WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

CITE AUTHORITY W. Va. Code §§16-1-7 and 16-5O-11

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 60

TITLE OF RULE BEING PROPOSED: Medication Administration by Unlicensed Personnel

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Joan E. Ohl

Joan E. Ohl, Secretary

$13.50

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 27,1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency name, Address & Phone No.) Division of Health
Department of Health and Human Resources

State Capitol Complex, Building 3, Room 265, Charleston, WV 25305

Telephone: (304) 558-3223

LEGISLATIVE RULE TITLE: Legally Unlicensed Health Care Homes, 64 CSR 50

1. Authorizing statute(s) citation: WV Code §§16-1-7 and 16-5E1a(a)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 22, 1998

b. What other notice, including advertising, did you give of the hearing?

The office of Health Facility Licensure and Certification provided a written notice of the availability of this proposed rule to all registered legally unlicensed service providers, provider associations, and interested state agancies and advocacy groups.

c. Date of Public Hearing(s) or Public Comment Period ended:

July 22, 1998

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached Yes No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing (be exact):

August 3, 1998

f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule (please type):

Marsha Dadisman, Acting Director

Regulatory Development/Department of Health and Human Resources

Room 265, Capitol Complex

Charleston, West Virginia 25305

(304) 558-3223 FAX: (304) 558-1130 MDadisman@WVDHHR.ORG

g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

Kathy Bauchamp

Residential Program Manager

1900 Kanawha Blvd. East, Building 3 Room 550

Charleston, WV 25305

Phone: (304) 558-0050 Fax: (340) 558-2515

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

Brief Summary of the Rule

The proposed rule, medication administration by unlicensed personnel, provides requirements for: staff eligibility; training, testing, and approval of unlicensed staff by a registered professional nurse, to administer medications in certain health care facilities; facility participation in this program; limitations on approved medication assistive personnel; and oversight and withdrawal of authorization, in accordance with West Virginia Code § 16-50-1 et seq.

Statement of Circumstances Which Require the Proposed Rule

The proposed rule is necessary to continue to allow the medication administration by unlicensed personnel that is provided for in W. Va. Code Article 5O, Chapter 16, after the expiration of the emergency rule that the Legislature has directed to be promulgated in W. Va. Code § 16-5O-11. Without the proposed rule the emergency rule would expire ending the reductions in costs that the Article allows.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Medication Administration by Unlicensed Personnel, 64CSR60

Type of Rule: X **Legislative** __ **Interpretive** _ **Procedural**

Agency: Division of Health
Department of Health and Human Resources

Address: Building 3, Capitol Complex
Charleston, W. Va. 25305

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current FY98	Next FY99	Thereafter
Estimated Total Cost	$	$	$ 101,362	$ 149,834	$ 157,534
Personal Services			82,446	80,752	84,352
Current Expense			17,920	63,790	68,182
Repairs & Alterations				0	0
Equipment				5,292	5,000
Other			996	0	0
Revenue					

2. Explanation of above estimates.

The above next year expenditures have been appropriated by the legislature from General Revenue Funds for the Medication Administration's budget for State fiscal year ending June 30, 1999. OHFLAC will receive no additional funding to cover the cost of this program as a result of the implementation of these rules. These expenditures are based on costs projected and attached as a fiscal note to the Bill that was passed into law as § 16-5O during the 1997 legislative session. The original estimated expenditures are further herein refined and based on the current fiscal year's actual start-up expenditures during this first year of the project.

3. Objectives of this rule:

To fulfill the Department's requirements to promulgate rules as contained in § 16-5O, Medication Administration by Unlicensed Personnel. This rule allows the dissemination of medications by unlicensed personnel trained and supervised in accordance with the proposed regulations.

4. **Explanation of Overall Economic Impact of Proposed Rule.**

A. **Economic Impact on State Government.**

These rules will lower the cost of providing services to ICF/MR residents. As a result the Bureau of Medical Services may reduce its Medicaid expenditures for payment to the providers of these services.

B. **Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.**

The implementation of this rule will lower the cost of providing services to ICF/MR residents by providers within that health care industry. Some of these cost savings may be passed on to the consumers of these services.

C. **Economic Impact on Citizens/Public at Large.**

Payment sources for the consumers of these services may experience reductions in charges to the extent providers pass these savings back to the purchaser.

Date: May 13, 1998

Signature of Agency Head or Authorized Representative

Joan E. Ohl, Secretary
Department of Health and Human Resources

TITLE 64
LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 60
MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

64CSR60

TITLE 64
LEGISLATIVE RULES
DIVISION OF HEALTH
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64CSR60

TITLE 64
LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 60
MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL

§64-49-1. General.

1.1. Scope. --This legislative rule prescribes specific standards and procedures to provide for training, competency testing, and approval of unlicensed personnel for limited administration of medications in specified health care facilities. This rule must be read in conjunction with W. Va. Code §16-5O-1 et seq.

1.2. Authority. -- W. Va. Code §§16-5O-11 and 16-1-7.

1.3. Filing date. --

1.4. Effective date. --

1.5. Applicability. -- This rule applies to any person, and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust association or political subdivision of this State establishing maintaining or operating a facility as defined in this rule and W. Va. Code §16-5O-2(d).

1.6. Enforcement. -- This rule is enforced by the secretary of the West Virginia department of health and human resources or his or her lawful designee.

§64-49-2. 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: *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.

2.2. Adult family care home. -- A residence where room, board and supervision are provided, with the approval of the department's office of social services, for one (1) to three (3) adults who are ambulatory and not in need of nursing care.

2.3. Approved medication assistive personnel. -- The unlicensed facility staff member, who meets eligibility requirements, has successfully completed the required training and competency testing, and is considered competent by the registered nurse to administer medications to residents of the facility in accordance with article five-o, chapter sixteen of the West Virginia Code.

2.4. Authorizing agency. -- The department's office of health facility licensure and certification.

2.5. 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.

2.6. Department. -- The department of health and human resources.

2.7. Facility. -- An intermediate care facility for the mentally retarded (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.

2.8. 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.

2.9. Health care professional. -- A medical doctor or doctor of osteopathy, a podiatrist, registered nurse, practical nurse, registered nurse practitioner, physician's assistant, dentist, optometrist, pharmacist, physical therapist or respiratory care

professional licensed under chapter thirty of the West Virginia code.

2.10. ICF/MR. -- An intermediate care facility for people with mentaretardation which is certified by the department to provide health or rehabilitation services to persons with mental retardation or persons with related conditions who are receiving active treatment.

2.11. Medication. -- A drug, as defined in section one hundred one, article one, chapter sixty-a of the West Virginia 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.

2.12. Medication error. -- Any deviation from the "six rights of medication administration," (as defined in section 2.19) that occurs during medication administration: *Provided,* That resident refusal is not considered a medication error.

2.13. Personal care home. -- Any institution, residence or place, or any part or unit thereof, however named, in this State which is advertised, offered, maintained or operated by the ownership or management, whether for consideration or not, for the express or implied purpose of providing accommodations and personal assistance and supervision, for a period of more than twenty-four (24) hours, to four (4) or more persons who are dependent upon the services of others by reason of physical or mental impairment who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice: *Provided,* That services utilizing equipment which requires auxiliary electrical power in the event of a power failure shall not be used unless the personal care home has a backup power generator.

2.14. Registered professional nurse. -- A person who holds a valid license pursuant to article seven, chapter thirty of the West Virginia Code.

2.15. Resident. -- A resident of a facility.

2.16. Residential board and care home. -- Any residence or any part or unit thereof, however named, in this State which is advertised, offered, maintained, or operated by the owners or management, whether for consideration or not, for the express or implied purpose of providing accommodations, personal assistance and supervision, for a period of more than twenty-four (24) hours, to four (4) or more persons who are not related to the owner or manager by blood or marriage within the degree of consanguinity of second cousin and are dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving

services coordinated by a licensed hospice: *Provided,* That services utilizing equipment which requires auxiliary electrical power in the event of a power failure shall not be used unless the residential board and care home has a backup power generator.

2.17. Secretary. -- The secretary of the department of health and human resources or his or her designee.

2.18. 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.

2.19. 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.)

2.20. 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.

§64-49-3. State Administrative Procedures.

3.1. Any facility may offer the training and competency evaluation program developed by the department to its facility staff members. The training and competency program shall be provided by the facility through a 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 registered professional nurse who will provide the training, and the facility policies and procedures required by this rule.

