

**H. B. 2731**

(By Delegates Fleischauer, Marshall, Barill,  
Manypenny, Campbell, Pasdon, Fragale,  
Iaquinta, Staggers, Miley and Perry)

[Introduced February 26, 2013; referred to the  
Committee on Health and Human Resources then the Judiciary.]

A BILL to amend and reenact §16-50-1, §16-50-2, §16-50-3, §16-50-4,  
§16-50-5, §16-50-6, §16-50-7, §16-50-8 and §16-50-10 of the  
Code of West Virginia, 1931, as amended, all relating to  
regulating the performance of health maintenance tasks by  
unlicensed personnel in certain personal care facilities;  
providing exceptions; identifying who may perform health  
maintenance tasks; requiring record keeping; requiring the  
administrative monitoring system to have input from registered  
professional nurses; requiring liability insurance; changing  
the short title; defining terms; and authorizing rule-making.

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

That §16-50-1, §16-50-2, §16-50-3, §16-50-4, §16-50-5,  
§16-50-6, §16-50-7, §16-50-8 and §16-50-10 of the Code of West  
Virginia, 1931, as amended, be amended and reenacted, all to read  
as follows:

**ARTICLE 50.            ~~MEDICATION~~     ADMINISTRATION     OF     MEDICATION     AND**

1                   **PERFORMANCE OF HEALTH MAINTENANCE TASKS BY**  
2                   **UNLICENSED PERSONNEL.**

3 **§16-50-1. Short title.**

4           This article may be cited as the ~~"medication Administration by~~  
5 ~~unlicensed Personnel act"~~ "Ken Ervin Community Living Act."

6 **§16-50-2. Definitions.**

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

9           (a) "Administration of medication" means:

10           (1) Assisting a person in the ingestion, application or  
11 inhalation of medications, including prescription drugs, or in the  
12 use of universal precautions or rectal or vaginal insertion of  
13 medication, according to the legibly written or printed directions  
14 of the attending physician or authorized practitioner, or as  
15 written on the prescription label; and

16           (2) Making a written record of such assistance with regard to  
17 each medication administered, including the time, route and amount  
18 taken. However, for purposes of this article, "administration"  
19 does not include judgment, evaluation, assessments, injections of  
20 medication, monitoring of medication or self-administration of  
21 medications, including prescription drugs and self-injection of  
22 medication by the resident.

23           (b) "Authorizing agency" means the department's office of

1 Health Facility Licensure and Certification.

2 (c) "Department" means the Department of Health and Human  
3 Resources.

4 (d) "Facility" means an ICF/ID, assisted living, behavioral  
5 health group home, private residence in which health care services  
6 and health maintenance tasks are provided under the supervision of  
7 a registered nurse or an adult family care home that is licensed by  
8 or approved by the department.

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

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

17 (g) "Health maintenance tasks" means performing the following  
18 tasks according to the legibly written or printed directions of the  
19 attending physician or authorized practitioner, or as written on  
20 the prescription label, and making a written record of that  
21 assistance with regard to each medication administered, including  
22 the time, route and amount taken:

23 (1) Administering glucometer tests;

24 (2) Administering gastrostomy tube feedings;

1       (3) Administering enemas;

2       (4) Performing ostomy care (including skin care and changing  
3 appliances);

4       (5) Administering nebulizer treatment;

5       (6) Administering oxygen therapies; and

6       (7) Performing ventilator and tracheostomy tube respiratory  
7 care and suctioning.

8 However, for purposes of this article, "performing health  
9 maintenance tasks" 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       ~~(g)~~ (h) "ICF/ID" means an intermediate care facility for  
14 individuals with an intellectual disability which is certified by  
15 the department.

16       ~~(h)~~ (i) "Location of medication administration or location  
17 where health maintenance tasks are performed" means a facility or  
18 location where the resident requires administration of medication  
19 or assistance in taking medications or the performance of health  
20 maintenance tasks.

21       ~~(i)~~ (j) "Medication" means a drug, as defined in section one  
22 hundred one, article one, chapter sixty-a of this code, which has  
23 been prescribed by a duly authorized health care professional to be  
24 ingested through the mouth, applied to the outer skin, eye or ear,

1 or applied through nose drops, vaginal or rectal ~~suppositories~~  
2 medications.

3 ~~(j)~~ (k) "Registered professional nurse" means a person who  
4 holds a valid license pursuant to article seven, chapter thirty of  
5 this code.

6 ~~(k)~~ (l) "Resident" means a resident of a facility, who for  
7 purposes of this article is in a stable condition.

8 ~~(l)~~ (m) "Secretary" means the Secretary of the Department of  
9 Health and Human Resources or his or her designee.

