

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4199

BY DELEGATES ELLINGTON, LONGSTRETH, HOUSEHOLDER

AND FRICH

[Passed March 2, 2018; in effect ninety days from passage.]

1 AN ACT to repeal §30-7D-1, §30-7D-2, §30-7D-3, §30-7D-4, §30-7D-5, §30-7D-6, §30-7D-7, §30-
2 7D-8, §30-7D-9, §30-7D-10, §30-7D-11, §30-7D-12, and §30-7D-13 of the Code of West
3 Virginia, 1931, as amended; and to amend said code by adding thereto a new article,
4 designated §16-5AA-1, §16-5AA-2, §16-5AA-3, §16-5AA-4, §16-5AA-5, §16-5AA-6, §16-
5 5AA-7, §16-5AA-8, §16-5AA-9, and §16-5AA-10, all relating to permitting a nursing home
6 to use trained individuals to administer medication under the direction of a registered
7 professional nurse; defining terms; authorizing an AMAP to administer medication in
8 nursing home; providing certain exemptions from chapter thirty licensing requirements;
9 establishing requirements for training curricula and competency evaluation procedures;
10 establishing eligibility criteria; establishing procedures by which an AMAP must administer
11 medication; requiring nursing homes using an AMAP to establish an administrative
12 monitoring system; permitting a registered professional nurse to withdraw authorization
13 for an AMAP to administer medications in certain circumstances; allowing certain fees to
14 be collected; providing limits on administration of medication by an AMAP; providing that
15 use of an AMAP in nursing homes is permissive; and repealing a pilot program designed
16 to monitor the practice of unlicensed personnel administering medication in a nursing
17 home setting.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5AA. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL IN NURSING HOMES.

§16-5AA-1. Definitions.

1 The following terms are defined for this article:

2 “Administration of medication” means assisting a person in the ingestion, application, or
3 inhalation of medications, or the supervision or providing of assistance of self-administered

4 medication both according to the legibly written or printed directions of the health care
5 professional or as written on the prescription label: *Provided*, That “administration” does not
6 include judgment, evaluation, assessments, or injections of medication (except for prefilled insulin
7 or insulin pens).

8 “Approved medication assistive personnel (AMAP)” means a staff member, who meets
9 eligibility requirements, has successfully completed the required training and competency testing
10 developed by the authorizing agency, and is considered competent by the authorized registered
11 professional nurse to administer medications to residents of the nursing home in accordance with
12 this article.

13 “Authorized practitioner” means a physician actively licensed under the provisions of §30-
14 3-1 *et seq.* of this code or §30-14-1 *et seq.* of this code.

15 “Authorized registered professional nurse” means a person who is actively licensed
16 pursuant to §30-7-1 *et seq.* of this code and meets the requirements to train and supervise
17 approved medication assistive personnel pursuant to this article, and has completed and passed
18 the facility trainer/instructor course developed by the authorizing agency.

19 “Authorizing agency” means the Office of Health Facility Licensure and Certification.

20 “Delegation” means transferring to a competent individual, as determined by the
21 authorized registered professional nurse, the authority to administer medications or perform a
22 health maintenance task.

23 “Health care professional” means an allopathic physician, osteopathic physician,
24 registered professional nurse, advanced practice registered nurse, physician’s assistant, dentist,
25 optometrist, or respiratory therapist licensed pursuant to the provisions of Chapter 30 of this code.

26 “Health maintenance tasks” means:

- 27 (1) Administering glucometer tests;
- 28 (2) Administering gastrostomy tube feedings;
- 29 (3) Administering enemas;

30 (4) Performing tracheostomy and ventilator care for residents.

31 “Prescribing practitioner” means an individual who has prescriptive authority as provided
32 in Chapter 30.

33 “Medication” means a drug, as defined in §60A-1-101 of this code, which has been
34 prescribed by a health care professional to be ingested through the mouth, inhaled through the
35 nose or mouth, applied to the outer skin, eye or ear, or applied through nose drops, or applied
36 through vaginal or rectal suppositories. Medication does not mean a controlled substance listed
37 in Schedule I as provided in §60A-2-204 of this code and Schedule II as provided in §60A-2-206
38 of this code.