3.1.b. Participation in the program shall only be permitted after review and approval of the nurse's credentials and the facility policies and procedures by the

authorizing agency, and after the registered professional nurse has completed the facility trainer / instructor orientation course developed by the authorizing agency.

3.2. The facility will be required to submit a fee, the amount to be determined by the authorizing agency, for participation of a registered professional nurse in the facility trainer / instructor orientation course and a fee per test for each facility staff member's competency evaluation.

§64-49-4. Administration of Medications in Facilities.

4.1. Administration of medication pursuant to this rule shall be performed by: registered professional nurses; other licensed health care professionals subject to the provisions of their respective licensing laws; or approved medication assistive personnel.

4.2. 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 the facility staff member to administer medications to the resident.

4.3. Authorization may only be granted if the facility staff member:

4.3.a. Has been trained pursuant to the requirements of this rule;

4.3.b. Is considered by the registered professional nurse to be competent;

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

4.3.d. Is monitored or supervised by the registered professional nurse (as defined in section 7.1.c.5).

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

4.4.a. Nothing in this rule 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.

4.4.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.

§64-49-5. Instruction and Training.

5.1. Curriculum.

5.1.a. The curriculum utilized to train facility staff shall be the West Virginia Department of Health and Human Resources Curriculum for Unlicensed Medication Assistive Personnel March 1998.

5.2. Competency testing.

5.2.a. Competency tests utilized shall be those developed and provided by the authorizing agency.

5.2.b. A competency test shall be administered to the facility staff member by the authorized registered professional nurse after completion of the required training. The completed exam shall be returned to the authorizing agency, postmarked within forty-eight (48) hours of completion.

5.2.c. The facility staff member shall be allowed three opportunities to satisfactorily complete a competency test, utilizing a different test for each opportunity. A fourth and final competency test may only be given if the staff member 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 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 observation, by the authorized registered professional nurse, of medication administration by the approved medication assistive personnel.

5.4. Authorization requirements of the registered professional nurse

5.4.a. The registered professional nurse authorized to train facility staff to administer medications shall:

5.4.a.1. Possess a current active 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 for the immediate two years prior to being authorized to train facility staff;

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

5.4.a.6. Have knowledge of this rule.

§64-49-6. Eligibility Requirements of Facility Staff.

6.1. A facility may permit a facility staff member to administer medications in a single specific agency only after compliance with all of the following:

6.1.a. The staff member has successfully completed the facility's medication administration training program and received a satisfactory competency evaluation as required by the provisions of this rule;

6.1.b. The facility determines there is no statement on the state administered nurse aide registry indicating that the 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.c. 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.d. The facility staff member holds a high school diploma or a general education diploma;

6.1.e. The facility staff member is certified in cardiopulmonary resuscitation and first aid; and

6.1.f. The facility staff member participates in the required retraining program at least every two (2) years.

6.2. Any facility which authorizes unlicensed staff members to administer medications pursuant to the provisions of this rule shall make available to the authorizing agency a list of the approved medication assistive personnel.

6.3. 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 required in subdivisions 6.1.a. -f. This file shall be maintained in the facility and available to representatives of the authorizing agency on request.

§64-49-7. Facility Oversight of Medication Administration by Unlicensed Personnel.

7.1. Administrative policy requirements.

7.1.a. The facility must submit policies and procedures pertaining to medication administration to the authorizing agency for approval, prior to receiving authorization to train facility staff members.

7.1.b. The 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 registered professional nurse and facility staff members participating in medication administration;

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, including;

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

persons. This record shall include: the name of the resident to receive the medication; the name of the medication, the dosage to be administered and the route of administration; the time or intervals at which the medication is to be administered; the date the medication is to begin and cease; the printed name, initials and signature of the individual who administered the medication; and any special instructions for handling or administering the medication, 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 registered professional nurse and must be countersigned by the physician.

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

7.1.c.5. Requirements for monitoring and supervising of the approved medication assistive personnel by the registered professional nurse employed or contracted by the facility including: twenty-four (24) hour on-call coverage; the number of approved medication assistive personnel, residents, and sites the registered professional nurse will supervise; the number of residents and sites for which the approved medication assistive personnel will administer medications; the furthest distance the registered professional nurse will be expected to travel to a site and between sites; periodic and ongoing observation and supervision, not less than quarterly, of all approved medication assistive personnel during medication administration; the training and approval process for an approved medication assistive personnel to administer medications at different sites within a specific agency; ongoing review of physician's orders, medication administration records and medication labels by the registered professional nurse for consistency and documentation of such, ongoing review of medication error reports and medication related incident reports by the registered professional nurse and the attending physician; and withdrawal of approval for a facility staff member to administer medication;

7.1.c.6. Requirements for communication between the approved medication assistive personnel and the supervising registered professional nurse, including: any change in a resident's condition; any discrepancy between the pharmacy label and the medication administration record; any deviation from the six rights of medication administration; any doubt or question about the medication administration process; resident refusal of medication; any question about a

medication ordered to be given "as needed"; any question about a medication looking different or unusual; receipt of any change in physician's orders, and the need for disposal of medications;

7.1.c.7. The medication delivery system to be utilized by the facility including: 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;

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

7.1.d. Each facility shall have available resource information on all drugs being administered in 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 is not being administered in accordance with the six rights of medication administration or if potentially unsafe conditions exist.

7.1.f. Failure by the facility to provide oversight of medication administration as required by this rule or by facility policies may result in denial of participation in this program.

§64-49-8. Withdrawal of Authorization.

8.1. The registered professional nurse, who monitors or supervises the approved medication assistive personnel, may withdraw the approval to administer medications if the nurse determines that the approved medication assistive personnel is not performing medication administration in accordance with the training and written instructions.

8.2. The withdrawal of approval shall be documented and shall be relayed to the facility and the authorizing agency.

§64-49-9. Limitations on Medication Administration 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.

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 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" (PRN) shall be administered only if the order is written with specific parameters which preclude independent judgement

§64-49-10. Administrative Due Process.

10.1. Administrative due process and remedies for actions taken under this rule, W. Va. Code §§16-5O-1 et seq. are as provided in this rule, in said articles of the West Virginia Code, and in the division of health procedural rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

64CSR60

Medication Administration by Unlicensed Personnel

COMMENTERS

1. Dave Plowright, Chair
   Mary B. Eaton, VOCA
   DD Committee

2. Elizabeth Vandall, QI Director
   Mental Health Council, Inc.

3. Roy Herzbach, Ombudsman Supervisor
   Legal Aid Society of Charleston

4. Mary Warman Terry, Executive Director
   Try-again Homes Inc.

5. Laura Skidmore Rhodes, Executive Secretary
   Board of Examiners for Registered Professional Nurses

6. Richard D. Stevens, Executive Director
   West Virginia Pharmacists Association

7. Jack H. Albert, WV State Legislative Committee
   American Association of Retired Persons

8. Julie DePuy, RN, DON, Co-Administrator
   Karen Freyhof, Co-Administrator
   Arlington Personal Care Home, Inc.

9. Elliott Birckhead, Advocacy Project Supervisor
   Legal Aid Society of Charleston

10. Staff
    Mullens Manor Personal Care Home

11. Beverly Kelley, Community Services Manager
    United Summit Center, Inc.

12. Karen Decker
    Decker's Residential Board and Care

13. Anita B. Shaver, RN, BSN, Administrator
Greenbrier County Home Health Agency

14. ARC Harrison County

Responses to comments
and
Changes Made as a Result of the Public Comment Period
on Proposed Rule
Medication Administration by Unlicensed Personnel, 64 CSR 60

General comment:

This is a general statement about the rule from an agency which provides specialized foster care requesting that the definitions be amended to clearly limit the Rule to adult facilities.

RESPONSE: As stated in the law, the scope of this rule is limited to a private residence where health care services are provided under the supervision of a registered nurse thereby excluding foster care for children.

General comment:

Are there any options available to the facility in an emergency situation? For example, a facility has only one Approved Medication Assistive Personnel. That person leaves their job leaving no other on-site facility staff person qualified to administer medications. The process to get another unlicensed facility staff person approved will take some time. In many parts of the state, it is not practical to think that a Health Care Professional can be immediately found to administer medications during this interim period. Under such circumstances as just described, how does a resident receive their medications:

I truly think the situation described is very likely to happen and the Rule needs to provide some protection to the residents to make sure they receive their medications in a timely manner.

RESPONSE: Rules cannot be written to allow noncompliance with the law. Facilities are expected to act as quickly as possible to comply with the law. If a situation is "very likely to happen" plans for addressing these situations should be addressed in the approved facility policies.

