

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4423**

BY DELEGATES HILL, PACK, KESSINGER, COWLES,  
WORRELL, ANGELUCCI, BARRETT, DISERIO AND  
SWARTZMILLER

[Introduced January 20, 2020; 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 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 home; 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 procedures by which AMAP must administer medication; requiring  
 12 nursing homes using AMAP to establish an administrative monitoring system; permitting  
 13 a registered professional nurse to withdraw authorization for AMAP to administer  
 14 medications in certain circumstances; allowing certain fees to be collected; providing limits  
 15 on administration of medication by AMAP; providing that use of AMAP in nursing homes  
 16 is permissive; and repealing a pilot program designed to monitor the practice of unlicensed  
 17 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 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. “Administration” does not include judgment,  
6 evaluation, assessments, or injections of medication, except for prefilled insulin or insulin pens.

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

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

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

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

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

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

29 “Health maintenance tasks” means:

30 (A) Administering glucometer tests;

31 (B) Administering gastrostomy tube feedings;

32 (C) Administering enemas; and

33 (D) Performing tracheostomy and ventilator care for residents.

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

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

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

44 “Prescribing practitioner” means an individual who has prescriptive authority as provided  
45 in chapter 30.

46 “Registered professional nurse” means a person who is actively licensed pursuant to §30-  
47 7-1 et seq. of this code.

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

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

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

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

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

61 “Supervision of self-administration of medication” means a personal service which  
62 includes reminding residents to take medications, opening medication containers for residents,  
63 reading the medication label to residents, observing residents while they take medication,  
64 checking the self-administered dosage against the label on the container and reassuring residents  
65 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, 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 certification  
2 examination procedures for an AMAP. The training curricula shall be based on a nationally  
3 recognized model curriculum for certified medication assistants. The authorizing agency shall  
4 consult with the West Virginia Board of Respiratory Care Practitioners in developing the training  
5 curricula relating to the use of an inhaler or nebulizer. The certification examination must be a  
6 national medication aide certification examination.

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (4) Have completed and passed the nursing home trainer/instructor course developed by  
30 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. Rulemaking 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.

The bill repeals §30-7D-1 *et. seq.* of the code.

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