

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 4287**

5 (By Delegates Fleischauer, Marshall, Barill, Manypenny, Fragle,
6 Campbell, Pasdon Mr. Speaker (Mr. Miley), White, Pethtel and
7 Tomblin)

8 [Passed March 6, 2014; in effect from its passage.]
9

10 AN ACT to amend and reenact §16-50-2, §16-50-3, §16-50-5, §16-50-6,
11 §16-50-7, §16-50-8, §16-50-10 and §16-50-12, of the Code of
12 West Virginia, 1931, as amended, relating to the performance
13 of certain functions by approved medication assistive
14 personnel; defining terms; updating terminology; requiring the
15 authorizing agency to collaborate with the Board of
16 Respiratory Care; adding requirements to be completed by a
17 registered nurse to become a trainer; requiring the department
18 to maintain a list of unauthorized individuals; and changing
19 the membership of the advisory committee.

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

21 That §16-50-2, §16-50-3, §16-50-5, §16-50-6, §16-50-7, §16-50-
22 8, §16-50-10 and §16-50-12, of the Code of West Virginia, 1931, as
23 amended, be amended and reenacted to read as follows:

24 **ARTICLE 50. Approved medication assistive personnel.**

25 **§16-50-2. Definitions.**

1 As used in this article the following definitions apply:

2 (a) "Administration of medication" means:

3 (1) Assisting a person in the ingestion, application or
4 inhalation of medications, including prescription drugs, or in the
5 use of universal precautions or rectal or vaginal insertion of
6 medication, according to the legibly written or printed directions
7 of the attending physician or the health care professional in
8 accordance with subdivision sixty-one, section four, article five,
9 chapter thirty of this code, or as written on the prescription
10 label; and

11 (2) Making a written record of such assistance with regard to
12 each medication administered, including the time, route and amount
13 taken. However, for purposes of this article, "administration" does
14 not include judgment, evaluation, assessments, injections of
15 medication (except for prefilled insulin or insulin pens), or
16 monitoring of medication or self-administration of medications,
17 such as prescription drugs and self-injection of medication by the
18 resident.

19 (b) "Approved medication assistive personnel (AMAP)" means
20 unlicensed facility staff member, who meets eligibility
21 requirements, has successfully completed the required training and
22 competency testing, and is considered competent by the authorized
23 registered professional nurse to administer medications or perform
24 health maintenance tasks, or both, to residents of the facility in
25 accordance with this article.

26 (c) "Authorized practitioner" means a physician licensed under

1 the provisions of article three, chapter thirty of this code or
2 article fourteen, chapter thirty of this code.

3 (d) "Authorized registered professional nurse" means a person
4 who holds an unencumbered license pursuant article seven, chapter
5 thirty, and meets the requirements to train and supervise approved
6 medication assistive personnel pursuant to this article, and has
7 completed and passed the facility trainer/instructor course
8 developed by the authorizing agency.

9 (e) "Authorizing agency" means the Office of Health Facility
10 Licensure and Certification

11 (f) "Delegation" means transferring to a competent individual,
12 as determined by the authorized registered professional nurse, the
13 authority to perform a selected task in a selected situation.

14 (g) "Delegation decision model" means the process the
15 authorized registered professional nurse must follow to determine
16 whether or not to delegate a nursing task to an approved medication
17 assistive personnel. The delegation decision model is approved by
18 the West Virginia Board of Examiners for Registered Professional
19 Nurses.

20 (h) "Department" means the Department of Health and Human
21 Resources.

22 (i) "Facility" means an intermediate care facility for
23 individuals with an intellectual disability, assisted living,
24 behavioral health group home, private residence in which health
25 care services and health maintenance tasks are provided under the
26 supervision of a registered professional nurse as defined in

1 article seven, chapter thirty of this code.

2 (j) "Facility staff member" means an individual employed by a
3 facility but does not include a health care professional acting
4 within his or her scope of practice.

5 (k) "Family" means biological parents, adoptive parents,
6 foster parents, or other immediate family members living within the
7 same household.

