

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Department of Health and Human Resources TITLE NUMBER: 64

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 60

TITLE OF RULE BEING AMENDED: Medication Administration and Performance of Health
Maintenance Tasks by Unlicensed Personnel

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) 155

SECTION 64-5-1(a), PASSED ON March 8, 2014

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: ~~FROM PASSAGE~~ June 2, 2014


Authorized Signature

**TITLE 64
LEGISLATIVE RULE
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

FILED

2014 MAY -7 A 8: 01

**SERIES 60
MEDICATION ADMINISTRATION AND PERFORMANCE OF HEALTH MAINTENANCE TASKS BY
UNLICENSED PERSONNEL**

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§64-60-1. General

1.1. Scope. – This legislative rule prescribes specific standards and procedures to provide for training, competency testing, and the certification of approved medication assistive personnel for the limited administration of medications and performance of health maintenance tasks in specified health care facilities. This rule must be read in conjunction with W. Va. Code § 16-50-1 et seq.

1.2. Authority. – W. Va. Code §§ 16-50-11 and 16-1-7.

1.3. Filing Date. –

1.4. Effective Date. –

1.5. Enforcement. – This rule is enforced by the secretary of the West Virginia Department of Health and Human Resources or his or her lawful designee.

§64-60-2. Definitions

2.1. Administration of medications. –

2.1.a. Assisting a person in the ingestion, application or inhalation of medications, including both prescription drugs and non-prescription drugs, or using universal precautions for 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

2.1.b. Making a written record of such assistance with regard to each medication administered, including the time, route and amount taken. "Administration" does not include:

2.1.b.1. Judgment, evaluation, assessments;

2.1.b.2. Injections of medication or any parenteral medications, except prefilled insulin injections and insulin pens pursuant to W.Va. Code § 16-50-10.a.,

2.1.b.3. Monitoring of medication; or

2.1.b.4. Self-administration of medications, including prescription drugs and self-injection of medication by the resident.

2.2. Approved medication assistive personnel (AMAP). -- The unlicensed facility staff member, who meets eligibility requirements, has successfully completed the required training and competency testing, and is considered competent by the authorized registered professional nurse to administer medications or perform health maintenance tasks, or both to residents of the facility in accordance with W. Va. Code § 16-50-1 et seq.

2.3. Assisted living residence. – Any living facility or place of accommodation in the state, however named, available for four (4) or more residents, that is advertised, offered, maintained or operated by the ownership or management, for the express or implied purpose of providing personal assistance, supervision, or both to any residents who are dependent upon the services of others by reason of physical or mental impairment, and who may also require nursing care at a level that is not greater than limited and intermittent nursing care.

2.4. Authorizing agency. – The department’s Office of Health Facility Licensure and Certification.

2.5. Authorized registered professional nurse. – A person who holds an unencumbered license pursuant to W. Va. Code § 30-7-1 et seq., and meets the requirements to train and supervise approved medication assistive personnel pursuant to this rule and W.Va. Code § 16-50-1 et seq., and has completed the facility trainer/instructor course developed by the authorizing agency. The curriculum can be accessed at <http://www.wvdhhr.org/ohflac/>.

2.6. Behavioral health group home. – A community-based type of housing that: is established for adults/children with similar needs, levels of independence and ability which provides services and supervision for people with developmental disabilities, behavioral disorders or substance addictions; is licensed by the department; and is in compliance with the state fire commission for residential facilities.

2.7. Department. – The Department of Health and Human Resources.

2.8. Delegation. – Transferring to a competent individual, as determined by the registered professional nurse, to a competent individual, the authority to perform a selected task in a selected situation.

2.9. Delegation decision model. – Describes the process the authorized registered professional nurse must follow to determine whether or not to delegate a nursing task to an approved medication assistive personnel. The delegation decision model currently approved by the West Virginia Board of Examiners for Registered Professional Nurses as a part of the “Criteria for Determining Scope of Practice for Licensed Nurses and Guidelines for Determining Acts that

May be Delegated or Assigned by Licensed Nurses.” The delegation decision model describes the process the authorized registered professional nurse must follow to determine whether or not to delegate a nursing task to an approved medication assistive personnel. It is the Registered Professional Nurse who makes the determination regarding competency of the approved medication assistive personnel to whom he or she is delegating a task.

2.10. Facility. – An intermediate care facility for individuals with intellectual disabilities, assisted living residences, behavioral health group home, or private residence in which health care services or health maintenance tasks, or both are provided under the supervision of a registered professional nurse.

2.11. Facility staff member. – An individual employed by a facility but does not include a health care professional acting within the scope of a professional license or certificate.

