

S T A T E O F N E W Y O R K

S. 3292--A
Cal. No. 68

A. 6848--A

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

March 13, 2009

IN SENATE -- Introduced by Sens. LAVALLE, DeFRANCISCO, DIAZ, FLANAGAN, FUSCHILLO, KRUEGER, LARKIN, LITTLE, MAZIARZ, MORAHAN, NOZZOLIO, ONORATO, RANZENHOFER, SERRANO, SEWARD, STACHOWSKI, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- recommitted to the Committee on Higher Education in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

IN ASSEMBLY -- Introduced by M. of A. CANESTRARI, GOTTFRIED, COLTON, ENGLEBRIGHT, PAULIN, BURLING, LIFTON, ORTIZ, FIELDS, BROOK-KRASNY, GORDON, GABRYSZAK, SKARTADOS, SCHROEDER, MAYERSOHN, BRODSKY, HYER-SPENCER, CASTELLI, SPANO, GUNTHER, STIRPE, SCHIMEL, JAFFEE, WEISENBERG, HOYT -- Multi-Sponsored by -- M. of A. ALFANO, AMEDORE, BARRA, BENEDETTO, BOYLAND, BRENNAN, BUTLER, CHRISTENSEN, CONTE, CROUCH, CYMBROWITZ, DeMONTE, DESTITO, GALEF, GANTT, HAWLEY, HEVESI, JACOBS, JOHN, KOON, LATIMER, LAVINE, V. LOPEZ, LUPARDO, MAGEE, MARKEY, McDONOUGH, McENENY, J. MILLER, MORELLE, PEOPLES-STOKES, PHEFFER, PRETLOW, QUINN, RAI, REILLY, ROSENTHAL, SAYWARD, THIELE, WRIGHT -- read once and referred to the Committee on Higher Education -- recommitted to the Committee on Higher Education in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to authorizing pharmacists to perform collaborative drug therapy management with physicians in certain settings and providing for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD02624-03-0

1 Section 1. Subdivision 1 of section 6801 of the education law, as
2 amended by chapter 563 of the laws of 2008, is amended to read as
3 follows:

4 1. The practice of the profession of pharmacy is defined as the admin-
5 istering, preparing, compounding, preserving, or the dispensing of
6 drugs, medicines and therapeutic devices on the basis of prescriptions
7 or other legal authority, AND COLLABORATIVE DRUG THERAPY MANAGEMENT IN
8 ACCORDANCE WITH THE PROVISIONS OF SECTION SIXTY-EIGHT HUNDRED ONE-A OF
9 THIS ARTICLE.

10 S 1-a. Section 6801 of the education law, as added by chapter 987 of
11 the laws of 1971, is amended to read as follows:

12 S 6801. Definition of practice of pharmacy. The practice of the
13 profession of pharmacy is defined as the preparing, compounding,
14 preserving, or the dispensing of drugs, medicines and therapeutic
15 devices on the basis of prescriptions or other legal authority, AND
16 COLLABORATIVE DRUG THERAPY MANAGEMENT IN ACCORDANCE WITH THE PROVISIONS
17 OF SECTION SIXTY-EIGHT HUNDRED ONE-A OF THIS ARTICLE.

18 S 2. The education law is amended by adding a new section 6801-a to
19 read as follows:

20 S 6801-A. COLLABORATIVE DRUG THERAPY MANAGEMENT DEMONSTRATION PROGRAM.

21 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOW-
22 ING MEANINGS:

23 A. "COLLABORATIVE DRUG THERAPY MANAGEMENT" SHALL MEAN THE PERFORMANCE
24 OF SERVICES BY A PHARMACIST RELATING TO THE REVIEW, EVALUATION AND
25 MANAGEMENT OF DRUG THERAPY TO A PATIENT, WHO IS BEING TREATED BY A
26 PHYSICIAN FOR A SPECIFIC DISEASE OR DISEASE STATE, IN ACCORDANCE WITH A
27 WRITTEN AGREEMENT OR PROTOCOL WITH A VOLUNTARILY PARTICIPATING PHYSICIAN
28 AND IN ACCORDANCE WITH THE POLICIES, PROCEDURES, AND PROTOCOLS OF THE
29 FACILITY. SUCH AGREEMENT OR PROTOCOL AS ENTERED INTO BY THE PHYSICIAN
30 AND A PHARMACIST, MAY INCLUDE, AND SHALL BE LIMITED TO:

