WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2012

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 109
(SENATORS JENKINS AND FOSTER, ORIGINAL SPONSORS)

[PASSED MARCH 10, 2012; IN EFFECT FROM PASSAGE.]
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Senate Bill No. 109

(SENATORS JENKINS AND FOSTER, original sponsors)

[Passed March 10, 2012; in effect from passage.]

AN ACT to amend and reenact §16-5O-2, §16-5O-3 and §16-5O-4 of the Code of West Virginia, 1931, as amended, all relating to permitting unlicensed personnel to administer or assist with administration of medications in certain circumstances; defining terms; and providing exemptions from licensure.

Be it enacted by the Legislature of West Virginia:

That §16-5O-2, §16-5O-3 and §16-5O-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5O. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL.

§16-5O-2. Definitions.

1 As used in this article, unless a different meaning appears from the context, the following definitions apply:

3 (a) "Administration of medication" means:

4 (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 practitio-
nor, 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, evalua-
tion, 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/ID, assisted living, behav-
ioral health group home, private residence in which health
care services are provided under the supervision of a regis-
tered nurse or an adult family care home that is licensed by
or approved by the department.

(e) “Facility staff member” means an individual em-
ployed 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/ID” means an intermediate care facility for
individuals with an intellectual disability which is certified
by the department.
(h) "Location of medication administration" means a facility or location where the resident requires administration of medication or assistance in taking medications.

(i) "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.

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

(k) "Resident" means a resident of a facility.

(l) "Secretary" means the Secretary of the Department of Health and Human Resources or his or her designee.

(m) "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 prepackaged 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.

(n) "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.

(o) "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.
§16-50-3. Administration of medications in facilities.

1. (a) The secretary is authorized to establish and implement a program for the administration of medications in locations of medication administration where the resident requires administration of or assistance in taking medications. The program shall be developed and conducted in cooperation with the appropriate agencies, advisory bodies and boards.

2. (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.

3. (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.

4. (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.

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

(a) Any individual who is not otherwise authorized by law to administer medication may administer medication in locations covered by this article 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, 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.

(d) Any parent or guardian may administer medication to his or her adult or minor child regardless of whether or not the parent or guardian receives compensation for caring for said child.
The 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 of the House of Delegates

The within is approved this the 30th Day of March, 2012.

Governor
PRESENTED TO THE GOVERNOR

MAY 24, 2012

Time 3:15 P.M.