General comment:

There was a general comment expressing concern that freedom to choose has been removed as a result of this rule and that many facilities will have to close related to increased costs.

RESPONSE: Medication Administration by Unlicensed Personnel is a voluntary program. No one is forced to participate. Unfortunately, most facilities do no have funds available to provide 24 hour nursing coverage for medication administration. This law was designed to improve health services for residents and allow them to remain in the least restrictive setting possible.

General comment:

There is concern that inexperienced persons will have difficulty recognizing signs and symptoms, complications, and/or drug reactions.

RESPONSE: The individuals that work with these residents see them on a regular basis and are many times the first to notice changes from the norm. They will also be carefully trained by the authorized registered nurse. In training the Medication-Assistive-Personnel (MAP) to become Approved Medication-Assistive Personnel(AMAP) and administer medications, the course emphasizes that the MAP and the registered professional nurse must maintain frequent close communication. Twenty-four hour on-call coverage by the registered nurse is also required for this program.

General comment:

There is concern that there is increased liability for the R.N..

RESPONSE: R.N.s are responsible for total care which includes administration of medications. If R.N.s want to improve the care of residents and assure safe medication administration at a higher level, then they must become involved.

General comment:

There is concern that this is another nursing duty that is being given away.

RESPONSE: As stated before, there are not funds available to many of the facilities to provide twenty-four hour nursing coverage for medication administration. The law requires that this program be monitored and supervised twenty-four hours a day with on-call coverage by a registered professional nurse. Only the registered professional nurse has the expertise and authority to make judgements and decisions, in consultation with other licensed health care professional when necessary.

General comment:

Is this law really needed?

RESPONSE: Comments regarding whether a state law is needed or not regarding medication administration are more appropriately addressed to the Legislature.

General comment:

Is there a choice about having help with medication administration?

RESPONSE: When one chooses to be served in a facility, defined in the Code relating to medication administration by unlicensed personnel, one is subject to the delivery of that service in accordance with the Code and regulatory requirements imposed upon such a facility, just as when one chooses to be served by a hospital one is subject to the delivery of service in accordance with the Code and regulatory requirements imposed upon that hospital.

General comment:

As a result of these proposed rules, instead of WV saving money, providers of behavioral health who have participants living in the community (other than ICF/MR's) will spend more state dollars on R.N.s. There is no fiscal note attached to these rules which enables providers to pay wages to R.N.s. Where do providers get money for the R.N. wages?

RESPONSE: If facilities have not been using R.N.s in the manner now required by the Code and rule, then yes it will cost them more. The rule reflects the requirements of the Code, and the Code does not provide payment to facilities to meet the requirements, as is the case with all regulatory requirements.

General comment:

It was recommended that legal counsel review the rules in comparison with the Americans with Disabilities Act in regard to imposing these rules on MR/DD people.

RESPONSE: The Americans with Disabilities Act generally prohibits discrimination on the basis of disability. The proposed rule will apply to all persons residing in facilities as defined in W.V. Code §16-50-2(d). Absent an explanation how the proposed rule will give a detrimental impact on MR/DD residents different than on other residents of the facilities to which the proposed rule will apply, there is no apparent discrimination to MR/DD residents.

§64-60-2 Definitions

COMMENT: "Pharmacist" should be added as a definition.

RESPONSE: Making the suggested changes would require revising the statute; a rule cannot conflict with the enabling statute. However, the application of the term pharmacist is encompassed in the definition in Chapter 30 Article 5 of the Code of West Virginia.

2.1.a. Assisting a person in the ingestion, application or inhalation of medications, including 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

COMMENT: Medication is defined in the same language as in the code. What is the meaning "including prescription drugs"? Are over the counter (non-prescription) medications included? I find the present wording confusing in as much as the definition of medication under Section 2.11 defines a drug as one which has been prescribed, but Section 2 . 1. a under Administration of Medications uses the language "Assisting a person in the ingestion . . . of medications, including prescription drugs," which seemingly include medications which are also non-prescription. Please clarify.

RESPONSE: Any individual in a specified facility must have written orders for all medications that are to be administered as stated in 7 . 1. c . 4 . B. which includes over the counter medications. We agree that the wording is confusing and will make the change in 2.1.a. to read "including prescription and non-prescription drugs."

2.5. Behavioral Health Group Home

COMMENT: This refers to people "who are developmentally disabled, behaviorally disabled or substance abusers." In order to help reinforce the point that people are not defined solely by their disabilities, could it read people with developmental disabilities, behavioral disorders or substance addictions.

RESPONSE: The change will be made as suggested.

2.7. Facility. --An intermediate care facility for the mentally retarded (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.

COMMENT: Does the term facility include a private residence? If so, what if these individuals receive medication, but have not been under the supervision of a Registered Nurse, i.e., waiver, respite, etc.

RESPONSE: The proposed rule does not apply to a person living in their own home who does not

receive health care services provided under the supervision of a registered nurse.

COMMENT: Would a Residential Board and Care Home qualify as a setting, the purpose of which is other than provision of health care?

RESPONSE: Residential Board and Care Homes are licensed as health care providers.

COMMENT: By what authority does the Secretary of the West Virginia Department of Health and Human Resources have to enforce actions within a private residence? I can see actions taken against an R.N. or an employee of a licensed health care service, but does not this extend to a family member as well? Please be more specific as to who is subject to enforcement action in a private residence.

RESPONSE: The authority is provided by this law, however the law limits enforcement to private residences in which health care is supervised by a Registered Professional Nurse. The intent here is to regulate the entity providing services in a private residence as opposed to regulating the private residences themselves. The rule does not impact on family members who administer medications.

2.9. Health Care Professional. --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.

COMMENT: Health Care Professional is defined as -- 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. Yet, in several places within the rule, physician is used rather than **health care professional.** The Board would like to see the language consistently refer to the **health care professional.**

Specifically, please refer to the following portions of the rule:

§64 - 60 - 4 . 2; 4 . 3 . c.; 7 . 1 . c . 4 . B.; 7 . 1 . c . 4. c; 7 . 1 . c . 5 .; and 7 . 1 . c . 6 .

RESPONSE: The language of the law utilizes physician in certain areas and cannot be changed. However, we do not see that this precludes appropriately licensed health care professionals from practicing within the scope allowed by West Virginia law in the circumstances noted above.

COMMENT: Pharmacist and physical therapist should be included.

RESPONSE: Pharmacist and physical therapist will be included in the definition of a Health Care Professional.

2.10 ICF/MR

COMMENT: This again refers to "the mentally retarded." Suggest change to people with mental retardation.

RESPONSE: This change will be made.

2.11. Medication -- A drug, as defined in section one hundred one, article one, chapter sixty-a of the West Virginia 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.

COMMENT: Unlicensed personnel are not allowed to perform any sterile procedure. All eye medications are sterile.

RESPONSE: Eye medications are sterile. Instillation is aseptic. Aseptic technique is included in the training curriculum.

2.12. Medication Error

COMMENT: This refers to the "six rights of medication administration." Could a reference to section 2.19. be added so people know where to look for determining what this refers to?

RESPONSE: This change will be made and will read ..."six rights of medication administration" as defined in 2.19...that etc.

2.13. Personal Care Home

COMMENT: This includes the phrase "receiving services coordinate by a licensed hospice" at the end of the first sentence. Should this be change to coordinated?

RESPONSE: This change will be made.

2.14. Registered Professional Nurse -- A person who holds a valid license pursuant to article seven, chapter thirty of the West Virginia Code.

COMMENT: The Registered Professional Nurse is defined but the Licensed Practical Nurse is not. Is this an oversight or is it not warranted?

RESPONSE: The Registered Professional Nurse is integral to this rule and is therefore defined.

2.16. **COMMENT:** In the section describing Residential Board and Care Home, it says"unless the personal care home has a" . . . Should it read residential board and care home instead.

RESPONSE: This will be changed to state residential board and care home.

2.18. 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 prepackage 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.

COMMENT: It is recommended that the first sentence (in 2. 18.) be changed to: The age of a resident, who is independently capable of demonstrating and/or understanding the labels of drugs. The current language excludes many people with MR/DD who have or can develop skills needed for self-administration of their medications.

RESPONSE: This comment is unclear. The language in this definition is taken directly from the law §16 - 5O - 2 (l). The requirement to be able to read the labels of drugs is one of the elements of the definition of "self-administration of medication" as defined by the legislature and repeated in the proposed rule. The requirement of being able to read the labels of drugs is equally applicable to both MR/DD residents who cannot read and to other residents who cannot read, all of whom receive supervision of their self-administration of medication in setting the substantial purpose of which is other than the provision of health care. The reading requirement is reasonably related to the objective of helping to assure that a resident of a facility in such a setting takes the correct drugs in the right dosage at the right time in the right manner.