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

13 (m) "Health maintenance tasks" means performing the following
14 tasks according to the legibly written or printed directions of a
15 health care professional or as written on the prescription label,
16 and making a written record of that assistance with regard to each
17 health maintenance task administered, including the time, route and
18 amount taken:

19 (1) Administering glucometer tests;

20 (2) Administering gastrostomy tube feedings;

21 (3) Administering enemas;

22 (4) Performing ostomy care which includes skin care and
23 changing appliances; and

24 (5) Performing tracheostomy and ventilator care for residents
25 in a private residence who are living with family and/or natural
26 supports.

1 "Health maintenance tasks" do not include judgment,
2 evaluation, assessments, injections of medication, except for
3 prefilled insulin or insulin pens, or monitoring of medication or
4 self-administration of medications, such as prescription drugs and
5 self-injection of medication by the resident.

6 (n) "Immediate family" means mother, stepmother, father,
7 stepfather, sister, stepsister, brother, stepbrother, spouse, child
8 grandparent and grandchildren.

9 (o) "Location of medication administration or location where
10 health maintenance tasks are performed" means a facility or
11 location where the resident requires administration of medication
12 or assistance in taking medications or the performance of health
13 maintenance tasks.

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

20 (q) "Natural supports" means family, friends, neighbors or
21 anyone who provides assistance and support to a resident but is not
22 reimbursed.

23 (r) "Registered professional nurse" means a person who holds
24 a valid license pursuant to article seven, chapter thirty of this
25 code.

26 (s) "Resident" means a resident of a facility who for purposes

1 of this article, is in a stable condition.

2 (t) "Secretary" means the Secretary of the department or his
3 or her designee.

4 (u) "Self-administration of medication" means the act of a
5 resident, who is independently capable of reading and understanding
6 the labels of drugs ordered by an authorized practitioner, in
7 opening and accessing prepackaged drug containers, accurately
8 identifying and taking the correct dosage of the drugs as ordered
9 by the health care professional, at the correct time and under the
10 correct circumstances.

11 (v) "Self-administration of medication with assistance" means
12 assisting residents who are otherwise able to self-administer their
13 own medications except their physical disabilities prevent them
14 from completing one or more steps in the process.

15 (w) "Stable" means the individual's health condition is
16 predictable and consistent as determined by the registered
17 professional nurse.

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

25 **§16-50-3. Administration of medications; performance of health**
26 **maintenance tasks; maintenance of liability insurance in**

1 **facilities.**

2 (a) The secretary shall continue a program for the
3 administration of medications and performance of health maintenance
4 tasks in locations covered by this article. The program shall be
5 developed and conducted in cooperation with the appropriate
6 agencies, advisory bodies and boards.

7 (b) Administration of medication or performance of health
8 maintenance tasks shall be performed only by:

9 (1) Licensed health care professionals; or

10 (2) Facility staff members who have been trained and retrained
11 every two years and who are subject to the supervision of and
12 approval by an authorized registered professional nurse.

13 (c) After assessing the health status of an individual
14 resident, a registered professional nurse, in collaboration with
15 the resident's health care professional and the facility staff
16 member, may recommend that the facility authorize a facility staff
17 member to administer medication or perform health maintenance tasks
18 if the staff member:

19 (1) Has been trained pursuant to the requirements of this
20 article;

21 (2) Is considered by the authorized registered professional
22 nurse to be competent;

23 (3) Consults with the authorized registered professional nurse
24 on a regular basis; and

25 (4) Is monitored or supervised by the authorized registered
26 professional nurse.

1 (d)

2 An agency or facility employing personnel for the purposes of
3 supervising the administration of medication or the performance of
4 health maintenance tasks shall maintain liability insurance for the
5 licensed health care provider, any facility staff member who has
6 been trained and is employed to administer medication or perform
7 health maintenance tasks and if applicable the health care
8 provider's collaborative supervising physician.

9 (e) Nothing in this article may be construed to prohibit any
10 facility staff member from administering medications or performing
11 health maintenance tasks, or providing any other prudent emergency
12 assistance to aid any person who is in acute physical distress or
13 requires emergency assistance.

14 (f) Supervision of self-administration of medication by
15 facility staff members who are not licensed health care
16 professionals may be permitted in certain circumstances, when the
17 substantial purpose of the setting is other than the provision of
18 health care.

