

HB 4287

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4287

(By Delegates Fleischauer, Marshall, Barill, Manypenny,
Fragle, Campbell, Pasdon, Mr. Speaker (Mr. Miley),
White, Pethel and Tomblin)



Passed March 6, 2014

In effect from its passage.

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FOR

H. B. 4287

**(BY DELEGATES FLEISCHAUER, MARSHALL, BARILL, MANYPENNY,
FRAGLE, CAMPBELL, PASDON, MR. SPEAKER (MR. MILEY),
WHITE, PETHTEL AND TOMBLIN)**

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 50. APPROVED MEDICATION ASSISTIVE PERSONNEL.

§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 label;
10 and

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

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

26 (c) "Authorized practitioner" means a physician licensed
27 under the provisions of article three, chapter thirty of this code
28 or article fourteen, chapter thirty of this code.

29 (d) "Authorized registered professional nurse" means a
30 person who holds an unencumbered license pursuant article
31 seven, chapter thirty, and meets the requirements to train and
32 supervise approved medication assistive personnel pursuant to
33 this article, and has completed and passed the facility
34 trainer/instructor course developed by the authorizing agency.

35 (e) "Authorizing agency" means the Office of Health
36 Facility Licensure and Certification.

37 (f) "Delegation" means transferring to a competent
38 individual, as determined by the authorized registered
39 professional nurse, the authority to perform a selected task in a
40 selected situation.

41 (g) "Delegation decision model" means the process the
42 authorized registered professional nurse must follow to
43 determine whether or not to delegate a nursing task to an
44 approved medication assistive personnel. The delegation
45 decision model is approved by the West Virginia Board of
46 Examiners for Registered Professional Nurses.

47 (h) "Department" means the Department of Health and
48 Human Resources.

49 (i) "Facility" means an intermediate care facility for
50 individuals with an intellectual disability, assisted living,
51 behavioral health group home, private residence in which health
52 care services and health maintenance tasks are provided under
53 the supervision of a registered professional nurse as defined in
54 article seven, chapter thirty of this code.

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

58 (k) "Family" means biological parents, adoptive parents,
59 foster parents, or other immediate family members living within
60 the same household.

61 (l) "Health care professional" means a medical doctor or
62 doctor of osteopathy, a podiatrist, registered professional nurse,
63 practical nurse, advanced practice registered nurse, physician's
64 assistant, dentist, optometrist or respiratory care professional
65 licensed under chapter thirty of this code.

66 (m) "Health maintenance tasks" means performing the
67 following tasks according to the legibly written or printed
68 directions of a health care professional or as written on the
69 prescription label, and making a written record of that assistance
70 with regard to each health maintenance task administered,
71 including the time, route and amount taken:

72 (1) Administering glucometer tests;

73 (2) Administering gastrostomy tube feedings;

74 (3) Administering enemas;

75 (4) Performing ostomy care which includes skin care and
76 changing appliances; and

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

80 "Health maintenance tasks" do not include judgment,
81 evaluation, assessments, injections of medication, except for
82 prefilled insulin or insulin pens, or monitoring of medication or
83 self-administration of medications, such as prescription drugs
84 and self-injection of medication by the resident.

85 (n) "Immediate family" means mother, stepmother, father,
86 stepfather, sister, stepsister, brother, stepbrother, spouse, child,
87 grandparent and grandchildren.

88 (o) "Location of medication administration or location where
89 health maintenance tasks are performed" means a facility or
90 location where the resident requires administration of medication
91 or assistance in taking medications or the performance of health
92 maintenance tasks.

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

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

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

106 (s) "Resident" means a resident of a facility who for
107 purposes of this article, is in a stable condition.

108 (t) "Secretary" means the Secretary of the department or his
109 or her designee.

110 (u) "Self-administration of medication" means the act of a
111 resident, who is independently capable of reading and
112 understanding the labels of drugs ordered by an authorized
113 practitioner, in opening and accessing prepackaged drug
114 containers, accurately identifying and taking the correct dosage
115 of the drugs as ordered by the health care professional, at the
116 correct time and under the correct circumstances.

117 (v) "Self-administration of medication with assistance"
118 means assisting residents who are otherwise able to self-

119 administer their own medications except their physical
120 disabilities prevent them from completing one or more steps in
121 the process.

122 (w) "Stable" means the individual's health condition is
123 predictable and consistent as determined by the registered
124 professional nurse.

125 (x) "Supervision of self-administration of medication"
126 means a personal service which includes reminding residents to
127 take medications, opening medication containers for residents,
128 reading the medication label to residents, observing residents
129 while they take medication, checking the self-administered
130 dosage against the label on the container and reassuring residents
131 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 continue a program for the
2 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 shall be performed only by:

8 (1) Licensed health care professionals; or

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

12 (c) After assessing the health status of an individual resident,
13 a registered professional nurse, in collaboration with the
14 resident's health care professional and the facility staff member,
15 may recommend that the facility authorize a facility staff

16 member to administer medication or perform health maintenance
17 tasks if the staff member:

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

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

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

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

26 (d) An agency or facility employing personnel for the
27 purposes of supervising the administration of medication or the
28 performance of health maintenance tasks shall maintain liability
29 insurance for the licensed health care provider, any facility staff
30 member who has been trained and is employed to administer
31 medication or perform health maintenance tasks and if
32 applicable the health care provider's collaborative supervising
33 physician.

