

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 548

BY SENATORS TAKUBO, CLINE, AND MARONEY

[Introduced February 7, 2019; Referred
to the Committee on Health and Human Resources]

1 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-
 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 generally to the
 6 administration of medication in nursing homes; repealing a pilot program designed to
 7 monitor the practice of unlicensed personnel administering medication in a nursing home
 8 setting; permitting a nursing home to use trained individuals to administer medication
 9 under the direction of a registered professional nurse; authorizing Approved Medication
 10 Assistive Personnel (AMAP) to administer medication in a nursing home; providing certain
 11 exemptions; establishing requirements for training curricula and national medication aide
 12 certification examination procedures; establishing eligibility criteria; establishing
 13 procedures by which an AMAP may administer medication; requiring nursing homes using
 14 an AMAP to establish an administrative monitoring system; permitting a registered
 15 professional nurse to withdraw authorization for an AMAP to administer medications in
 16 certain circumstances; allowing certain fees to be collected; providing limits on
 17 administration of medication by an AMAP; providing that use of an AMAP in nursing homes
 18 is permissive; requiring rulemaking; and defining terms.

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, has passed a national medication aide certification
11 examination, and is considered competent by the authorized registered professional nurse to
12 administer medications to residents of the nursing 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 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 Department of Health and Human Resources’ Office of
24 Health Facility Licensure and Certification.

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

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

31 “Health maintenance tasks” means:

32 (1) Administering glucometer tests;

33 (2) Administering gastrostomy tube feedings;

34 (3) Administering enemas;

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

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

38 “Medication” means a drug, as defined in §60A-1-101 of this code, which has been
39 prescribed by a health care professional to be ingested through the mouth, inhaled through the
40 nose or mouth using an inhaler or nebulizer, applied to the outer skin, eye or ear, or applied
41 through nose drops, or applied through vaginal or rectal suppositories. Medication does not mean
42 a controlled substance listed in Schedule I as provided in §60A-2-204 of this code, Schedule II
43 as provided in §60A-2-206 of this code, buprenorphine or benzodiazepines.

44 “Nursing Home” means as defined in §16-5C-2 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, in opening and accessing prepackaged drug containers, 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.

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 residents
64 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 AMAP who has been trained
4 and retrained every two years, passed a national medication aide certification examination, and
5 who is subject to the supervision of and approval by an authorized registered professional nurse.

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

8 (d) Nothing in this article prohibits a staff member from administering medications or
9 performing health maintenance tasks or providing any other prudent emergency assistance to aid
10 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 national
2 medication aide certification examination procedures for an AMAP. The authorizing agency shall
3 develop the training curricula based on a nationally recognized model curriculum for certified
4 medication assistants. The curricula shall include training on the proper administration of inhaler
5 and nebulizer treatments and medications.

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

12 (5) Pass a certification examination developed by the authorizing agency;

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 and competency programs shall be provided by the nursing
19 home through a registered 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 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”; 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) Administer the first dose of a medication;

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

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 AMAP or require its health care 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. Rule-making authority.

1 [Repealed]

NOTE: The purpose of this bill is to permit nursing homes 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.