

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.

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

A Bill

SENATE BILL 424

4
5 By: Senators Horn, J. Bookout, Critcher, Wilkinson, Womack
6 By: Representatives Pace, Borhauer

For An Act To Be Entitled

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

Subtitle

13
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
36 responsibilities:



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

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

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

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

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

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

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

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

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

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

22 ~~(9)~~(10) Provide for surveys of such programs at such times as it
23 deems necessary or at the request of the schools;

24 ~~(10)~~(11) Approve programs that meet the requirements of this
25 chapter;

26 ~~(11)~~(12) Deny or withdraw approval from educational programs for
27 failure to meet prescribed standards;

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

30 ~~(12)~~(14) Examine, license, and renew the licenses of qualified
31 applicants for professional nursing, practical nursing, and psychiatric
32 technician nursing;

33 ~~(13)~~(15) License and renew the licenses of qualified applicants
34 for registered nurse practitioner nursing and advanced practice nursing;

35 ~~(14)~~(16) Grant certificates of prescriptive authority to
36 qualified advanced practice nurses;

1 ~~(15)~~(17) Convene an advisory committee as provided for in this
2 chapter to assist with oversight of prescriptive authority; ~~and~~

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

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

7 ~~(16)~~(20) Conduct disciplinary proceedings as provided for in
8 this chapter.

9
10 SECTION 3. Arkansas Code § 17-87-306, is amended to read as follows:
11 17-87-306. Fees.

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

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

20 17-87-701. Definitions.

21 As used in this subchapter:

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

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

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

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

33
34 17-87-702. Certificate required.

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

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

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

3
4 17-87-703. Designated facilities.

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

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

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

12
13 17-87-704. Qualifications.

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

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

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

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

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

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

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

27 (7) Has successfully completed a medication assistive person
28 training course approved by the board; and

29 (8) Has successfully passed an examination on subjects the board
30 determines.

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

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

36 (2) The board recommends certification.

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

4
5 17-87-705. Scope of work.

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

9 (2) A medication assistive person shall perform medication
10 administration and related tasks only:

11 (A) At a designated facility; and

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

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

16 (i) Orally;

17 (ii) Topically;

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

19 (iv) Vaginally;

20 (v) Rectally;

21 (vi) Transdermally; and

22 (vii) Via oral inhaler.

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

25 (b) A medication assistive person may not:

26 (1) Receive, have access to, or administer any controlled
27 substance;

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

29 (3) Administer any substances by nasogastric or gastrostomy
30 tubes;

31 (4) Calculate drug dosages;

32 (5) Destroy medication;

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

35 (7) Transcribe orders from the medical record;

36 (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

6 17-87-706. Renewal of certifications.

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

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

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

15 (2)(A) If the board finds the application to be accurate, the
 16 board shall issue a certificate of renewal to the applicant.

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

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

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

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

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

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

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

33 (e) Any person providing services as a medication assistive person
 34 during the time his or her certification has lapsed shall be considered to be
 35 providing services illegally and shall be subject to the penalties provided
 36 for violations of this subchapter.

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17-87-707. Disciplinary actions.

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

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

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

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

(C) Committing a crime of moral turpitude;

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

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

(4) Is mentally incompetent;

(5) Is guilty of unprofessional conduct;

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

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

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

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

(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 § 20-33-205.

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

17-87-708. Penalty.

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

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

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

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

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

12 (i) Medication assistive person;

13 (ii) M.A.P.;

14 (iii) Medication aide;

15 (iv) Medication technician;

16 (v) Medication assistant;

17 (vi) Certified medication aide;

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

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

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

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

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

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

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

34 (b)(1) After providing notice and a hearing, the board may levy civil
 35 penalties in an amount not to exceed one thousand dollars (\$1,000) against a
 36 person or entity for each violation of this subchapter or regulations

1 promulgated under this chapter.

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

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

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

9
 10 17-87-709. Injunction.

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

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

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

20
 21 17-87-710. Medication Assistive Person Advisory Committee.

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

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

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

28 (1) Two (2) members shall be certified medication assistive
 29 persons;

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

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

34 (4) One (1) member shall be a lay person representing the
 35 interest of consumers of health care services.

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

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

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

5
 6 SECTION 5. Arkansas Code § 20-10-1401 is amended to read as follows:
 7 20-10-1401. Definitions.

8 For purposes of this subchapter:

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

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

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

14 (i) ~~therapy~~ Therapy personnel or personnel listed in
 15 § 20-10-1404; or

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

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

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

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

22 and

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

29 (B) Provided, the term "nursing facility or nursing home"
 30 shall not include the offices of private physicians and surgeons, boarding
 31 homes, residential care facilities, intermediate care facilities for the
 32 mentally retarded, hospitals, institutions operated by the federal government
 33 or licensed by the Division of Developmental Disabilities Services, or any
 34 facility which is conducted by and for those who rely exclusively upon
 35 treatment by prayer alone for healing in accordance with the tenets or
 36 practices of any recognized religious denomination.