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

39 (f) Supervision of self-administration of medication by
40 facility staff members who are not licensed health care
41 professionals may be permitted in certain circumstances, when
42 the substantial purpose of the setting is other than the provision
43 of health care.

§16-50-5. Instruction and training.

1 (a) The authorizing agency shall establish a council of nurses
2 to represent the facilities and registered professional nurses

**3 affected by this article. The council shall prepare a procedural
4 manual and recommendations regarding a training course to the
5 secretary. The council shall meet every two years to review and
6 make recommendations to the training curricula, competency
7 evaluation procedures and rules implemented by the secretary.**

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

**16 (c) The authorizing agency shall coordinate and collaborate
17 with the Board of Respiratory Care to develop the training and
18 testing component for health maintenance tasks related to
19 respiratory care, including but not limited to inhaled
20 medications, tracheostomy care and ventilator care. This
21 includes modifying and updating the existing curriculum for an
22 authorized registered professional nurse and the approved
23 medication assistive persons.**

**24 (1) The authorizing agency shall develop and approve
25 training curricula and competency evaluation. The authorizing
26 agency shall establish a council of nurses to assist with the
27 development of the training and evaluation process.**

**28 (2) The curriculum, training competency and testing
29 components related to respiratory care shall be approved by the
30 Respiratory Care Board per subsection (e), section fifteen, article
31 thirty-four, chapter thirty.**

**32 (d) The program developed by the department shall require
33 that any person who applies to act as a facility staff member
34 authorized to administer medications or perform health
35 maintenance tasks shall:**

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

38 (2) Be certified in cardiopulmonary resuscitation and first
39 aid;

40 (3) Participate in the initial training program developed by
41 the department;

42 (4) Pass a competency evaluation developed by the
43 department; and

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

45 (e) Any facility may offer the training and competency
46 evaluation program developed by the department to its facility
47 staff members. The training and competency programs shall be
48 provided by the facility through a registered professional nurse.

49 (f) A registered professional nurse who is authorized to train
50 facility staff members to administer medications or perform
51 health maintenance tasks in facilities shall:

52 (1) Possess a current active license as set forth in article
53 seven, chapter thirty in good standing to practice as a registered
54 nurse;

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

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

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

63 (g) After successfully completing the initial training and
64 testing for the AMAP program, registered professional nurses

65 and AMAPs shall have competencies for health maintenance
66 tasks reassessed and documented annually by the employer of
67 record to ensure continued competence.

**§16-5O-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 shall make available to the authorizing agency a list of the
4 individual facility staff members authorized to administer
5 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
20 Registry, establishing that the individual has not been convicted
21 of crimes 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 physician; and

25 (5) The facility staff member has complied with all other
26 applicable requirements of this article, the legislative rules

27 adopted pursuant to this article and other criteria, including
28 minimum competency requirements, as are specified by the
29 authorizing agency.

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

1 (a) Any facility in which medication is administered or
2 health maintenance tasks performed by the approved medication
3 assistive personnel shall establish an administrative monitoring
4 system in 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:

12 (1) Instructions on protocols for contacting an appropriate
13 healthcare professional in situations where a condition arises
14 which may create a risk to the resident's health and safety;

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

17 (3) Procedures to prevent drug diversion.

18 (b) Monitoring of facility staff members authorized pursuant
19 to this article shall be performed by a registered professional
20 nurse employed or contracted by the facility, who shall exercise
21 judgment, evaluate and assess the patient, inject medicine,
22 except prefilled insulin and insulin pens if this task is delegated
23 to an approved medication assistive person, and monitor
24 medications, self-administration of medications and self-
25 injections by the resident in accordance with his or her scope of
26 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 relayed to the facility and
9 the department in order to remove the facility staff member from
10 the list of authorized individuals. The department shall maintain
11 a list of the names of persons whose authorization to administer
12 medication or perform health maintenance tasks has been
13 withdrawn, and the reasons for withdrawal of authorization. The
14 list may be accessed by registered professional nurses or
15 facilities.

§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;

12 (d) No medications ordered by the health care professional
13 to be given "as needed" may be administered unless the order is

14 written with specific parameters which preclude independent
15 judgment; and

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

§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
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) A representative chosen 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
16 Developmental 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
22 Examiners 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
27 Licensure and Certification.**

**28 (c) A chairman shall be selected from the voting members of
29 the advisory committee.**

**30 (d) The advisory committee shall meet at least four times
31 annually, upon the call of the chairman, or at the request of the
32 authorizing agency. A simple majority of the members shall
33 constitute a quorum.**

**34 (e) All members of the committee shall be reimbursed
35 reasonable expenses pursuant to the rules promulgated by the
36 Department of Administration for the reimbursement of
37 expenses of state officials and employees and shall receive no
38 other compensation for their services.**

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

Penny Wells
Chairman, House Committee

Paul ...
Chairman, Senate Committee

Originating in the House.

In effect from its passage.

Bryan W. Bay
Clerk of the House of Delegates

Joseph M. Minard
Clerk of the Senate

...
Speaker of the House of Delegates

...
President of the Senate

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The within *is approved* this the *26th*
day of *March*, 2014.

Earl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

MAR 17 2014

Time 3:30 pm