

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 1423 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: S2/24/05 H3/16/05

A Bill

SENATE BILL 424

5 By: Senators Horn, J. Bookout, Critcher, Wilkinson, Womack

6 By: Representatives Pace, Borhauer
7
8

For An Act To Be Entitled

9
10 AN ACT TO ESTABLISH QUALIFICATIONS AND OVERSIGHT
11 REQUIREMENTS FOR MEDICATION ASSISTIVE PERSONS;
12 AND FOR OTHER PURPOSES.
13

Subtitle

14
15 TO ESTABLISH QUALIFICATIONS AND
16 OVERSIGHT REQUIREMENTS FOR MEDICATION
17 ASSISTIVE PERSONS.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Intent.

23 The General Assembly intends to:

24 (1) Authorize the use of medication assistive persons in
25 designated health care facilities in order to facilitate improvement in the
26 quality of patient care by creating more time for nurses to conduct patient
27 assessments, evaluations, and treatments;

28 (2) Ensure patients receive medication in the most efficient and
29 timely manner; and

30 (3) Improve nursing staff retention during this time of severe
31 nursing shortages across the state.
32

33 SECTION 2. Arkansas Code § 17-87-203, is amended to read as follows:
34 17-87-203. Powers and duties.

35 The Arkansas State Board of Nursing shall have the following powers and



1 responsibilities:

2 (1)(A) Promulgate whatever regulations it deems necessary for
3 the implementation of this chapter.

4 (B) No regulation promulgated hereafter by the board shall
5 be effective until reviewed by the Legislative Council and the House and
6 Senate Interim Committees on Public Health, Welfare, and Labor or appropriate
7 subcommittees thereof of the General Assembly;

8 (2) Cause the prosecution of persons violating this chapter;

9 (3) Keep a record of all its proceedings;

10 (4) Make an annual report to the Governor;

11 (5) Employ personnel necessary for carrying out its functions;

12 (6) Study, review, develop, and recommend role levels of
13 technical classes of nursing service and practice to state and federal health
14 agencies and to public and private administrative bodies;

15 (7) Fix the time for holding its regular meetings;

16 (8) Prescribe minimum standards and approve curricula for
17 educational programs preparing persons for licensure as registered nurses,
18 advanced practice nurses, registered nurse practitioner nurses, licensed
19 practical nurses, and licensed psychiatric technician nurses;

20 (9) Prescribe minimum standards and approve curricula for
21 educational programs preparing persons for certification as medication
22 assistive persons;

23 ~~(9)~~(10) Provide for surveys of such programs at such times as it
24 deems necessary or at the request of the schools;

25 ~~(10)~~(11) Approve programs that meet the requirements of this
26 chapter;

27 ~~(11)~~(12) Deny or withdraw approval from educational programs for
28 failure to meet prescribed standards;

29 (13) Examine, certify, and renew the certification of qualified
30 applicants for medication assistive persons;

31 ~~(12)~~(14) Examine, license, and renew the licenses of qualified
32 applicants for professional nursing, practical nursing, and psychiatric
33 technician nursing;

34 ~~(13)~~(15) License and renew the licenses of qualified applicants
35 for registered nurse practitioner nursing and advanced practice nursing;

36 ~~(14)~~(16) Grant certificates of prescriptive authority to

1 qualified advanced practice nurses;

2 ~~(15)~~(17) Convene an advisory committee as provided for in this
3 chapter to assist with oversight of prescriptive authority; ~~and~~

4 (18) Convene an advisory committee as provided for in this
5 chapter to assist with oversight of medication assistive persons;

6 (19) Establish the maximum number of medication assistive
7 persons who may be supervised by a nurse; and

8 ~~(16)~~(20) Conduct disciplinary proceedings as provided for in
9 this chapter.

10
11 SECTION 3. Arkansas Code § 17-87-306, is amended to read as follows:
12 17-87-306. Fees.