39 “Nursing Home” means as defined in §16-5C-2 of this code.

40 “Registered professional nurse” means a person who is actively licensed pursuant to §30-
41 7-1 *et seq.* of this code.

42 “Resident” means a person living in a nursing home who is in a stable condition.

43 “Self-administration of medication” means the act of a resident, who is independently
44 capable of reading and understanding the labels of medication ordered by an authorized
45 practitioner, in opening and accessing prepackaged drug containers, accurately identifying and
46 taking the correct dosage of the drugs as ordered by the health care professional, at the correct
47 time and under the correct circumstances.

48 “Self-administration of medication with assistance” means assisting residents who are
49 otherwise able to self-administer their own medications except their physical disabilities prevent
50 them from completing one or more steps in the process.

51 “Stable” means the resident’s health condition is predictable and consistent as determined
52 by the registered professional nurse.

53 “Staff member” means an individual employed by a nursing home but does not include a
54 health care professional acting within his or her scope of practice.

55 “Supervision of self-administration of medication” means a personal service which
56 includes reminding residents to take medications, opening medication containers for residents,
57 reading the medication label to residents, observing residents while they take medication,
58 checking the self-administered dosage against the label on the container and reassuring residents
59 that they have obtained and are taking the dosage as prescribed.

§16-5AA-2. Administration of medications.

1 (a) The authorizing agency shall create a program for the administration of medications in
2 nursing homes. The authorizing agency shall create the program in consultation with the
3 appropriate agencies and licensing boards.

4 (b) Administration of medication shall be performed by an AMAP who has been trained
5 and retrained every two years and who is subject to the supervision of and approval by an
6 authorized registered professional nurse.

7 (c) After assessing the health status of a resident daily, a registered professional nurse, in
8 collaboration with the resident’s prescriber, may allow an AMAP to administer medication.

9 (d) Nothing in this article prohibits a staff member from administering medications or
10 performing health maintenance tasks or providing any other prudent emergency assistance to aid
11 any person who is in acute physical distress or requires emergency assistance.

§16-5AA-3. Exemption from licensure; statutory construction.

1 (a) A staff member who is not authorized by law to administer medication may do so in a
2 nursing home if he or she meets the requirements of this article.

3 (b) An AMAP is exempt from the licensing requirements of Chapter 30 of this code.

4 (c) A health care professional remains subject to his or her respective licensing laws.

5 (d) This article shall not be construed to violate or conflict with Chapter 30 of this code.

§16-5AA-4. Instruction and training.

1 (a) The authorizing agency shall develop and approve training curricula and competency
2 evaluation procedures for an AMAP. The authorizing agency shall consult with the West Virginia

3 Board of Examiners for Registered Nurses in developing the training curricula and competency
4 evaluation procedures.

5 (b) The program developed by the authorizing agency shall require that a person who
6 applies to act as an AMAP shall:

7 (1) Hold a high school diploma or its equivalent;

8 (2) Be a Certified Nurse Aide with at least one year of full-time experience;

9 (3) Be certified in cardiopulmonary resuscitation and first aid;

10 (4) Participate in the initial training program developed by the authorizing agency;

11 (5) Pass a competency evaluation developed by the authorizing agency;

12 (6) Not have a statement on the stated administered nurse aide registry indicating that the
13 staff member has been the subject of finding of abuse or neglect of a long-term care nursing home
14 resident or convicted of the misappropriation of a resident's property; and

15 (7) Participate in a retraining program every two years.

16 (c) A nursing home may offer the training and competency evaluation program developed
17 by the authorizing agency to its staff members. The training and competency programs shall be
18 provided by the nursing home through a registered professional nurse.

19 (d) A registered professional nurse who is authorized to train staff members to administer
20 medications in nursing homes shall:

21 (1) Possess a current active license as set forth in §30-7-1 *et seq.* of this code to practice
22 as a registered professional nurse;

23 (2) Have practiced as a registered professional nurse in a position or capacity requiring
24 knowledge of medications for the immediate two years prior to being authorized to train staff
25 members;

26 (3) Be familiar with the nursing care needs of the residents as described in this article; and

27 (4) Have completed and passed the nursing home trainer/instructor course developed by
28 the authorizing agency.

