

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4287**

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

7 (Originating in the Committee of Health and Human Resources
8 (January 29, 2014)

9
10 A BILL 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 ~~authorized practitioner~~ or the health
8 care professional in accordance with subdivision sixty-one, section
9 four, article five, chapter thirty of this code, or as written on
10 the prescription 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 ~~(b)~~ (e) "Authorizing agency" means the Office of Health
10 Facility Licensure and Certification within the department of
11 Health and Human Resources.

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

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

21 ~~(c)~~ (h) "Department" means the Department of Health and Human
22 Resources.

23 ~~(d)~~ (i) "Facility" means an intermediate care facility for
24 individuals with an intellectual disability, assisted living,
25 behavioral health group home, private residence in which health
26 care services and health maintenance tasks are provided under the

1 supervision of a registered professional nurse as defined in
2 article seven, chapter thirty of this code.

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

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

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

14 ~~(g)~~ (m) "Health maintenance tasks" means performing the
15 following tasks according to the legibly written or printed
16 directions of ~~a physician licensed under the provisions of article~~
17 ~~two A, chapter thirty of this code or article fourteen, chapter~~
18 ~~thirty of this code, or other authorized practitioner~~ a health care
19 professional or as written on the prescription label, and making a
20 written record of that assistance with regard to each health
21 maintenance task administered, including the time, route and amount
22 taken:

- 23 (1) Administering glucometer tests;
24 (2) Administering gastrostomy tube feedings;
25 (3) Administering enemas; ~~and~~
26 (4) Performing ostomy care which includes skin care and

1 changing appliances; and

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

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

10 (n) "Immediate family" means mother, stepmother, father,
11 stepfather, sister, stepsister, brother, stepbrother, spouse, child
12 grandparent and grandchildren.

13 ~~(h)~~ (o) "Location of medication administration or location
14 where health maintenance tasks are performed" means a facility or
15 location where the resident requires administration of medication
16 or assistance in taking medications or the performance of health
17 maintenance tasks.

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

25 (q) "Natural supports" means family, friends, neighbors or
26 anyone who provides assistance and support to a resident but is not

1 reimbursed.

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

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

7 ~~(l)~~ (t) "Secretary" means the Secretary of the department of
8 ~~Health and Human Resources~~ or his or her designee.

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

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

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

24 ~~(q)~~ (x) "Supervision of self-administration of medication"
25 means a personal service which includes reminding residents to take
26 medications, opening medication containers for residents, reading

1 the medication label to residents, observing residents while they
2 take medication, checking the ~~self-administered~~ self-administered
3 dosage against the label on the container and reassuring residents
4 that they have obtained and are taking the dosage as prescribed.

5 **§16-50-3. Administration of medications; performance of health**
6 **maintenance tasks; maintenance of liability insurance in**
7 **facilities.**

8 (a) The secretary shall ~~establish and implement~~ continue a
9 program for the administration of medications and performance of
10 health maintenance tasks in locations covered by this article. The
11 program shall be developed and conducted in cooperation with the
12 appropriate agencies, advisory bodies and boards.

13 (b) Administration of medication or performance of health
14 maintenance tasks ~~pursuant to this article~~ shall be performed only
15 by:

- 16 (1) Licensed health care professionals; or
- 17 (2) Facility staff members who have been trained and retrained
18 every two years and who are subject to the supervision of and
19 approval by ~~a~~ an authorized registered professional nurse.

20 (c) After assessing the health status of an individual
21 resident, a registered professional nurse, in collaboration with
22 the resident's ~~attending physician~~ health care professional and the
23 facility staff member, may recommend that the facility authorize a
24 facility staff member to administer medication or perform health
25 maintenance tasks if the staff member:

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

3 (2) Is considered by the authorized registered professional
4 nurse to be competent;

5 (3) Consults with the authorized registered professional nurse
6 ~~or attending physician~~ on a regular basis; and

7 (4) Is monitored or supervised by the authorized registered
8 professional nurse.