10 ~~(m)~~ (n) "Self-administration of medication" means the act of  
11 a resident, who is independently capable of reading and  
12 understanding the labels of drugs ordered by a physician, in  
13 opening and accessing prepackaged drug containers, accurately  
14 identifying and taking the correct dosage of the drugs as ordered  
15 by the physician, at the correct time and under the correct  
16 circumstances.

17 ~~(n)~~ (o) "Self-administration of medication with assistance"  
18 means assisting residents who are otherwise able to self administer  
19 their own medications except their physical disabilities prevent  
20 them from completing one or more steps in the process.

21 (p) "Stable" means the individual's medical condition is  
22 predictable and consistent as determined by the registered  
23 professional nurse.

24 ~~(o)~~ (q) "Supervision of self-administration of medication"

1 means a personal service which includes reminding residents to take  
2 medications, opening medication containers for residents, reading  
3 the medication label to residents, observing residents while they  
4 take medication, checking the self administered dosage against the  
5 label on the container and reassuring residents that they have  
6 obtained and are taking the dosage as prescribed.

7 **§16-50-3. Administration of medications; ~~in facilities~~ performance**  
8 **of health maintenance tasks; maintenance of liability**  
9 **insurance in facilities.**

10 (a) In order to safeguard the well-being and preserve the  
11 dignity of people who need assistance to live in their community,  
12 the secretary is authorized to establish and implement a program  
13 for the administration of medications and performance of health  
14 maintenance tasks in locations covered by this article in locations  
15 of medication administration where the resident requires  
16 administration of or assistance in taking medications or  
17 performance of health maintenance tasks. The program shall be  
18 developed and conducted in cooperation with the appropriate  
19 agencies, advisory bodies and boards.

20 (b) Administration of medication or performance of health  
21 maintenance tasks pursuant to this article shall be performed only  
22 by:

- 23 (1) Registered professional nurses;  
24 (2) Other licensed health care professionals; or

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

4 (c) Subsequent to assessing the health status of an individual  
5 resident, a registered professional nurse, in collaboration with  
6 the resident's attending physician and the facility staff member,  
7 may recommend that the facility authorize a facility staff member  
8 to administer medication or perform health maintenance tasks if the  
9 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) Any agency or facility providing services covered by this  
19 article shall maintain liability insurance for the registered  
20 professional nurse, other licensed health care provider and any  
21 facility staff member who has been trained and is employed to  
22 administer medication or perform health maintenance tasks pursuant  
23 to this article.

24 ~~(d)~~ (e) Nothing in this article may be construed to prohibit

1 any facility staff member from administering medications or  
2 performing health maintenance tasks or providing any other prudent  
3 emergency assistance to aid any person who is in acute physical  
4 distress or requires emergency assistance.

5 ~~(e)~~ (f) 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 or perform health maintenance tasks may  
13 administer medication or perform health maintenance tasks in  
14 locations covered by this article if he or she meets the  
15 requirements and provisions of this article. Any person who  
16 administers medication or perform health maintenance tasks pursuant  
17 to ~~the provisions of~~ this article shall be exempt from the  
18 licensing requirements of chapter thirty of this code.

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

22 (c) Notwithstanding any other provision of law to the  
23 contrary, this article shall not be construed to violate or be in  
24 conflict with ~~any of the provisions of~~ articles seven or seven-a,



1 chapter thirty of this code.

2 (d) Any parent or guardian may administer medication to, or  
3 perform health maintenance tasks for, his or her adult or minor  
4 child regardless of whether or not the parent or guardian receives  
5 compensation for caring for said child.

6 **§16-50-5. Instruction and training.**

7 (a) The Office of Health Facility Licensure and Certification  
8 shall establish a council of nurses to represent the facilities and  
9 registered professional nurses affected by ~~the provisions of this~~  
10 article. The council of nurses shall prepare a procedural manual  
11 and recommendations regarding a training course to the Secretary of  
12 the Department of Health and Human Resources. The council shall  
13 meet every two years to review the training curricula, competency  
14 evaluation procedures and rules implemented by the secretary, and  
15 shall make recommendations as deemed necessary.

16 (b) The department shall develop and approve training  
17 curricula and competency evaluation procedures for facility staff  
18 members who administer medication or perform health maintenance  
19 tasks pursuant to ~~the provisions of~~ this article. The department  
20 shall consider the recommendations of the council of nurses and  
21 shall consult with the West Virginia Board of Examiners for  
22 Registered Nurses in developing the training curricula and  
23 competency evaluation procedures.

24 (c) The program developed by the department shall require that

1 any person who applies to act as a facility staff member authorized  
2 to administer medications or perform health maintenance tasks  
3 pursuant to ~~the provisions of~~ this article shall:

4 (1) Hold a high school diploma or general education diploma;

5 (2) Be trained or certified in cardiopulmonary resuscitation  
6 and first aid;

7 (3) Participate in the initial training program developed by  
8 the department;

9 (4) Pass a competency evaluation developed by the department;

10 and

11 (5) Subsequent to initial training and evaluation, participate  
12 in a retraining program every two years.

