

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 3196**

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

6
7 [Passed March 11, 2011; in effect from passage.]
8
9

10 AN ACT to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §30-7D-1, §30-7D-2
12 and §30-7D-3, §30-7D-4, §30-7D-5, §30-7D-6, §30-7D-7, §30-7D-
13 8, §30-7D-9, §30-7D-10, §30-7D-11, §30-7D-12 and §30-7D-13,
14 all relating to medication assistive persons in the nursing
15 home setting; creating a pilot program; defining terms;
16 requiring certification; designating certain facilities;
17 stating qualifications to serve as a medication assistive
18 person; detailing the scope of a medication assistive person's
19 work; setting requirements for renewal of certifications;
20 creating disciplinary authority in the West Virginia Board of
21 Examiners for Registered Professional Nurses; creating
22 misdemeanor offenses for certain violations; creating criminal
23 penalties; vesting the Kanawha County circuit court with
24 jurisdictional and power to enjoin violations; creating the
25 medication assistive person advisory committee; ensuring
26 nurses responsibilities are not changed; and authorizing

1 emergency rule-making authority.

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

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

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

9 **§30-7D-1. Pilot program.**

10 A pilot program is herein developed to monitor the practice of
11 unlicensed personnel administering medication in the nursing home
12 setting. Monitoring of this pilot program shall be conducted by
13 the West Virginia Board of Examiners for Registered Professional
14 Nurses and shall encompass the following:

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

19 (2) After a period of six months of monitoring the
20 implementation of the pilot program, a report shall be provided to
21 the Legislative Commission for Health and Human Resources
22 Accountability.

23 **§30-7D-2. Definitions.**

24 As used in this article:

25 (1) "Board" means the West Virginia Board of Examiners for

1 Registered Professional Nurses;

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

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

9 (4) "Supervision" means the active oversight of patient care
10 services while on the premises of a designated facility in a manner
11 defined by the board; and

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

14 **§30-7D-3. Certificate required.**

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

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

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

19 **§30-7D-4. Designated facilities.**

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

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

25 (2) If a designated facility elects to use medication
26 assistive personnel, the facility shall notify the board in a

1 manner prescribed by the board.

2 **§30-7D-5. Qualifications.**

3 (a) In order to be certified as a medication assistive person,
4 an applicant shall submit to the West Virginia Board of Examiners
5 for Registered Professional Nurses an application and appropriate
6 fee. During the pilot program, temporary certificates will be
7 issued. At the completion of the pilot program, if proven
8 successful, qualified individuals holding a temporary certificate
9 as a medication assistive person meeting requirements for full
10 certification shall be issued a permanent certificate. The
11 application shall provide written evidence, verified by oath, that
12 the applicant:

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

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

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

19 (D) Is currently employed at a designated facility;

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

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

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

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

1 board; and

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

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

6 (B) Passed the medication aide examination.

7 (b) The board may issue a certification as a medication
8 assistive person by endorsement to an applicant who has been
9 licensed or certified as a medication assistive person under the
10 laws of another state or territory if:

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

13 (2) The board recommends certification.

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

17 **§30-7D-6. Scope of work.**

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

22 (2) A medication assistive person shall perform medication
23 administration and related tasks only:

24 (A) At a designated facility; and

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

26 (3) (A) Medication administration is limited to the

1 administration of nonprescription and legend drugs ordered by an
2 authorized prescriber and only by the following methods:

- 3 (i) Orally;
- 4 (ii) Topically;
- 5 (iii) Drops for eye, ear or nose;
- 6 (iv) Vaginally;
- 7 (v) Rectally;
- 8 (vi) Transdermally; and
- 9 (vii) Via oral inhaler.

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

12 (b) A medication assistive person may not:

- 13 (1) Receive, have access to or administer any controlled
14 substance;
- 15 (2) Administer parenteral, enteral, or injectable medications;
- 16 (3) Administer any substances by nasogastric, oralgastric or
17 gastrostomy tubes;
- 18 (4) Calculate drug dosages;
- 19 (5) Destroy medication;
- 20 (6) Receive orders either in writing or verbally for new or
21 changed medications;
- 22 (7) Transcribe orders from the medical record;
- 23 (8) Order initial medications;
- 24 (9) Evaluate medication error reports;
- 25 (10) Perform treatments;
- 26 (11) Conduct patient assessments or evaluations; or

1 (12) Engage in patient teaching activities.

