

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3196**

4 (By Delegates D. Campbell, Williams and Shaver)

5
6 (Originating in the Committee on Finance)

7 [February 25, 2011]

8
9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §30-7D-1, §30-7D-2
12 and §30-7D-3, §30-7D-4, §30-7D-5, §30-7D-6, §30-7D-7, §30-7D-
13 8, §30-7D-9, §30-7D-10, §30-7D-11, §30-7D-12, §30-7D-13 and
14 §30-7D-14, all relating to medication assistive persons in the
15 nursing home setting including a pilot program, requirements
16 and criminal penalty.

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

18 That the Code of West Virginia, 1931, as amended, be amended
19 by adding thereto a new article, designated §30-7D-1, §30-7D-2,
20 §30-7D-3, §30-7D-4, §30-7D-5, §30-7D-6, §30-7D-7, §30-7D-8, §30-7D-
21 9, §30-7D-10, §30-7D-11, §30-7D-12, §30-7D-13 and §30-7D-14, all to
22 read as follows:

23 **ARTICLE 7D. MEDICATION ASSISTIVE PERSONS.**

24 **§30-7D-1. Pilot program.**

25 A pilot program is herein developed to monitor the practice of

1 unlicensed personnel administering medication in the nursing home
2 setting. Monitoring of this pilot program shall be conducted by
3 the West Virginia Board of Examiners for Registered Professional
4 Nurses and shall encompass the following:

5 (1) Signed participation agreements from a minimum of ten
6 nursing homes licensed in West Virginia that meet participation
7 requirements as determined by the board. The pilot program will
8 not progress unless this requirement is met.

9 (2) After a period of six months of monitoring the
10 implementation of the pilot program, a report shall be provided to
11 the Legislative Commission for Health and Human Resources
12 Accountability.

13 **§30-7D-2. Definitions.**

14 As used in this article:

15 (1) "Board" means the West Virginia Board of Examiners for
16 Registered Professional Nurses;

17 (2) "Designated facility" means a type of facility determined
18 by the board as an environment in which medication assistive
19 persons may serve in accordance with the requirements of this
20 article and rules promulgated by the board;

21 (3) "Medication assistive person" means a person who is
22 certified by the board to administer certain nonprescription and
23 legend drugs in designated facilities;

24 (4) "Supervision" means the active oversight of patient care
25 services while on the premises of a designated facility in a manner
26 defined by the board; and

1 (5) "MA-C" is the designation for a person who is certified as
2 a medication assistive person.

3 **§30-7D-3. Certificate required.**

4 In order to safeguard life and health, any person serving or
5 offering to serve as a medication assistive person shall:

6 (1) Submit evidence that he or she is qualified; and

7 (2) Be certified as provided in this article.

8 **§30-7D-4. Designated facilities.**

9 (a) The West Virginia Board of Examiners for Registered
10 Professional Nurses shall designate the types of facilities that
11 may use medication assistive persons.

12 (b)(1) Designated facilities may not be required to use
13 medication assistive persons.

14 (2) If a designated facility elects to use medication
15 assistive personnel, the facility shall notify the board in a
16 manner prescribed by the board.

17 **§30-7D-5. Qualifications.**

18 (a) In order to be certified as a medication assistive person,
19 an applicant shall submit to the West Virginia Board of Examiners
20 for Registered Professional Nurses an application and appropriate
21 fee. During the pilot program, temporary certificates will be
22 issued. At the completion of the pilot program, if proven
23 successful, qualified individuals holding a temporary certificate
24 as a medication assistive person meeting requirements for full
25 certification shall be issued a permanent certificate. The

1 application shall provide written evidence, verified by oath, that
2 the applicant:

3 (1) (A) Is currently listed in good standing on the state's
4 certified nurse aide registry;

5 (B) Has maintained registration on the state's certified nurse
6 aide registry continuously for a minimum of one year;

7 (C) Has completed at least one continuous year of full-time
8 experience as a certified nurse aide in this state;

9 (D) Is currently employed at a designated facility;

10 (E) Has a high school diploma or the equivalent;

11 (F) Has successfully completed a literacy and reading
12 comprehension screening process approved by the board;

13 (G) Has completed a state and federal criminal background
14 check in compliance with board requirements;

15 (H) Has successfully completed a medication assistive person
16 training course of not less than one hundred hours approved by the
17 board; and

18 (I) Has successfully passed an examination on subjects the
19 board determines; or

20 (2) (A) Has completed a portion of a nursing education program
21 equivalent to the medication assistive person training course; and

22 (B) Passed the medication aide examination.

