

**WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION**

Form #6

Do Not Mark In This Box

FILED

APR 29 1 49 PM '99

OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: Division of Health, Department of Health & Human Resources TITLE NUMBER: 64

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 60

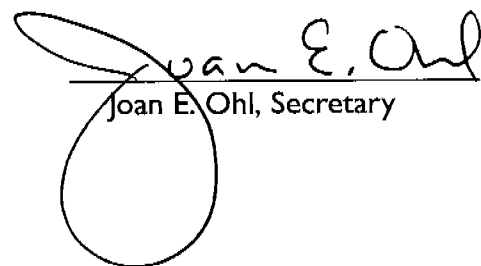
TITLE OF RULE BEING PROPOSED: Medication Administered by Unlicensed Personnel

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

AUTHORIZATION IS CITED IN (house or senate bill number) SB 305

SECTION 64-5-2(g), PASSED ON March 10, 1999

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE  
FOLLOWING DATE: July 1, 1999

  
Joan E. Ohi, Secretary

\$4.00

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
RULE PROMULGATION HISTORY ABSTRACT**

**Rule Title:** 64 Medication Administration by Unlicensed Personnel

**Series Number:** 60

**Amendment of Existing Rule:**  **New Rule:**

**Responsible Agency:** Division of Health

**Date Filed for Public Hearing or Comment Period:** May 26, 1998

**Date of Public Hearing (if any):**

**Date Public Comment Period Ended:** June 30, 1998

**Date Agency-Approved Rule Filed with the  
Legislative Rule-Making Review Committee:** August 3, 1998

**Date of Filing of Modified Rule as Approved by  
the Legislative Rule-Making Review Committee:** January 20, 1999

**Date of Final Filing:** April 29, 1999

**Effective Date:** July 1, 1999

**Authorized by:** S.B. 305 (With amendments? Yes  No )  
**Passed:** March 10, 1999

**Dates Emergency Rule in Effect (if any):** July 6, 1998

FILED

Apr 29 1 43 PM '99

TITLE 64  
LEGISLATIVE RULES  
DIVISION OF HEALTH  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
WEST VIRGINIA  
SECRETARY OF STATE

SERIES 60  
MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL

**§64-60-1. 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. -- April 29, 1999.

1.4. Effective date. -- July 1, 1999.

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.

**§64-60-2. Definitions.**

2.1. Administration of medications. --

2.1.a. Assisting a person in the ingestion, application or inhalation of medications, including both prescription drugs and non-prescription drugs, or using universal precautions for rectal or vaginal insertion of medication, according to the legibly written or printed directions of the attending physician or authorized practitioner, or as written on the prescription label; and

2.1.b. Making a written record of such assistance with regard to each medication administered, including the time, route and amount taken: *Provided*, That "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 mental retardation which is certified by the health care financing administration of the United States department of health and human services 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. Private residence in which health care services are provided under the supervision of a registered nurse. —

2.14.a. An unlicensed home in which one or more residents receive home health agency services; and

2.14.b. An unlicensed home that has twenty-four (24) hour staffing based on the nursing care needs of one or more residents in which the registered professional nurse makes the decision as part of the treatment plan to delegate medication administration to staff members.

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

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

2.17. 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.

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

2.19. 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.

2.20. Single specific agency. -- A person or entity operating two or more facilities.

2.21. 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.)

2.22. Supervision of self-administration of medications. -- A personal service which includes reminding residents to take medications, opening medication containers for residents, reading the medication label to residents, observing residents while they take medication, checking the self administered dosage against the label on the container and reassuring residents that they have obtained and are taking the dosage as prescribed.

### **§64-60-3. Facility Administrative Procedures.**

3.1. Any facility may offer the training and competency evaluation program developed by the department to 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.

3.1.c. Approved medication assistive personnel who have successfully trained and tested in one facility type shall, prior to being approved to administer medications in another type of facility, be re-evaluated for competency by the registered professional nurse. This re-evaluation of competency shall be determined by using the tasks in the curriculum adopted in policy by the authorizing agency.

3.2. During such time as the authorizing agency contracts for an entity to provide the facility trainer / instructor orientation training for registered professional nurses and to provide the testing of each facility staff member's competency, facilities utilizing the training and testing shall pay the contract entity its fees for the training and testing.

**§64-60-4. 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 to administer medications may only be granted and continued if the facility staff member:

4.3.a. Has successfully completed the approved medication administration training program and received a satisfactory competency evaluation as required by the provisions of this rule;

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

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

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

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

4.4. 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.

4.5. 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.

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

4.6.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.

4.6.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.

#### **§64-60-5. Instruction and Training.**

5.1. Curriculum.

5.1.a. The curriculum adopted in policy by the authorizing agency utilized to train facility staff shall be the West Virginia Department of Health and Human Resources Curriculum for Unlicensed Medication Assistive Personnel. The curriculum may be obtained from the authorizing agency.

5.2. Competency evaluation.

5.2.a. Competency evaluation includes the facility staff member's:

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

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

5.2.b. The administration of the competency test to the facility staff member shall be by the authorized registered professional nurse. The registered professional nurse shall handle competency tests in accordance with the instructions of

the authorizing agency.

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.