COMMENT: The phrase "opening and accessing prepackage drug containers" should be changed to "prepackaged."

RESPONSE: This will be changed.

2.20. 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.

COMMENTS: The only reference to self-administration or supervision of self-administration appears in the definition section. There needs to be some reference to these definitions in the text of the Rule to give such definitions substance. Also, there needs to be some guidance as to what is the procedure(s) if a resident can self-administer.

Pharmacists are licensed to dispense and administer drugs or devices. Pharmacists provide the personal services described in your definition 2.20.

Does this article include medication boxes prepared by registered nurses for client self-administration?

Community Support workers remind clients to take their medications. Are personnel allowed to prompt clients who use medication boxes to take their medications?

RESPONSE: The definitions are taken directly from the law. They are there to exclude self-administration and supervision of self-administration from this program. The authority for this is in the

law §16 - 5O - 3 (e). There will be an addition to the rule :

4.4. Exclusions for administration of medications in facilities:

4.4.b. Supervision of self-administration of medication...

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

COMMENT: Two R.N.s representing this agency participated in a week's training by the state to be our facility trainer/instructors. Will this training be acceptable or will our R.N.s have to complete further training? Also, will they be able to train other R.N.s to be instructors?

RESPONSE: The response to both questions is no. It is required by the law that every R.N. who wishes to become a trainer/instructor is authorized for this specific program. See § 16-5O - 5 (d) (e).

3.2. The facility will be required to submit a fee, the amount to be determined by the authorizing agency, for participation of a registered professional nurse in the facility trainer/instructor orientation course and a fee per test for each facility staff member's competency evaluation.

COMMENT: What will these fees be?

RESPONSE: These fees have not been determined yet as we are pursuing an extension of an agreement that is all ready in place with a training and testing service.

COMMENT: Is there any reason we can't have the tests printed?

RESPONSE: Each test (or group of tests) that is provided will consist of randomly selected test items taken from a computerized data base of questions. This insures the integrity of the test and helps to eliminate the possibility of "teaching to the test."

4.1. Administration of medication pursuant to this rule shall be performed by: registered professional nurses: other licensed health care professionals subject to the provisions of their respective licensing laws; or approved medication assistive personnel.

COMMENT: Pharmacists should be included in 4.1.

RESPONSE: Pharmacists are included as this applies to any health care professionals practicing under their respective licensing laws.

4.2. 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 the facility staff member to administer medications to the resident.

COMMENT: How often will this need to be done?

RESPONSE: There is no frequency requirement. This will be a one time documentation that would be changed only when deemed necessary based on the resident's condition and the judgement of the health care professionals involved.

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

COMMENT: What is a regular basis and is the individual staff member supposed to consult with the doctor as opposed to consulting with the R.N.?

RESPONSE: Expectation that consultation occurs as frequently as needed based on the resident's condition. According to the West Virginia Department of Health and Human Resources Curriculum for Unlicensed Medication Assistive Personnel approved by the Council of Nurses, the Medication Assistive Personnel will be instructed to report directly to the supervising R.N..

4.3.d. Is monitored or supervised by the registered professional nurse.

COMMENT: Is this direct 24-hour observation?

RESPONSE: Monitoring and supervising by the registered professional nurse is explained in 7.1.c.5. and includes 24 hour on-call coverage, not direct observation.

COMMENT: Could a reference be made to 7.1.c.5. so people will know where to look for determining what this entails?

RESPONSE: Yes. It will read ...nurse as defined in 7.1.c.5.

5.1.a. The curriculum utilized to train facility staff shall be the West Virginia Department of Health and Human Resources Curriculum for Unlicensed Medication Assistive Personnel March 1998.

COMMENT: How much training is required?

RESPONSE: This will be determined by the curriculum criteria. It is anticipated that to cover the content and provide adequate experience for the adult learner, a minimum of forty hours will be required. The actual time will be determined by the learner's comprehension and competence as determined by the Registered Professional Nurse.

5.2.b. A competency test shall be administered to the facility staff member by the authorized registered professional nurse after completion of the required training. The completed exam shall be returned to the authorizing agency, postmarked within forty-eight (48) hours of completion.

COMMENT: Why the 48-hour postmark?

RESPONSE: The sooner the tests are in, the sooner approval can be granted.

COMMENT: Is licensure going to grade the tests?

RESPONSE: The RN and the facility are not responsible for grading the tests. Licensure will be responsible for the test being graded.

COMMENT: What is the expected turn around?

RESPONSE: The expected turn around is seven to ten days from receipt of a test(s) in the office.

5.2.c. The facility staff member shall be allowed three opportunities to satisfactorily complete a competency test, utilizing a different test for each opportunity. A fourth and final competency test may only be given if the staff member repeats the training program. The decision to repeat the training course will be at the discretion of the authorized registered professional nurse.

COMMENT: Is there a reason for three separate tests?

RESPONSE: There will be a separate test provided for each testing consisting of randomly selected items taken from a computerized data base of questions. This again protects the integrity of the test and helps to prevent "training to the test."

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

COMMENT: Retraining should not be needed with the monitoring and supervision built into the system. What about the additional training costs and test expense? This cost is not covered under some of the funding streams.

RESPONSE: Retraining every two years is required by the law §16 - 5O - 5 (5). There is no testing requirement with the retraining.

5. 4. a. The registered professional nurse authorized to train facility staff to administer medications shall:

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

COMMENT: Will we be able to send one registered nurse and then have that person train our other registered professional nurses?

RESPONSE: No. Each registered nurse that wants to become eligible to be a trainer/instructor must be individually authorized by the department and attend the designated R.N. Orientation course.

6.1. A facility may permit a facility staff member to administer medications in a single specific agency only after compliance with all of the following:

COMMENT: Why can't the core curriculum be transferrable to other agencies? Do they receive a card or completion certificate?

RESPONSE: Training is not transferrable because it is facility specific. Neither cards nor completion certificates will be provided. Documentation of successful course completion with a certificate/letter from the Approved Facility Trainer/Instructor should be maintained in the facility file.

COMMENT: Does the person need to be a certified nursing assistant? Can a secretary, dietary staff member, administrator be trained to be an Approved Medication Assistive Person?

RESPONSE: There is no requirement to be a certified nursing assistant. Other staff member can be trained if they meet the eligibility requirements.

COMMENT: Can these people also work in another capacity, i.e., secretary?

RESPONSE: This would be a policy decision and subject to the Office of Health Facility and Licensure and Certification approval.

COMMENT: What if staff members already employed do not meet the eligibility requirements?

RESPONSE: Any employee that is trained to administer medications must meet all eligibility requirements.

6.1.c. 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;

COMMENT: Recommended change "or drug related felony."

RESPONSE: The word crime is taken directly from the wording used in the law.

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

COMMENT: The assumption is that this is only during the initial implementation. Once the policies have been developed or revised in some cases this would be a mute issue.

RESPONSE: 7 . 1. b . will be changed to read "The authorized registered professional nurse shall participate in development and revision of these policies and procedures."

7.1.c.4.A. Each facility shall maintain a medication administration record for each resident, to be maintained as a part of the permanent medical record. This record shall be available for review by the registered professional nurse, representatives of the authorizing agency, and other authorized persons. This record shall include: the name of the resident to receive the medication; the name of the medication, the dosage to be administered and the route of administration; the time or intervals at which the medication is to be administered; the date the medication is to begin and cease; the printed name, initials and signature of the individual who administered the medication; and any special instructions for handling or administering the medication, including instructions for maintaining aseptic conditions and appropriate storage.

COMMENT: Is there an expectation that every personal residence have an MAR in the home? How may years are required for medical record retention?

RESPONSE: In order to fulfill the requirement of the six rights of medication administration, there must be a MAR maintained for each resident receiving medication in every setting. Records must be kept for five years.

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 registered professional nurse and must be countersigned by the physician

COMMENT: It is recommended to remove over the counter medications due to family and private residence concerns with resident rights.

RESPONSE: All medications administered must have written orders by the authorized practitioner, thus including over the counter.

COMMENT: Can verbal orders be taken by LPN's?

RESPONSE: The language in this rule must be consistent with the Nurse Practice Acts. The registered professional nurse is the only person who can delegate duties to the Approved Medication Assistive Personnel.

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

COMMENT: Why does a physician need to be involved in this decision? This has potential complications.