23 (b) The board may issue a certification as a medication
24 assistive person by endorsement to an applicant who has been
25 licensed or certified as a medication assistive person under the
26 laws of another state or territory if:

1 (1) In the opinion of the board, the applicant meets the
2 qualifications of medication assistive persons in this state; and

3 (2) The board recommends certification.

4 (c) Any person holding a certification as a medication
5 assistive person may use the title "medication aide-certified" and
6 the abbreviation "MA-C".

7 **§30-7D-6. Scope of work.**

8 (a) (1) A medication assistive person may perform the delegated
9 nursing function of medication administration and related tasks in
10 accordance with rules promulgated by the West Virginia Board of
11 Examiners for Registered Professional Nurses.

12 (2) A medication assistive person shall perform medication
13 administration and related tasks only:

14 (A) At a designated facility; and

15 (B) Under the supervision of a registered professional nurse.

16 (3) (A) Medication administration is limited to the
17 administration of nonprescription and legend drugs ordered by an
18 authorized prescriber and only by the following methods:

19 (i) Orally;

20 (ii) Topically;

21 (iii) Drops for eye, ear or nose;

22 (iv) Vaginally;

23 (v) Rectally;

24 (vi) Transdermally; and

25 (vii) Via oral inhaler.

26 (B) Medication administration by a medication assistive person

1 may not include controlled substances.

2 (b) A medication assistive person may not:

3 (1) Receive, have access to or administer any controlled
4 substance;

5 (2) Administer parenteral, enteral, or injectable medications;

6 (3) Administer any substances by nasogastric, oralgastric or
7 gastrostomy tubes;

8 (4) Calculate drug dosages;

9 (5) Destroy medication;

10 (6) Receive orders either in writing or verbally for new or
11 changed medications;

12 (7) Transcribe orders from the medical record;

13 (8) Order initial medications;

14 (9) Evaluate medication error reports;

15 (10) Perform treatments;

16 (11) Conduct patient assessments or evaluations; or

17 (12) Engage in patient teaching activities.

18 **§30-7D-7. Renewal of certifications.**

19 (a) (1) The West Virginia Board of Examiners for Registered
20 Professional Nurses shall prescribe the procedure for the cyclical
21 renewal of medication assistive person certifications.

22 (2) In each case, the board shall provide a notification for
23 renewal to the medication assistive person at least thirty days
24 before the expiration date of the certification by United States
25 Postal Service or by electronic means.

26 (b) (1) Upon receipt of the renewal application and the fee,

1 the board shall verify the accuracy of the application.

2 (2) (A) If the board finds the application to be accurate and
3 related documents indicate that the applicant remains in good
4 standing, the board shall issue a certificate of renewal to the
5 applicant.

6 (B) As a condition of certification renewal, a medication
7 assistive person shall be:

8 (i) Currently listed in good standing on the state's certified
9 nurse aide registry; and

10 (ii) Required to satisfactorily complete all continuing
11 education required in the legislative rules governing the practice
12 of the MA-C.

13 (c) The renewal renders the holder of the certificate a legal
14 provider of medication assistive person services for the period
15 stated in the certificate of renewal.

16 (d) Any medication assistive person who allows his or her
17 certification to lapse by failing to renew the certification as
18 provided in this section may be reinstated by the board on:

19 (1) Payment of the renewal fee plus a penalty; and

20 (2) Submission of evidence that the person currently meets the
21 requirements to serve as a medication assistive person.

22 (e) Any person providing services as a medication assistive
23 person during the time his or her certification has lapsed is
24 considered to be providing services illegally and is subject to the
25 penalties provided for violations of this article.