13 (d) Any facility may offer the training and competency  
14 evaluation program developed by the department to its facility  
15 staff members. The training and competency programs shall be  
16 provided by the facility through a registered professional nurse.

17 (e) A registered nurse who is authorized to train facility  
18 staff members to administer medications or perform health  
19 maintenance tasks in facilities shall:

20 (1) Possess a current active West Virginia license in good  
21 standing to practice as a registered nurse;

22 (2) Have practiced as a registered professional nurse in a  
23 position or capacity requiring knowledge of medications and the  
24 performance of health maintenance tasks for the immediate two years

1 prior to being authorized to train facility staff members; and

2 (3) Be familiar with the nursing care needs of residents of  
3 facilities as described in this article.

4 **§16-50-6. Availability of records; eligibility requirements of**  
5 **facility staff.**

6 (a) Any facility which authorizes unlicensed staff members to  
7 administer medications or perform health maintenance tasks pursuant  
8 to ~~the provisions of~~ this article shall make available to the  
9 authorizing agency a list of the individual facility staff members  
10 authorized to administer medications.

11 (b) A facility may permit a facility staff member to  
12 administer medications or perform health maintenance tasks in a  
13 single specific agency only after compliance with all of the  
14 following:

15 (1) The staff member has successfully completed a training  
16 program and received a satisfactory competency evaluation as  
17 required by ~~the provisions of~~ this article;

18 (2) The facility determines there is no statement on the state  
19 administered nurse aide registry indicating that the staff member  
20 has been the subject of finding of abuse or neglect of a long-term  
21 care facility resident or convicted of the misappropriation of such  
22 a resident's property;

23 (3) The facility staff member has had a criminal background  
24 check or if applicable, a check of the State Police abuse registry,

1 establishing that the individual has been convicted of no crimes  
2 against persons or drug related crimes;

3 (4) The medication to be administered is received and  
4 maintained by the facility staff member in the original container  
5 in which it was dispensed by a pharmacist or the prescribing health  
6 care professional; and

7 (5) The facility staff member has complied with all other  
8 applicable requirements of this article, the rules adopted pursuant  
9 to this article and such other criteria, including minimum  
10 competency requirements, as are specified by the authorizing  
11 agency.

12 **§16-50-7. Oversight of medication administration and performance**  
13 **of health maintenance tasks by unlicensed personnel.**

14 (a) Each facility in which medication is administered or  
15 health maintenance tasks are performed by unlicensed personnel  
16 shall establish in policy an administrative monitoring system. The  
17 specific requirements of the administrative policy shall be  
18 established by the department, in consultation with registered  
19 professional nurses supervising delegated tasks, through rules  
20 proposed pursuant to section eleven of this article. These rules  
21 shall include specific instructions on whom to contact should any  
22 condition occur that might create a risk to the resident's health  
23 or safety, and training on how to handle these situations.

24 (b) Monitoring of facility staff members authorized pursuant

1 to this article shall be performed by a registered professional  
2 nurse employed or contracted by the facility.

3 **§16-50-8. Withdrawal of authorization.**

4 The registered professional nurse who monitors or supervises  
5 the facility staff members authorized to administer medication or  
6 perform health maintenance tasks pursuant to this article may  
7 withdraw authorization for a facility staff member if the nurse  
8 determines that the facility staff member is not performing  
9 medication administration or health maintenance tasks in accordance  
10 with the training and written instructions. The withdrawal of the  
11 authorization shall be documented and shall be relayed to the  
12 facility and the department in order to remove the facility staff  
13 member from the list of authorized individuals.

14 **§16-50-10. Limitations on medication administration or performance**  
15 **health maintenance tasks.**

16 The following limitations apply to the administration of  
17 medication or performance of health maintenance tasks by facility  
18 staff members:

19 (a) Injections or any parenteral medications may not be  
20 administered, except that prefilled insulin or insulin pens may be  
21 administered;

22 (b) Irrigations or debriding agents used in the treatment of  
23 a skin condition or minor abrasions may not be administered;

24 (c) No verbal medication orders may be accepted, no new

1 medication orders shall be transcribed and no drug dosages may be  
2 converted and calculated; and

3 (d) No medications ordered by the physician or a health care  
4 professional with legal prescriptive authority to be given "as  
5 needed" may be administered unless the order is written with  
6 specific parameters which preclude independent judgment.

NOTE: The purpose of this bill is to regulate the performance of health maintenance tasks by unlicensed personnel in certain personal care facilities. The bill changes the short title to the "Ken Ervin Community Living Act." The bill requires liability insurance in certain instances. The bill defines terms. The bill provides exceptions. The bill requires the administrative monitoring system to have input from registered professional nurses. The bill authorizes rule-making.

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