**§64-60-6. Eligibility Requirements of Facility Staff in order to be Trained.**

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

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

6.1.b. The facility staff member has had a criminal background check or if applicable, a check of the state police abuse registry, establishing that the individual has not been convicted of any crimes against persons or drug related crimes;

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

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

**§64-60-7. Facility Oversight of Medication Administration by Unlicensed Personnel.**

7.1. Administrative policy requirements.

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

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

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

7.1.c.1. Eligibility requirements for the 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: registered professional nurse coverage to respond to questions related to any aspect of medication administration by unlicensed personnel; 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 the medication administration process including selected administration of medications; 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.

#### **§64-60-8. 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.

#### **§64-60-9. 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.

**§64-60-10. Administrative Due Process.**

10.1. Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the division of health rule 64CSR1 "Rules of Procedure for Contested Case Hearings and Declaratory Rulings."

64-60  
H B 2545

H. B. 2545

1 Bill-Health, Medicatic

(By Delegates Hunt, Linch, Compton, Faircloth,  
2 Jenkins and Riggs)

3

4

[Introduced Feburary 1, 1999; referred to the  
Committee on Health and Human Resources then  
the Judiciary.]

5

6

7

8

9

10 A BILL to amend and reenact section one, article five,  
11 chapter sixty-four of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, relating  
13 to authorizing the division of health to promulgate a  
14 legislative rule relating to medication administration  
15 by unlicensed personnel.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article five, chapter sixty-four of  
18 the code of West Virginia, one thousand nine hundred  
19 thirty-one, as amended, be amended and reenacted, to read  
20 as follows:

21 **ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND**  
22 **HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

23 §64-5-1. State board of health; division of health.

1           (a) The legislative rule filed in the state register  
2 on the eighteenth day of November, one thousand nine  
3 hundred ninety-six, authorized under the authority of  
4 section three, article thirty-two, chapter sixteen of this  
5 code, modified by the division of health to meet the  
6 objections of the legislative rule-making review committee  
7 and refiled in the state register on the sixteenth day of  
8 December, one thousand nine hundred ninety-seven, relating  
9 to the division of health (asbestos abatement licensing, 64  
10 CSR 63), is authorized.

11           (b) The legislative rule filed in the state register  
12 on the first day of August, one thousand nine hundred  
13 ninety-seven, authorized under the authority of section  
14 eight, article thirty-three, chapter sixteen of this code,  
15 modified by the division of health to meet the objections  
16 of the legislative rule-making review committee and refiled  
17 in the state register on the sixteenth day of December, one  
18 thousand nine hundred ninety-seven, relating to the  
19 division of health (breast and cervical cancer diagnostic  
20 and treatment fund, 64 CSR 69), is authorized.

21           (c) The legislative rule filed in the state register  
22 on the first day of August, one thousand nine hundred  
23 ninety-seven, under the authority of section ten, article

1 five-j, chapter sixteen of this code, modified by the  
2 director of the division of health to meet the objections  
3 of the legislative rule-making review committee and refiled  
4 in the state register on the twenty-third day of January,  
5 one thousand nine hundred ninety-eight, relating to the  
6 division of health (clinical laboratory technician and  
7 technologist licensure and certification, 64 CSR 57), is  
8 authorized.

9 (d) The legislative rule filed in the state register  
10 on the twenty-second day of December, one thousand nine  
11 hundred ninety-seven, authorized under the authority of  
12 section two, article thirteen-c, chapter sixteen of this  
13 code, relating to the division of health (drinking water  
14 treatment revolving fund, 64 CSR 49), is authorized.

15 (e) The legislative rule filed in the state register  
16 on the fourth day of June, one thousand nine hundred  
17 ninety-seven, authorized under the authority of section  
18 seven, article one, chapter sixteen of this code, modified  
19 by the division of health to meet the objections of the  
20 legislative rule-making review committee and refiled in the  
21 state register on the sixteenth day of December, one  
22 thousand nine hundred ninety-seven, relating to the  
23 division of health (sewage systems, 64 CSR 9), is

1 authorized with the following amendment:

2       On page 7, subsection 5.1. following the sentence  
3 which ends "local health department offices." by inserting  
4 the following: "Provided, That the director shall issue a  
5 permit for the installation of a National Sanitation  
6 Foundation Class I home aeration unit to be installed on a  
7 single family dwelling unit when no other approved system  
8 can be installed."

9       (f) The legislative rule filed in the state register  
10 on the third day of August, one thousand nine hundred  
11 ninety-eight, authorized under the authority of section  
12 eleven, article five-o, chapter sixteen, of this code,  
13 modified by the division of health to meet the objections  
14 of the legislative rule-making review committee and refiled  
15 in the state register on the twentieth day of January, one  
16 thousand nine hundred ninety-nine, relating to the division  
17 of health (medication administration by unlicensed  
18 personnel, 64 CSR 60), is authorized.

19

20       NOTE: The purpose of this bill is to authorize the  
21 Division of Health to promulgate a legislative rule  
22 relating to Medication Administration by Unlicensed  
23 Personnel.

24

25       Strike-throughs indicate language that would be  
26 stricken from the present law, and underscoring indicates

1 new language that would be added.