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I N  A S S E M B L Y

June 16, 2014

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Glick, Weinstein, Morelle, Gunther, Weprin, Gottfried) -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law and the public health law, in relation to authorizing certain advanced home health aides to perform certain advanced tasks; 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:

Section 1. Subparagraph (v) of paragraph a of subdivision 1 of section 6908 of the education law is renumbered subparagraph (vi) and a new subparagraph (v) is added to read as follows:

(V) ADVANCED TASKS PROVIDED BY AN ADVANCED HOME HEALTH AIDE IN ACCORDANCE WITH REGULATIONS DEVELOPED BY THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF HEALTH WHICH, AT A MINIMUM, SHALL: (1) SPECIFY THE ADVANCED TASKS THAT MAY BE PERFORMED BY ADVANCED HOME HEALTH AIDES PURSUANT TO THIS SUBPARAGRAPH, WHICH SHALL INCLUDE THE ADMINISTRATION OF MEDICATIONS WHICH ARE ROUTINE AND PREFILLED OR OTHERWISE PACKAGED IN A MANNER THAT PROMOTES RELATIVE EASE OF ADMINISTRATION, PROVIDED THAT ADMINISTRATION OF MEDICATIONS BY INJECTION OTHER THAN INSULIN FOR DIABETES CARE, STERILE PROCEDURES, AND CENTRAL LINE MAINTENANCE SHALL BE PROHIBITED, AND PROVIDED FURTHER THAT A SYSTEM SHALL BE ESTABLISHED THAT ADDRESSES DRUG DIVERSION; (2) SPECIFY THAT PARTICIPATION IN THIS PROGRAM SHALL BE VOLUNTARY AND SUCH ADVANCED TASKS PROVIDED BY AN ADVANCED HOME HEALTH AIDE SHALL BE AT THE OPTION OF THE INDIVIDUAL; (3) PROVIDE THAT ADVANCED TASKS PERFORMED BY ADVANCED HOME HEALTH AIDES MAY BE PERFORMED ONLY UNDER THE DIRECT SUPERVISION OF A REGISTERED PROFESSIONAL NURSE LICENSED IN NEW YORK STATE AND EMPLOYED BY A HOME CARE SERVICES AGENCY LICENSED OR CERTIFIED PURSUANT TO ARTICLE THIRTY-SIX OR HOSPICE PROGRAM CERTIFIED PURSUANT TO ARTICLE FORTY OF THE PUBLIC HEALTH LAW, WHERE SUCH NURSING SUPERVISION (A) INCLUDES TRAINING AND PERIODIC ASSESSMENT OF THE PERFORMANCE OF ADVANCED TASKS, (B) SHALL BE DETERMINED BY THE REGISTERED PROFESSIONAL NURSE RESPONSIBLE FOR SUPERVISING SUCH ADVANCED TASKS BASED UPON THE COMPLEXITY OF SUCH ADVANCED TASKS, THE SKILL AND EXPERIENCE OF

