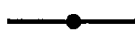


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OFFICE OF WEST VIR
SECRETARY OF ST.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 105

(By Senator MAUCHIN, ET AL)



PASSED MARCH 9, 1995
In Effect FROM Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 105

(SENATORS MANCHIN, ANDERSON, BOLEY,
GRUBB AND MACNAUGHTAN, *ORIGINAL SPONSORS*)

[Passed March 9, 1995; in effect from passage.]

AN ACT to amend and reenact article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; the legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of health to promul-

gate legislative rules relating to wastewater treatment works and operators, as modified; authorizing the department of health and human resources to promulgate legislative rules relating to public water systems, as modified; authorizing the department of health and human resources to promulgate legislative rules relating to personal care homes, as modified; and authorizing the department of health and human resources to promulgate legislative rules relating to behavioral health patient rights, as modified and amended.

Be it enacted by the Legislature of West Virginia:

That article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

§64-5-1. State board of health; division of health.

1 The legislative rules filed in the state register on the
2 fifteenth day of August, one thousand nine hundred
3 ninety-four, modified by the division of health to meet
4 the objections of the legislative rule-making review
5 committee and refiled in the state register on the twenti-
6 eth day of October, one thousand nine hundred ninety-
7 four, relating to the division of health (wastewater
8 treatment works and operators, 64 CSR 5), are autho-
9 rized.

§64-5-2. Department of health and human resources.

1 (a) The legislative rules filed in the state register on the
2 fifteenth day of August, one thousand nine hundred
3 ninety-four, modified by the department of health and
4 human resources to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the twenty-eighth day of November, one
7 thousand nine hundred ninety-four, relating to the
8 department of health and human resources (public water
9 systems, 64 CSR 3), are authorized.

10 (b) The legislative rules filed in the state register on the
11 fifteenth day of August, one thousand nine hundred
12 ninety-four, modified by the department of health and
13 human resources to meet the objections of the legislative
14 rule-making review committee and refiled in the state
15 register on the sixteenth day of January, one thousand
16 nine hundred ninety-five, relating to the department of
17 health and human resources (behavioral health patient
18 rights, 64 CSR 59), are authorized with the amendments
19 set forth below:

20 On page 1, section 2.2, in the first line after the word
21 "enforced" inserting the word "internally", and in the
22 third line after the word "designee," inserting the words
23 "or externally by individual action";

24 On page 2, section 3.8.3, by striking out all of section
25 3.8.3, and inserting in lieu thereof the following:

26 "3.8.3. An individual appointed as committee or
27 guardian prior to June 9, 1994, within the limits set by
28 the appointing order and W. Va. Code 44A-1-2(d);"

29 On page 2, section 3.8.4, first sentence by striking out
30 "in accordance with" following "medical power of
31 attorney," and inserting the words "pursuant to" and; in
32 the fourth line, by striking out "power of attorney" and
33 inserting the words "law and the appointment";

34 On page 2, section 3.8.5, by inserting a comma after the
35 word "act", and inserting the words, "Title 42 U.S. Code
36 §301 et seq., within the limits of the payee's legal author-
37 ity" and by striking out the word "or" following the
38 semi-colon;

39 On page 2, section 3.8.6, by striking out the period at
40 the end of the section and inserting a semi-colon and the
41 following two sections:

42 "section 3.8.7. An individual having a durable power
43 of attorney pursuant to W. Va. Code §39-4-1, or a power
44 of attorney under common law, within the limits of the
45 appointment; or


46 section 3.8.8. An individual lawfully appointed in a
47 similar or like relationship of responsibility for a client
48 under the laws of this State, or another State or legal
49 jurisdiction, within the limits of the applicable statute
50 and appointing authority.”;

51 On page 2, section 3.8.7, by renumbering the section as
52 3.8.9, and striking out “Wherever this rule sets forth
53 rights and responsibilities of an individual client, in
54 matters relating to informed consent for treatment or the
55 withholding of treatment, record release, authorizations,
56 disclosures of information, participation in treatment
57 planning, suspension or restrictions of the individual’s
58 rights as granted or recognized in this rule, or in the laws
59 of this State or of the United States government, or any
60 other matters relating to the client’s rights,” and insert-
61 ing the words “If a legal representative has been ap-
62 pointed for or designated by any client as having the
63 authority to exercise on behalf of the client one or more
64 of the client’s rights under this rule,” and by striking out
65 the word “rights” inserting the words “to exercise the”
66 in the thirteenth line and inserting in lieu thereof the
67 word “authority”;

68 And,

69 On page 3, section 3.8.8, by striking out “section
70 3.8.10” and inserting the words “The facility administra-
71 tor and staff should note that the various types of legal
72 representatives do not necessarily have the lawful
73 authority to act on behalf of the resident in all matters
74 which may require action by a legal representative. For
75 example, a conservator may have responsibility for
76 financial affairs, but not personal affairs, such as
77 medical care.”

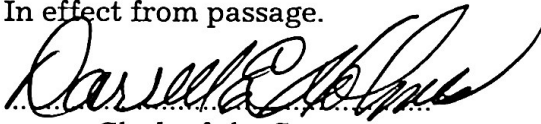
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

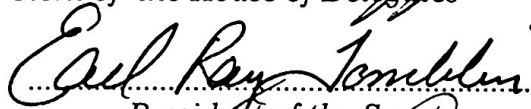

.....
Chairman House Committee


Originated in the Senate.

In effect from passage.


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Clerk of the Senate

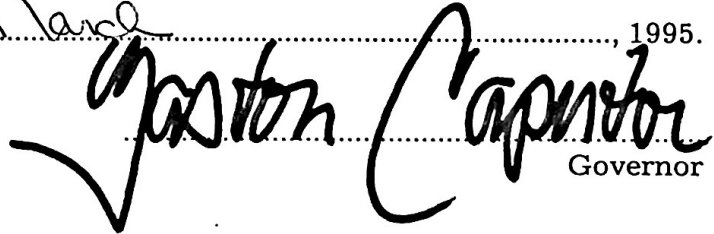

.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved..... this the 22nd.....

day of March....., 1995.


.....
Governor

PRESENTED TO THE
GOVERNOR,

Date 3/17/95

Time 3:15 pm