

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2011



ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 3196

(By Delegates D. Campbell, Williams and Shaver)



Passed March 11, 2011

In Effect Ninety Days From Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 3196

(BY DELEGATES D. CAMPBELL, WILLIAMS AND SHAVER)

[Passed March 11, 2011; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-7D-1, §30-7D-2 and §30-7D-3, §30-7D-4, §30-7D-5, §30-7D-6, §30-7D-7, §30-7D-8, §30-7D-9, §30-7D-10, §30-7D-11, §30-7D-12 and §30-7D-13, all relating to medication assistive persons in the nursing home setting; creating a pilot program; defining terms; requiring certification; designating certain facilities; stating qualifications to serve as a medication assistive person; detailing the scope of a medication assistive person's work; setting requirements for renewal of certifications; creating disciplinary authority in the West Virginia Board of Examiners for Registered Professional Nurses; creating misdemeanor offenses for certain violations; creating criminal penalties; vesting the Kanawha County circuit court with jurisdictional

and power to enjoin violations; creating the medication assistive person advisory committee; ensuring nurses responsibilities are not changed; and authorizing emergency rule-making authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7D. MEDICATION ASSISTIVE PERSONS.

§30-7D-1. Pilot program.

1 A pilot program is herein developed to monitor the
2 practice of unlicensed personnel administering medication in
3 the nursing home setting. Monitoring of this pilot program
4 shall be conducted by the West Virginia Board of Examiners
5 for Registered Professional Nurses and shall encompass the
6 following:

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

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

§30-7D-2. Definitions.

1 As used in this article:

2 (1) “Board” means the West Virginia Board of Examiners
3 for Registered Professional Nurses;

4 (2) “Designated facility” means a type of facility
5 determined by the board as an environment in which medication
6 assistive persons may serve in accordance with the requirements
7 of this article and rules promulgated by the board;

8 (3) “Medication assistive person” means a person who is
9 certified by the board to administer certain nonprescription
10 and legend drugs in designated facilities;

11 (4) “Supervision” means the active oversight of patient
12 care services while on the premises of a designated facility in
13 a manner defined by the board; and

14 (5) “MA-C” is the designation for a person who is
15 certified as a medication assistive person.

§30-7D-3. Certificate required.

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

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

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

§30-7D-4. Designated facilities.

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

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

6 (2) If a designated facility elects to use medication
7 assistive personnel, the facility shall notify the board in a
8 manner prescribed by the board.

§30-7D-5. Qualifications.

1 (a) In order to be certified as a medication assistive
2 person, an applicant shall submit to the West Virginia Board
3 of Examiners for Registered Professional Nurses an
4 application and appropriate fee. During the pilot program,
5 temporary certificates will be issued. At the completion of the
6 pilot program, if proven successful, qualified individuals
7 holding a temporary certificate as a medication assistive
8 person meeting requirements for full certification shall be
9 issued a permanent certificate. The application shall provide
10 written evidence, verified by oath, that the applicant:

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

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

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

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

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

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

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

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

26 (I) Has successfully passed an examination on subjects
27 the board determines; or

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

31 (B) Passed the medication aide examination.

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

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

39 (2) The board recommends certification.

40 (c) Any person holding a certification as a medication
41 assistive person may use the title “medication aide-certified”
42 and the abbreviation “MA-C”.

§30-7D-6. Scope of work.

1 (a) (1) A medication assistive person may perform the
2 delegated nursing function of medication administration and
3 related tasks in accordance with rules promulgated by the

4 West Virginia Board of Examiners for Registered
5 Professional Nurses.

6 (2) A medication assistive person shall perform
7 medication administration and related tasks only:

8 (A) At a designated facility; and

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

11 (3) (A) Medication administration is limited to the
12 administration of nonprescription and legend drugs ordered
13 by an authorized prescriber and only by the following
14 methods:

15 (i) Orally;

16 (ii) Topically;

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

18 (iv) Vaginally;

19 (v) Rectally;

20 (vi) Transdermally; and

21 (vii) Via oral inhaler.

22 (B) Medication administration by a medication assistive
23 person may not include controlled substances.