RESPONSE: This is required by law. See §16 - 50 - 3 (c).

COMMENT: If a physician is in the decision to use authorized med pass by unlicensed personnel why do we need an R.N. or any of the proposed rule at all?

RESPONSE: This is required in the law. See §16-50-3(c)(4) and §16-50-11.

7.1.c.5. Requirements for supervision of the approved medication assistive personnel by the registered professional nurse employed or contracted by the facility including; twenty-four (24) hour on-call coverage; the number of approved medication assistive personnel, residents, and sites the registered professional nurse will supervise; the number of residents and sites for which the approved medication assistive personnel will administer medications; the furthest distance the registered professional nurse will be expected to travel to a site and between sites; periodic and ongoing observation and supervision, not less than quarterly, of all approved medication assistive personnel during medication administration; the training and approval process for an approved medication assistive personnel to administer medications at different sites within a specific agency; ongoing review of physician's orders medication administration records and medication labels by the registered professional nurse for consistency and documentation of such, ongoing review of medication error reports and medication related incident reports by the registered professional nurse and the attend physician; and withdrawal of approval for a facility staff member to administer medication;

COMMENT: Recommended change in sentence one to read "requirements for monitoring a[nd] supervising."

RESPONSE: Agreed. Change will be made.

COMMENT: There was a great deal of concern regarding the resident to R.N. ratio implications, travel distance, and quarterly monitoring requirements. This could actually result in an increase in R.N.'s and a major increase in Medicaid expenditures.

RESPONSE: Minimum ratios are necessary to insure resident protection and may have to be revised if potential for a poor outcome is identified. The department along with the Council of Nurses concur that in order to safely monitor medication administration, it must be done at **least** quarterly.

COMMENT: Policies and procedures should include medication error reporting systems and outcomes should be monitored and available for surveyors.

RESPONSE: This is addressed as ongoing review of medication error and incident reports. Surveyors will have access to these reports.

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.

COMMENT: Concern was expressed about not being able to use med planning devices to assist people in being more independent in self administration or other like alternatives that may require the medication being placed out of its original container, i.e. medication boxes.

RESPONSE: Any time an AMAP is involved in medication administration, the law states that medications to be administered are received and maintained by the facility staff member in the original container in which it was dispensed by a pharmacy or the prescribing health care professional. See §16 - 5O - 6 (4).

9.2. No injections nor any parenteral medications shall be administered.

COMMENT: Will emergency injections required for bee stings on residents with allergies be excluded from this requirement?

RESPONSE: Yes. As stated in §16 - 5O - 3 (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" There will also be an addition to the rule:

4.4. Exclusions for administration of medications in facilities:

4.4.a. Nothing in this rule 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.

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

COMMENT: Would it be a judgement call for Approved Medication Assistive Personnel to give medications for agitation?

RESPONSE: There would have to be a specific description on the MAR of what constitutes agitation.

cc: JD
KB
RP
AS

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BUREAU OF
HEALTH FACILITIES REGULATION

MEMO

To: John Wilkinson

From: DD Committee Chair Dave Plowright DP
Mary Bea Eaton, VOCA MBE

Subject: Medication Administration Legislative Rules

Date: May 14, 1998

On behalf of the DD Committee I have compiled a summary of the comments that came from our Committee's review of the Draft Medication Administration Legislative rules on 5/12/98.

If you have any questions or concerns please feel free to give me or Dave Plowright a call.

MBE/ljb

Enclosure

Page one - no comments

Page two - 2.7 Does the term facility include a private residence. If so, what if these individuals receive medication, but have not been under the supervision of a Registered Nurse, i.e., waiver, respite, etc.

Page three - no comments

Page four - 2.18 The Committee recommends that the first sentence be changed to: The age of a resident, who is independently capable of demonstrating and/or understanding the labels of drugs. The current language excludes many people with MR/DD who have or can develop skills needed for self-administration of their medications.

3.2 How much money are we looking at here? Is there a reason we can't have the tests printed?

Page five - 4.2 A concern was raised about individuals in their homes who may not be supervised by a RN or have an attending physician.

4.3.c. Consults on a "regular basis" what is regular? Who interprets this?

5.2.5 The 48 hour postmark. Why the time frame? Is Licensure going to grade the tests? What is the expected turn around time?

Page six - 5.2.c. Is there a reason for 3 separate tests?

5.3.a Restraining should not be needed with the monitoring and supervision built into they system. What about the additional training costs and test expense? This cost is not covered under some of the funding streams.

5.4.a.4. How often will the trained instruction orientation be offered?

6.1 Why can't the core curriculum be transferrable to other agencies? Do they receive a card or completion certificate?

Page seven - 6.1.c. Recommended change "or drug related felony"

6.1.f. The facility staff is retrained every year. (See 5.3.a.)

7.1.b. The assumption is that this is only during the initial implementation. Once the policies have been developed or revised in some cases this would be a mute issue.

Page eight - **7.1.c.4.a.** Is there an expectation that every personal residence have an MAR in the home? How many years are required for medical record retention? (3, 5, etc.)

7.1.c.4.b. The Committee recommended removing over the counter medications due to family and private residence concerns for resident rights.

Can verbal orders be taken by LPN's?

7.1.c.4.c. Why does a physician need to be involved in this decision? This has potential complications.

7.1.c.5. Recommended change in sentence one to read "requirements for monitoring a supervising".

There was a great deal of concern regarding the resident to RN ratio implications, travel distance, and quarterly monitoring requirements. This could actually result in an increase in RN's and a major increase in Medicaid expenditures.

Page nine - No comment

Page ten - **9.1** Concern was expressed about not being able to use med planning devices to assist people in being more independent in self administration or other like alternatives that may require the medication being placed out of it's original container.

FMRS MENTAL HEALTH COUNCIL, INC.
ADMINISTRATIVE OFFICE
Telephone: 304-256-7100
101 S. Eisenhower Drive
BECKLEY, W. VA. 25801

June 23, 1998

Marsha Dadisman, Acting Director
Regulatory Development
Department of Health and Human Resources
Capitol Complex – Building 3, Room 265
Charleston, West Virginia 25305

Dear Ms. Dadisman:

Please find attached our questions and comments about the new Medication Administration by Unlicensed Personnel Rule. These questions/comments come from our nursing staff.

We are very interested in knowing exactly what the requirements will be for our staff and the Rule is sometimes vague on what we need to know. Basically, we are concerned about what will be the length of training for our RNs, and for our unlicensed staff (and how soon we can have staff certified to administer medications.) We are also interested in knowing what the fee amounts for the training will be. We would like to know what the time frames will be for all requirements.

Thank you and please let us know if there are any questions about our questions/comments.

Sincerely,

Elizabeth Vandall

Elizabeth Vandall
QI Director

64-49-3 State Administrative Procedures

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

Two RNs representing this agency participated in a week's training by the state to be our facility trainer/instructors. Will this training be acceptable or will our RNs have to complete further training? Also, will they be able to train our other RNs to be instructors?

3.2 The facility will be required to submit a fee, **the amount to be determined by the authorizing agency,** for participation of a registered professional nurse in the facility trainer/instructor orientation course and a fee per test for each facility staff member's competency evaluation.

Have the fee amounts been determined?

4.2 **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 the facility staff member to administer medications to the resident.

How often will this need to be done? Every time the resident sees the doctor, yearly?

4.3.c Authorization may only be granted if the facility staff member:

Consults with the registered professional nurse or **the attending physician on a regular basis;**

What will be considered a regular basis? Is the individual staff member supposed to consult with the doctor as opposed to consulting with the R.N., who consults with the physician?

64-49-5 Instruction and Training

5.1.a **The curriculum** utilized to train facility staff shall be the West Virginia Department of Health and Human Resources Curriculum for Unlicensed Medication Assistive Personnel March 1998.

How much training is required? Will it be one day, one week or what?

5.2.b A competency test shall be administered to the facility staff member by the authorized registered professional nurse after completion of the required training. The completed exam **shall be returned to the authorizing agency postmarked with forty-eight (48) hours of completion.**

What is the turn around time for getting testing results back to us, so that staff may start working?

5.4.a4. **The registered professional nurse authorized to train facility staff to administer medications shall have completed the facility trainer/instructor orientation course developed by the authorizing agency.**

Will we be able to send one registered professional nurse and then have that person train our other registered professional nurses?

64-49-9 Limitation on Medication Administration by Unlicensed Personnel

9.2. **No injections or any parenteral medications shall be administered.**

Will emergency injections required for bee stings on residents with allergies be excluded from this requirement?

