

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 560

SENATORS TAKUBO, MARONEY, CLINE, RUCKER, AND

ROBERTS, *original sponsors*

[Passed February 18, 2020; in effect 90 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 approved medication assistive personnel
8 (AMAP) to administer medication in nursing homes; providing certain exemptions from
9 chapter 30 licensing requirements; establishing requirements for training curricula and
10 national Medication Aide Certification Examination procedures; establishing eligibility
11 criteria; establishing requirements for AMAP to administer medication; requiring
12 compliance with legislative rules promulgated by the authorizing agency; requiring nursing
13 homes using AMAP to establish an administrative monitoring system; permitting a
14 registered professional nurse to withdraw authorization for AMAP to administer
15 medications in certain circumstances; allowing certain fees to be collected; providing limits
16 on administration of medication by AMAP; providing that use of AMAP in nursing homes
17 is permissive; and repealing a pilot program designed to monitor the practice of unlicensed
18 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.

1 For the purposes of this article:

2 “Administration of medication” means assisting a person in the ingestion, application, or
3 inhalation of medications, or the supervision of or the providing of assistance with self-
4 administered medication, both according to the legibly written or printed directions of the health
5 care professional, or as written on the prescription label. “Administration” does not include
6 judgment, evaluation, assessments, or injections of medication.

7 “Approved medication assistive personnel (AMAP)” means a staff member who meets
8 eligibility requirements, has successfully completed a nationally recognized model curriculum for
9 certified medication assistants, has passed a national medication aide certification examination
10 approved by the National Council of State Boards of Nursing, and is considered competent by the
11 authorized registered professional nurse to administer medications to residents of the nursing
12 home in accordance with this article.

13 “Authorized practitioner” means a physician actively licensed under the provisions of §30-
14 3-1 *et seq.* or §30-14-1 *et seq.* of this code, an advanced practice registered nurse with
15 prescriptive authority actively licensed under the provisions of §30-7-1 *et seq.* of this code, a
16 physician’s assistant actively licensed under the provisions of §30-3E-1 *et seq.* of this code, an
17 optometrist actively licensed under the provisions of §30-8-1 *et seq.* of this code, or a dentist
18 actively licensed under the provisions of §30-4-1 *et seq.* of this code.

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

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

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

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

30 “Health maintenance tasks” means: Administering glucometer tests; administering
31 gastrostomy tube feedings; administering enemas; and performing tracheostomy and ventilator
32 care for residents.

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 using an inhaler or nebulizer, applied to the outer skin, eye, or ear, or applied
36 through nose drops, or applied through vaginal or rectal suppositories. Medication does not mean
37 a controlled substance listed in Schedule I as provided in §60A-2-204 of this code, Schedule II
38 as provided in §60A-2-206 of this code, buprenorphine, or benzodiazepines.

39 “Medication reconciliation” means the process of creating an accurate list of all
40 medications a resident is taking, including drug name, dosage, frequency, and route, so correct
41 medications are being provided to the resident.

42 “Nursing home” means the same as it is defined in §16-5C-2 of this code.

43 “Prescribing practitioner” means an individual who has prescriptive authority as provided
44 in chapter 30 of this code.

45 “Registered professional nurse” means a person who is actively licensed pursuant to §30-
46 7-1 *et seq.* of this code.

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

48 “Self-administration of medication” means the act of a resident, who is independently
49 capable of reading and understanding the labels of medication ordered by an authorized
50 practitioner, opening and accessing prepackaged drug containers, and accurately identifying and

51 taking the correct dosage of the drugs as ordered by the health care professional at the correct
52 time and under the correct circumstances.

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

56 “Stable” means the resident’s health condition is predictable and consistent as determined
57 by the registered professional nurse, and the resident’s medications have been reconciled.

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

60 “Supervision of self-administration of medication” means a personal service which
61 includes reminding residents to take medications, opening medication containers for residents,
62 reading the medication label to residents, observing residents while they take medication,
63 checking the self-administered dosage against the label on the container, and reassuring
64 residents 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.

3 (b) Administration of medication shall be performed by an approved medication assistive
4 personnel (AMAP) who has been trained and retrained every two years, passed a national
5 medication aide certification examination, and who is subject to the supervision of, and approval
6 by, an authorized registered professional nurse.

7 (c) After assessing the health status of a resident, 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 approved medication assistive personnel is exempt from the licensing requirements
4 of chapter 30 of this code.

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

6 (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's training curricula shall be based on a nationally recognized
2 model curriculum for certified medication assistants. The authorizing agency shall consult with the
3 West Virginia Board of Respiratory Care Practitioners in developing the training curricula relating
4 to the use of an inhaler or nebulizer. The certification examination must be a national Medication
5 Aide Certification Examination.

6 (b) The program developed by the authorizing agency shall require that a person who
7 applies to act as an approved medication assistive personnel shall:

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

9 (2) Be a nurse aide with at least one year of full-time experience;

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

11 (4) Participate in the initial training program as set forth in §16-5AA-1 of this code;

12 (5) Pass a national certification examination as set forth in §16-5AA-1 of this code;

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

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

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

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

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

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

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

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

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

1 In order to administer medication, an approved medication assistive personnel (AMAP)
2 shall:

3 (1) Determine the medication to be administered is in its original container in which it was
4 dispensed by a pharmacist or the physician;

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

7 (3) Display the title Approved Medication Assistive Personnel; and

8 (4) Comply with the legislative rules promulgated by the authorizing agency pursuant
9 to §29A-3-1 *et seq.* of this code relating to the provisions of this article, which shall address, at a
10 minimum, the supervision provided by the registered professional nurse to the AMAP.

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

1 A nursing home using an approved medication assistive personnel shall establish an
2 administrative monitoring system and shall comply with the applicable provisions of the legislative
3 rules promulgated pursuant to §16-5O-11 of this code.

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

1 (a) The registered professional nurse who supervises an approved medication assistive
2 personnel (AMAP) may withdraw authorization for an AMAP to administer medications if the nurse
3 determines that the AMAP is not performing the function in accordance with the training and
4 written instructions.

5 (b) The withdrawal of the authorization shall be documented and relayed to the nursing
6 home and the authorizing agency. The agency shall remove the AMAP from the list of authorized
7 individuals. The department shall maintain a list of the names of persons whose authorization has
8 been withdrawn and the reasons for withdrawal of authorization. The list may be accessed by
9 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 approved medication assistive personnel (AMAP) may not:
- 2 (1) Administer the first dose of a medication;
 - 3 (2) Perform an injection;
 - 4 (3) Administer irrigations or debriding agents to treat a skin condition or minor abrasions;
 - 5 (4) Act upon verbal medication orders;
 - 6 (5) Transcribe medication orders;
 - 7 (6) Convert or calculate drug dosages;

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

12 (8) Perform health maintenance tasks.

13 (b) An AMAP may not be assigned to both medication administration duty and typical
14 nurse aide duties related to resident care and assistance with activities of daily living
15 simultaneously. When assigned to medication administration, the AMAP’s responsibility shall be
16 to administer medication and tasks related to the administration of medication. An AMAP may be
17 assigned to other resident care and assistance with activities of daily living during such times that
18 the AMAP is not engaged in, or 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 a nurse aide to
3 become an approved medication assistive personnel (AMAP) or require its health care
4 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, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2020.

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Governor