31 (I) ADJUSTING OR MANAGING A DRUG REGIMEN OF A PATIENT, PURSUANT TO A
32 PATIENT SPECIFIC WRITTEN ORDER OR PROTOCOL MADE BY THE PATIENT'S PHYSI-
33 CIAN, WHICH MAY INCLUDE ADJUSTING DRUG STRENGTH, FREQUENCY OF ADMINIS-
34 TRATION OR ROUTE OF ADMINISTRATION. ADJUSTING THE DRUG REGIMEN SHALL NOT
35 INCLUDE SUBSTITUTING OR SELECTING A DIFFERENT DRUG WHICH DIFFERS FROM
36 THAT INITIALLY PRESCRIBED BY THE PATIENT'S PHYSICIAN UNLESS SUCH SUBSTI-
37 TUTION IS EXPRESSLY AUTHORIZED IN THE WRITTEN ORDER OR PROTOCOL. THE
38 PHARMACIST SHALL BE REQUIRED TO IMMEDIATELY ENTER INTO THE PATIENT
39 RECORD ANY CHANGE OR CHANGES MADE TO THE PATIENT'S DRUG THERAPY AND
40 SHALL USE ANY REASONABLE MEANS OR METHOD ESTABLISHED BY THE FACILITY OR
41 THE DEPARTMENT TO NOTIFY ANY OF THE PATIENT'S OTHER TREATING PHYSICIANS
42 WITH WHOM HE OR SHE DOES NOT HAVE A WRITTEN AGREEMENT OR PROTOCOL
43 REGARDING SUCH CHANGES. THE PATIENT'S PHYSICIAN MAY PROHIBIT, BY WRITTEN
44 INSTRUCTION, ANY ADJUSTMENT OR CHANGE IN THE PATIENT'S DRUG REGIMEN BY
45 THE PHARMACIST;

46 (II) EVALUATING AND, ONLY IF SPECIFICALLY AUTHORIZED BY THE PROTOCOL
47 AND ONLY TO THE EXTENT NECESSARY TO DISCHARGE THE RESPONSIBILITIES SET
48 FORTH IN THIS SECTION, ORDERING CLINICAL LABORATORY TESTS RELATED TO THE
49 DRUG THERAPY MANAGEMENT FOR THE SPECIFIC DISEASE OR DISEASE STATE SPECI-
50 FIED WITHIN THE PROTOCOL; AND

51 (III) ONLY IF SPECIFICALLY AUTHORIZED BY THE PROTOCOL AND ONLY TO THE
52 EXTENT NECESSARY TO DISCHARGE THE RESPONSIBILITIES SET FORTH IN THIS
53 SECTION, ORDERING OR PERFORMING ROUTINE PATIENT MONITORING FUNCTIONS AS
54 MAY BE NECESSARY IN THE DRUG THERAPY MANAGEMENT, INCLUDING THE COLLECT-
55 ING AND REVIEWING OF PATIENT HISTORIES, AND ORDERING OR CHECKING PATIENT

1 VITAL SIGNS, INCLUDING PULSE, TEMPERATURE, BLOOD PRESSURE AND RESPIRA-
2 TION.

3 B. "WRITTEN AGREEMENT OR PROTOCOL" SHALL MEAN A WRITTEN DOCUMENT,
4 PURSUANT TO AND CONSISTENT WITH ANY APPLICABLE STATE OR FEDERAL REQUIRE-
5 MENTS, THAT ADDRESSES A SPECIFIC DISEASE OR DISEASE STATE AND THAT
6 DESCRIBES THE NATURE AND SCOPE OF COLLABORATIVE DRUG THERAPY MANAGEMENT
7 TO BE UNDERTAKEN BY THE PHARMACIST, IN COLLABORATION WITH THE PARTIC-
8 IPATING PHYSICIAN, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

9 C. "PHYSICIAN" SHALL MEAN THE PHYSICIAN, SELECTED BY OR ASSIGNED TO A
10 PATIENT, WHO HAS PRIMARY RESPONSIBILITY FOR THE TREATMENT AND CARE OF
11 THE PATIENT FOR THE DISEASE OR DISEASE STATE THAT IS THE SUBJECT OF THE
12 COLLABORATIVE DRUG THERAPY MANAGEMENT.

13 D. "FACILITY" SHALL MEAN A TEACHING HOSPITAL, INCLUDING ANY DIAGNOSTIC
14 CENTER, TREATMENT CENTER, OR HOSPITAL-BASED OUTPATIENT DEPARTMENT,
15 HOWEVER, FOR THE PURPOSES OF THIS SECTION, RESIDENTIAL HEALTH CARE
16 FACILITIES AND NURSING HOMES SHALL BE EXCLUDED. FOR THE PURPOSES OF THIS
17 SECTION, A "TEACHING HOSPITAL" SHALL MEAN A HOSPITAL LICENSED PURSUANT
18 TO ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW THAT IS ELIGIBLE TO
19 RECEIVE DIRECT OR INDIRECT GRADUATE MEDICAL EDUCATION PAYMENTS PURSUANT
20 TO ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW.