LEGAL AID SOCIETY OF CHARLESTON

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Parkersburg, WV 26101
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Legal Aid Society of Charleston
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Charleston, WV 25301
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APPALRED
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Princeton, WV 24740
425-9138

Sponsored by: Bureau of Senior Services

June 17, 1998

Marsha Dadisman - Acting Director
Regulatory Department
Department of Health and Human Resources
Capitol Complex, Building 3, Room 205
Charleston, WV 25305

Dear Ms. Dadisman:

The following are my comments concerning the Medication Administration by Unlicensed Personnel Rule:

1). **Section 64-49-2 Definitions:**
A). Section 2.1 and Section 2.11

Are over the counter (non-prescription) medications included? I find the present wording confusing in as much as the definition of medication under Section 2.11 defines drug as one which has been prescribed, but Section 2.1.a under Administration of Medications uses the language "Assisting a person in the ingestion ... of medications, including prescription drugs", which seemingly includes medications which are also non-prescription. Please clarify.

2). **Section 2.7 - Definition of Facility:**

By what authority does the Secretary of the West Virginia Department of Health and Human Resources have to enforce actions within a private residence? I can see actions taken against an RN or an employee of a licensed health care service, but does this extend to a family member as well? Please be more specific as to who is subject to enforcement action in a private residence.

3). **Sections 2.18 and 2.20:**

Deals with self-administration of medications. The only reference to self-administration or supervision of self-administration appears in the definition section. There needs to be some reference to these definitions in the text of the Rule to give such definitions substance. Also, thee needs to be some guidance as to what is the procedure(s) if a resident can self-administer.

4). A general concern I have is: Are there any options available to the facility in an emergency situation? For example, a facility has only one Approved Medication Assistive Personnel. That person leaves their job leaving no other on-site facility staff person qualified to administer medications. The process to get another unlicensed facility staff person approved will take some time. In many parts of the state, it is not practical to think that a Health Care Professional can be immediately found to administer medications during this interim period. Under such circumstances as just described, how does a resident receive their medications?

I truly think the situation described is very likely to happen and the Rule needs to provide some protection to the residents to make sure they receive their medications in a timely manner.

If you have any need to follow-up regarding my comments, please do not hesitate to contact me.

Very truly yours,

Roy Herzbach
Ombudsman Supervisor

RH:cm

TRY-AGAIN HOMES INC.

Serving Children and Their Families

98 JUN 15 AM 8:

RECEIVED
NURSING ASSISTANT TRAINING
AND JUN 18 1998
COMPETENCY EVALUATION
PROGRAM

June 9, 1998

Marsha Davidson, Acting Director
Regulatory Development/DHHR
Bldg 3 Room 265 Capitol Complex
Charleston WV 25305

Re: Comment -- Medication Administration by Unlicensed Personnel
64 CSR 49

Dear Ms. Davidson:

This agency is a private non-profit corporation which provides specialized foster care to children up to age 18, and occasionally to young adults up to age 21 who are remaining in school. The children are generally dependent or abused children placed out of their own homes by DHHR. Our foster homes are spread over a multi-county area, covering about 25 Counties, and are supported by staff who visit the homes at least weekly. We have three offices from which staff are based, in Fairmont, Parkersburg, and Charleston.

The nature of foster care for children is that it is with a family who, under the supervision and with the support of our caseworkers and counselors, provide for the day-to-day needs of children. Foster parents are intensively screened and trained. Quite a few of the children placed with our agency by DHHR are on medications, and some, most often the infants, are medically fragile. We train the foster parents on our policies and procedures (which are prepared in compliance with the child placing regulations and behavioral health licensure regulations) about the administration of medicines, but it is the foster parents who are primarily responsible for administering medications. It is also usually the foster parents who take the children to their doctors, much as any parent would, and therefore receive directly from the doctor's staff any instructions regarding the medications.

It appears from the language of the proposed Rule that the Rule applies to adult care facilities, and would not be intended to apply to foster care for children, but the definitions may be susceptible to an interpretation that the Rule applies as well to specialized foster care for children. If the Rule was deemed to apply to foster care for children, compliance would be impossible. We know of no specialized foster care agency with a nurse on staff. There is no way, given the geographical spread of foster homes, that a single nurse in any one office for our agency could perform the functions required by the Rule. Not only would the Rule be incredibly burdensome for our agency at a time when the State is

unwilling to meet even the normal costs of foster care, but the medical focus of the Rule is inconsistent with the standards and philosophy of foster care as a social service which creates homes and families for children who are temporarily unable to remain in their own homes.

Clarification of the Rule would be appreciated, and I would request that the definitions be amended to clearly limit the Rule to adult facilities.

Thank you for your consideration of this issue. I look forward to your response.

Very truly yours,

Mary Warman Terry
Executive Director

Laura S. Rhodes, M.S.N., R.N.
Executive Secretary

TELEPHONE:
(304) 558-3596
(304) 558-3728
FAX (304) 558-3666

RECEIVED
98 JUN 18 PM 2

STATE OF WEST VIRGINIA
BOARD OF EXAMINERS FOR REGISTERED PROFESSIONAL NURSES
101 Dee Drive
Charleston, WV 25311-1620

June 17, 1998

Marsha Dadisman, Acting Director
Regulatory Development/ Department of Health and Human Resources
Bldg. 3 Room 265
Capitol Complex
Charleston WV 25305

Dear Ms. Dadisman:

The West Virginia Board of Examiners for Registered Professional Nurses has reviewed the proposed emergency rule related to Medication Administration by Unlicensed Personnel provided to the agency on June 10, 1998. The comments included in this letter are being provided prior to the June 30, 1998 deadline.

64CSR49.2.9. Health Care Professional is defined as -- 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. Yet, in several places within the rule, physician is used rather than **health care professional**. The Board would like to see the language consistently refer to the **health care professional**.

Specifically, please refer to the following portions of the rule:

§64-49-4.2; 4.3.c.; 7.1.c.4.B.; 7.1.c.4.C.; 7.1.c.5.; and 7.1.c.6.

A copy of the rule with the suggested changes highlighted is enclosed for your review and consideration.

The Board hopes you will give serious consideration to the suggested changes as the current language has the potential to restrict the opportunity for citizens of West Virginia to seek health care from the entire list of health care professionals listed in the definition.

Thank you for the opportunity to review and comment on this rule.

For the Board,
Laura Skidmore Rhodes
Laura Skidmore Rhodes, MSN, RN
Executive Secretary

xc: file

West Virginia Pharmacists Association
2003 Quarrier Street, Charleston, West Virginia 25311
Telephone (304) 344-5302 • FAX: (304) 344-5316

June 25, 1998

Marsha Dadisman, Acting Director
Regulatory Development
Department of Health and Human Resources
Capitol Complex, Building 3, Room 265
Charleston, WV 25305

Re: Proposed Rule 64CSR49
Medication Administration by Unlicensed Personnel

Dear Ms. Dadisman:

This Association respectfully submits comments to the above proposed rule.

1. "Pharmacist" should be included in definition No. 2.9 "Health Care Professional." Pharmacists are identified in Chapter 30, Article 5 of the Code of West Virginia as licensed health care providers and are authorized to dispense and administer drugs or devices. Pharmacists dispense medications to patients in facilities described in your proposed rule, and may, in some instance, administer the drug(s).

2. "Pharmacist" should be added as a definition in §64-49-2. Definitions. Recommended language is: "Pharmacist. -- A person who holds a valid license pursuant to article five, chapter thirty of the West Virginia Code." As contained in No. 1 above, pharmacists are licensed to dispense and administer drugs or devices. Pharmacists provide the personal services described in your definition No. 2.20. "Supervision of Self-administration of Medications."

3. "Pharmacist" should be included in 4.1. as a licensed professional authorized to administer medication because such authority is extended pharmacists under Chapter 30, Article 5 of the Code of West Virginia.

Your consideration in including the above in your proposed rule is respectfully requested in the interest of specifically identifying pharmacists' authority to administer medications.

Very truly yours,

Richard D. Stevens
Executive Director

RDS:msf

AARP

Bringing lifetimes of experience and leadership to serve all generations.

WEST VIRGINIA STATE LEGISLATIVE COMMITTEE

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Apt. A
Charleston, WV 25302-1519
(304) 342-5723

June 25, 1998

Regulatory Development
Department of Health & Human Resources
Capitol Complex - Building 3, Room 265
Charleston, WV 25305

ATTN: Marsha Dadisman, Acting Director

Dear Ms. Dadisman;

Following are my comments on the proposed legislative rule for Medication Administration By Unlicensed Personnel.