2.12. Health care professional. – A medical doctor or doctor of osteopathy, a podiatrist, registered professional nurse, licensed practical nurse, advance practice registered nurse, physician’s assistant, dentist, optometrist, pharmacist, physical therapist or respiratory care professional licensed under chapter thirty of the W.Va. Code.

2.13. Health maintenance tasks. –

2.13.a. Performing the following tasks according to the legibly written or printed directions of a physician under the provisions of article two-A, chapter thirty or article fourteen, chapter thirty of the W.Va. Code, or other authorized practitioner, or as written on the prescription label, and making a record of that assistance with regard to each health maintenance tasks administered, including the time, route, and amount taken:

2.13.a.1. Administering glucometer tests;

2.13.a.2. Administering gastrostomy tube feedings;

2.13.a.3. Administering enemas; and

2.13.a.4. Performing ostomy care which includes skin care and changing appliances.

2.13.b. Health maintenance tasks do not include:

2.13.b.1. Judgment, evaluation, assessments;

2.13.b.2. Injections of medication or any parenteral medications, except prefilled insulin injections and insulin pens pursuant to W.Va. Code § 16-50-10.a.,

2.13.b.3. Monitoring of medication; or

2.13.b.4. Self-administration of medications, including prescription drugs and self-injection of medication by the resident.

2.14. ICF/IID. – An intermediate care facility for individuals with intellectual disabilities which is certified by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services to provide health or rehabilitation services to persons with intellectual disabilities or persons with related conditions who are receiving active treatment.

2.15. Medication. – A drug, as defined in W. Va. Code § 60A-1-101, 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.

2.16. Medication error. – Any deviation from the “six rights of medication administration,” that occurs during medication administration process required by the provisions of this rule. A resident refusal is not considered a medication error.

2.17. Registered professional nurse. – A person who holds a valid license pursuant to W. Va. Code § 30-7-1 et seq.

2.18. Resident. – A resident of a facility who for purposes of this rule, is in a stable condition.

2.19. Secretary. – The secretary of the Department of Health and Human Resources or his or her designee.

2.20. Self-administration of medication. – 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.

2.21. Self-administration of medication with assistance. – Assisting residents who are otherwise able to self-administer their own medication except their physical disability prevents them from completing one or more steps in the process.

2.22. Single specific agency. – A person or entity operating two or more facilities.

2.23. Six rights of medication administration. – The criteria used to assure that each resident receives the specific medication, prescribed for the person, in the ordered amount, at the scheduled time, by the designated route - both as prescribed and prepared, which is accurately recorded in the resident’s record: (1. The right resident; 2. The right drug; 3. The right dosage; 4. The right time; 5. The right route; and 6. The right record / documentation.) The six rights of medication administration is defined in the curriculum, and can be accessed at <http://www.wvdhhr.org/ohflac/>.

2.24. Stable. – The individual’s medical condition is predictable and consistent as determined by the authorized registered professional nurse.

2.25. Supervision of self-administration of medications. – 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.

§64-60-3. Facility Administrative Procedures

3.1. Any facility may offer the training and competency evaluation program developed by the department to authorize approved medication assistive personnel. The training and competency program shall be provided by the facility through an authorized registered professional nurse.

3.1.a. Prior to initiating a training program, the facility shall submit, to the authorizing agency, written notification of the intent to participate in this program, documentation of the credentials of the authorized registered professional nurse who will provide the training, and the facility policies and procedures required by the provisions of this rule.

3.1.b. Participation in the program shall only be permitted after review and approval of the registered professional nurse’s credentials and the facility policies and procedures by the authorizing agency, and after the authorized registered professional nurse has completed the facility trainer / instructor orientation course developed by the authorizing agency.

3.1.c. Approved medication assistive personnel who have successfully trained and tested in one facility shall, prior to being approved to administer medications or health maintenance tasks, or both in another facility, be re-evaluated for competency by the authorized registered professional nurse. This re-evaluation of competency shall be determined by using the tasks in the curriculum adopted in policy by the authorizing agency. The curriculum can be accessed at <http://www.wvdhhr.org/ohflac/>.

3.2. The authorizing agency may contract with an entity to provide facility trainer/instructor orientation training for the authorized registered professional nurse and to test the competency of prospective approved medication assistive personnel. The facility utilizing services shall pay any fees for training and testing.

§64-60-4. Administration of Medications and Performance of Health Maintenance Tasks in Facilities

4.1. Before delegating the performance of medication administration or health maintenance tasks, or both the authorized registered professional nurse must decide whether the task is appropriate to delegate based on the criteria set forth by the "Delegation Decision Model."

