

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 265**

4 (By Senator Snyder)

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported March 22, 2013.]

8 _____
9
10 A BILL to amend and reenact article 5, chapter 64 of the Code of
11 West Virginia, 1931, as amended, relating generally to the
12 promulgation of administrative rules by the Department of
13 Health and Human Resources; legislative mandate or
14 authorization for the promulgation of certain legislative
15 rules by various executive or administrative agencies of the
16 state; authorizing certain of the agencies to promulgate
17 certain legislative rules with various modifications presented
18 to and recommended by the Legislative Rule-Making Review
19 Committee; authorizing certain of the agencies to promulgate
20 certain legislative rules with various modifications presented
21 to and recommended by the Legislative Rule-Making Review
22 Committee and as amended by the Legislature; authorizing
23 certain of the agencies to promulgate certain legislative
24 rules in the form that the rules were filed in the State

1 Register; authorizing certain of the agencies to promulgate
2 certain legislative rules in the form that the rules were
3 filed in the State Register and as amended by the Legislature;
4 authorizing the Department of Health and Human Resources to
5 promulgate a legislative rule relating to reportable diseases,
6 events and conditions; authorizing the Department of Health
7 and Human Resources to promulgate a legislative rule relating
8 to general sanitation; authorizing the Department of Health
9 and Human Resources to promulgate a legislative rule relating
10 to Grade A pasturized milk; authorizing the Department of
11 Health and Human Resources to promulgate a legislative rule
12 relating to fees for services; authorizing the Department of
13 Health and Human Resources to promulgate a legislative rule
14 relating to the regulation of opioid treatment programs;
15 authorizing the Department of Health and Human Resources to
16 promulgate a legislative rule relating to pulse oximetry
17 newborn testing; authorizing the Department of Health and
18 Human Resources to promulgate a legislative rule relating to
19 the regulation of opioid treatment programs; authorizing the
20 Department of Health and Human Resources to promulgate a
21 legislative rule relating to chronic pain management clinic
22 licensure; authorizing the Department of Health and Human
23 Resources to promulgate a legislative rule relating to minimum
24 licensing requirements for residential child care and

1 treatment facilities for children and transitioning adults in
2 West Virginia; authorizing the Health Care Authority to
3 promulgate a legislative rule relating to the West Virginia
4 Health Information Network; and authorizing the Bureau of
5 Senior Services to promulgate a legislative rule relating to
6 the in-home care worker registry.

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

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

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

12 **§64-5-1. Bureau for Public Health.**

13 (a) The legislative rule filed in the State Register on August
14 31, 2012, authorized under the authority of section four, article
15 one, 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 January 10, 2013, relating to the Department of Health
19 and Human Resources (reportable diseases, events and conditions, 64
20 CSR 7), is authorized with the following amendments:

21 On page twenty-four, subsection 9.1., by striking out the
22 words "the reporting" and inserting in lieu thereof the words "the
23 access";

24 On page twenty-five, subsection 9.2., by striking out the

1 words "be reported" and inserting in lieu thereof the words "be
2 made available";

3 On page twenty-five, subsection 9.2., by striking out the
4 words "the reporting" and inserting in lieu thereof the words "the
5 access";

6 On page twenty-five, subsection 9.2., after the word
7 "activities" by inserting the following: "consistent with the
8 mission of the bureau. The responsibility for communication with
9 healthcare facilities regarding data collection, data quality and
10 completeness rests with the Office of Epidemiology and Prevention
11 Services within the Bureau for Public Health";

12 And,

13 On page twenty-five, by striking out all of subsection 9.3.
14 and renumbering the remaining subsection.

15 (b) The legislative rule filed in the State Register on June
16 29, 2012, 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 November 15, 2012, relating to the Department of Health
21 and Human Resources (general sanitation, 64 CSR 18), is authorized.

22 (c) The legislative rule filed in the State Register on August
23 27, 2012, authorized under the authority of section five, article
24 seven, chapter sixteen, of this code, relating to the Department of

1 Health and Human Resources (Grade A pasturized milk, 64 CSR 34), is
2 authorized.

3 (d) The legislative rule filed in the State Register on August
4 31, 2012, authorized under the authority of section one, article
5 eleven, chapter sixteen, of this code, modified by the Department
6 of Health and Human Resources to meet the objections of the
7 Legislative Rule-Making Review committee and refiled in the State
8 Register on January 10, 2013, relating to the Department of Health
9 and Human Resources (fees for services, 64 CSR 51), is authorized.

