WEST VIRGINIA CODE CHAPTER 16b ARTICLE 10

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§16B-10-1. Short title.

This article may be cited as the "Ken Ervin Community Living Act."

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§16B-10-2. Definitions.

As used in this article the following definitions apply:

(a) "Administration of medication" means:

(1) Assisting a person in the ingestion, application, or inhalation of medications, including prescription drugs, or in the use of universal precautions or rectal or vaginal insertion of medication, according to the legibly written or printed directions of the attending physician or the health care professional in accordance with §30-5-4 of this code, or as written on the prescription label; and

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

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

(c) “Authorized practitioner" means a physician licensed under the provisions of §30-3-1 *et seq*. of this code or §30-14-1 *et seq*. of this code.

(d) "Authorized registered professional nurse" means a person who holds an unencumbered license pursuant to §30-7-1 *et seq*. of this code and meets the requirements to train and supervise approved medication assistive personnel pursuant to this article, and has completed and passed the facility trainer/instructor course developed by the authorizing agency.

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

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

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

(h) "Director" means the director of the Office of Health Facility Licensure and Certification,

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or his or her designee.

(i) "Facility" means an intermediate care facility for individuals with an intellectual disability, assisted living, behavioral health group home, private residence in which health care services and health maintenance tasks are provided under the supervision of a registered professional nurse as defined in §30-7-1 *et seq*. of this code.

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

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

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

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

(1) Administering glucometer tests;

(2) Administering gastrostomy tube feedings;

(3) Administering enemas;

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

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

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

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

(p) "Inspector General" means the Inspector General of the Office of Inspector General as described in §16B-2-1 of this code, or his or her designee.

(q) "Location of medication administration or location where health maintenance tasks are

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performed" means a facility or location where the resident requires administration of medication or assistance in taking medications or the performance of health maintenance tasks.

(r) "Medication" means a drug, as defined in §60A-1-101 of this code, which has been prescribed by a health care professional to be ingested through the mouth, inhaled through the nose or mouth, administered through a gastrostomy tube, applied to the outer skin, eye or ear, or applied through nose drops, vaginal or rectal suppositories.

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

(t) "Office of Health Facility Licensure and Certification" means the West Virginia Office of Health Facility Licensure and Certification within the Office of the Inspector General.

(u) "Registered professional nurse" means a person who holds a valid license pursuant to §30-7-1, *et seq*. of this code.

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

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

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

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

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

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§16B-10-3. Administration of medications; performance of health maintenance tasks; maintenance of liability insurance in facilities.

(a) The Inspector General designates the director of the Office of Health Facility Licensure and Certification to enforce the provisions of this article, except where otherwise stated.

(b) The director shall continue a program for the administration of medications and performance of health maintenance tasks in locations covered by this article. The program shall be developed and conducted in cooperation with the appropriate agencies, advisory bodies and boards.

(c) Administration of medication or performance of health maintenance tasks shall be performed only by:

(1) Licensed health care professionals; or

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

(d) After assessing the health status of an individual resident, a registered professional nurse, in collaboration with the resident's health care professional and the facility staff member, may recommend that the facility authorize a facility staff member to administer medication or perform health maintenance tasks if the staff member:

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

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

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

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

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

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

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

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§16B-10-4. Exemption from licensure; statutory construction.

(a) Any individual who is not otherwise authorized by law to administer medication or perform health maintenance tasks may administer medication or perform health maintenance tasks in locations covered by this article if he or she meets the requirements of this article and is exempt from the licensing requirements of §30-1-1 of this code.

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

(c) Notwithstanding any other provision of law to the contrary, this article shall not be construed to violate or be in conflict with §30-7-1 et seq. or §30-7A-1 *et seq*. of this code.

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

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§16B-10-5. Instruction and training.