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

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THE ADVANCED HOME HEALTH AIDE, AND THE HEALTH STATUS OF THE INDIVIDUAL FOR WHOM SUCH ADVANCED TASKS ARE BEING PERFORMED, AND (C) INCLUDES A COMPREHENSIVE INITIAL AND THEREAFTER REGULAR AND ONGOING ASSESSMENT OF THE INDIVIDUAL'S NEEDS; PROVIDED THAT THE REGISTERED PROFESSIONAL NURSE RESPONSIBLE FOR SUPERVISING SUCH ADVANCED TASKS SHALL VISIT INDIVIDUALS RECEIVING ACUTE SERVICES NO LESS THAN ONCE PER MONTH AND INDIVIDUALS RECEIVING MAINTENANCE CARE NO LESS THAN ONCE EVERY SIX MONTHS AND PROVIDED FURTHER THAT A REGISTERED PROFESSIONAL NURSE SHALL BE AVAILABLE BY TELEPHONE TO THE ADVANCED HOME HEALTH AIDE TWENTY-FOUR HOURS A DAY, SEVEN DAYS A WEEK; THE COMMISSIONER OF HEALTH SHALL, IN CONSULTATION WITH THE COMMISSIONER, DETERMINE APPROPRIATE STAFFING RATIOS TO ENSURE ADEQUATE NURSING SUPERVISION THAT SHALL NOT EXCEED ONE FULL TIME EQUIVALENT OF A REGISTERED PROFESSIONAL NURSE TO FIFTY INDIVIDUALS RECEIVING SERVICES; (4) ESTABLISH A PROCESS BY WHICH A REGISTERED PROFESSIONAL NURSE MAY DELEGATE ADVANCED TASKS TO AN ADVANCED HOME HEALTH AIDE PROVIDED THAT SUCH PROCESS SHALL INCLUDE, BUT NOT BE LIMITED TO (A) ALLOWING DELEGATION OF ADVANCED TASKS TO AN ADVANCED HOME HEALTH AIDE ONLY WHERE SUCH ADVANCED HOME HEALTH AIDE HAS DEMONSTRATED TO THE SATISFACTION OF THE SUPERVISING REGISTERED PROFESSIONAL NURSE COMPETENCY IN EVERY ADVANCED TASK THAT SUCH ADVANCED HOME HEALTH AIDE IS AUTHORIZED TO PERFORM, (B) AUTHORIZING THE SUPERVISING REGISTERED PROFESSIONAL NURSE TO REVOKE ANY DELEGATED ADVANCED TASK FROM AN ADVANCED HOME HEALTH AIDE FOR ANY REASON, AND (C) AUTHORIZING MULTIPLE REGISTERED PROFESSIONAL NURSES TO JOINTLY AGREE TO DELEGATE ADVANCED TASKS TO AN ADVANCED HOME HEALTH AIDE, PROVIDED FURTHER THAT ONLY ONE REGISTERED PROFESSIONAL NURSE SHALL BE REQUIRED TO DETERMINE THE ADVANCED HOME HEALTH AIDE HAS DEMONSTRATED COMPETENCY IN THE ADVANCED TASK TO BE PERFORMED; (5) PROVIDE THAT ADVANCED TASKS MAY BE PERFORMED ONLY IN ACCORDANCE WITH AND PURSUANT TO AN AUTHORIZED PRACTITIONER'S ORDERED CARE; (6) PROVIDE THAT ONLY A HOME HEALTH AIDE WHO HAS AT LEAST ONE YEAR OF EXPERIENCE AS A CERTIFIED HOME HEALTH AIDE, HAS COMPLETED THE REQUISITE TRAINING AND DEMONSTRATED COMPETENCIES OF AN ADVANCED HOME HEALTH AIDE AS DETERMINED BY THE COMMISSIONER OF HEALTH, HAS SUCCESSFULLY COMPLETED COMPETENCY EXAMINATIONS SATISFACTORY TO AND DEVELOPED OR APPROVED BY THE COMMISSIONER OF HEALTH AND MEETS OTHER APPROPRIATE QUALIFICATIONS AS DETERMINED BY THE COMMISSIONER OF HEALTH MAY PERFORM ADVANCED TASKS AS AN ADVANCED HOME HEALTH AIDE; (7) PROVIDE THAT ONLY AN INDIVIDUAL WHO IS LISTED IN THE HOME CARE SERVICES REGISTRY MAINTAINED BY THE DEPARTMENT OF HEALTH PURSUANT TO SUBDIVISION NINE OF SECTION THIRTY-SIX HUNDRED THIRTEEN OF THE PUBLIC HEALTH LAW AS HAVING SATISFIED ALL APPLICABLE TRAINING REQUIREMENTS AND HAVING PASSED THE APPLICABLE COMPETENCY EXAMINATIONS AND WHO MEETS OTHER REQUIREMENTS AS SET FORTH IN REGULATIONS ISSUED BY THE COMMISSIONER OF HEALTH PURSUANT TO SUBDIVISION SEVENTEEN OF SECTION THIRTY-SIX HUNDRED TWO OF THE PUBLIC HEALTH LAW MAY PERFORM ADVANCED TASKS PURSUANT TO THIS SUBPARAGRAPH AND MAY HOLD HIMSELF OR HERSELF OUT AS AN ADVANCED HOME HEALTH AIDE; (8) ESTABLISH MINIMUM STANDARDS OF TRAINING FOR THE PERFORMANCE OF ADVANCED TASKS BY ADVANCED HOME HEALTH AIDES, INCLUDING (A) DIDACTIC TRAINING, (B) CLINICAL TRAINING, AND (C) A SUPERVISED CLINICAL PRACTICUM WITH STANDARDS SET FORTH BY THE COMMISSIONER OF HEALTH; (9) PROVIDE THAT ADVANCED HOME HEALTH AIDES SHALL RECEIVE CASE-SPECIFIC TRAINING ON THE ADVANCED TASKS TO BE ASSIGNED BY THE SUPERVISING NURSE, PROVIDED THAT ADDITIONAL TRAINING SHALL TAKE PLACE WHENEVER ADDITIONAL ADVANCED TASKS ARE ASSIGNED; (10) PROHIBIT AN ADVANCED HOME HEALTH AIDE FROM HOLDING HIMSELF OR HERSELF OUT, OR ACCEPTING EMPLOYMENT AS, A PERSON LICENSED TO PRACTICE NURSING UNDER THE PROVISIONS OF THIS ARTICLE; (11) PROVIDE THAT AN ADVANCED HOME

