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**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 245**

(SENATOR MINARD, *original sponsor*)

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[Passed March 10, 2012; in effect from passage.]  
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AN ACT 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; and authorizing the Commission for the Deaf and  
20 Hard of Hearing to promulgate a legislative rule relating to  
21 the establishment of required qualifications and ethical  
22 standards for interpreters and transliterators.

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

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

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

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

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

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

(c) The legislative rule filed in the State Register on July 28, 2011, authorized under the authority of section eight, article four-a, chapter thirty-three of this code, modified by the Secretary of the Department of Health and Human Resources, the Insurance Commissioner and the Chair of the West Virginia Health Care Authority to meet the objections of the Legislative Rule-

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

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

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

And,

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

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

(d) The legislative rule filed in the State Register on July 28, 2011, authorized under the authority of section eight, article four-a, chapter thirty-three of this code, relating to the Secretary of the Department of Health and Human Resources, the Insurance Commissioner and the Chair of the West Virginia Health

Care Authority (all-payer claims database program's privacy and security, 114A CSR 2), is authorized.

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

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

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

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

And,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On page twelve, subdivision 12.1.h., line eight, following the words "under this rule shall", by striking out the word "take" and inserting in lieu thereof "complete";

On page twelve, subdivision 12.1.h., line ten, following the words "advanced certified operator", by inserting the words "without examination";

And,

On page fifteen, Table 64-5B, in the row beginning with the word "Advanced", under the column heading labeled "Education", following the words "Commissioner-approved training course" by striking out the words "& passing the Advanced exam".

(d) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section three, article five, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 1, 2011, relating to the Department of Health

and Human Resources (vital statistics, 64 CSR 32), is authorized.

(e) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 1, 2011, relating to the Department of Health and Human Resources (manufactured home communities, 64 CSR 40), is authorized with the following amendments:

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

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

And,

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

(f) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the

Legislative Rule-Making Review Committee and refiled in the State Register on December 1, 2011, relating to the Department of Health and Human Resources (AIDS-related medical testing and confidentiality, 64 CSR 64), is authorized with the following amendments:

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

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

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

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

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

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

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

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

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

"4.3.b.1. A court shall order a defendant charged with an offense set forth in subdivision two, subsection f, section two, article three-c, chapter sixteen of the code, to undergo an oral test for HIV test not later than 48 hours after the date on which the information or indictment is presented";

On page six, by striking out all of paragraph 4.3.b.3. and inserting in lieu thereof a new paragraph 4.3.b.3, to read as follows:

"4.3.b.3. Follow-up tests for HIV are authorized as may be medically appropriate, and the results of any follow-up tests shall be made available in accordance with paragraph 4.3.b.2, as soon as practicable.";

And,

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

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

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

"3.4. Specifications - The applicant or the applicant's

engineer shall supply complete, detailed technical specifications for the proposed project, including: pipe, valves and other building materials; a program for keeping existing public water system facilities in operation during construction of additional facilities so as to minimize interruption of service; laboratory facilities and equipment; the number and design of chemical feeding equipment; and materials or proprietary equipment for sanitary or other facilities including any necessary backflow or backsiphonage protection.”;

On page eleven, by striking out “§65-77-5.” and inserting in lieu thereof “§64-77-5.”;

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

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

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

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

And,

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

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

(a) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article

two-b, chapter forty-nine of this code, modified by the Division of Human Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 23, 2011, relating to the Division of Human Services (family child care facility licensing requirements, 78 CSR 18), is authorized.

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

(c) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section two, article two-e, chapter forty-nine of this code, modified by the Division of Human Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 23, 2011, relating to the Division of Human Services (child care quality rating and improvement system, 78 CSR 22), is authorized, with the following amendment:

On page one, subsection 1.4, line six, by striking out the words "July 1, 2012" and inserting in lieu thereof the words "This rule is effective upon the date specified in an emergency rule

promulgated by the Department of Health and Human Resources as being the date funding for implementation of the Child Care Quality Rating and Improvement System will become available pursuant to a duly enacted appropriation bill authorizing the expenditure of funds for that purpose.”;

And,

On page one, beginning on line thirteen, by striking out subsection 2.3 in its entirety and inserting in lieu thereof a new subsection 2.3, to read as follows:

“2.3 Pursuant to W.Va. Code §49-2E-4, no provision of this rule may be construed to require implementation of a quality rating and improvement system unless funds are appropriated therefor. The ‘Quality Rating and Improvement System Cost Implementation Study’ dated July 31, 2011, prepared and published by the Marshall University Center for Business and Economic Research for the Department of Health and Human Resources and accessible on-line at <http://www.marshall.edu/cber/research/QualityRatingImprovementSystemFINAL.pdf>, is the financial plan submitted by the Secretary of the Department of Health and Human Resources pursuant to Chapter §49-2E-3, and is hereby attached by reference and incorporated into this rule as if fully set forth herein. The financial plan prioritizes the components of the system for implementation and provides for gradual implementation over a period of several years in the event that funding is not sufficient to implement all requirements in code.”.

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

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

On page four, subsection 2.24, by striking out the words "spoken translating" and inserting in lieu thereof the words "translating spoken".

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