WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

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ENROLLED

HOUSE BILL No. 2741

Compton, Mahan, Hutchins, Thomas,
Pino, Louisos and Capito

(By Delegate

Passed ____________________________ 1997

In Effect Ninety Days From Passage

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AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-n, relating to medication administration by unlicensed personnel; short title; definitions; administration of medications by staff members in certain residential facilities; exemption from licensure; authorizing creation of a council of nurses; instructions and training requirements; eligibility requirements for authorization; oversight administration; procedures for withdrawal of authorization; authorization for fee schedules; limitations on administration of medication and authority to promulgate emergency and legislative rules.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-n, to read as follows:

ARTICLE 5N. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL.

§16-5N-1. Short title.

This article may be cited as the “Medication Administration by Unlicensed Personnel Act.”
§16-5N-2. Definitions.

As used in this article, unless a different meaning appears from the context, 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 authorized practitioner, 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: Provided, That for purposes of this article, "administration" does not include judgement, evaluation, assessments, injections of medication, monitoring of medication or self-administration of medications, including prescription drugs and self-injection of medication by the resident.

(b) "Authorizing agency" means the department's office of health facility licensure and certification.

(c) "Department" means the department of health and human resources.

(d) "Facility" means an ICF/MR, a personal care home, residential board and care home, behavioral health group home, private residence in which health care services are provided under the supervision of a registered nurse or an adult family care home that is licensed by or approved by the department.

(e) "Facility staff member" means an individual employed by a facility but does not include a health care professional acting within the scope of a professional license or certificate.

(f) "Health care professional" means a medical doctor or doctor of osteopathy, a podiatrist, registered nurse, practical nurse, registered nurse practitioner, physician’s assistant, dentist, optometrist or respiratory care professional licensed under chapter thirty of this code.
(g) “ICF/MR” means an intermediate care facility for the mentally retarded which is certified by the department.

(h) “Medication” means a drug, as defined in section one hundred one, article one, chapter sixty-a of this code, which has been prescribed by a duly authorized health care professional to be ingested through the mouth, applied to the outer skin, eye or ear, or applied through nose drops, vaginal or rectal suppositories.

(i) “Registered professional nurse” means a person who holds a valid license pursuant to article seven, chapter thirty of this code.

(j) “Resident” means a resident of a facility.

(k) “Secretary” means the secretary of the department of health and human resources or his or her designee.

(l) “Self-administration of medication” means the act of a resident, who is independently capable of reading and understanding the labels of drugs ordered by a physician, in opening and accessing pre-packaged drug containers, accurately identifying and taking the correct dosage of the drugs as ordered by the physician, at the correct time and under the correct circumstances.

(m) “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.

§16-5N-3. Administration of medications in facilities.

(a) The secretary is authorized to establish and implement a program for the administration of medications in facilities. The program shall be developed and conducted in cooperation with the appropriate agencies, advisory bodies and boards.
(b) Administration of medication pursuant to this article shall be performed only by:

(1) Registered professional nurses;

(2) Other licensed health care professionals; or

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

(c) Subsequent to assessing the health status of an individual resident, a registered professional nurse, in collaboration with the resident's attending physician and the facility staff member, may recommend that the facility authorize a facility staff member to administer medication if the staff member:

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

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

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

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

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

(e) 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.

§16-5N-4. Exemption from licensure; statutory construction.

(a) Any individual who is not otherwise authorized by law to administer medication may administer medication in a facility if he or she meets the requirements and
provisions of this article. Any person who administers medication pursuant to the provisions of this article shall be exempt from the licensing requirements of chapter thirty of this code.

(b) All licensed health care professionals as defined in this article remain subject to the provisions of their respective licensing laws.

(c) Notwithstanding any other provision of law to the contrary, the provisions of this article shall not be construed to violate or be in conflict with any of the provisions of articles seven or seven-a, chapter thirty of this code.

§16-5N-5. Instruction and training.

(a) The office of health facility licensure and certification shall establish a council of nurses to represent the facilities and registered professional nurses affected by the provisions of this article. The council of nurses shall prepare a procedural manual and recommendations regarding a training course to the secretary of the department of health and human resources. The council shall meet every two years to review the training curricula, competency evaluation procedures and rules implemented by the secretary, and shall make recommendations as deemed necessary.

(b) The department shall develop and approve training curricula and competency evaluation procedures for facility staff members who administer medication pursuant to the provisions of this article. The department shall consider the recommendations of the council of nurses and shall consult with the West Virginia board of examiners for registered nurses in developing the training curricula and competency evaluation procedures.

(c) The program developed by the department shall require that any person who applies to act as a facility staff member authorized to administer medications pursuant to the provisions of this article shall:

(1) Hold a high school diploma or general education diploma;
(2) Be trained or 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) Subsequent to initial training and evaluation, participate in a retraining program every two years.

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

(e) A registered nurse who is authorized to train facility staff members to administer medications in facilities shall:

(1) Possess a current active West Virginia license 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 for the immediate two years prior to being authorized to train facility staff members; and

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

§16-5N-6. Availability of records; eligibility requirements of facility staff.

(a) Any facility which authorizes unlicensed staff members to administer medications pursuant to the provisions of this article shall make available to the authorizing agency a list of the individual facility staff members authorized to administer medications.

(b) A facility may permit a facility staff member to administer medications 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 the provisions of 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 such 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 been convicted of no crimes against persons or drug related crimes;

(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 prescribing health care professional; and

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

§16-5N-7. Oversight of medication administration by unlicensed personnel.

(a) Each facility in which medication is administered by unlicensed personnel shall establish in policy an administrative monitoring system. The specific requirements of the administrative policy shall be established by the department through rules proposed pursuant to section eleven of this article.

(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.

§16-5N-8. Withdrawal of authorization.

The registered professional nurse who monitors or supervises the facility staff members authorized to administer medication pursuant to this article may withdraw
authorization for a facility staff member if the nurse deter-
mines that the facility staff member is not performing
medication administration in accordance with the training
and written instructions. The withdrawal of the authoriza-
tion shall be documented and shall be relayed to the facili-
ty and the department in order to remove the facility staff
member from the list of authorized individuals.


The department may set and collect fees necessary
for the implementation of the provisions of this article
pursuant to rules authorized by section eleven of this arti-
cle.

§16-5N-10. Limitations on medication administration.

The following limitations apply to the administration
of medication by facility staff members:

(a) Injections or any parenteral medications may not
be administered;

(b) Irrigations or debriding agents used in the treat-
ment 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; and

(d) No medications ordered by the physician or a
health care professional with legal prescriptive authority to
be given “as needed” may be administered unless the
order is written with specific parameters which preclude
independent judgment.


The department shall promulgate emergency rules
pursuant to the provisions of section fifteen, article three,
chapter twenty-nine-a of this code as may be necessary to
implement the provisions of this article. Subsequently, the
department may propose rules for legislative approval in
accordance with the provisions of article three, chapter
twenty-nine-a of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the fifth day of March, 1997.

Governor