

CHAPTER 42
FORMERLY
SENATE BILL NO. 27
AS AMENDED BY
SENATE AMENDMENT NO. 1

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

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

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

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

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

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

WHEREAS, the General Assembly finds that one solution to this situation is to allow direct care workers to administer medications to an adult individual who resides in the individual's own residence.

NOW, THEREFORE:

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

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

§ 1921. Applicability of chapter.

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

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

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

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 a direct care worker to an adult individual who resides in the adult individual's own residence if the administration is authorized by a responsible caregiver and all of the following apply:

1. The responsible caregiver prepackages the medication to be given by the direct care worker by date and time and provides the direct care worker with written instructions regarding the administration procedure. Each medication must be packaged separately and labeled with the medication name and dosage. The responsible caregiver may decide which medication is to be given by the direct care worker to the adult individual.

2. The responsible caregiver and a personal assistance services agency enter into an agreement regarding the administration of medication under this paragraph (a)(17) of this section. The agreement must include confirmation by the responsible caregiver that both 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. "Direct care worker" means an individual employed by or under contract to a personal assistance services agency to provide a consumer with personal care services, companion services, homemaker services, transportation services, and those services authorized by this paragraph (a)(17) of this section.

2. "Residence" means a dwelling considered to be home by an adult individual. "Residence" does not include any facility licensed by the Department of Health and Social Services under Title 16 or Title 29.

3. "Responsible caregiver" means an individual 18 years old or older who is the primary caretaker for an adult individual.

c. This paragraph (a)(17) of this section applies to the administration of prescription or nonprescription medications by any route except the following:

1. Injection.

2. Intravenous therapy.

3. Through the rectum or vagina.

4. Through a catheter.

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

d. This paragraph (a)(17) of this section does not apply to the administration of a controlled substance listed on Schedule II or IV under Subchapter II of Chapter 47 of Title 16.

e. A direct care worker may administer medication under this paragraph (a)(17) of this section only if the worker has successfully completed an administration of medications training program approved by the Secretary of Department of Health and Social Services.

f. A direct care worker who administers medication under this paragraph (a)(17) of this section shall document, in writing, the medications administered by the worker and provide the documentation to the

personal assistance services agency that employs the worker. The personal assistance services agency shall retain the documentation and make it available to the Secretary of Department of Health and Social Services for inspection on request.

g. A personal assistance services agency, or its employees or authorized agents, is not liable for the death of or injury to an adult individual caused by an act or omission of a direct care worker under this paragraph (a)(17) of this section, unless the adult individual's death or injury was caused in part or solely by the negligence of the personal assistance services agency, or its employees or authorized agents.

h. In any action for negligence based upon a claim of a failure to adequately train or instruct a direct care worker, it is a defense that the direct care worker was given and following instructions provided under this paragraph (a)(17)a. of this section.

Section 2. This Act may be known and cited as the "Share the Care Act."

Section 3. This Act is effective upon enactment and is to be implemented the earlier of the following:

- (1) 1 year from the date of the Act's enactment.
- (2) Upon promulgation of final regulations under this Act and the Secretary of the Department of Health and Social Services providing notice to the Registrar of Regulations, published in the Register of Regulations, that the contingency under this paragraph (2) of this Section has been fulfilled.

Approved June 13, 2019