19 **§16-50-5. Instruction and training.**

20 (a) The authorizing agency shall establish a council of nurses
21 to represent the facilities and registered professional nurses
22 affected by this article. The council shall prepare a procedural
23 manual and recommendations regarding a training course to the
24 secretary. The council shall meet every two years to review and
25 make recommendations to the training curricula, competency
26 evaluation procedures and rules implemented by the secretary.

1 (b) The department shall develop and approve training
2 curricula and competency evaluation procedures for facility staff
3 members who administer medication or perform health maintenance
4 tasks. The department shall consider the recommendations of the
5 council and shall consult with the West Virginia Board of Examiners
6 for Registered Nurses in developing the training curricula and
7 competency evaluation procedures.

8 (c) The authorizing agency shall coordinate and collaborate
9 with the Board of Respiratory Care to develop the training and
10 testing component for health maintenance tasks related to
11 respiratory care, including but not limited to inhaled medications,
12 tracheostomy care and ventilator care. This includes modifying and
13 updating the existing curriculum for an authorized registered
14 professional nurse and the approved medication assistive persons.

15 (1) The authorizing agency shall develop and approve training
16 curricula and competency evaluation. The authorizing agency shall
17 establish a council of nurses to assist with the development of the
18 training and evaluation process.

19 (2) The curriculum, training competency and testing components
20 related to respiratory care shall be approved by the Respiratory
21 Care Board per subsection (e), section fifteen, article thirty-
22 four, chapter thirty.

23 (d) The program developed by the department shall require that
24 any person who applies to act as a facility staff member authorized
25 to administer medications or perform health maintenance tasks
26 shall:

- 1 (1) Hold a high school diploma or general education diploma;
- 2 (2) Be certified in cardiopulmonary resuscitation and first
3 aid;
- 4 (3) Participate in the initial training program developed by
5 the department;
- 6 (4) Pass a competency evaluation developed by the department;
7 and
- 8 (5) Participate in a retraining program every two years.
- 9 (e) Any facility may offer the training and competency
10 evaluation program developed by the department to its facility
11 staff members. The training and competency programs shall be
12 provided by the facility through a registered professional nurse.
- 13 (f) A registered professional nurse who is authorized to train
14 facility staff members to administer medications or perform health
15 maintenance tasks in facilities shall:
- 16 (1) Possess a current active license as set forth in article
17 seven, chapter thirty in good standing to practice as a registered
18 nurse;
- 19 (2) Have practiced as a registered professional nurse in a
20 position or capacity requiring knowledge of medications and the
21 performance of health maintenance tasks for the immediate two years
22 prior to being authorized to train facility staff members;
- 23 (3) Be familiar with the nursing care needs of residents of
24 facilities as described in this article; and
- 25 (4) Have completed and passed the facility trainer/instructor
26 course developed by the authorizing agency.

1 (g) After successfully completing the initial training and
2 testing for the AMAP program, registered professional nurses and
3 AMAPs shall have competencies for health maintenance tasks
4 reassessed and documented annually by the employer of record to
5 ensure continued competence.

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

8 (a) Any facility which authorizes unlicensed staff members to
9 administer medications or perform health maintenance tasks shall
10 make available to the authorizing agency a list of the individual
11 facility staff members authorized to administer medications or
12 perform health maintenance tasks.

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

17 (1) The staff member has successfully completed a training
18 program and received a satisfactory competency evaluation as
19 required by this article;

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

25 (3) The facility staff member has had a criminal background
26 check or if applicable, a check of the State Police Abuse Registry,

1 establishing that the individual has not been convicted of 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 physician; and

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

11 **§16-50-7. Oversight of medication administration and performance**
12 **of health maintenance tasks by the approved medication**
13 **assistive personnel.**

14 (a) Any facility in which medication is administered or health
15 maintenance tasks performed by the approved medication assistive
16 personnel shall establish an administrative monitoring system in
17 administrative policy. The specific requirements of the
18 administrative policy shall be established by the department,
19 through legislative rules. These rules shall be developed in
20 consultation with the West Virginia Board of Examiners for
21 Registered Nurses, the West Virginia Nurses Association, the West
22 Virginia Statewide Independent Living Council, and the West
23 Virginia Board of Respiratory Care. These rules are required to
24 include, at a minimum:

25 (1) Instructions on protocols for contacting an appropriate

1 healthcare professional in situations where a condition arises
2 which may create a risk to the resident's health and safety;

3 (2) The type and frequency of monitoring and training
4 requirements for management of these occurrences; and

5 (3) Procedures to prevent drug diversion.

