Committee Substitute

for

House Bill 4199

BY DELEGATES ELLINGTON, LONGSTRETH, HOUSEHOLDER AND FRICH

[Introduced January 18, 2018; Referred to the Committee on Health and Human Resources then the Judiciary.]
A BILL to repeal §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 of the Code of West
Virginia, 1931, as amended; and to amend said code by adding thereto a new article,
designated §16-5AA-1, §16-5AA-2, §16-5AA-3, §16-5AA-4, §16-5AA-5, §16-5AA-6, §16-
5AA-7, §16-5AA-8, §16-5AA-9, and §16-5AA-10, all relating to permitting a nursing home
to use trained individuals to administer medication under the direction of a registered
professional nurse, defining terms, authorizing an AMAP to administer medication in
nursing home, providing certain exemptions from chapter thirty licensing requirements,
establishing requirements for training curricula and competency evaluation procedures,
establishing procedures by which an AMAP must administer medication, requiring nursing
homes using an AMAP to establish an administrative monitoring system, permitting a
registered professional nurse to withdraw authorization for an AMAP to administer
medications in certain circumstances, allowing certain fees to be collected, providing limits
on administration of medication by an AMAP, providing that use of an AMAO in nursing
homes is permissive, and repealing a pilot program designed to monitor the practice of
unlicensed personnel administering medication in a nursing 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.

The following terms are defined for this article:

“Administration of medication” means assisting a person in the ingestion, application or
inhalation of medications, or the supervision or providing of assistance of self-administered
medication both according to the legibly written or printed directions of the health care
professional or as written on the prescription label: Provided, That “administration” does not include judgment, evaluation, assessments, or injections of medication (except for prefilled insulin or insulin pens).

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

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

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

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

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

“Health care professional” means an allopathic physician, osteopathic physician, registered professional nurse, advanced practice registered nurse, physician’s assistant, dentist or optometrist licensed under chapter thirty of this code.

“Health maintenance tasks” means:

(1) Administering glucometer tests;

(2) Administering gastrostomy tube feedings;

(3) Administering enemas;

(4) Performing tracheostomy and ventilator care for residents.
“Prescribing practitioner” means an individual who has prescriptive authority as provided in Chapter 30.

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

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

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

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

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

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

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

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

“Supervision of self-administration of medication” means 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.

§16-5AA-2. Administration of medications

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

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

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

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

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

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

(b) An AMAP is exempt from the licensing requirements of chapter thirty of this code.

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

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

§16-5AA-4. Instruction and training.

(a) The authorizing agency shall develop and approve training curricula and competency evaluation procedures for an AMAP. The authorizing agency shall consult with the West Virginia Board of Examiners for Registered Nurses in developing the training curricula and competency evaluation procedures.
(b) The program developed by the authorizing agency shall require that a person who applies to act as an AMAP shall:

1. Hold a high school diploma or its equivalent;
2. Be a Certified Nurse Aide with at least one year of full-time experience;
3. Be certified in cardiopulmonary resuscitation and first aid;
4. Participate in the initial training program developed by the authorizing agency;
5. Pass a competency evaluation developed by the authorizing agency;
6. Not have a statement on the stated administered nurse aide registry indicating that the staff member has been the subject of finding of abuse or neglect of a long-term care nursing home resident or convicted of the misappropriation of a resident’s property; and
7. Participate in a retraining program every two years.

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

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

1. Possess a current active license as set forth in §30-7-1 et seq. to practice as a registered professional nurse;
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 staff members;
3. Be familiar with the nursing care needs of the residents as described in this article; and
4. Have completed and passed the nursing home trainer/instructor course developed by the authorizing agency.

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

(a) In order to administer medication an AMAP shall:
(1) Determine the medication to be administered is in its original container in which it was dispensed by a pharmacist or the physician;

(2) Make a written record of assistance of medication with regard to each medication administered, including the time, route and amount taken;

(3) Comply with the legislative rules promulgated pursuant to §29-3 et seq. to implement the provisions of this article.

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

A nursing home using an AMAP shall establish an administrative monitoring system and shall comply with the applicable provisions of the legislative rules promulgated pursuant to §16-5O-11 of this code.


(a) The registered professional nurse who supervises an AMAP may withdraw authorization for an AMAP to administer medications, if the nurse determines that the AMAP is not performing the function in accordance with the training and written instructions.

(b) The withdrawal of the authorization shall be documented and relayed to the nursing home and the authorizing agency. The agency shall remove the AMAP from the list of authorized individuals. The department shall maintain a list of the names of persons whose authorization has been withdrawn, and the reasons for withdrawal of authorization. The list may be accessed by registered professional nurses and administrative personnel of nursing homes.

§16-5AA-8. Fees.

The authorizing agency may set and collect any appropriate fees necessary for the implementation of the provisions of this article pursuant to the legislative rules authorized by this article.

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

An AMAP may not:

(1) Perform an injection, except that prefilled insulin or insulin pens may be administered;
(2) Administer irrigations or debriding agents to treat a skin condition or minor abrasions;
(3) Act upon verbal medication orders;
(4) Transcribe medication orders;
(5) Convert or calculate drug dosages;
(6) Administer medications to be given “as needed” as ordered by the health care professional unless the supervising nurse has first performed and documented a bedside assessment and then the AMAP may administer the medication based on the written order with specific parameters which preclude independent judgment; or
(7) Perform health maintenance tasks.

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

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 7D. MEDICATION ASSISTIVE PERSONS.

§30-7D-1. Pilot program.
[Repealed]

§30-7D-2. Definitions.
[Repealed]

§30-7D-3. Certificate required.
[Repealed]

§30-7D-4. Designated facilities.
[Repealed]

§30-7D-5. Qualifications.
[Repealed]
§30-7D-6. Scope of work.
[Repealed]

§30-7D-7. Renewal of certifications.
[Repealed]

§30-7D-8. Disciplinary actions.
[Repealed]

§30-7D-9. Offenses and Penalties.
[Repealed]

§30-7D-10. Injunction.
[Repealed]

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

§30-7D-12. Applicability of article.
[Repealed]

§30-7D-13. Rulemaking authority.
[Repealed]

NOTE: The purpose of this bill is to permit a nursing home to use trained individuals to administer medication under the direction of a registered professional nurse.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.