

1 **ENGROSSED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 3196**

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

6
7 (Originating in the Committee on Finance)

8 [February 25, 2011]

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

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

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

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

25 **§30-7D-1. Pilot program.**

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

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

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

14 **§30-7D-2. Definitions.**

15 As used in this article:

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

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

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

25 (4) "Supervision" means the active oversight of patient care
26 services while on the premises of a designated facility in a manner

1 defined by the board; and

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

4 **§30-7D-3. Certificate required.**

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

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

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

9 **§30-7D-4. Designated facilities.**

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

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

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

18 **§30-7D-5. Qualifications.**

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

certification shall be issued a permanent certificate. The application shall provide written evidence, verified by oath, that the applicant:

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

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

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

(D) Is currently employed at a designated facility;

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

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

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

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

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

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

(B) Passed the medication aide examination.

(b) The board may issue a certification as a medication assistive person by endorsement to an applicant who has been licensed or certified as a medication assistive person under the

1 laws of another state or territory if:

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

4 (2) The board recommends certification.

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

8 **§30-7D-6. Scope of work.**

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

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

15 (A) At a designated facility; and

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

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

20 (i) Orally;

21 (ii) Topically;

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

23 (iv) Vaginally;

24 (v) Rectally;

25 (vi) Transdermally; and

26 (vii) Via oral inhaler.

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

3 (b) A medication assistive person may not:

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

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

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

9 (4) Calculate drug dosages;

10 (5) Destroy medication;

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

13 (7) Transcribe orders from the medical record;

14 (8) Order initial medications;

15 (9) Evaluate medication error reports;

16 (10) Perform treatments;

17 (11) Conduct patient assessments or evaluations; or

18 (12) Engage in patient teaching activities.

19 **§30-7D-7. Renewal of certifications.**

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

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

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

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

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

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

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

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

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

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

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

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

1 **§30-7D-8. Disciplinary actions.**

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

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

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

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

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

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

1 (11) Has willfully or repeatedly violated any of the
2 provisions of this article.

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

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

10 **§30-7D-9. Penalty.**

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

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

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

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

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

24 (i) Medication assistive person;

25 (ii) M.A.P.;

26 (iii) Medication aide;

1 (iv) Medication technician;

2 (v) Certified medication aide;

3 (vi) C.M.A.;

4 (vii) Medication Aide - certified;

5 (viii) MA-C; or

6 (ix) Any other name, title, or initials that would cause a
7 reasonable person to believe the user is certified under this
8 article;

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

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

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

15 **§30-7D-10. Injunction.**

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

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

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

1 **§30-7D-11. Medication Assistive Person Advisory Committee.**

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

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

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

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

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

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

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

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

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

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

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

26 **§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 to
3 assure public safety and safe medication administration.

4 **§30-7D-13. Rulemaking authority.**

5 The board may promulgate emergency rules pursuant to the
6 provisions of section fifteen, article three, chapter twenty-nine-a
7 of the code.