4.2. Administration of medication or the performance of health maintenance tasks, or both pursuant to this rule shall only be performed by:

4.2.a. Licensed health care professionals subject to the provisions of their respective licensing law; and

4.2.b. Approved medication assistive personnel who have been trained and retrained every two years and who are subject to the supervision of and approval by a the authorized registered professional nurse.

4.3. After having assessed the health status of an individual resident, a the authorized registered professional nurse, in collaboration with the resident's attending physician and the approved medication assistive personnel, may recommend that the administration of medications or performance of health maintenance tasks, or both be provided by an approved medication assistive personnel.

4.4. Authorization to administer medications or health maintenance tasks, or both may only be granted and continued if the approved medication assistive personnel:

4.4.a. Has successfully completed the approved medication administration or health maintenance tasks, or both training programs and received a satisfactory competency evaluation as required by the provisions of this rule;

4.4.b. Is considered by the authorized registered professional nurse to be competent, including satisfactory completion of the training program and competency evaluation and possession of the ability to perform the required tasks to administer medications or health maintenance tasks, or both;

4.4.c. Consults with the authorized registered professional nurse or the attending physician on a regular basis;

4.4.d. Is monitored or supervised by the authorized registered professional nurse as required by the provisions of this rule; and

4.4.e. Participates in the required retraining program at least every two (2) years.

4.5. Any facility which uses approved medication assistive personnel to administer medications or health maintenance tasks, or both pursuant to the provisions of this rule shall make available to the authorizing agency a list of the approved medication assistive personnel, upon request, but no less than annually.

4.6. Any agency or facility employing a health care provider licensed pursuant to chapter thirty of the W.Va. Code for the purposes of supervising the administration of medication or the performance of health maintenance tasks, or both shall maintain liability insurance for the licensed care provider and any approved medication assistive personnel who has been trained and is employed to administer medication or perform health maintenance, or both pursuant to W.Va. Code § 16-5O-1 et seq. and this rule.

4.7. The authorized registered professional nurse shall initiate and keep current, a file for all approved medication assistive personnel which contains proof of compliance with eligibility requirements as required by the provisions of this rule. This file shall be maintained in the facility and available to representatives of the authorizing agency on request.

4.8. Exclusions from this rule for administration of medications in facilities.

4.8.a. Nothing in this rule may be construed to prohibit any facility staff member from administering medications or performing health maintenance tasks, or both or providing any other prudent emergency assistance to aid any person who is in acute physical distress or requires emergency assistance.

4.8.b. 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.

4.8.c. Any parent or guardian may administer medication to, or perform health maintenance tasks, or both for, his or her adult or minor child regardless of whether or not the parent or guardian receives compensation for caring for said child.

4.9. The location of medication administration or location where health maintenance tasks are performed is not limited to the facility. Medication administration or health maintenance tasks, or both must be administered or performed in a manner that protects the facility resident's personal privacy and dignity.

§64-60-5. Instruction and Training

5.1. Curriculum.

5.1.a. The curriculum adopted in policy by the authorizing agency utilized to train prospective approved medication assistive personnel shall be the West Virginia Department of Health and Human Resources Curriculum for Unlicensed Approved Medication Assistive Personnel. The curriculum may be obtained from the authorizing agency. The curriculum can be accessed at <http://www.wvdhhr.org/ohflac/>.

5.2. Competency evaluation.

5.2.a. Competency evaluation includes the prospective approved medication assistive personnel:

5.2.a.1. Satisfactory completion and demonstration of all tasks in the curriculum; and

5.2.a.2. Satisfactory completion of a competency test approved by the authorizing agency.

5.2.b. The administration of the competency test to the prospective approved medication assistive personnel shall be by the authorized registered professional nurse. The authorized registered professional nurse shall handle competency tests in accordance with the instructions of the authorizing agency.

5.2.c. The prospective approved medication assistive personnel shall be allowed two (2) opportunities to satisfactorily complete a competency test, utilizing a different test for each opportunity. A third and final competency test may only be given if the prospective approved medication assistive personnel repeats the training program. The decision to repeat the training course will be at the discretion of the authorized registered professional nurse.

5.3. Retraining program.

5.3.a. Retraining of the approved medication administration personnel shall be conducted every two (2) years by the authorized registered professional nurse.

5.3.b. The content of this training shall be an overview of the original curriculum, and shall include copy of the most recent observation, by the authorized registered professional nurse, of medication administration or health maintenance tasks, or both by the approved medication assistive personnel.