21 2. A. A PHARMACIST WHO MEETS THE EXPERIENCE REQUIREMENTS OF PARAGRAPH
22 B OF THIS SUBDIVISION AND WHO IS EMPLOYED BY OR OTHERWISE AFFILIATED
23 WITH A FACILITY SHALL BE PERMITTED TO ENTER INTO A WRITTEN AGREEMENT OR
24 PROTOCOL WITH A PHYSICIAN AUTHORIZING COLLABORATIVE DRUG THERAPY MANAGE-
25 MENT, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS SECTION, WITHIN THE
26 SCOPE OF SUCH EMPLOYMENT OR AFFILIATION.

27 B. A PARTICIPATING PHARMACIST MUST:

28 (I)(A) HAVE BEEN AWARDED EITHER A MASTER OF SCIENCE IN CLINICAL PHAR-
29 MACY OR A DOCTOR OF PHARMACY DEGREE;

30 (B) MAINTAIN A CURRENT UNRESTRICTED LICENSE; AND

31 (C) HAVE A MINIMUM OF TWO YEARS EXPERIENCE, OF WHICH AT LEAST ONE YEAR
32 OF SUCH EXPERIENCE SHALL INCLUDE CLINICAL EXPERIENCE IN A HEALTH FACILI-
33 TY, WHICH INVOLVES CONSULTATION WITH PHYSICIANS WITH RESPECT TO DRUG
34 THERAPY AND MAY INCLUDE A RESIDENCY AT A FACILITY INVOLVING SUCH CONSUL-
35 TATION; OR

36 (II)(A) HAVE BEEN AWARDED A BACHELOR OF SCIENCE IN PHARMACY;

37 (B) MAINTAIN A CURRENT UNRESTRICTED LICENSE; AND

38 (C) WITHIN THE LAST SEVEN YEARS, HAVE A MINIMUM OF THREE YEARS EXPERI-
39 ENCE, OF WHICH AT LEAST ONE YEAR OF SUCH EXPERIENCE SHALL INCLUDE CLIN-
40 ICAL EXPERIENCE IN A HEALTH FACILITY, WHICH INVOLVES CONSULTATION WITH
41 PHYSICIANS WITH RESPECT TO DRUG THERAPY AND MAY INCLUDE A RESIDENCY AT A
42 FACILITY INVOLVING SUCH CONSULTATION.

43 C. NOTWITHSTANDING ANY PROVISION OF THIS SECTION, NOTHING HEREIN SHALL
44 AUTHORIZE THE PHARMACIST TO DIAGNOSE DISEASE. IN THE EVENT THAT A
45 TREATING PHYSICIAN MAY DISAGREE WITH THE EXERCISE OF PROFESSIONAL JUDG-
46 MENT BY THE PHARMACIST, THE JUDGMENT OF THE TREATING PHYSICIAN SHALL
47 PREVAIL.

48 3. THE PHYSICIAN WHO IS A PARTY TO A WRITTEN AGREEMENT OR PROTOCOL
49 AUTHORIZING COLLABORATIVE DRUG THERAPY MANAGEMENT SHALL BE EMPLOYED BY
50 OR OTHERWISE AFFILIATED WITH THE SAME FACILITY WITH WHICH THE PHARMACIST
51 IS ALSO EMPLOYED OR AFFILIATED.

52 4. THE EXISTENCE OF A WRITTEN AGREEMENT OR PROTOCOL ON COLLABORATIVE
53 DRUG THERAPY MANAGEMENT AND THE PATIENT'S RIGHT TO CHOOSE TO NOT PARTIC-
54 IPATE IN COLLABORATIVE DRUG THERAPY MANAGEMENT SHALL BE DISCLOSED TO ANY
55 PATIENT WHO IS ELIGIBLE TO RECEIVE COLLABORATIVE DRUG THERAPY MANAGE-
56 MENT. COLLABORATIVE DRUG THERAPY MANAGEMENT SHALL NOT BE UTILIZED UNLESS

1 THE PATIENT OR THE PATIENT'S AUTHORIZED REPRESENTATIVE CONSENTS, IN
2 WRITING, TO SUCH MANAGEMENT. IF THE PATIENT OR THE PATIENT'S AUTHORIZED
3 REPRESENTATIVE CONSENTS, IT SHALL BE NOTED ON THE PATIENT'S MEDICAL
4 RECORD. IF THE PATIENT OR THE PATIENT'S AUTHORIZED REPRESENTATIVE WHO
5 CONSENTED TO COLLABORATIVE DRUG THERAPY MANAGEMENT CHOOSES TO NO LONGER
6 PARTICIPATE IN SUCH MANAGEMENT, AT ANY TIME, IT SHALL BE NOTED ON THE
7 PATIENT'S MEDICAL RECORD. IN ADDITION, THE EXISTENCE OF THE WRITTEN
8 AGREEMENT OR PROTOCOL AND THE PATIENT'S CONSENT TO SUCH MANAGEMENT SHALL
9 BE DISCLOSED TO THE PATIENT'S PRIMARY PHYSICIAN AND ANY OTHER TREATING
10 PHYSICIAN OR HEALTHCARE PROVIDER.

