

H. B. 3196

(By Delegates D. Campbell, Williams and Shaver)
[Introduced February 18, 2011; referred to the
Committee on Health and Human Resources then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §30-7D-1, §30-7D-2
and §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, §30-7D-13 and
§30-7D-14, all relating to medication assistive persons in the
nursing home setting including a pilot program, requirements
and criminal penalty.

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, §30-7D-13 and §30-7D-14, all to
read as follows:

ARTICLE 7D. MEDICATION ASSISTIVE PERSONS.

§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;

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

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

6 **§30-7D-3. Certificate required.**

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

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

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

11 **§30-7D-4. Designated facilities.**

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

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

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

20 **§30-7D-5. Qualifications.**

21 (a) In order to be certified as a medication assistive person,
22 an applicant shall submit to the West Virginia Board of Examiners
23 for Registered Professional Nurses an application and appropriate
24 fee. During the pilot program, temporary certificates will be

1 issued. At the completion of the pilot program, if proven
2 successful, qualified individuals holding a temporary certificate
3 as a medication assistive person meeting requirements for full
4 certification shall be issued a permanent certificate. The
5 application shall provide written evidence, verified by oath, that
6 the applicant:

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

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

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

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

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

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

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

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

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

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

3 (B) Passed the medication aide examination.

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

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

10 (2) The board recommends certification.

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

14 **§30-7D-6. Scope of work.**

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

19 (2) A medication assistive person shall perform medication
20 administration and related tasks only:

21 (A) At a designated facility; and

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

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

4 (i) Orally;

5 (ii) Topically;

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

7 (iv) Vaginally;

8 (v) Rectally;

9 (vi) Transdermally; and

10 (vii) Via oral inhaler.

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

13 (b) A medication assistive person may not:

14 (1) Receive, have access to or administer any controlled
15 substance;

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

17 (3) Administer any substances by nasogastric, oralgastric or
18 gastrostomy tubes;

19 (4) Calculate drug dosages;

20 (5) Destroy medication;

21 (6) Receive orders either in writing or verbally for new or
22 changed medications;

23 (7) Transcribe orders from the medical record;

24 (8) Order initial medications;

1 (9) Evaluate medication error reports;

2 (10) Perform treatments;

3 (11) Conduct patient assessments or evaluations; or

4 (12) Engage in patient teaching activities.

5 **§30-7D-7. Renewal of certifications.**

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

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

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

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

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

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

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

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

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

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

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

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

17 **§30-7D-8. Disciplinary actions.**

18 (a) The West Virginia Board of Examiners for Registered
19 Professional Nurses has sole authority to deny, suspend, revoke or
20 limit any medication assistive person certificate issued by the
21 board or applied for in accordance with the provisions of this
22 article or to otherwise discipline a certificate holder upon proof
23 that the person:

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

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

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

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

10 (5) Is mentally incompetent;

11 (6) Is guilty of unprofessional conduct;

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

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

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

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

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

22 (b) The board shall refuse to issue or shall revoke the
23 certificate of any person who would be disqualified from employment

1 under the provisions of this law or the rules governing the
2 practice of the medication assistive person.

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

6 **§30-7D-9. Penalty.**

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

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

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

14 (C) Serve as a medication assistive person unless certified by
15 the West Virginia Board of Examiners for Registered Professional
16 Nurses;

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

20 (i) Medication assistive person;

21 (ii) M.A.P.;

22 (iii) Medication aide;

23 (iv) Medication technician;

24 (v) Certified medication aide;

1 (vi) C.M.A.;

2 (vii) Medication Aide - certified;

3 (viii) MA-C; or

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

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

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

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

13 **§30-7D-10. Injunction.**

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

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

23 (2) The remedy of injunction is in addition to liability for
24 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.

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

4 **§30-7D-12. Applicability of article.**

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

8 **§30-7D-13. Emergency rules.**

9 The board may promulgate emergency rules pursuant to the
10 provisions of section fifteen, article three, chapter twenty-nine-a
11 of the code.

12 **§30-7D-14. Special appropriations.**

13 The board shall have approval for an appropriation of an
14 additional \$20,000 to implement the pilot program.

NOTE: The purpose of this article is to establish a program and procedure for certifying medications assistive persons in the health industry including a pilot program, requirements and criminal penalty.

This article is new; therefore, it has been completely underscored.