WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1995

ENROLLED

Committee Substitute for
SENATE BILL NO. 105

(By Senator MUNCHIN, 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 promul-
gation 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; autho-
rizing 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 Legisla-
ture; 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.

The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred ninety-four, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of October, one thousand nine hundred ninety-four, relating to the division of health (wastewater treatment works and operators, 64 CSR 5), are authorized.

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

(a) The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred ninety-four, modified by the department of health and human resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of November, one thousand nine hundred ninety-four, relating to the department of health and human resources (public water systems, 64 CSR 3), are authorized.
(b) The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred ninety-four, modified by the department of health and human resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of January, one thousand nine hundred ninety-five, relating to the department of health and human resources (behavioral health patient rights, 64 CSR 59), are authorized with the amendments set forth below:

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

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

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

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

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

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

"section 3.8.7. An individual having a durable power of attorney pursuant to W. Va. Code §39-4-1, or a power of attorney under common law, within the limits of the appointment; or
section 3.8.8. An individual lawfully appointed in a similar or like relationship of responsibility for a client under the laws of this State, or another State or legal jurisdiction, within the limits of the applicable statute and appointing authority.

On page 2, section 3.8.7, by renumbering the section as 3.8.9, and striking out "Wherever this rule sets forth rights and responsibilities of an individual client, in matters relating to informed consent for treatment or the withholding of treatment, record release, authorizations, disclosures of information, participation in treatment planning, suspension or restrictions of the individual's rights as granted or recognized in this rule, or in the laws of this State or of the United States government, or any other matters relating to the client's rights," and inserting the words "If a legal representative has been appointed for or designated by any client as having the authority to exercise on behalf of the client one or more of the client's rights under this rule," and by striking out the word "rights" inserting the words "to exercise the" in the thirteenth line and inserting in lieu thereof the word "authority";

And,

On page 3, section 3.8.8, by striking out "section 3.8.10" and inserting the words "The facility administrator and staff should note that the various types of legal representatives do not necessarily have the lawful authority to act on behalf of the resident in all matters which may require action by a legal representative. For example, a conservator may have responsibility for financial affairs, but not personal affairs, such as 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.

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