26 **§30-7D-8. Disciplinary actions.**

1 (a) The West Virginia Board of Examiners for Registered
2 Professional Nurses has sole authority to deny, suspend, revoke or
3 limit any medication assistive person certificate issued by the
4 board or applied for in accordance with the provisions of this
5 article or to otherwise discipline a certificate holder upon proof
6 that the person:

7 (1) Is or was guilty of fraud or deceit in procuring or
8 attempting to procure a certificate to practice as a medication
9 aide certified;

10 (2) Has been found guilty of or pled guilty or nolo contendere
11 to a crime;

12 (3) Is unfit or incompetent by reason of negligence, habits or
13 other causes;

14 (4) Is habitually intemperate or is addicted to the use of
15 habit-forming drugs;

16 (5) Is mentally incompetent;

17 (6) Is guilty of unprofessional conduct;

18 (7) Is practicing or attempting to practice as a medication
19 aide certified without a certification;

20 (8) Has had a license, certificate, or registration revoked or
21 suspended;

22 (9) Has been placed on probation or under disciplinary order
23 in any jurisdiction;

24 (10) Has voluntarily surrendered a license, certification, or
25 registration and has not been reinstated in any jurisdiction; or

26 (11) Has willfully or repeatedly violated any of the

1 provisions of this article.

2 (b) The board shall refuse to issue or shall revoke the
3 certificate of any person who would be disqualified from employment
4 under the provisions of this law or the rules governing the
5 practice of the medication assistive person.

6 (c) Proceedings under this section shall be conducted in
7 accordance with the West Virginia Administrative Procedure Act,
8 chapter twenty-nine-a of this code.

9 **§30-7D-9. Penalty.**

10 (a) (1) It shall be a misdemeanor for any person to:

11 (A) Sell or fraudulently obtain or furnish any medication
12 assistive person's certificate, renewal or record, aid or abet in
13 any such sale or fraud;

14 (B) Serve as a medication assistive person under cover of any
15 certificate or record illegally or fraudulently obtained or signed
16 or issued unlawfully or under fraudulent representation;

17 (C) Serve as a medication assistive person unless certified by
18 the West Virginia Board of Examiners for Registered Professional
19 Nurses;

20 (D) Use in connection with his or her name any of the
21 following titles, names, or initials if the user is not properly
22 certified under this article:

23 (i) Medication assistive person;

24 (ii) M.A.P.;

25 (iii) Medication aide;

26 (iv) Medication technician;

1 (v) Certified medication aide;
2 (vi) C.M.A.;
3 (vii) Medication Aide - certified;
4 (viii) MA-C; or
5 (ix) Any other name, title, or initials that would cause a
6 reasonable person to believe the user is certified under this
7 article;

8 (E) Serve as a medication assistive person during the time his
9 or her certification is suspended;

10 (F) Conduct an education program for the preparation of
11 medication assistive persons unless the program has been approved
12 by the board; or

13 (G) Otherwise violate any provisions of this article.

14 **§30-7D-10. Injunction.**

15 (a) The Kanawha County circuit court is vested with
16 jurisdiction and power to enjoin the unlawful provision of
17 medication assistive person services in any county of the State of
18 West Virginia in a proceeding initiated by the West Virginia Board
19 of Examiners for Registered Professional Nurses, any member of the
20 board, or any citizen in this state.

21 (b) (1) The issuance of an injunction does not relieve a person
22 from criminal prosecution for violation of the provisions of this
23 article.

24 (2) The remedy of injunction is in addition to liability for
25 criminal prosecution.

26 **§30-7D-11. Medication Assistive Person Advisory Committee.**

1 (a) (1) The Medication Assistive Person Advisory Committee is
2 created as an advisory committee to the West Virginia Board of
3 Examiners for Registered Professional Nurses.

4 (2) The committee shall assist the board in implementing the
5 provisions of this article regarding medication assistive persons.

6 (b) The board shall appoint six members who have the
7 following qualifications:

8 (1) Two members shall be certified medication assistive
9 persons;

10 (2) One member shall be a licensed nursing home administrator
11 who has worked in that capacity for at least three years;

12 (3) One member shall be a registered nurse who has been in a
13 practice using certified nurse aides for at least three years;

14 (4) One member shall be a lay person representing the
15 interests of consumers of health care services; and

16 (5) One member shall be a nursing faculty member of a West
17 Virginia nursing education program.

18 (c) Members shall serve three-year terms.

19 (d) The board may remove any committee member after notice and
20 hearing for incapacity, incompetence, neglect of duty or
21 malfeasance in office.

22 (e) The members of the committee shall serve without
23 compensation but may receive expense reimbursement in accordance
24 with applicable law or rule.

25 **§30-7D-12. Applicability of article.**

26 Nothing in this article relieves a nurse from the

1 responsibility of assessing each patient daily and as needed to
2 assure public safety and safe medication administration.

3 **§30-7D-13. Rulemaking authority.**

4 The board may promulgate legislative rules pursuant to the
5 provisions of article three, chapter twenty-nine-a of the code.