5.4. Requirements of the authorized registered professional nurse.

5.4.a. The authorized registered professional nurse shall train approved medication assistive personnel to administer medications or perform health maintenance tasks, or both and shall:

5.4.a.1. Possess a current valid and unencumbered West Virginia license in good standing to practice as a registered professional nurse;

5.4.a.2. Have practiced as a registered professional nurse in a position or capacity requiring knowledge of medications and health maintenance tasks for the immediate two years prior to being authorized to train approved medication assistive personnel;

5.4.a.2.a As used in this section, "immediate two years" means the two years prior, disregarding short absences, including, but not limited to, vacation or illness.

5.4.a.3. Be familiar with the nursing care needs of the residents of the facility;

5.4.a.4. Have completed the facility trainer / instructor orientation course developed by the authorizing agency;

5.4.a.5. Have knowledge of all facility policies and procedures pertaining to medication administration and health maintenance tasks; and

5.4.a.6. Have knowledge of the provisions in this rule.

§64-60-6. Eligibility Requirements for Approved Medication Assistive Personnel to be Trained

6.1. A facility may permit a facility staff member to be trained as an approved medication assistive personnel to administer medications or health maintenance tasks, or both in a single specific agency only after compliance with all of the following:

6.1.a. The facility determines there is no statement on the state administered nurse aide registry indicating that the facility staff member has been the subject of a finding of abuse or neglect of a long-term care facility resident or convicted of the misappropriation of such a resident's property;

6.1.b. 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 not been convicted of any crimes against persons or drug related crimes;

6.1.c. The facility staff member holds a high school diploma or a general education diploma;

6.1.d. The facility staff member has successfully completed the training curriculum and passed the competency evaluation developed by the authorizing agency;

6.1.e. The approved medication assistive personnel is currently certified in cardiopulmonary resuscitation and first aid; and

6.1.f. The approved medication assistive personnel participates in a retraining program every two years.

§64-60-7. Facility Oversight of Medication Administration and Health Maintenance Tasks by Unlicensed Personnel

7.1. Administrative policy requirements.

7.1.a. The facility or single specific agency must submit policies and procedures pertaining to medication administration and health maintenance tasks to the authorizing agency for approval, prior to receiving authorization to train facility staff members as approved medication assistive personnel.

7.1.b. An authorized registered professional nurse shall participate in development and revision of these policies and procedures.

7.1.c. The policies and procedures shall include at least the following:

7.1.c.1. Eligibility requirements for the authorized registered professional nurse and approved medication assistive personnel participating in medication administration or health maintenance tasks, or both;

7.1.c.2. Limitations on the functions of the approved medication assistive personnel;

7.1.c.3. Requirements for documentation in personnel records;

7.1.c.4. Requirements for documentation in resident medical records, shall include at least the following:

7.1.c.4.A. Each facility shall maintain a medication or a treatment administration record, or both, for each resident, to be maintained as a part of the permanent medical record. This record shall be available for review by the authorized registered professional nurse, representatives of the authorizing agency, and other authorized persons. This record shall include:

7.1.c.4.A.1. The name of the resident to receive the medication or health maintenance task, or both;

7.1.c.4.A.2. The name of the medication or health maintenance task, or both the dosage to be administered and the route of administration;

7.1.c.4.A.3. The time or intervals at which the medication or health maintenance task, or both is to be administered;

7.1.c.4.A.4. The date the medication or health maintenance task, or both is to begin and cease;

7.1.c.4.A.5. The printed name, the initials and the signature of the individual who administered the medication or health maintenance task, or both; and

7.1.c.4.A.6. Any special instructions for handling or administering the medication or health maintenance task, or both, including instructions for maintaining aseptic conditions and appropriate storage.

7.1.c.4.B. Written, signed and dated physician orders shall be present in the medical record of each resident, for each medication to be administered, including over-the-counter medications. Verbal orders may only be taken by the authorized registered professional nurse and must be countersigned by the physician.

7.1.c.4.C. Written, signed and dated physician orders shall be present in the medical record of each resident, for each authorized health maintenance task to be performed. Verbal orders may only be taken by the authorized registered professional nurse and must be countersigned by the physician.

7.1.c.4.D. Written, signed and dated verification of physician collaboration in the decision to allow medication administration or health maintenance tasks, or both by unlicensed personnel shall be present in the medical record of each resident.

