

HB 2731

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2731

(By Delegate(s) Fleischauer, Marshall, Barill, Manypenny, Campbell,
Pasdon, Fragale, laquinta, Staggers, Miley and Perry)



Passed April 13, 2013

In effect from passage.

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SECRETARY OF STATE

FILE

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REG. CLERK OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

for

H. B. 2731

(BY DELEGATE(S) FLEISCHAUER, MARSHALL, BARILL,
MANYPENNY, CAMPBELL, PASDON, FRAGALE,
IAQUINTA, STAGGERS, MILEY AND PERRY)

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AN ACT 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, §16-50-10 and §16-50-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-50-12, 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 including health maintenance tasks; requiring legislative rules necessary to

implement the article; and the creation of an advisory committee to review definition of health maintenance tasks, along with polices and procedures authorized by the article.

Be it enacted by the Legislature of West Virginia:

That §16-5O-1, §16-5O-2, §16-5O-3, §16-5O-4, §16-5O-5, §16-5O-6, §16-5O-7, §16-5O-8, §16-5O-10 and §16-5O-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that said code be amended by adding thereto a new section, designated §16-5O-12, all to read as follows:

ARTICLE 50. ADMINISTRATION OF MEDICATION AND PERFORMANCE OF HEALTH MAINTENANCE TASKS BY UNLICENSED PERSONNEL.

§16-5O-1. Short title.

1 This article may be cited as the “Ken Ervin Community
2 Living Act.”

§16-5O-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 authorized practitioner, or as
8 written on the prescription label; and

9 (2) Making a written record of such assistance with regard
10 to each medication administered, including the time, route and
11 amount taken. However, for purposes of this article,
12 “administration” does not include judgment, evaluation,
13 assessments, injections of medication, or monitoring of

14 medication or self-administration of medications, such as
15 prescription drugs and self-injection of medication by the
16 resident.

17 (b) "Authorizing agency" means the office of Health Facility
18 Licensure and Certification within the Department of Health and
19 Human Resources.

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

22 (d) "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
26 the supervision of a registered professional nurse as defined in
27 article seven, chapter thirty of this code.

28 (e) "Facility staff member" means an individual employed
29 by a facility but does not include a health care professional
30 acting within his or her scope of practice.

31 (f) "Health care professional" means a medical doctor or
32 doctor of osteopathy, a podiatrist, registered professional nurse,
33 practical nurse, advanced practice registered nurse, physician's
34 assistant, dentist, optometrist or respiratory care professional
35 licensed under chapter thirty of this code.

36 (g) "Health maintenance tasks" means performing the
37 following tasks according to the legibly written or printed
38 directions of a physician licensed under the provisions of article
39 two-A, chapter thirty of this code or article fourteen, chapter
40 thirty of this code, or other authorized practitioner, or as written
41 on the prescription label, and making a written record of that
42 assistance with regard to each health maintenance task
43 administered, including the time, route and amount taken:

44 (1) Administering glucometer tests;

45 (2) Administering gastrostomy tube feedings;

46 (3) Administering enemas; and

47 (4) Performing ostomy care which includes skin care and
48 changing appliances;

49 "Health maintenance tasks" do not include judgment,
50 evaluation, assessments, injections of medication, or monitoring
51 of medication or self-administration of medications, such as
52 prescription drugs and self-injection of medication by the
53 resident.

54 (h) "Location of medication administration or location where
55 health maintenance tasks are performed" means a facility or
56 location where the resident requires administration of medication
57 or assistance in taking medications or the performance of health
58 maintenance tasks.

59 (i) "Medication" means a drug, as defined in section one
60 hundred one, article one, chapter sixty-a of this code, which has
61 been prescribed by a authorized health care professional to be
62 ingested through the mouth, applied to the outer skin, eye or ear,
63 or applied through nose drops, vaginal or rectal suppositories.

64 (j) "Registered professional nurse" means a person who
65 holds a valid license pursuant to article seven, chapter thirty of
66 this code.

67 (k) "Resident" means a resident of a facility who for
68 purposes of this article, is in a stable condition.

69 (l) "Secretary" means the Secretary of the Department of
70 Health and Human Resources or his or her designee.