6 (b) Monitoring of facility staff members authorized pursuant
7 to this article shall be performed by a registered professional
8 nurse employed or contracted by the facility, who shall exercise
9 judgment, evaluate and assess the patient, inject medicine, except
10 prefilled insulin and insulin pens if this task is delegated to an
11 approved medication assistive person, and monitor medications,
12 self-administration of medications and self-injections by the
13 resident in accordance with his or her scope of practice.

14 **§16-50-8. Withdrawal of authorization.**

15 The registered professional nurse who monitors or supervises
16 the facility staff members authorized to administer medication or
17 perform health maintenance tasks may withdraw authorization for a
18 facility staff member if the nurse determines that the facility
19 staff member is not performing medication administration or health
20 maintenance tasks in accordance with the training and written
21 instructions. The withdrawal of the authorization shall be
22 documented and relayed to the facility and the department in order
23 to remove the facility staff member from the list of authorized
24 individuals. The department shall maintain a list of the names of
25 persons whose authorization to administer medication or perform
26 health maintenance tasks has been withdrawn, and the reasons for

1 withdrawal of authorization. The list may be accessed by
2 registered professional nurses or facilities.

3 **§16-50-10. Limitations on medication administration or performance**
4 **of health maintenance tasks.**

5 The following limitations apply to the administration of
6 medication or performance of health maintenance tasks by facility
7 staff members:

8 (a) Injections or any parenteral medications may not be
9 administered, except that prefilled insulin or insulin pens may be
10 administered;

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

13 (c) No verbal medication orders may be accepted, no new
14 medication orders shall be transcribed and no drug dosages may be
15 converted and calculated;

16 (d) No medications ordered by the health care professional to
17 be given "as needed" may be administered unless the order is
18 written with specific parameters which preclude independent
19 judgment; and,

20 (e) Health maintenance tasks for the performance of
21 tracheostomy care and ventilator care is not permitted in an
22 intermediate care facility for individuals with an intellectual
23 disability, assisted living, behavioral health group home, private
24 residence where the resident is not residing with family and/or
25 natural supports.

26 **§16-50-12. Advisory Committee.**

1 (a) There is continued an advisory committee to assist with
2 the development of polices and procedures regarding health
3 maintenance care in order to safeguard the well-being and to
4 preserve the dignity of persons who need assistance to live in
5 their communities and avoid institutionalization.

6 (b) (1) The advisory committee shall consist of eleven voting
7 members as follows:

8 (A) The Olmstead Coordinator within the department of Health
9 and Human Resources, Office of Inspector General;

10 (B) One physician with expertise in respiratory medicine to be
11 chosen by the West Virginia Board of Respiratory Care.

12 (C) A representative choosen by AARP West Virginia;

13 (D) A representative chosen by the West Virginia Statewide
14 Independent Living Council;

15 (E) A representative chosen by the West Virginia Developmental
16 Disabilities Council;

17 (F) A representative chosen by the West Virginia Board of
18 Respiratory Care;

19 (G) A representative chosen by the West Virginia Society for
20 Respiratory Care.

21 (H) One representative of the West Virginia Board of Examiners
22 for Registered Professional Nurses;

23 (I) One representative of the West Virginia Nurses
24 Association;

25 (J) One representative of the Fair Shake Network; and

26 (K) The Office Director of the Office of Health Facility

1 Licensure and Certification.

2 (c) A chairman shall be selected from the voting members of
3 the advisory committee.

4 (d) The advisory committee shall meet at least four times
5 annually, upon the call of the chairman, or at the request of the
6 authorizing agency. A simple majority of the members shall
7 constitute a quorum.

8 (e) All members of the committee shall be reimbursed
9 reasonable expenses pursuant to the rules promulgated by the
10 Department of Administration for the reimbursement of expenses of
11 state officials and employees and shall receive no other
12 compensation for their services.