10 (e) The legislative rule filed in the State Register on
11 October 11, 2012, authorized under the authority of section four,
12 article one, chapter sixteen, of this code, relating to the
13 Department of Health and Human Resources (regulation of opioid
14 treatment programs, 64 CSR 90), is authorized.

15 (f) The legislative rule filed in the State Register on August
16 27, 2012, 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 January 10, 2013, relating to the Department of Health
21 and Human Resources (pulse oximetry newborn testing, 64 CSR 100),
22 is authorized with the following amendment:

23 On page two, subdivision 5.3, by striking out the words "the
24 closest" and inserting in lieu thereof the word "an".

1 **§64-5-2. Department of Health and Human Resources.**

2 (a) The legislative rule filed in the State Register on August
3 31, 2012, authorized under the authority of section one, article
4 eleven, chapter sixteen, of this code, modified by the Department
5 of Health and Human Resources to meet the objections of the
6 Legislative Rule-Making Review Committee and refiled in the State
7 Register on February 5, 2013, relating to the Department of Health
8 and Human Resources (regulation of opioid treatment programs, 69
9 CSR 7), is authorized.

10 (b) The legislative rule filed in the State Register on
11 January 7, 2013, authorized under the authority of section nine,
12 article five-h, chapter sixteen, of this code, relating to the
13 Department of Health and Human Resources (chronic pain management
14 clinic licensure, 69 CSR 8), is authorized with the following
15 amendments:

16 On page four, subsection 3.1., by striking out all of
17 subdivisions 3.1.a., 3.1.b., 3.1.c. and 3.1.d. and inserting in
18 lieu thereof the following:

19 3.1.a. The primary component of the medical practice of the
20 clinic, facility or office is treatment of chronic pain for non-
21 malignant conditions;

22 3.1.b. More than fifty percent of patients in any one month of
23 the prescribers are provided treatment for chronic pain for
24 nonmalignant conditions and are prescribed, administered or

1 dispensed tramadol, carisoprodol, opioid drug products or other
2 Schedule II or Schedule III controlled substances for such
3 diagnosis;

4 3.1.c. The calculation of more than fifty percent of patients
5 will be calculated by dividing the number of unique patient
6 encounters at the clinic, facility or office during any one month
7 for a diagnosis of chronic nonmalignant pain and pursuant to such
8 diagnosis of chronic nonmalignant pain were prescribed,
9 administered or dispensed tramadol, carisoprodol, opioid drugs or
10 other Scheduled II or Scheduled III controlled substances by the
11 total number of all patient encounters at the clinic, facility or
12 office during any month; and

13 3.1.d. Patients receiving tramadol, carisoprodol, opioid drug
14 products or other Schedule II or Schedule III controlled substances
15 for treatment of an injury or illness that lasts or is expected to
16 last thirty days or less shall not be included in the calculation
17 of more than fifty percent of all patients.;

18 And renumbering the remaining subdivisions;

19 And,

20 On page thirteen, subparagraph 6.5.b.2.B., after the words
21 "Osteopathic Specialist;" by inserting the words "hold Competency
22 Certification in Controlled Substances Management;".

23 (c) The legislative rule filed in the State Register on August
24 30, 2012, authorized under the authority of section four, article

1 two-b, chapter forty-nine, of this code, modified by the Department
2 of Health and Human Resources to meet the objections of the
3 Legislative Rule-Making Review Committee and refiled in the State
4 Register on January 15, 2013, relating to the Department of Health
5 and Human Resources (minimum licensing requirements for residential
6 child care and treatment facilities for children and transitioning
7 adults in West Virginia, 78 CSR 3), is authorized.

8 **§64-5-3. Health Care Authority.**

9 The legislative rule filed in the State Register on May 14,
10 2012, authorized under the authority of section seven, article
11 twenty-nine-g, chapter sixteen, of this code, modified by the
12 Health Care Authority to meet the objections of the Legislative
13 Rule-Making Review Committee and refiled in the State Register on
14 July 19, 2012, relating to the Health Care Authority to promulgate
15 a legislative rule relating to (West Virginia Health Information
16 Network, 65 CSR 28), is authorized.

17 **§64-5-4. Bureau of Senior Services.**

18 The legislative rule filed in the State Register on August 31,
19 2012, authorized under the authority of section fifteen, article
20 five-p, chapter sixteen, of this code, modified by the Bureau of
21 Senior Services to meet the objections of the Legislative Rule-
22 making Review Committee and refiled in the State Register on
23 January 17, 2013, relating to the Bureau of Senior Services (in-
24 home care worker registry, 76 CSR 2), is authorized.