71 (m) "Self-administration of medication" means the act of a
72 resident, who is independently capable of reading and
73 understanding the labels of drugs ordered by a physician, in

74 opening and accessing prepackaged drug containers, accurately
75 identifying and taking the correct dosage of the drugs as ordered
76 by the physician, at the correct time and under the correct
77 circumstances.

78 (n) "Self-administration of medication with assistance"
79 means assisting residents who are otherwise able to self
80 administer their own medications except their physical
81 disabilities prevent them from completing one or more steps in
82 the process.

83 (p) "Stable" means the individual's medical condition is
84 predictable and consistent as determined by the registered
85 professional nurse.

86 (q) "Supervision of self-administration of medication"
87 means a personal service which includes reminding residents to
88 take medications, opening medication containers for residents,
89 reading the medication label to residents, observing residents
90 while they take medication, checking the self administered
91 dosage against the label on the container and reassuring residents
92 that they have obtained and are taking the dosage as prescribed.

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

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

6 (b) Administration of medication or performance of health
7 maintenance tasks pursuant to this article shall be performed
8 only by:

9 (1) Licensed health care professionals; or

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

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

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

21 (2) Is considered by the registered professional nurse to be
22 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 professional
26 nurse.

27 (d) An agency or facility employing a health care provider
28 licensed pursuant to the provisions of chapter thirty of this code
29 for the purposes of supervising the administration of medication
30 or performance of health maintenance tasks shall maintain
31 liability insurance for the licensed health care provider and any
32 facility staff member who has been trained and is employed to
33 administer medication or perform health maintenance tasks
34 pursuant to this article.

35 (e) Nothing in this article may be construed to prohibit any
36 facility staff member from administering medications or
37 performing health maintenance tasks, or providing any other
38 prudent emergency assistance to aid any person who is in acute
39 physical distress or requires emergency assistance.

40 (f) Supervision of self-administration of medication by

41 facility staff members who are not licensed health care
42 professionals may be permitted in certain circumstances, when
43 the substantial purpose of the setting is other than the provision
44 of health care.

§16-50-4. Exemption from licensure; statutory construction.

1 (a) Any individual who is not otherwise authorized by law
2 to administer medication or perform health maintenance tasks
3 may administer medication or perform health maintenance tasks
4 in locations covered by this article if he or she meets the
5 requirements of this article and is exempt from the licensing
6 requirements of chapter thirty of this code.

7 (b) Licensed health care professionals remain subject to
8 their respective licensing laws.

9 (c) Notwithstanding any other provision of law to the
10 contrary, this article shall not be construed to violate or be in
11 conflict with articles seven or seven-a, chapter thirty of this
12 code.

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

§16-50-5. Instruction and training.

1 (a) The Office of Health Facility Licensure and Certification
2 shall establish a council of nurses to represent the facilities and
3 registered professional nurses affected by this article. The
4 council shall prepare a procedural manual and recommendations
5 regarding a training course to the secretary. The council shall
6 meet every two years to review the training curricula,
7 competency evaluation procedures and rules implemented by the
8 secretary, and shall make recommendations as deemed
9 necessary.

10 (b) The department shall develop and approve training
11 curricula and competency evaluation procedures for facility staff
12 members who administer medication or perform health
13 maintenance tasks pursuant to this article. The department shall
14 consider the recommendations of the council and shall consult
15 with the West Virginia Board of Examiners for Registered
16 Nurses in developing the training curricula and competency
17 evaluation procedures.

18 (c) The program developed by the department shall require
19 that any person who applies to act as a facility staff member
20 authorized to administer medications or perform health
21 maintenance tasks pursuant to this article shall:

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

24 (2) Be trained or certified in cardiopulmonary resuscitation
25 and first aid;

26 (3) Participate in the initial training program developed by
27 the department;

28 (4) Pass a competency evaluation developed by the
29 department; and

30 (5) Participate in a retraining program every two years.

31 (d) Any facility may offer the training and competency
32 evaluation program developed by the department to its facility
33 staff members. The training and competency programs shall be
34 provided by the facility through a registered professional nurse.