13 The Arkansas State Board of Nursing shall establish and collect fees
14 and penalties for services relating to certification, examination, licensing,
15 endorsement, certification for prescriptive authority, temporary permits,
16 license renewal, certification renewal, and other reasonable services as
17 determined by the board.

18
19 SECTION 4. Arkansas Code Title 17, Chapter 87 is amended to add an
20 additional subchapter to read as follows:

21 17-87-701. Definitions.

22 As used in this subchapter:

23 (1) "Board" means the Arkansas State Board of Nursing;

24 (2) "Designated facility" means a type of facility determined by
25 the board as an environment in which medication assistive persons may serve
26 in accordance with the requirements of this subchapter and regulations
27 promulgated by the board;

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

31 (4) "Supervision" means the active oversight of patient care
32 services while on the premises of a designated facility in a manner defined
33 by the board.

34
35 17-87-702. Certificate required.

36 In order to safeguard life and health, any person serving or offering

1 to serve as a medication assistive person shall:

2 (1) Submit evidence that he or she is qualified to so serve; and

3 (2) Be certified as provided in this subchapter.

4
5 17-87-703. Designated facilities.

6 (a) The Arkansas State Board of Nursing shall designate the types of
7 facilities that may use medication assistive persons.

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

10 (2) However, if a designated facility elects to use medication
11 assistive personnel, the facility shall notify the board in a manner
12 prescribed by the board.

13
14 17-87-704. Qualifications.

15 (a) In order to be certified as a medication assistive person, an
16 applicant shall submit to the Arkansas State Board of Nursing written
17 evidence, verified by oath, that the applicant:

18 (1) Is currently listed in good standing on the state's
19 certified nurse aide registry;

20 (2) Has maintained registration on the state's certified nurse
21 aide registry continuously for a minimum of one (1) year;

22 (3) Has completed at least one (1) continuous year of full-time
23 experience as a certified nurse aide in this state;

24 (4) Is currently employed at a designated facility;

25 (5) Has a high school diploma or the equivalent;

26 (6) Has successfully completed a literacy and reading
27 comprehension screening process approved by the board;

28 (7) Has successfully completed a medication assistive person
29 training course of not less than one hundred (100) hours approved by the
30 board; and

31 (8) Has successfully passed an examination on subjects the board
32 determines.

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

36 (1) In the opinion of the board, the applicant meets the

1 qualifications of medication assistive persons in this state; and

2 (2) The board recommends certification.

3 (c) Any person holding a certification as a medication assistive
4 person shall have the right to use the title "medication assistive person"
5 and the abbreviation "M.A.P.".

6
7 17-87-705. Scope of work.

8 (a)(1) A medication assistive person may perform the delegated nursing
9 function of medication administration and related tasks in accordance with
10 rules promulgated by the Arkansas State Board of Nursing.

11 (2) A medication assistive person shall perform medication
12 administration and related tasks only:

13 (A) At a designated facility; and

14 (B) Under the supervision of a licensed nurse.

15 (3)(A) Medication administration shall be limited to the
16 administration of nonprescription and legend drugs ordered by an authorized
17 prescriber by the following methods:

18 (i) Orally;

19 (ii) Topically;

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

21 (iv) Vaginally;

22 (v) Rectally;

23 (vi) Transdermally; and

24 (vii) Via oral inhaler.

25 (B) Medication administration by a medication assistive
26 person shall not include controlled substances.

27 (b) A medication assistive person shall not:

28 (1) Receive, have access to, or administer any controlled
29 substance;

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

31 (3) Administer any substances by nasogastric or gastrostomy
32 tubes;

33 (4) Calculate drug dosages;

34 (5) Destroy medication;

35 (6) Receive orders, either in writing or verbally, for new or
36 changed medications;

- 1 (7) Transcribe orders from the medical record;
2 (8) Order initial medications;
3 (9) Evaluate medication error reports;
4 (10) Perform treatments;
5 (11) Conduct patient assessments or evaluations; or
6 (12) Engage in patient teaching activities.