7.1.c.5. Requirements for the monitoring and supervision of the approved medication assistive personnel by the authorized registered professional nurse employed or contracted by the facility shall include at least the following:

7.1.c.5.A. The authorized registered professional nurse coverage to respond to questions related to any aspect of medication administration or health maintenance tasks, or both by approved medication assistive personnel;

7.1.c.5.B. The number of approved medication assistive personnel, residents, and sites the authorized registered professional nurse will supervise;

7.1.c.5.C. The number of residents and sites for which the approved medication assistive personnel will administer medications or health maintenance tasks, or both;

7.1.c.5.D. The furthest distance the authorized registered professional nurse will be expected to travel to a site and between sites;

7.1.c.5.E. Periodic and ongoing observation and supervision, not less frequently than quarterly, of the medication administration or health maintenance tasks, or both;

7.1.c.5.F. The training and approval process for an approved medication assistive personnel to administer medications or health maintenance tasks, or both at different sites within a specific agency;

7.1.c.5.G. Ongoing review of physician's orders, medication administration records and medication labels by the authorized registered professional nurse for consistency and documentation of such, ongoing review of medication error reports and medication related incident reports by the authorized registered professional nurse and the attending physician; and

7.1.c.5.H. The withdrawal of approval for an approved medication assistive personnel to administer medication and perform health maintenance tasks, including the reasons for the withdrawal of approval.

7.1.c.6. Requirements for communication between the approved medication assistive personnel and the authorized registered professional nurse and instructions on protocols for contacting the appropriate healthcare professional in situations where a condition arises which may create a risk to the resident's health and safety, shall include at least the following:

7.1.c.6.A. Any change in a resident's condition;

7.1.c.6.B. Any discrepancy between the pharmacy label and the medication administration record;

7.1.c.6.C. Any deviation from the six (6) rights of medication administration;

7.1.c.6.D. Any doubt or question about the medication administration or health maintenance tasks processes;

7.1.c.6.E. Resident refusal of medication or health maintenance tasks, or both;

7.1.c.6.F. Any question about a medication or health maintenance task, or both ordered to be given "as needed";

7.1.c.6.G. Any question about a medication or health maintenance task, or both looking different or unusual;

7.1.c.6.H. Receipt of any change in physician's orders, and the need for disposal of medications ; and

7.1.c.6.I. The type and frequency of monitoring and the training requirements for management of these occurrences shall be determined through the nurse delegation decision model.

7.1.c.7. The medication delivery system to be utilized by the facility including shall include at least the following: the type of medication packaging required; medication storage; how the six rights of medication administration are assured; disposal of medications; and special procedures for controlled substances;

7.1.c.8. Infection control, including: universal precautions, use of personal protective equipment, and medical aseptic practices; and

7.1.c.9. The process for resident identification.

7.1.d. Each facility shall have available the most, current published resource information on all drugs being administered by the facility, including the risks and possible side effects.

7.1.e. The authorizing agency may require alterations to facility policy if the determination is made that medication administration or health maintenance task, or both is not being administered in accordance with the nurse delegation decision model or if potentially unsafe conditions exist.

7.1.f. Failure by the facility to provide oversight of medication administration or health maintenance tasks, or both as required by this rule or by facility policies may result in penalties including, the denial of participation in this program.

§64-60-8. Withdrawal of Authorization

8.1. The authorized registered professional nurse may withdraw the authorization for the approved medication assistive personnel if the registered professional nurse determines that the approved medication assistive personnel is not performing in accordance with the training and written instructions.

8.2. The withdrawal of authorization and the reasons for the withdrawal with any corresponding evidence shall be documented and shall be relayed to the facility and the authorizing agency in order to remove the approved medication assistive personnel from the list of authorized individuals.

§64-60-9. Limitations on Medication Administration and Health Maintenance Tasks by Unlicensed Personnel

9.1. The medication to be administered shall be received and maintained in the original container in which it was dispensed by a pharmacist or the prescribing health care professional until such time as it is administered to the resident.

9.2. No injections nor any parenteral medications shall be administered, except that prefilled

insulin or insulin pens may be administered.

9.3. No irrigations nor debriding agents used in the treatment of a skin condition or minor abrasions shall be administered.

9.4. No verbal medication orders shall be accepted, no new medication orders or health maintenance task orders, or both shall be transcribed and no drug dosages shall be converted and calculated.

9.5. Medications ordered by the physician or a health care professional with legal prescriptive authority to be given as needed shall be administered only if the order is written with specific parameters which preclude independent judgment.

§64-60-10. Administrative Due Process

10.1. Those persons adversely affected by the enforcement of this rule may submit a written request for a desk review to determine whether the privileges were appropriately withdrawn in a manner prescribed by the policy developed by the authorizing agency.