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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2741

(By Delegate 5 Compton, Mahan, Hutchins, Thomas,
Pino, Louisos and Capito _____)



Passed _____ April 12, _____ 1997

In Effect _____ Ninety Days From _____ Passage

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H. B. 2741

(BY DELEGATES COMPTON, MAHAN,
HUTCHINS, THOMAS, PINO, LOUISOS AND CAPITO)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-n, relating to medication administration by unlicensed personnel; short title; definitions; administration of medications by staff members in certain residential facilities; exemption from licensure; authorizing creation of a council of nurses; instructions and training requirements; eligibility requirements for authorization; oversight administration; procedures for withdrawal of authorization; authorization for fee schedules; limitations on administration of medication and authority to promulgate emergency and legislative rules.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-n, to read as follows:

ARTICLE 5N. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL.

§16-5N-1. Short title.

- 1 This article may be cited as the "Medication Adminis-
- 2 tration by Unlicensed Personnel Act."

§16-5N-2. Definitions.

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

3 (a) “Administration of medication” means:

4 (1) Assisting a person in the ingestion, application or
5 inhalation of medications, including prescription drugs, or
6 in the use of universal precautions or rectal or vaginal
7 insertion of medication, according to the legibly written or
8 printed directions of the attending physician or authorized
9 practitioner, or as written on the prescription label; and

10 (2) Making a written record of such assistance with
11 regard to each medication administered, including the
12 time, route and amount taken: *Provided*, That for purpos-
13 es of this article, “administration” does not include
14 judgement, evaluation, assessments, injections of medica-
15 tion, monitoring of medication or self-administration of
16 medications, including prescription drugs and self-injec-
17 tion of medication by the resident.

18 (b) “Authorizing agency” means the department’s
19 office of health facility licensure and certification.

20 (c) “Department” means the department of health
21 and human resources.

22 (d) “Facility” means an ICF/MR, a personal care
23 home, residential board and care home, behavioral health
24 group home, private residence in which health care servic-
25 es are provided under the supervision of a registered nurse
26 or an adult family care home that is licensed by or ap-
27 proved by the department.

28 (e) “Facility staff member” means an individual
29 employed by a facility but does not include a health care
30 professional acting within the scope of a professional
31 license or certificate.

32 (f) “Health care professional” means a medical doc-
33 tor or doctor of osteopathy, a podiatrist, registered nurse,
34 practical nurse, registered nurse practitioner, physician’s
35 assistant, dentist, optometrist or respiratory care profes-
36 sional licensed under chapter thirty of this code.

37 (g) "ICF/MR" means an intermediate care facility for
38 the mentally retarded which is certified by the department.

39 (h) "Medication" means a drug, as defined in section
40 one hundred one, article one, chapter sixty-a of this code,
41 which has been prescribed by a duly authorized health
42 care professional to be ingested through the mouth, ap-
43 plied to the outer skin, eye or ear, or applied through nose
44 drops, vaginal or rectal suppositories.

45 (i) "Registered professional nurse" means a person
46 who holds a valid license pursuant to article seven, chapter
47 thirty of this code.

48 (j) "Resident" means a resident of a facility.

49 (k) "Secretary" means the secretary of the depart-
50 ment of health and human resources or his or her
51 designee.

52 (l) "Self-administration of medication" means the act
53 of a resident, who is independently capable of reading
54 and understanding the labels of drugs ordered by a physi-
55 cian, in opening and accessing pre-packaged drug con-
56 tainers, accurately identifying and taking the correct dos-
57 age of the drugs as ordered by the physician, at the correct
58 time and under the correct circumstances.

59 (m) "Supervision of self-administration of medica-
60 tion" means a personal service which includes reminding
61 residents to take medications, opening medication contain-
62 ers for residents, reading the medication label to residents,
63 observing residents while they take medication, checking
64 the self administered dosage against the label on the con-
65 tainer and reassuring residents that they have obtained and
66 are taking the dosage as prescribed.

§16-5N-3. Administration of medications in facilities.

1 (a) The secretary is authorized to establish and imple-
2 ment a program for the administration of medications in
3 facilities. The program shall be developed and conducted
4 in cooperation with the appropriate agencies, advisory
5 bodies and boards.

6 (b) Administration of medication pursuant to this
7 article shall be performed only by:

8 (1) Registered professional nurses;

9 (2) Other licensed health care professionals; or

10 (3) Facility staff members who have been trained and
11 retrained every two years and who are subject to the super-
12 vision of and approval by a registered professional nurse.

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

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

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

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

25 (4) Is monitored or supervised by the registered pro-
26 fessional nurse.

27 (d) Nothing in this article may be construed to pro-
28 hibit any facility staff member from administering medi-
29 cations or providing any other prudent emergency assis-
30 tance to aid any person who is in acute physical distress or
31 requires emergency assistance.

32 (e) Supervision of self-administration of medication
33 by facility staff members who are not licensed health care
34 professionals may be permitted in certain circumstances,
35 when the substantial purpose of the setting is other than
36 the provision of health care.

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

1 (a) Any individual who is not otherwise authorized
2 by law to administer medication may administer medica-
3 tion in a facility if he or she meets the requirements and

4 provisions of this article. Any person who administers
5 medication pursuant to the provisions of this article shall
6 be exempt from the licensing requirements of chapter
7 thirty of this code.

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

11 (c) Notwithstanding any other provision of law to the
12 contrary, the provisions of this article shall not be con-
13 strued to violate or be in conflict with any of the provi-
14 sions of articles seven or seven-a, chapter thirty of this
15 code.