§16-5AA-5. Eligibility requirements of nursing home staff.

- 1 (a) In order to administer medication an AMAP shall:
- 2 (1) Determine the medication to be administered is in its original container in which it was
- 3 dispensed by a pharmacist or the physician;
- 4 (2) Make a written record of assistance of medication with regard to each medication
- 5 administered, including the time, route, and amount taken;
- 6 (3) Display the title “Approved Medication Assistive Personnel” at all times; and
- 7 (4) Comply with the legislative rules promulgated pursuant to §29A-3-1 *et seq.* of this code
- 8 to implement the provisions of this article.

§16-5AA-6. Oversight of approved medication assistive personnel.

1 A nursing home using an AMAP shall establish an administrative monitoring system and

2 shall comply with the applicable provisions of the legislative rules promulgated pursuant to §16-

3 5O-11 of this code.

§16-5AA-7. Withdrawal of authorization.

- 1 (a) The registered professional nurse who supervises an AMAP may withdraw
- 2 authorization for an AMAP to administer medications, if the nurse determines that the AMAP is
- 3 not performing the function in accordance with the training and written instructions.
- 4 (b) The withdrawal of the authorization shall be documented and relayed to the nursing
- 5 home and the authorizing agency. The agency shall remove the AMAP from the list of authorized
- 6 individuals. The department shall maintain a list of the names of persons whose authorization has
- 7 been withdrawn and the reasons for withdrawal of authorization. The list may be accessed by
- 8 registered professional nurses and administrative personnel of nursing homes.

§16-5AA-8. Fees.

1 The authorizing agency may set and collect any appropriate fees necessary for the

2 implementation of the provisions of this article pursuant to the legislative rules authorized by this

3 article.

§16-5AA-9. Limitations on medication administration.

1 (a) An AMAP may not:

2 (1) Perform an injection, except that prefilled insulin or insulin pens may be administered;

3 (2) Administer irrigations or debriding agents to treat a skin condition or minor abrasions;

4 (3) Act upon verbal medication orders;

5 (4) Transcribe medication orders;

6 (5) Convert or calculate drug dosages;

7 (6) Administer medications to be given “as needed” as ordered by the health care
8 professional unless the supervising nurse has first performed and documented a bedside
9 assessment, and then the AMAP may administer the medication based on the written order with
10 specific parameters which preclude independent judgment; or

11 (7) Perform health maintenance tasks.

12 (b) An AMAP’s primary responsibility shall be to administer medication when assigned.
13 While performing medication administration he or she may respond to routine requests from
14 residents as long as it would not conflict with the administration of medication. An AMAP may
15 perform other resident care activities during such times that the AMAP is not engaged in, or
16 scheduled to be engaged in, the administration of medication.

§16-5AA-10. Permissive Participation.

1 The provisions of this article are not mandatory upon any nursing home or nursing home
2 employee. A nursing home may not, as a condition of employment, require any of its health care
3 professionals to use AMAPs.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 7D. MEDICATION ASSISTIVE PERSONS.

§30-7D-1. Pilot program.

1 [Repealed]

§30-7D-2. Definitions.

1 [Repealed]

§30-7D-3. Certificate required.

1 [Repealed]

§30-7D-4. Designated facilities.

1 [Repealed]

§30-7D-5. Qualifications.

1 [Repealed]

§30-7D-6. Scope of work.

1 [Repealed]

§30-7D-7. Renewal of certifications.

1 [Repealed]

§30-7D-8. Disciplinary actions.

1 [Repealed]

§30-7D-9. Offenses and Penalties.

1 [Repealed]

§30-7D-10. Injunction.

1 [Repealed]

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

1 [Repealed]

§30-7D-12. Applicability of article.

1 [Repealed]

§30-7D-13. Rulemaking authority.

1 [Repealed]

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2018.

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Governor