2 **§30-7D-7. Renewal of certifications.**

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

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

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

12 (2) (A) If the board finds the application to be accurate and
13 related documents indicate that the applicant remains in good
14 standing, the board shall issue a certificate of renewal to the
15 applicant.

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

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

20 (ii) Required to satisfactorily complete all continuing
21 education required in the legislative rules governing the practice
22 of the MA-C.

23 (c) The renewal renders the holder of the certificate a legal
24 provider of medication assistive person services for the period
25 stated in the certificate of renewal.

26 (d) Any medication assistive person who allows his or her

1 certification to lapse by failing to renew the certification as
2 provided in this section may be reinstated by the board on:

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

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

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

10 **§30-7D-8. Disciplinary actions.**

11 (a) The West Virginia Board of Examiners for Registered
12 Professional Nurses has sole authority to deny, suspend, revoke or
13 limit any medication assistive person certificate issued by the
14 board or applied for in accordance with the provisions of this
15 article or to otherwise discipline a certificate holder upon proof
16 that the person:

17 (1) Is or was guilty of fraud or deceit in procuring or
18 attempting to procure a certificate to practice as a medication
19 aide certified;

20 (2) Has been found guilty of or pled guilty or nolo contendere
21 to a felony, crime of moral turpitude or violation of chapter
22 sixty-one-a of this code;

23 (3) Is unfit or incompetent by reason of negligence, habits or
24 other causes;

25 (4) Is habitually intemperate or is addicted to the use of
26 habit-forming drugs;

- 1 (5) Is mentally incompetent;
- 2 (6) Is guilty of unprofessional conduct;
- 3 (7) Is practicing or attempting to practice as a medication
4 aide certified without a certification;
- 5 (8) Has had a license, certificate, or registration revoked or
6 suspended;
- 7 (9) Has been placed on probation or under disciplinary order
8 in any jurisdiction;
- 9 (10) Has voluntarily surrendered a license, certification, or
10 registration and has not been reinstated in any jurisdiction; or
- 11 (11) Has willfully or repeatedly violated any of the
12 provisions of this article.

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

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

20 **§30-7D-9. Offenses and Penalties.**

- 21 (a) It shall be a misdemeanor for any person to:
 - 22 (1) Sell or fraudulently obtain or furnish any medication
23 assistive person's certificate, renewal or record, or aid or abet
24 in any such sale or fraud;
 - 25 (2) Serve as a medication assistive person under cover of any
26 certificate or record illegally or fraudulently obtained or signed

1 or issued unlawfully or under fraudulent representation;

2 (3) Serve as a medication assistive person unless certified by
3 the West Virginia Board of Examiners for Registered Professional
4 Nurses;

5 (4) Use in connection with his or her name any of the
6 following titles, names, or initials if the user is not properly
7 certified under this article:

8 (A) Medication assistive person;

9 (B) M.A.P.;

10 (C) Medication aide;

11 (D) Medication technician;

12 (E) Certified medication aide;

13 (F) C.M.A.;

14 (G) Medication Aide - certified;

15 (H) MA-C; or

16 (I) Any other name, title, or initials that would cause a
17 reasonable person to believe the user is certified under this
18 article;

19 (5) Serve as a medication assistive person during the time his
20 or her certification is suspended;

21 (6) Conduct an education program for the preparation of
22 medication assistive persons unless the program has been approved
23 by the board; or

24 (7) Otherwise violate any provisions of this article.

25 (b) Any person convicted of any such misdemeanor shall be
26 punished by a fine of not less than \$25 nor more than \$250.

1 **§30-7D-10. Injunction.**

2 (a) The Kanawha County circuit court is vested with
3 jurisdiction and power to enjoin the unlawful provision of
4 medication assistive person services in any county of the State of
5 West Virginia in a proceeding initiated by the West Virginia Board
6 of Examiners for Registered Professional Nurses, any member of the
7 board, or any citizen in this state.

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

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

13 **§30-7D-11. Medication Assistive Person Advisory Committee.**

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

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

19 (b) The board shall appoint six members who have the following
20 qualifications:

21 (1) Two members shall be certified medication assistive
22 persons;

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

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

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

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

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

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

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

12 **§30-7D-12. Applicability of article.**

13 Nothing in this article relieves a nurse from the
14 responsibility of assessing each patient daily and as needed to
15 assure public safety and safe medication administration.

16 **§30-7D-13. Rulemaking authority.**

17 The board may promulgate emergency rules pursuant to the
18 provisions of section fifteen, article three, chapter twenty-nine-a
19 of the code.