six, by striking out "4.2.c.4." and inserting in lieu
17 thereof "4.2.c.2.";

18 On page six, by striking out all of paragraph 4.3.b.1. and
19 inserting in lieu thereof a new paragraph 4.3.b.1, to read as
20 follows:

21 4.3.b.1. Upon his or her initial appearance for an offense set
22 forth in subdivision two, subsection f, section two, article three-
23 c, chapter sixteen of this code, the courts shall order the
24 defendant to undergo an oral test for HIV within forty-eight hours
25 of the defendant's appearance.;

1 And,

2 On page seven, by striking out all of subsection 5.3.

3 (g) The legislative rule filed in the State Register on July
4 29, 2011, authorized under the authority of section four, article
5 one, chapter sixteen of this code, relating to the Department of
6 Health and Human Resources (public water systems design standards,
7 64 CSR 77), is authorized with the following amendments:

8 On page seven, after subdivision 3.3.d., by inserting a new
9 subsection, designated subsection 3.4., to read as follows:

10 3.4. Specifications - The applicant or the applicant's
11 engineer shall supply complete, detailed technical specifications
12 for the proposed project, including: pipe, valves and other
13 building materials; a program for keeping existing public water
14 system facilities in operation during construction of additional
15 facilities so as to minimize interruption of service; laboratory
16 facilities and equipment; the number and design of chemical feeding
17 equipment; and materials or proprietary equipment for sanitary or
18 other facilities including any necessary backflow or backsiphonage
19 protection.;

20 On page eleven, by striking out "\$65-77-5." and inserting in
21 lieu thereof "\$64-77-5.";

22 On page thirty-five, paragraph 6.3.h.2., after the words "at
23 a minimum," by inserting the word "of";

24 On page forty, paragraph 6.4.g.1., by striking out the word
25 "led" and inserting in lieu thereof the word "lead";

1 On page forty-five, paragraph 6.4.i.2., by striking out the
2 word "devise" and inserting in lieu thereof the word "device";

3 On page sixty-seven, paragraph 7.5.d.2., by striking out the
4 word "shallbe" and inserting in lieu thereof the words "shall be";

5 And,

6 On page sixty-seven, paragraph 7.5.e.3., by striking out the
7 word "serve" and inserting in lieu thereof the word "severe".

8 **§64-5-3. Division of Human Services.**

9 (a) The legislative rule filed in the State Register on July
10 29, 2011, authorized under the authority of section four, article
11 two-b, chapter forty-nine of this code, modified by the Division of
12 Human Services to meet the objections of the Legislative Rule-
13 Making Review Committee and refiled in the State Register on
14 November 23, 2011, relating to the Division of Human Services
15 (family child care facility licensing requirements, 78 CSR 18), is
16 authorized.

17 (b) The legislative rule filed in the State Register on July
18 29, 2011, authorized under the authority of section four, article
19 two-b, chapter forty-nine of this code, modified by the Division of
20 Human Services to meet the objections of the Legislative Rule-
21 Making Review Committee and refiled in the State Register on
22 November 23, 2011, relating to the Division of Human Services
23 (family child care home registration requirements, 78 CSR 19), is
24 authorized.

25 (c) The legislative rule filed in the State Register on July

1 29, 2011, authorized under the authority of section two, article
2 two-e, chapter forty-nine of this code, modified by the Division of
3 Human Services to meet the objections of the Legislative Rule-
4 Making Review Committee and refiled in the State Register on
5 November 23, 2011, relating to the Division of Human Services
6 (child care quality rating and improvement system, 78 CSR 22), is
7 authorized.

8 **§64-5-4. Commission for the Deaf and Hard of Hearing.**

9 (a) The legislative rule filed in the State Register on July
10 29, 2011, authorized under the authority of section nine, article
11 fourteen-a, chapter five of this code, relating to the Commission
12 for the Deaf and Hard of Hearing (fees for qualified interpreters,
13 192 CSR 1), is authorized.

14 (b) The legislative rule filed in the State Register on July
15 29, 2011, authorized under the authority of section five, article
16 fourteen-a, chapter five of this code, modified by the Commission
17 for the Deaf and Hard of Hearing to meet the objections of the
18 Legislative Rule-Making Review Committee and refiled in the State
19 Register on December 1, 2011, relating to the Commission for the
20 Deaf and Hard of Hearing (establishment of required qualifications
21 and ethical standards for interpreters and transliterators, 192 CSR
22 3), is authorized.

23 **§64-5-5. Directors of the West Virginia Health Insurance Plan.**

24 The legislative rule filed in the State Register on July 28,
25 2011, authorized under the authority of section seven-b, article

1 forty-eight, chapter thirty-three of this code, relating to the
2 Board of Directors of the West Virginia Health Insurance Plan
3 (premium subsidy, 113 CSR 1), is authorized.