Under ¶ 64-49-2 Definitions:

The language for administration of medications is identical to that of the code, chapter 16, article 5N, section 2. This not only seems to be unnecessary, since it does not clarify nor implement the statute, it also seems to further confuse the intention of the law.

Medication is defined in the proposed rule in the same language as used in the code, and the words "including prescription drugs" are also used in both references. Since the definition of medication implies a drug which has been prescribed, what is the meaning of "including prescription drugs"?

I think the rule should clarify this point, rather than just duplicate the language in the code.

I also think the same principle should apply in the definition of Facility, in regards to a private residence.
Article 5N, section 3(e) of chapter 16 in the code provides for supervision of self-administration of medication by unlicensed persons when the substantial purpose of the setting is other than provision of health care. This should be elaborated in the rule; would this setting include a private residence? It is not mentioned in the proposed rule. Would a Residential Board and Care Home qualify as a setting, the purpose of which is other than provision of health care?

Thank you for providing the opportunity to comment on the proposed rule. Please let me know if my comments need further explanation, or if there are any questions regarding them.

Sincerely;

Jack H. Albert
WV State Legislative Committee
American Association of Retired Persons

Arlington Personal Care Home, Inc.
2301 Kennedy Avenue
Parkersburg, WV 26104-2799
(304) 485-5503

Karen Freyhof, Administrator

Julie DePuy,RN, Administrator

June 25, 1998

Regulatory Development
Department of Health & Human Resources
Capitol Complex - Building 3, Room 265
Charleston, WV 25305
ATTN: Marsha Dadisman, Acting Director

Dear Ms. Dadisman,

We own and operate Arlington Personal Care Home. We are licensed for 61 residents. We currently only use licensed personnel for all medication administration. Unless absolutely cost prohibitive, we do not plan to use unlicensed personnel for medication administration. However, there are a few items that we feel need to be addressed in the proposed rule "Medication Administration by Unlicensed Personnel." They are as follows:

--In the definition of Health Care Professional (2.9) not included are pharmacist or physical therapist. Is there some reason why they are not included? The pharmacist in particular should be involved, especially in matters related to medications and their administration.

--In the section of the definitions, the Registered Professional Nurse (2.14) is defined, but the Licensed Practical Nurse is not. Is this an oversight or did you just not feel it warranted a definition?

--In the section describing Residential Board and Care Home (2.16) in the last sentence it says ..."unless the personal care home has a backup".... are these considered interchangeable or should it not read residential board and care home? We were under the impression that these were two different things.

--In the section 3.2 it talks about a fee, to be determined later - is there any idea what this will cost? This could well become cost prohibitive in facilities that have to rely on unlicensed personnel for medication administration - especially in view of the high turnover rate of employees in this field.

--In the section 4.3.d when it says "is monitored or supervised by the registered professional nurse" does this mean directly observed on site 24 hours per day or can the RN be off site but available by phone? If direct observation is needed, why not use the licensed person instead of unlicensed? Where is the advantage?

--In section 6.1 related to the eligibility requirements of the facility staff, no mention is made that the person need be a nursing assistant or certified nursing assistant - so does that mean the secretary, housekeeping or dietary staff or the administrator (if unlicensed) could all be trained to be the medication assistive personnel? Can this person also work in their other capacity, secretary, for example, as well as the medication administration capacity at the same time?

--In section 7.1.c.4.B "Verbal orders may only be taken by the registered professional nurse and must be countersigned by the physician." In our facility our licensed practical nurses work in the charge nurse capacity and are staffed on a 24 hour per day basis. We have an RN available by phone if not on site on a 24 hour per day basis. We were not aware that in a personal care home setting that it were required to have an RN on site 24 hours per day. It would be impeding resident care to require the RN to be the only one able to take orders, when they are not required to be there and orders need to be obtained. All orders obtained are signed by the physician, whether written by the RN or LPN currently. The RN goes over and signs off the sheet of orders. We sincerely request that the wording be changed to allow an LPN to accept verbal orders as long as the physician countersigns them as is currently allowed and the RN reviews them.

We submit these thoughts for your consideration and appreciate your willingness to listen and be reasonable in your decisions. In the end, safe, effective and cost efficient quality care for our residents are all of our goals.

Sincerely,

Julie DePuy, RN, DON
Co-Administrator

Karen Freyhof
Co-Administrator

LEGAL AID SOCIETY OF CHARLESTON

FACILITY ADVOCACY PROJECT

922 Quarrier St., 4th Floor Charleston, WV 25301
(304) 343-4481 ext. 29 FAX (304) 345-5934
Toll Free WV 1-800-834-0598

MEMORANDUM

TO: Marsha Dadisman, Acting Director

FROM: Elliott Birckhead, Advocacy Project Supervisor

RE: Medication Administration by Unlicensed Personnel

DATE: June 26, 1998

I am writing to comment on proposed legislative rule 64 CSR 49, Medication Administration by Unlicensed Personnel. I appreciate the opportunity to give you some feedback.

In §64-49-2:

Subsection 2.5 refers to people "who are developmentally disabled, behaviorally disabled or substance abusers." In order to help reinforce the point that people are not defined solely by their disabilities, it might be preferable to describe them as people with developmental disabilities, behavioral disorders or substance addictions.

Subsection 2.7 includes "private residence[s] in which health care services are provided under the supervision of a registered nurse." It is not clear to me what this implies about a family member's ability to give their relatives medications when they have hired a visiting nurse. Does this mean such families will have to be trained per these regulations?

Subsection 2.10 again refers to "the mentally retarded." I would suggest changing this to people with mental retardation for the reason given above.

Subsection 2.12 refers to the "six rights of medication administration." I would recommend inserting a reference to Section 2.19 here so people will know where to look for determining what this refers to.

☐ HUNTINGTON STATE
525-7801 FAX 697-1117
P.O. Box 448
Huntington, WV 25709

☐ NEW DIRECTIONS/
SUBSTANCE ABUSE UNIT
525-5522 FAX 522-2770
P.O. Box 448
Huntington, WV 25709

☐ COLIN ANDERSON
P.O. Box 106
St. Mary's, WV 26170
684-2441 FAX 684-3758

☐ SHARPE HOSPITAL
P.O. Drawer 1127
Weston, WV 26452
269-1210 FAX 269-6235

Subsection 2.13 includes the phrase "receiving services coordinate by a licensed hospice" at the end of the first sentence. It appears that "coordinate" should be changed to coordinated.

Subsection 2.18 includes the phrase "opening and accessing prepackage drug containers." It appears that "prepackage" should be changed to "prepackaged."

In §64-49-4:

Subsection 4.3.d suggests that authorization may only be granted where the facility staff person is "monitored or supervised by" the RN. I would suggest inserting a reference to Subsection 7.1.c.5 here so that people will know where to look for determining what exactly this entails.

DATE 06/30/98
TO DHHR OFLC
Attention Sandra Daubman
FROM: Mullens MANOR
Re Legislative Rules - Medication Assitve Personnel

OUR CONCERNS

1. We have a Licensed LPN - who does not have a high school diploma
2. We have an 18 year old who is in her Senior Year completing diploma by 1999.
3. We have an employee who has graduated from a School that has closed ITer original diploma was destroyed in a FIRE We are having difficulty locating a source for varification.

These employees have been giving meds for long periods of time. With a minimal amount (less than 1%) error rate. HAS been supervised and observed by Phyllis McKinney LPN Nurse Supervisor R.N SUPERVISOR HAS been given our medication delivery policy and Procedures She finds them acceptable. She reviews individual Medication sheets and Incident reports

4. PRN MEDICATIONS are specific for use. Would it be a judgement call for a medication ASSISTIVE Personnel to give Medications for AGITATION?

STAFF OF MULLENS Manor

MULLENS MANOR PERSONAL CARE HOME
1238 A GUYANDOTTE AVE., MULLENS WV. 25882

June 29, 1998

To: Marsha Dadisman, Acting Director
Regulatory Development/DHHR

From: Beverly Kelley, Community Services Manager
United Summit Center, Inc.

The following is a compilation of questions and comments regarding the recent Legislative Proposed Ruling on Medication Administration by Unlicensed Personnel. Any additional information you can provide is appreciated.

Page 3, 2.11 Unlicensed personnel are not allowed to perform any sterile procedure. All eye medications are sterile.

Page 4, 2.20 Supervision of self-administration of medication--if this is the only involvement with medication in a private home, do paraprofessional staff need training?

