

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

emergency rule-making authority.

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

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

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

**§30-7D-1. Pilot program.**

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

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

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

**§30-7D-2. Definitions.**

As used in this article:

(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

(12) Engage in patient teaching activities.

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

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

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

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

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

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

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

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

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

(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;



(5) Is mentally incompetent;

(6) Is guilty of unprofessional conduct;

(7) Is practicing or attempting to practice as a medication aide certified without a certification;

(8) Has had a license, certificate, or registration revoked or suspended;

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

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

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

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

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

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

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

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

(2) Serve as a medication assistive person under cover of any 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.