7
8 17-87-706. Renewal of certifications.

9 (a)(1) The Arkansas State Board of Nursing shall prescribe the
10 procedure for the cyclical renewal of medication assistive person
11 certifications.

12 (2) In each case, the board shall mail a notification for
13 renewal to the medication assistive person at least thirty (30) days before
14 the expiration date of the certification.

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

17 (2)(A) If the board finds the application to be accurate, the
18 board shall issue a certificate of renewal to the 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
22 certified nurse aide registry; and

23 (ii) Required to satisfactorily complete at least
24 eight (8) hours of continuing medication education course work as required by
25 the board.

26 (c) The renewal shall render the holder of the certificate a legal
27 provider of medication assistive person services for the period stated in the
28 certificate of renewal.

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

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

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

35 (e) Any person providing services as a medication assistive person
36 during the time his or her certification has lapsed shall be considered to be

1 providing services illegally and shall be subject to the penalties provided
2 for violations of this subchapter.

3
4 17-87-707. Disciplinary actions.

5 (a) The Arkansas State Board of Nursing shall have sole authority to
6 deny, suspend, revoke, or limit any medication assistive person certificate
7 issued by the board or applied for in accordance with the provisions of this
8 subchapter or to otherwise discipline a certificate holder upon proof that
9 the person:

10 (1) Has been found guilty of or pleads guilty or nolo contendere
11 to:

12 (A) Fraud or deceit in procuring or attempting to procure
13 a medication assistive person certificate;

14 (B) Providing services as a medication assistive person
15 without a valid certificate; or

16 (C) Committing a crime of moral turpitude;

17 (2) Is unfit or incompetent by reason of negligence, habits, or
18 other causes;

19 (3) Is habitually intemperate or is addicted to the use of
20 habit-forming drugs;

21 (4) Is mentally incompetent;

22 (5) Is guilty of unprofessional conduct;

23 (6) Has had a license, certificate, or registration revoked or
24 suspended;

25 (7) Has been placed on probation or under disciplinary order in
26 any jurisdiction in any jurisdiction;

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

29 (9) Has willfully or repeatedly violated any of the provisions
30 of this chapter.

31 (b) The board shall refuse to issue or shall revoke the certificate of
32 any person who would be disqualified from employment under the provisions of
33 § 20-33-205.

34 (c) Proceedings under this section shall be conducted in accordance
35 with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

36

1 17-87-708. Penalty.

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

3 (A) Sell or fraudulently obtain or furnish any medication
4 assistive person certificate, renewal, or record or aid or abet in any such
5 sale or fraud;

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

9 (C) Serve as a medication assistive person unless
10 certified by the Arkansas State Board of Nursing;

11 (D) Use in connection with his or her name any of the
12 following titles, names, or initials, if the user is not properly certified
13 under this chapter:

14 (i) Medication assistive person;

15 (ii) M.A.P.;

16 (iii) Medication aide;

17 (iv) Medication technician;

18 (v) Medication assistant;

19 (vi) Certified medication aide;

20 (vii) C.M.A.; or

21 (viii) Any other name, title, or initials that would
22 cause a reasonable person to believe the user is certified under this
23 chapter;

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

26 (F) Conduct an education program for the preparation of
27 medication assistive persons unless the program has been approved by the
28 board; or

29 (G) Otherwise violate any provisions of this subchapter.

30 (2)(A) A misdemeanor under subdivision (a)(1) of this section
31 shall be punishable by a fine of not less than twenty-five dollars (\$25.00)
32 or more than five hundred dollars (\$500).

33 (B) Each subsequent offense shall be punishable by a fine
34 of not more than five hundred dollars (\$500) or by imprisonment of not more
35 than thirty (30) days, or by both a fine and imprisonment.

36 (b)(1) After providing notice and a hearing, the board may levy civil

1 penalties in an amount not to exceed one thousand dollars (\$1,000) against a
2 person or entity for each violation of this subchapter or regulations
3 promulgated under this chapter.