The R.N prepares medication boxes as either a Personal Care or Basic Living Skills (Med. education) function. Does this article include medication boxes prepared by R.N.s on a weekly or biweekly basis for the client's self-administration?

Community Support workers remind clients to take their medications at prescribed times under Personal Care and/or Basic Living Skill training. Are personnel allowed to prompt clients who use medication boxes to take their medications?

Page 10, 9.1 Limitation on medication administration--All medications in original containers: How does this affect Medication Education under Basic Living Skills and medication box refills under Personal Care by an R.N.?

Thank you.

June 24, 1998

Marsha Dadisman, Acting Director
Regulatory Department of Health and Human Resorces
Bldg. 3, Room 265, Capitol Complex
Charleston, West Virginia 25305

RE: Legislative Rule Title:
Medication Administration by
Unlicensed Personnel
64 CSR 49

Ms. Dadisman:

With reference to the above proposed rule, I offer the following comments.

From the day we are born, we're given a Social Security Number and from then on the government rules our life.

When we get to our golden years, we are told HOW, WHEN and WHERE.

I feel you have finally found a way to close most of our Residential Board and Care Homes with this last rule.

First of all freedom to choose has been removed from us through your rule making. I feel people should be allowed to stay where they want. (Not your choice)

I feel that it is nome of your business as long as we give the care they can't give themselves.

I care about the seniors and do a damn good job taking care of them. I have never had a complaint about the care I give them.

Board and Care is the first step for many, so how do you justify the extra charge for hiring a registered nurse to perform duties that every Mother has done in the past. (Read a Label)

Russia tore down a wall and the government is trying to build another one just as high. After all, our homes are not subsidized by the government and we are the only ones that receive nothing from the government.

If you care anything about the seniors of our state you will let them, or their family, make decisions about their care, without the interference from the state, except to see that they are not neglected or abused.

Yours Truly

Karen Decker

Karen Decker
Decker's Residential Board and Care
Fairmont, West Virginia

Greenbrier County Home Health Agency

"Member West Virginia Family of Home Health Agencies"

RR 2, Box 171C
Greyrock Professional Park
Lewisburg, West Virginia 24901
304-647-4820 / 1-800-734-2846
Fax 304-647-5195
TDD 1-800-982-8771

Anita B. Shaver, RN/BSN
Administrator

Ronald E. Isom
Asst. Administrator

June 25, 1998

Regulatory Development
Department of Health & Human Resources
Capitol Complex - Bldg. 3, Room 265
Charleston, WV 25305

ATTENTION: Marsha Dadisman, Acting Director

RE: Comments, Rule 49, Medication Administration by Unlicensed Personnel

Dear Ms. Dadisman:

As a collaborative effort the nursing staff of our agency have the following comments:

1. With the multiple meds that patients take, it would be difficult for an inexperienced person with an untrained eye to recognize s/s problems or complications, and/or drug interactions.

2. Ultimate responsibility lies with the RN who trains unskilled staff -- increased liability.

3. Personal Care Homes are often short-staffed and disorganized, further increasing risk of error in med administration.

4. We view this as another nursing duty that is being given away.

5. Documentation is a weak area with skilled staff and even weaker with unskilled caregivers, again increased liability.

6. Policies and procedures should include medication error reporting systems and outcomes should be monitored and available for surveyors.

Sincerely,

Anita Shaver

Anita B. Shaver, RN, BSN
Administrator

ABS:pjh

Page eight - 7.1.c.4.a. Is there an expectation that every personal residence have an MAR in the home? How many years are required for medical record retention? (3, 5, etc.)

7.1.c.4.b. The Committee recommended removing over the counter medications due to family and private residence concerns for resident rights

Can verbal orders be taken by LPN's?

7.1.c.4.c. Why does a physician need to be involved in this decision? This has potential complications.

7.1.c.5. Recommended change in sentence one to read "requirements for monitoring & supervising"

There was a great deal of concern regarding the resident to RN ratio implications, travel distance and quarterly monitoring requirements. This could actually result in an increase in RN's and a major increase in Medicaid expenditures

Page nine - No comment

Page ten - 9.1 Concern was expressed about not being able to use med planning devices to assist people in being more independent in self administration or other like alternatives that may require the medication being placed out of it's original container

6/30/98

Dear Mr. Davidsman,

I participated in the meeting during which the above comments were made. I agree with the above comments. In addition, my staff and I have the following comments:

1. The word "facility" is stated throughout the rules. Our participants who are MR/DD live in their own apartment or house which they rent or own - They do not live in a "licensed facility" Our participants do not receive health care services provided under the supervision of a R.N. Hence the D.D. "facility" The definition of a R.N. health care is provided under a mutual agreement of the I.D.T. members cont.

6/30/98

Comments Continued -

which includes a Physician.

(2) Since our participants live in their own homes, are they exempt from this intrusive law into their private lives? These participants are their own guardians and can make legal decisions about their health care with regards to medication administration. They decide if they want to go to the Doctor or not, and they decide if they want to take any medication or not regardless of whether we have a R.N. on staff.

(3) We would recommend having your legal counsel review these rules, and determine if our adult person with MR/DD who is their own guardian needs to be subjected to these (rules). Also compare these rules with language in the Americans with Disabilities Act to verify the validity of the State of West Virginia imposing these rules on persons with MR/DD as these rights are guaranteed in the Federal Law - the ADA. We recommend caution before enforcing these Med Pass rules until research as to legality of the individual's rights under the ADA is completed

(N.) At issue, we believe, is not language in the WV OH FLAC regulations re: medication Administration. The language in OHFLAC needs amended re: licensed behavioral health sites. If those regulations were amended, we maintain + need a state law re: medication administration; R.N. trained + not to be involved in a person's life who lives in their own home. This would be less expensive to the state + the providers.

Our concerns further include that A) A person with MR/DD chooses their provider of behavioral health; B) they choose their own Medical Doctor, dentist, etc.; C) they choose to accept or deny medical treatment; D) therefore, it should follow that they choose who helps them with medicine administration, or not. We all know that the only people who properly read, pronounce, spell the name of drugs properly are RN's, RPh's + Pharmacists. Using the criteria of being able to read the Code on a prescription is discriminatory of a person with MR/DD, and unjustly forces them into a non-restrictive treatment plan limiting their freedoms of self determination.

Comments - Continued --

Our staff knows dozens of people with MR/DD who can't read yet work at competitive employment, are married, own homes, drive cars, (legally) and manage their own financial affairs.

(5) The purpose of having these med rules passed was to save the ICF/MR group homes in West Virginia save money for the state. What has happened as a result of these proposed rules is that instead of it saving money, providers of behavioral health who have participants living in the community (other than ICF/MR's) will spend more state dollars on R.N.'s. In addition, there is no fiscal note attached to these rules which enables providers to pay wages to R.N.'s. Where will providers get $ for the R.N. wages??

Finally, reference 7.1 c 4. C. If providers obtained Physician collaboration in the decision... Our staff feel that if the physician is in the decision for med pass via ITT, and then her signature authorizes med pass by unlicensed personnel; so, we don't even need a R.N. or any of the proposed rules at all!

John Williams
Page 2
May 14, 1998

Page one - no comments

Page two - 2.7 Does the term facility include a private residence. If so, what if these individuals receive medication, but have not been under the supervision of a Registered Nurse, i.e., waiver, respite, etc.

Page three - no comments

Page four - **2.18** The Committee recommends that the first sentence be changed to: The age of a resident, who is independently capable of demonstrating and/or understanding the labels of drugs. The current language excludes many people with MR/DD who have or can develop skills needed for self-administration of their medications.

3.2 How much money are we looking at here? Is there a reason we can't have the tests printed?

Page five - **4.2** A concern was raised about individuals in their homes who may not be supervised by a RN or have an attending physician

4.3.c. Consults on a "regular basis" what is regular? Who interprets this?

5.2.5. The 48 hour postmark Why the time frame? Is Licensure going to grade the tests? What is the expected turn around time?

Page six - **5.2.a.** Is there a reason for 3 separate tests?

5.3.a Restraining should not be needed with the monitoring and supervision built into they system. What about the additional training costs and test expense? This cost is not covered under sense of the funding streams.

5.4.a.4. How often will the trained instruction orientation be offered?

6.1 Why can't the core curriculum be transferrable to other agencies? Do they receive a card or completion certificate?

Page seven - **6.1.c.** Recommended change "or drug related <u>felony</u>"

6.1.f. The facility staff is retrained every year (See 5.3.a.)

7.1.b. The assumption is that this is only during the initial implementation. Once the policies have been developed or revised in some cases this would be a mute issue.