11 5. PARTICIPATION IN A WRITTEN AGREEMENT OR PROTOCOL AUTHORIZING COLLA-
12 BORATIVE DRUG THERAPY MANAGEMENT SHALL BE VOLUNTARY, AND NO PATIENT,
13 PHYSICIAN, PHARMACIST, OR FACILITY SHALL BE REQUIRED TO PARTICIPATE.

14 6. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT THE SCOPE OF PRAC-
15 TICE OF PHARMACY NOR BE DEEMED TO LIMIT THE AUTHORITY OF PHARMACISTS AND
16 PHYSICIANS TO ENGAGE IN MEDICATION MANAGEMENT PRIOR TO THE EFFECTIVE
17 DATE OF THIS SECTION AND TO THE EXTENT AUTHORIZED BY LAW.

18 S 3. Subdivision 2 of section 6827 of the education law, as added by
19 chapter 311 of the laws of 1996, is amended to read as follows:

20 2. During each triennial registration period an applicant for regis-
21 tration shall complete a minimum of forty-five hours of acceptable
22 formal continuing education, as specified in subdivision four of this
23 section, provided that no more than twenty-two hours of such continuing
24 education shall consist of self-study courses. ANY PHARMACIST PARTIC-
25 IPATING IN COLLABORATIVE DRUG THERAPY MANAGEMENT PURSUANT TO SECTION SIX
26 THOUSAND EIGHT HUNDRED ONE-A OF THIS ARTICLE SHALL COMPLETE AT LEAST
27 FIVE HOURS OF ACCEPTABLE FORMAL CONTINUING EDUCATION IN THE AREA OR
28 AREAS OF PRACTICE GENERALLY RELATED TO ANY COLLABORATIVE DRUG THERAPY
29 MANAGEMENT PROTOCOLS TO WHICH THE PHARMACIST MAY BE SUBJECT. Any phar-
30 macist whose first registration date following the effective date of
31 this section occurs less than three years from such effective date, but
32 on or after January first, nineteen hundred ninety-eight, shall complete
33 continuing education hours on a prorated basis at the rate of one and
34 one-quarter hours per month for the period beginning January first,
35 nineteen hundred ninety-seven up to the first registration date there-
36 after. A licensee who has not satisfied the mandatory continuing educa-
37 tion requirements shall not be issued a triennial registration certif-
38 icate by the department and shall not practice unless and until a
39 conditional registration certificate is issued as provided for in subdivi-
40 sion three of this section. Continuing education hours taken during
41 one triennium may not be transferred to a subsequent triennium.

42 S 4. The department of education, in consultation with the department
43 of health, shall prepare or shall arrange for the preparation of a
44 report on the implementation of collaborative drug therapy management
45 (CDTM) in New York state. The report shall be submitted to the speaker
46 of the assembly and the temporary president of the senate and the chairs
47 of the senate and assembly higher education committees at least four
48 months prior to the expiration of this act. The report shall review the
49 extent to which CDTM was implemented in New York state and shall examine
50 whether and the extent to which CDTM contributed to the improvement of
51 quality of care for patients, reduced the risk of medication error,
52 reduced unnecessary health care expenditures, and was otherwise in the
53 public interest. The report may make recommendations regarding the
54 extension, alteration and/or expansion of these provisions and make any
55 other recommendations related to the implementation of CDTM pursuant to
56 this act.

1 S 5. This act shall take effect on the one hundred twentieth day after
2 it shall have become a law and shall expire 3 years after such effective
3 date when upon such date the provisions of this act shall be deemed
4 repealed; provided, however, that the amendments to subdivision 1 of
5 section 6801 of the education law made by section one of this act shall
6 be subject to the expiration and reversion of such subdivision pursuant
7 to section 8 of chapter 563 of the laws of 2008, when upon such date the
8 provisions of section one-a of this act shall take effect; provided,
9 further, that effective immediately, the addition, amendment and/or
10 repeal of any rule or regulation necessary for the implementation of
11 this act on its effective date is authorized and directed to be made and
12 completed on or before such effective date.