



SPONSOR: Sen. Walsh & Rep. Baumbach
Reps. Briggs King, Heffernan

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 262

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO NURSING.

1 WHEREAS, as Delaware's population ages, an increasing number of older Delawareans need assistance to
2 continue to live at home with help from family and other caregivers; and

3 WHEREAS, many family caregivers have full-time jobs and cannot be home to manage their loved one's
4 medications throughout the day; and

5 WHEREAS, family caregivers often must pay for expensive nursing care to ensure their loved one's needs are met
6 at home throughout the day; and

7 WHEREAS, it is less expensive to provide this care to individuals in their homes than to support the individuals in
8 an institutional setting; and

9 WHEREAS, the General Assembly finds that one solution to this situation is to permit family or other responsible
10 caregivers to give permission to an individual employed by a home care agency selected by the family or other responsible
11 caregivers to administer medications to an adult individual who lacks decision-making capacity in the individual's
12 residence.

13 NOW, THEREFORE:

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

15 Section 1. Amend § 1921, Title 24 of the Delaware Code by making deletions as shown by strikethrough and
16 insertions as shown by underline as follows:

17 § 1921. Applicability of chapter.

18 (a) This chapter ~~shall~~ does not apply to the following situations:

19 (4) The incidental care of the sick in private homes by members of the family, friends, domestic servants or
20 persons primarily employed as housekeepers;

21 (15) A competent individual who does not reside in a medical facility or a facility regulated pursuant to
22 Chapter 11 of Title 16, may delegate to unlicensed persons performance of health-care acts, unless of a nature excluded
23 by the Board through regulations, provided:

24 a. The acts are those individuals could normally perform themselves but for functional limitations; and

b. The delegation decision is entirely voluntary.

c. Nothing contained herein shall diminish any legal or contractual entitlement to receive health-care services from licensed or certified personnel;

(16) The limited lay administration of medications pursuant to § 1932 of this title.

(17)a. The administration of prescription or nonprescription medications by unlicensed assistive personnel to an adult individual who lacks decision-making capacity in the individual's residence, if the administration is authorized by a responsible caregiver and all of the following apply:

1. The responsible caregiver prepackages the medication by date and time and provides the unlicensed assistive personnel with written instructions regarding the administration procedure.

2. The responsible caregiver and the person employing the unlicensed assistive personnel sign an agreement governing the administration under this paragraph (a)(17) of this section. The agreement must include confirmation by the responsible caregiver that the medication to be administered and the process for administering the medication are safe and appropriate.

b. For purposes of this paragraph (a)(17) of this section:

1. "Decision-making capacity" means a individual's ability to understand and appreciate the nature and consequences of a particular health-care decision, including the benefits and risks of that decision and alternatives to any proposed health care, and to reach an informed health-care decision.

2. "Residence" means a dwelling considered by an adult individual who lacks decision-making capacity to be the individual's home. "Residence" does not include any facility licensed by the Department of Health and Social Services under Title 16.

3. "Responsible caregiver" means one of the following:

A. An individual designated under an advance health-care directive under Chapter 25 of Title 16.

B. A guardian appointed under Chapters 39 or 39A of Title 12.

C. A surrogate under § 2507 of Title 16.

D. An individual who is otherwise authorized to make health-care decisions under applicable law of this State.

4. "Unlicensed assistive personnel" means an individual employed by any of the following that are selected by a responsible caregiver to assist an individual needing assistance with medication in the individual's residence:

A. A hospice program licensed under § 122(3)m. of Title 16.

55 B. A home health agency licensed under § 122(3)o. of Title 16.

56 C. A personal assistance services agency licensed under § 122(3)x. of Title 16.

57 c. This paragraph (a)(17) does not apply to the administration of medications by any of the following
58 means:

59 1. Injection.

60 2. Intravenous therapy.

61 3. Through the rectum or vagina.

62 4. Through a catheter.

63 5. Through a feeding tube, including nasogastric, gastrostomy, or jejunostomy tubes.

64 d. This paragraph (a)(17) of this section does apply to the administration of non-oral medications, such as
65 eye or ear drops.

66 Section 2. This Act may be known and cited as the “Share the Care Act.”

SYNOPSIS

This Act, named the Share the Care Act, permits a responsible caregiver to give permission to an individual employed by a home care agency selected by the responsible caregiver to administer medications to an adult individual who lacks decision-making capacity in the individual’s residence.

Under this Act, the responsible caregiver must prepackage the medication by date and time and provide written instructions regarding the administration procedure. And, the responsible caregiver and the person employing the unlicensed assistive personnel must sign an agreement governing the administration or medication.

Author: Senator Walsh