35 (e) A registered professional nurse who is authorized to train
36 facility staff members to administer medications or perform
37 health maintenance tasks in facilities shall:

38 (1) Possess a current active West Virginia license as set forth
39 in article seven chapter thirty of this code in good standing to
40 practice as a registered nurse;

41 (2) Have practiced as a registered professional nurse in a
42 position or capacity requiring knowledge of medications and the
43 performance of health maintenance tasks for the immediate two
44 years prior to being authorized to train facility staff members;
45 and

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

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

1 (a) Any facility which authorizes unlicensed staff members
2 to administer medications or perform health maintenance tasks
3 pursuant to this article shall make available to the authorizing
4 agency a list of the individual facility staff members authorized
5 to administer medications or perform health maintenance tasks.

6 (b) Any facility may permit a facility staff member to
7 administer medications or perform health maintenance tasks in
8 a single specific agency only after compliance with all of the
9 following:

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

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

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

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

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

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

1 (a) Any facility in which medication is administered or
2 health maintenance tasks performed by unlicensed personnel
3 shall establish an administrative monitoring system in
4 administrative policy. The specific requirements of the
5 administrative policy shall be established by the department,
6 through legislative rules. These rules shall be developed in
7 consultation with the West Virginia Board of Examiners for
8 Registered Nurses, the West Virginia Nurses Association, the
9 West Virginia Statewide Independent Living Council, and the
10 West Virginia Board of Respiratory Care. These rules are
11 required to include, at a minimum, instructions on protocols for
12 contacting an appropriate healthcare professional in situations
13 where a condition arises which may create a risk to the resident's
14 health and safety. These rules shall also include the type and
15 frequency of monitoring and training requirements for
16 management of these occurrences.

17 (b) Monitoring of facility staff members authorized pursuant
18 to this article shall be performed by a registered professional
19 nurse employed or contracted by the facility, who shall exercise
20 judgment, evaluate and assess the patient, inject medicine, and
21 monitor medications, self-administration of medications and

22 self-injections by the resident in accordance with his or her
23 scope of practice.

§16-50-8. Withdrawal of authorization.

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

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

1 The following limitations apply to the administration of
2 medication or performance of health maintenance tasks by
3 facility staff members:

4 (a) Injections or any parenteral medications may not be
5 administered, except that prefilled insulin or insulin pens may be
6 administered;

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

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

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

§16-50-11. Rules.

1 The department shall propose rules for legislative approval
2 in accordance with the provisions of article three, chapter
3 twenty-nine-a of this code as may be necessary to implement the
4 provision of this article.

§16-50-12. Advisory Committee.

1 (a) There is established an advisory committee to assist with
2 the development 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 seven voting
7 members as follows:

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

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

12 (C) The State Health Officer, as defined in section four,
13 article three, chapter thirty of this code;

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

16 (E) A representative chosen by the West Virginia
17 Developmental Disability Council;

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

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

22 (2) The advisory committee shall also include five non-
23 voting members as follows:

24 (A) The co-chairs of the Joint Standing Committee on
25 Health, or their designees;

26 (B) One representative of the West Virginia Board of
27 Examiners for Registered Professional Nurses;

28 (C) One representative of the West Virginia Nurses
29 Association;

30 (D) One representative of the Fair Shake Network; and

31 (E) The Office Director of the Office of Health Facility
32 License and Certification within the Department of Health and
33 Human Resources;

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

36 (d) The advisory committee shall meet at least four times
37 annually and upon the call of the chairman. A simple majority of
38 the members shall constitute a quorum.

39 (e) On or before December 31, 2013, the advisory committee
40 shall prepare a report to the Legislative Oversight Commission
41 on Health and Human Resources Accountability. The report
42 shall make recommendations on the need for further legislation,
43 policies or procedures regarding health maintenance tasks.

44 (f) All members of the committee shall be reimbursed
45 reasonable expenses pursuant to the rules promulgated by the
46 Department of Administration for the reimbursement of
47 expenses of state officials and employees and shall receive no
48 other compensation for their services.

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

Jimmy Wells
Chairman, House Committee

Member *Rocky Filpian*
Chairman, Senate Committee

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FILED

Originating in the House.

In effect from passage.

Suzanne E. Spang
Clerk of the House of Delegates

Joseph M. Minard
Clerk of the Senate

Robert J. Taylor
Speaker of the House of Delegates

Jeffrey K. Cook
President of the Senate

The within *is approved* this the *3rd*
day of *May*, 2013.

Carl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

APR 29 2013

Time 2:10 pm