4 (2) Each day of violation shall be a separate offense.

5 (c) Unless a penalty assessed under this section is paid within
6 fifteen (15) calendar days following the date for an appeal from the order,
7 the board may file suit in Pulaski County Circuit Court to obtain a judgment
8 for the amount of penalty not paid.

9 (d) The penalties permitted in this section shall be in addition to
10 other penalties that may be imposed by the board under this chapter.

11
12 17-87-709. Injunction.

13 (a) The Pulaski County Circuit Court is vested with jurisdiction and
14 power to enjoin the unlawful provision of medication assistive person
15 services in any county of the State of Arkansas in a proceeding initiated by
16 the Arkansas State Board of Nursing, any member of the board, or any citizen
17 in this state.

18 (b)(1) The issuance of an injunction shall not relieve a person from
19 criminal prosecution for violation of the provisions of this chapter.

20 (2) The remedy of injunction is to be in addition to liability
21 for criminal prosecution.

22
23 17-87-710. Medication Assistive Person Advisory Committee.

24 (a)(1) The Medication Assistive Person Advisory Committee is created
25 as an advisory committee to the Arkansas State Board of Nursing.

26 (2) The committee shall assist the board in implementing the
27 provisions of this subchapter regarding medication assistive persons.

28 (b) The board shall appoint five (5) members to be approved by the
29 Governor who have the following qualifications:

30 (1) Two (2) members shall be certified medication assistive
31 persons;

32 (2) One (1) member shall be a licensed nursing home
33 administrator who has worked in that capacity for at least five (5) years;

34 (3) One (1) member shall be a registered nurse who has been in a
35 practice using certified nurse aides for at least five (5) years; and

36 (4) One (1) member shall be a lay person representing the

1 interest of consumers of health care services.

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

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

5 (e) The members of the committee shall serve without compensation but
6 may receive expense reimbursement in accordance with § 25-16-902.

7
8 17-87-711. Applicability of subchapter.

9 Nothing in this subchapter relieves a nurse from the responsibility of
10 assessing each patient daily.

11
12 SECTION 5. Arkansas Code § 20-10-1401 is amended to read as follows:
13 20-10-1401. Definitions.

14 For purposes of this subchapter:

15 (1) "Day shift" means the period of 7:00 a.m. to 3:00 p.m.;

16 (2)(A) "Direct-care staff" means any licensed or certified
17 nursing staff who provides direct, hands-on care to residents in a nursing
18 facility.

19 (B) "Direct-care staff" shall not include:

20 (i) ~~therapy~~ Therapy personnel or personnel listed in
21 § 20-10-1404; or

22 (ii) Medication assistive persons as defined in §
23 17-87-701;

24 (3) "Evening shift" means the period of 3:00 p.m. to 11:00 p.m.;

25 (4) "Midnight census" means the number of patients occupying
26 nursing home beds in a nursing facility at midnight of each day;

27 (5) "Night shift" means the period of 11:00 p.m. to 7:00 a.m.;

28 and

29 (6)(A) "Nursing facility or nursing home" means any buildings,
30 structure, agency, institution, or other place for the reception,
31 accommodation, board, care, or treatment of more than three (3) unrelated
32 individuals, who, because of physical or mental infirmity, are unable to
33 sufficiently or properly care for themselves, and for which reception,
34 accommodation, board, care, and treatment a charge is made.

35 (B) Provided, the term "nursing facility or nursing home"
36 shall not include the offices of private physicians and surgeons, boarding

1 homes, residential care facilities, intermediate care facilities for the
2 mentally retarded, hospitals, institutions operated by the federal government
3 or licensed by the Division of Developmental Disabilities Services, or any
4 facility which is conducted by and for those who rely exclusively upon
5 treatment by prayer alone for healing in accordance with the tenets or
6 practices of any recognized religious denomination.

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/s/ Horn, et al

APPROVED: 3/30/2005

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