§16-5N-5. Instruction and training.

1 (a) The office of health facility licensure and certifi-
2 cation shall establish a council of nurses to represent the
3 facilities and registered professional nurses affected by the
4 provisions of this article. The council of nurses shall pre-
5 pare a procedural manual and recommendations regard-
6 ing a training course to the secretary of the department of
7 health and human resources. The council shall meet every
8 two years to review the training curricula, competency
9 evaluation procedures and rules implemented by the sec-
10 retary, and shall make recommendations as deemed neces-
11 sary.

12 (b) The department shall develop and approve train-
13 ing curricula and competency evaluation procedures for
14 facility staff members who administer medication pursuant
15 to the provisions of this article. The department shall
16 consider the recommendations of the council of nurses
17 and shall consult with the West Virginia board of examin-
18 ers for registered nurses in developing the training curric-
19 ula and competency evaluation procedures.

20 (c) The program developed by the department shall
21 require that any person who applies to act as a facility staff
22 member authorized to administer medications pursuant to
23 the provisions of this article shall:

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

26 (2) Be trained or certified in cardiopulmonary resus-
27 citation and first aid;

28 (3) Participate in the initial training program devel-
29 oped by the department;

30 (4) Pass a competency evaluation developed by the
31 department; and

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

34 (d) Any facility may offer the training and compe-
35 tency evaluation program developed by the department to
36 its facility staff members. The training and competency
37 programs shall be provided by the facility through a regis-
38 tered professional nurse.

39 (e) A registered nurse who is authorized to train facili-
40 ty staff members to administer medications in facilities
41 shall:

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

44 (2) Have practiced as a registered professional nurse
45 in a position or capacity requiring knowledge of medica-
46 tions for the immediate two years prior to being autho-
47 rized to train facility staff members; and

48 (3) Be familiar with the nursing care needs of resi-
49 dents of facilities as described in this article.

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

1 (a) Any facility which authorizes unlicensed staff
2 members to administer medications pursuant to the provi-
3 sions of this article shall make available to the authorizing
4 agency a list of the individual facility staff members au-
5 thorized to administer medications.

6 (b) A facility may permit a facility staff member to
7 administer medications in a single specific agency only
8 after compliance with all of the following:

9 (1) The staff member has successfully completed a
10 training program and received a satisfactory competency
11 evaluation as required by the provisions of this article;

12 (2) The facility determines there is no statement on
13 the state administered nurse aide registry indicating that
14 the staff member has been the subject of finding of abuse
15 or neglect of a long-term care facility resident or convict-
16 ed of the misappropriation of such a resident's property;

17 (3) The facility staff member has had a criminal
18 background check or if applicable, a check of the state
19 police abuse registry, establishing that the individual has
20 been convicted of no crimes against persons or drug relat-
21 ed crimes;

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

26 (5) The facility staff member has complied with all
27 other applicable requirements of this article, the rules
28 adopted pursuant to this article and such other criteria,
29 including minimum competency requirements, as are
30 specified by the authorizing agency.

**§16-5N-7. Oversight of medication administration by unli-
censed personnel.**

1 (a) Each facility in which medication is adminis-
2 tered by unlicensed personnel shall establish in policy an
3 administrative monitoring system. The specific require-
4 ments of the administrative policy shall be established by
5 the department through rules proposed pursuant to section
6 eleven of this article.

7 (b) Monitoring of facility staff members authorized
8 pursuant to this article shall be performed by a registered
9 professional nurse employed or contracted by the facility.

§16-5N-8. Withdrawal of authorization.

1 The registered professional nurse who monitors or
2 supervises the facility staff members authorized to admin-
3 ister medication pursuant to this article may withdraw

4 authorization for a facility staff member if the nurse deter-
5 mines that the facility staff member is not performing
6 medication administration in accordance with the training
7 and written instructions. The withdrawal of the authoriza-
8 tion shall be documented and shall be relayed to the facili-
9 ty and the department in order to remove the facility staff
10 member from the list of authorized individuals.

§16-5N-9. Fees.

1 The department may set and collect fees necessary
2 for the implementation of the provisions of this article
3 pursuant to rules authorized by section eleven of this arti-
4 cle.

§16-5N-10. Limitations on medication administration.

1 The following limitations apply to the administration
2 of medication by facility staff members:

3 (a) Injections or any parenteral medications may not
4 be administered;

5 (b) Irrigations or debriding agents used in the treat-
6 ment of a skin condition or minor abrasions may not be
7 administered;

8 (c) No verbal medication orders may be accepted,
9 no new medication orders shall be transcribed and no
10 drug dosages may be converted and calculated; and

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

§16-5N-11. Rules.

1 The department shall promulgate emergency rules
2 pursuant to the provisions of section fifteen, article three,
3 chapter twenty-nine-a of this code as may be necessary to
4 implement the provisions of this article. Subsequently, the
5 department may propose rules for legislative approval in
6 accordance with the provisions of article three, chapter
7 twenty-nine-a of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Joseph H. Hoover
Chairman Senate Committee

Nick Fantasia
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Darrell E. Robles
Clerk of the Senate

Bugary M. Gray
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

R. K.
Speaker of the House of Delegates

The within *is approved* this the *5th*
day of *May*, 1997.

Lee D. Anderson
Governor

PRESENTED TO THE
GOVERNOR

Date 4/28/97

Time 2:16 pm