24 (b) A medication assistive person may not:

25 (1) Receive, have access to or administer any controlled
26 substance;

27 (2) Administer parenteral, enteral, or injectable
28 medications;

29 (3) Administer any substances by nasogastric, oralgastric
30 or gastrostomy tubes;

31 (4) Calculate drug dosages;

32 (5) Destroy medication;

33 (6) Receive orders either in writing or verbally for new or
34 changed medications;

35 (7) Transcribe orders from the medical record;

36 (8) Order initial medications;

37 (9) Evaluate medication error reports;

38 (10) Perform treatments;

39 (11) Conduct patient assessments or evaluations; or

40 (12) Engage in patient teaching activities.

§30-7D-7. Renewal of certifications.

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

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

9 (b) (1) Upon receipt of the renewal application and the
10 fee, the board shall verify the accuracy of the application.

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

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

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

19 (ii) Required to satisfactorily complete all continuing
20 education required in the legislative rules governing the
21 practice of the MA-C.

22 (c) The renewal renders the holder of the certificate a
23 legal provider of medication assistive person services for the
24 period stated in the certificate of renewal.

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

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

29 (2) Submission of evidence that the person currently
30 meets the requirements to serve as a medication assistive
31 person.

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

§30-7D-8. Disciplinary actions.

1 (a) The West Virginia Board of Examiners for Registered
2 Professional Nurses has sole authority to deny, suspend,
3 revoke or limit any medication assistive person certificate
4 issued by the board or applied for in accordance with the
5 provisions of this article or to otherwise discipline a
6 certificate holder upon proof 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
11 contendere to a felony, crime of moral turpitude or violation
12 of chapter sixty-one-a of this code;

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

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

17 (5) Is mentally incompetent;

18 (6) Is guilty of unprofessional conduct;

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

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

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

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

28 (11) Has willfully or repeatedly violated any of the
29 provisions of this article.

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

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

§30-7D-9. Offenses and Penalties.

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

2 (1) Sell or fraudulently obtain or furnish any medication
3 assistive person's certificate, renewal or record, or aid or abet
4 in any such sale or fraud;

5 (2) Serve as a medication assistive person under cover of
6 any certificate or record illegally or fraudulently obtained or
7 signed or issued unlawfully or under fraudulent
8 representation;

9 (3) Serve as a medication assistive person unless certified
10 by the West Virginia Board of Examiners for Registered
11 Professional Nurses;

12 (4) Use in connection with his or her name any of the
13 following titles, names, or initials if the user is not properly
14 certified under this article:

15 (A) Medication assistive person;

16 (B) M.A.P.;

17 (C) Medication aide;

18 (D) Medication technician;

19 (E) Certified medication aide;

20 (F) C.M.A.;

21 (G) Medication Aide - certified;

22 (H) MA-C; or

23 (I) Any other name, title, or initials that would cause a
24 reasonable person to believe the user is certified under this
25 article;

26 (5) Serve as a medication assistive person during the time
27 his or her certification is suspended;

28 (6) Conduct an education program for the preparation of
29 medication assistive persons unless the program has been
30 approved by the board; or

31 (7) Otherwise violate any provisions of this article.

32 (b) Any person convicted of any such misdemeanor shall
33 be punished by a fine of not less than \$25 nor more than
34 \$250.

§30-7D-10. Injunction.

1 (a) The Kanawha County circuit court is vested with
2 jurisdiction and power to enjoin the unlawful provision of

3 medication assistive person services in any county of the
4 State of West Virginia in a proceeding initiated by the West
5 Virginia Board of Examiners for Registered Professional
6 Nurses, any member of the board, or any citizen in this state.

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

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

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

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

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

8 (b) The board shall appoint six members who have the
9 following qualifications:

10 (1) Two members shall be certified medication assistive
11 persons;

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

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

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

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

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

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

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

§30-7D-12. Applicability of article.

1 Nothing in this article relieves a nurse from the
2 responsibility of assessing each patient daily and as needed
3 to assure public safety and safe medication administration.

§30-7D-13. Rulemaking authority.

1 The board may promulgate emergency rules pursuant to
2 the provisions of section fifteen, article three, chapter twenty-
3 nine-a of the code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2011.

Governor