(a) The authorizing agency shall establish a council of nurses to represent the facilities and registered professional nurses affected by this article. The council shall prepare a procedural manual and recommendations regarding a training course to the director. The council shall meet every two years to review and make recommendations to the training curricula, competency evaluation procedures and rules implemented by the director.

(b) The Office of Health Facility Licensure and Certification shall develop and approve training curricula and competency evaluation procedures for facility staff members who administer medication or perform health maintenance tasks. The Office of Health Facility Licensure and Certification shall consider the recommendations of the council and shall consult with the West Virginia Board of Examiners for Registered Nurses in developing the training curricula and competency evaluation procedures.

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

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

(2) The curriculum, training competency and testing components related to respiratory care shall be approved by the Respiratory Care Board pursuant to §30-34-15(e).

(d) The program developed by the Office of Health Facility Licensure and Certification shall require that any person who applies to act as a facility staff member authorized to administer medications or perform health maintenance tasks shall:

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

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

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

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

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

(e) Any facility may offer the training and competency evaluation program developed by the Office of Health Facility Licensure and Certification to its facility staff members. The training and competency programs shall be provided by the facility through a registered professional nurse.

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

(1) Possess a current active license as set forth in §30-7-1 *et seq*. of this code in good standing to practice as a registered nurse;

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

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

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

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

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§16B-10-6. Availability of records; eligibility requirements of facility staff.

(a) Any facility which authorizes unlicensed staff members to administer medications or perform health maintenance tasks shall make available to the authorizing agency a list of the individual facility staff members authorized to administer medications or perform health maintenance tasks.

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

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

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

(3) The facility staff member has had a criminal background check or if applicable, a check of the State Police Abuse Registry, establishing that the individual has not been convicted of crimes against persons or drug related crimes by utilizing and following the provisions of §16B-15-1 *et seq.* of this code;

(4) The medication to be administered is received and maintained by the facility staff member in the original container in which it was dispensed by a pharmacist or the physician; and

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

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§16B-10-7. Oversight of medication administration and performance of health maintenance tasks by the approved medication assistive personnel.

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

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

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

(3) Procedures to prevent drug diversion.

(b) Monitoring of facility staff members authorized pursuant to this article shall be performed by a registered professional nurse employed or contracted by the facility, who shall exercise judgment, evaluate and assess the patient, inject medicine, except prefilled insulin and insulin pens if this task is delegated to an approved medication assistive person, and monitor medications, self-administration of medications and self-injections by the resident in accordance with his or her scope of practice.

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§16B-10-8. Withdrawal of authorization.

The registered professional nurse who monitors or supervises the facility staff members authorized to administer medication or perform health maintenance tasks may withdraw authorization for a facility staff member if the nurse determines that the facility staff member is not performing medication administration or health maintenance tasks in accordance with the training and written instructions. The withdrawal of the authorization shall be documented and relayed to the facility and the Office of Health Facility Licensure and Certification in order to remove the facility staff member from the list of authorized individuals. The Office of Health Facility Licensure and Certification shall maintain a list of the names of persons whose authorization to administer medication or perform health maintenance tasks has been withdrawn, and the reasons for withdrawal of authorization. The list may be accessed by registered professional nurses or facilities.

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§16B-10-9. Fees.

The Office of Health Facility Licensure and Certification may set and collect fees necessary for the implementation of the provisions of this article pursuant to rules authorized by §16B-10-11 of this code.

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

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

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

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

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

(d) No medications ordered by the health care professional to be given "as needed" may be administered unless the order is written with specific parameters which preclude independent judgment; and,

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

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§16B-10-11. Rules.

The director shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code as may be necessary to implement the provision of this article.

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§16B-10-12. Advisory Committee.

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

(b)(1) The advisory committee shall consist of 11 voting members as follows:

(A) The Olmstead Coordinator within the Office of Inspector General;

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

(C) A representative chosen by AARP West Virginia;

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

(E) A representative chosen by the West Virginia Developmental Disabilities Council;

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

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

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

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

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

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

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

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

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

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