WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 2731

(By Delegate(s) Fleischauer, Marshall, Barill, Manypenny, Campbell, Pasdon, Fragale, laquinta, Staggers, Miley and Perry)

Passed April 13, 2013

In effect from passage.
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for

H. B. 2731

(BY DELEGATE(S) FLEISCHAUER, MARSHALL, BARILL, MANYPENNY, CAMPBELL, PASDON, FRAGALE, IAQUINTA, STAGGERS, MILEY AND PERRY)

[Passed April 13, 2013: in effect from passage.]

AN ACT to amend and reenact §16-50-1, §16-50-2, §16-50-3, §16-50-4, §16-50-5, §16-50-6, §16-50-7, §16-50-8, §16-50-10 and §16-50-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-50-12, all relating to regulating the performance of health maintenance tasks by unlicensed personnel in certain personal care facilities; providing exceptions; identifying who may perform health maintenance tasks; requiring record keeping; requiring the administrative monitoring system to have input from registered professional nurses; requiring liability insurance; changing the short title; defining terms including health maintenance tasks; requiring legislative rules necessary to
implement the article; and the creation of an advisory committee to review definition of health maintenance tasks, along with polices and procedures authorized by the article.

Be it enacted by the Legislature of West Virginia:

That §16-50-1, §16-50-2, §16-50-3, §16-50-4, §16-50-5, §16-50-6, §16-50-7, §16-50-8, §16-50-10 and §16-50-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that said code be amended by adding thereto a new section, designated §16-50-12, all to read as follows:

ARTICLE 50. ADMINISTRATION OF MEDICATION AND PERFORMANCE OF HEALTH MAINTENANCE TASKS BY UNLICENSED PERSONNEL.

§16-50-1. Short title.

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

§16-50-2. 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 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. However, for purposes of this article, "administration" does not include judgment, evaluation, assessments, injections of medication, or monitoring of
medication or self-administration of medications, such as prescription drugs and self-injection of medication by the resident.

(b) "Authorizing agency" means the office of Health Facility Licensure and Certification within the Department of Health and Human Resources.

(c) "Department" means the Department of Health and Human Resources.

(d) "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 article seven, chapter thirty of this code.

(e) "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.

(f) "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.

(g) "Health maintenance tasks" means performing the following tasks according to the legibly written or printed directions of a physician licensed under the provisions of article two-A, chapter thirty of this code or article fourteen, chapter thirty of this code, or other authorized practitioner, 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; and

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

"Health maintenance tasks" do not include judgment, evaluation, assessments, injections of medication, or monitoring of medication or self-administration of medications, such as prescription drugs and self-injection of medication by the resident.

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

(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 an 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 who for purposes of this article, is in a stable condition.

(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.

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

(q) "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; performance of health
maintenance tasks; maintenance of liability
insurance in facilities.

(a) The secretary shall establish and implement 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.

(b) Administration of medication or performance of health
maintenance tasks pursuant to this article 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 a registered professional nurse.

(c) After 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 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 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) An agency or facility employing a health care provider licensed pursuant to the provisions of chapter thirty of this code for the purposes of supervising the administration of medication or performance of health maintenance tasks shall maintain liability insurance for the licensed health care provider and any facility staff member who has been trained and is employed to administer medication or perform health maintenance tasks pursuant to this article.

(e) 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.

(f) 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.

§16-50-4. 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 chapter thirty 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 articles seven or seven-a, chapter thirty 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.

§16-50-5. 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 this article. The council shall prepare a procedural manual and recommendations regarding a training course to the secretary. 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 or perform health maintenance tasks pursuant to this article. The department 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 program developed by the department shall require that any person who applies to act as a facility staff member authorized to administer medications or perform health maintenance tasks pursuant to 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. 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 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 West Virginia license as set forth in article seven chapter thirty 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; and

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

§16-5O-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 pursuant to this article 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 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 legislative rules adopted pursuant to this article and other criteria, including minimum competency requirements, as are specified by the authorizing agency.

§16-50-7. Oversight of medication administration and performance of health maintenance tasks by unlicensed personnel.

(a) Any facility in which medication is administered or health maintenance tasks performed by unlicensed personnel shall establish an administrative monitoring system in administrative policy. The specific requirements of the administrative policy shall be established by the department, 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, 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. These rules shall also include the type and frequency of monitoring and training requirements for management of these occurrences.

(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, and monitor medications, self-administration of medications and
self-injections by the resident in accordance with his or her scope of practice.

§16-5O-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 shall be relayed to the facility and the department in order to remove the facility staff member from the list of authorized individuals.

§16-5O-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; 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.

1 The department shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as may be necessary to implement the provision of this article.

§16-50-12. Advisory Committee.

1 (a) There is established an advisory committee to assist with the development policies 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.

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

3 (A) The Olmstead Coordinator within the Department of Health and Human Resources, Office of Inspector General;

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

5 (C) The State Health Officer, as defined in section four, article three, chapter thirty of this code;

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

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

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

9 (G) A representative chosen by the West Virginia Society for Respiratory Care.
(2) The advisory committee shall also include five non-voting members as follows:

(A) The co-chairs of the Joint Standing Committee on Health, or their designees;

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

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

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

(E) The Office Director of the Office of Health Facility License and Certification within the Department of Health and Human Resources;

(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 and upon the call of the chairman. A simple majority of the members shall constitute a quorum.

(e) On or before December 31, 2013, the advisory committee shall prepare a report to the Legislative Oversight Commission on Health and Human Resources Accountability. The report shall make recommendations on the need for further legislation, policies or procedures regarding health maintenance tasks.

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

[Signatures]

Chairman, House Committee

Member, Senate Committee

Originating in the House.

In effect from passage.

[Signatures]

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 3rd day of May, 2013.

Governor
PRESENTED TO THE GOVERNOR

APR 29 2013

Time 2:10 pm