9 ~~(d) An agency or facility employing a health care provider
10 licensed pursuant to the provisions of chapter thirty of this code
11 for the purposes of supervising the administration of medication or
12 performance of health maintenance tasks shall maintain liability
13 insurance for the licensed health care provider and any facility
14 staff member who has been trained and is employed to administer
15 medication or perform health maintenance tasks pursuant to this
16 article.~~

17 An agency or facility employing personnel for the purposes of
18 supervising the administration of medication or the performance of
19 health maintenance tasks shall maintain liability insurance for the
20 licensed health care provider, any facility staff member who has
21 been trained and is employed to administer medication or perform
22 health maintenance tasks and if applicable the health care
23 provider's collaborative supervising physician.

24 (e) Nothing in this article may be construed to prohibit any
25 facility staff member from administering medications or performing
26 health maintenance tasks, or providing any other prudent emergency

1 assistance to aid any person who is in acute physical distress or
2 requires emergency assistance.

3 (f) Supervision of self-administration of medication by
4 facility staff members who are not licensed health care
5 professionals may be permitted in certain circumstances, when the
6 substantial purpose of the setting is other than the provision of
7 health care.

8 **§16-50-5. Instruction and training.**

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

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

25 (c) The authorizing agency shall coordinate and collaborate
26 with the Board of Respiratory Care to develop the training and

1 testing component for health maintenance tasks related to
2 respiratory care, including but not limited to inhaled medications,
3 tracheostomy care and ventilator care. This includes modifying and
4 updating the existing curriculum for an authorized registered
5 professional nurse and the approved medication assistive persons.

6 (1) The authorizing agency shall develop and approve training
7 curricula and competency evaluation. The authorizing agency shall
8 establish a council of nurses to assist with the development of the
9 training and evaluation process.

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

14 ~~(c)~~ (d) The program developed by the department shall require
15 that any person who applies to act as a facility staff member
16 authorized to administer medications or perform health maintenance
17 tasks ~~pursuant to this article~~ shall:

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

19 (2) Be ~~trained or~~ certified in cardiopulmonary resuscitation
20 and first aid;

21 (3) Participate in the initial training program developed by
22 the department;

23 (4) Pass a competency evaluation developed by the department;
24 and

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

26 ~~(d)~~ (e) Any facility may offer the training and competency

1 evaluation program developed by the department to its facility
2 staff members. The training and competency programs shall be
3 provided by the facility through a registered professional nurse.

4 ~~(e)~~ (f) A registered professional nurse who is authorized to
5 train facility staff members to administer medications or perform
6 health maintenance tasks in facilities shall:

7 (1) Possess a current active ~~West Virginia~~ license as set
8 forth in article seven, chapter thirty ~~of this code~~ in good
9 standing to practice as a registered nurse;

10 (2) Have practiced as a registered professional nurse in a
11 position or capacity requiring knowledge of medications and the
12 performance of health maintenance tasks for the immediate two years
13 prior to being authorized to train facility staff members; ~~and~~

14 (3) Be familiar with the nursing care needs of residents of
15 facilities as described in this article; and

16 (4) Have completed and passed the facility trainer/instructor
17 course developed by the authorizing agency.

18 (g) After successfully completing the initial training and
19 testing for the AMAP program, registered professional nurses and
20 AMAPs shall have competencies for health maintenance tasks
21 reassessed and documented annually by the employer of record to
22 ensure continued competence.

23 **§16-50-6. Availability of records; eligibility requirements of**
24 **facility staff.**

25 (a) Any facility which authorizes unlicensed staff members to
26 administer medications or perform health maintenance tasks pursuant

1 ~~to this article~~ shall make available to the authorizing agency a
2 list of the individual facility staff members authorized to
3 administer medications or perform health maintenance tasks.

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

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

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

16 (3) The facility staff member has had a criminal background
17 check or if applicable, a check of the State Police Abuse Registry,
18 establishing that the individual has not been convicted of ~~no~~
19 crimes against persons or drug related crimes;

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

24 (5) The facility staff member has complied with all other
25 applicable requirements of this article, the legislative rules
26 adopted pursuant to this article and other criteria, including

1 minimum competency requirements, as are specified by the
2 authorizing agency.

3 **§16-50-7. Oversight of medication administration and performance**
4 **of health maintenance tasks by the approved medication**
5 **assistive personnel.**

6 (a) Any facility in which medication is administered or health
7 maintenance tasks performed by ~~unlicensed personnel~~ the approved
8 medication assistive personnel shall establish an administrative
9 monitoring system in administrative policy. The specific
10 requirements of the administrative policy shall be established by
11 the department, through legislative rules. These rules shall be
12 developed in consultation with the West Virginia Board of Examiners
13 for Registered Nurses, the West Virginia Nurses Association, the
14 West Virginia Statewide Independent Living Council, and the West
15 Virginia Board of Respiratory Care. These rules are required to
16 include, at a minimum:

17 (1) Instructions on protocols for contacting an appropriate
18 healthcare professional in situations where a condition arises
19 which may create a risk to the resident's health and safety; ~~These~~
20 ~~rules shall also include~~

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

23 (3) Procedures to prevent drug diversion.

24 (b) Monitoring of facility staff members authorized pursuant
25 to this article shall be performed by a registered professional

1 nurse employed or contracted by the facility, who shall exercise
2 judgment, evaluate and assess the patient, inject medicine, except
3 prefilled insulin and insulin pens if this task is delegated to an
4 approved medication assistive person, and monitor medications,
5 self-administration of medications and self-injections by the
6 resident in accordance with his or her scope of practice.

7 **§16-50-8. Withdrawal of authorization.**

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

22 **§16-50-10. Limitations on medication administration or performance**
23 **of health maintenance tasks.**

24 The following limitations apply to the administration of
25 medication or performance of health maintenance tasks by facility

1 staff members:

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

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

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

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

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

21 **§16-50-12. Advisory Committee.**

22 (a) There is ~~established~~ continued an advisory committee to
23 assist with the development of polices and procedures regarding
24 health maintenance care in order to safeguard the well-being and to
25 preserve the dignity of persons who need assistance to live in
26 their communities and avoid institutionalization.

1 (b) (1) The advisory committee shall consist of ~~seven~~ eleven
2 voting members as follows:

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

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

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

9 (C) A representative chosen by AARP West Virginia;

10 (D) A representative chosen by the West Virginia Statewide
11 Independent Living Council;

12 (E) A representative chosen by the West Virginia Developmental
13 ~~Disability~~ Disabilities Council;

14 (F) A representative chosen by the West Virginia Board of
15 Respiratory Care; ~~and~~

16 (G) A representative chosen by the West Virginia Society for
17 Respiratory Care.

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

20 (I) One representative of the West Virginia Nurses
21 Association;

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

23 (K) The Office Director of the Office of Health Facility
24 Licensure and Certification.

25 ~~(2) The advisory committee shall also include five nonvoting~~
26 ~~members. as follows:~~

1 ~~(A) The cochaIRS of the Joint Standing Committee on Health, or~~
2 ~~their designees;~~

3 ~~(B) One representative of the West Virginia Board of Examiners~~
4 ~~for Registered Professional Nurses;~~

5 ~~(C) One representative of the West Virginia Nurses~~
6 ~~Association;~~

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

8 ~~(E) The Office Director of the Office of Health Facility~~
9 ~~License and Certification within the Department of Health and Human~~
10 ~~Resources;~~

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

13 (d) The advisory committee shall meet at least four times
14 annually, ~~and~~ upon the call of the chairman, or at the request of
15 the authorizing agency. A simple majority of the members shall
16 constitute a quorum.

17 ~~(e) On or before December 31, 2013, the advisory committee~~
18 ~~shall prepare a report to the Legislative Oversight Commission on~~
19 ~~Health and Human Resources Accountability. The report shall make~~
20 ~~recommendations on the need for further legislation, policies or~~
21 ~~procedures regarding health maintenance tasks.~~

22 ~~(f)~~ All members of the committee shall be reimbursed
23 reasonable expenses pursuant to the rules promulgated by the
24 Department of Administration for the reimbursement of expenses of
25 state officials and employees and shall receive no other
26 compensation for their services.

NOTE: The purpose of this bill is to update the administration of medication and performance of health maintenance tasks by unlicensed personnel.

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