HEALTH AIDE IS NOT REQUIRED NOR PERMITTED TO ASSESS THE MEDICATION OR MEDICAL NEEDS OF AN INDIVIDUAL; (12) PROVIDE THAT AN ADVANCED HOME HEALTH AIDE SHALL NOT BE AUTHORIZED TO PERFORM ANY ADVANCED TASKS OR ACTIVITIES PURSUANT TO THIS SUBPARAGRAPH THAT ARE OUTSIDE THE SCOPE OF PRACTICE OF A LICENSED PRACTICAL NURSE OR ANY ADVANCED TASKS THAT HAVE NOT BEEN APPROPRIATELY DELEGATED BY THE SUPERVISING REGISTERED PROFESSIONAL NURSE; (13) PROVIDE THAT AN ADVANCED HOME HEALTH AIDE SHALL DOCUMENT MEDICATION ADMINISTRATION TO EACH INDIVIDUAL THROUGH THE USE OF A MEDICATION ADMINISTRATION RECORD; (14) PROVIDE THAT THE SUPERVISING REGISTERED PROFESSIONAL NURSE SHALL RETAIN THE DISCRETION TO DECIDE WHETHER TO ASSIGN ADVANCED TASKS TO ADVANCED HOME HEALTH AIDES UNDER THIS PROGRAM AND THE ADVANCED HOME HEALTH AIDE SHALL RETAIN THE DISCRETION TO REFUSE A DELEGATED ADVANCED TASK AND SHALL NOT BE SUBJECT TO COERCION OR THE THREAT OF RETALIATION; (15) NOTWITHSTANDING ANY PROVISIONS OF SECTIONS SEVEN HUNDRED FORTY AND SEVEN HUNDRED FORTY-ONE OF THE LABOR LAW TO THE CONTRARY, THE PROTECTIONS PROVIDED IN SUCH SECTIONS SHALL APPLY TO INDIVIDUALS PROVIDING SUPERVISION OR ADVANCED TASKS PURSUANT TO THIS SUBPARAGRAPH; AND (16) PROVIDE THAT NO ADVANCED TASKS, OTHER THAN ADMINISTRATION OF MEDICATION, MAY BE PERFORMED PRIOR TO JANUARY FIRST, TWO THOUSAND SEVENTEEN; PROVIDED THAT IN DEVELOPING SUCH REGULATIONS, THE COMMISSIONER SHALL TAKE INTO ACCOUNT THE RECOMMENDATIONS OF A WORKGROUP OF STAKEHOLDERS CONVENED BY THE COMMISSIONER OF HEALTH IN CONSULTATION WITH THE COMMISSIONER FOR THE PURPOSE OF PROVIDING GUIDANCE ON THE FOREGOING; OR

S 2. Section 206 of the public health law is amended by adding a new subdivision 29 to read as follows:

29. THE COMMISSIONER SHALL NOTIFY THE COMMISSIONER OF EDUCATION IN ANY INSTANCE IN WHICH A REGISTERED PROFESSIONAL NURSE ENGAGES IN IMPROPER BEHAVIOR WHILE SUPERVISING AN ADVANCED HOME HEALTH AIDE PURSUANT TO SUBPARAGRAPH (V) OF PARAGRAPH A OF SUBDIVISION ONE OF SECTION SIXTY-NINE HUNDRED EIGHT OF THE EDUCATION LAW.

S 3. Section 3602 of the public health law is amended by adding a new subdivision 17 to read as follows:

17. "ADVANCED HOME HEALTH AIDES" MEANS HOME HEALTH AIDES WHO ARE AUTHORIZED TO PERFORM ADVANCED TASKS AS DELINEATED IN SUBPARAGRAPH (V) OF PARAGRAPH A OF SUBDIVISION ONE OF SECTION SIXTY-NINE HUNDRED EIGHT OF THE EDUCATION LAW AND REGULATIONS ISSUED BY THE COMMISSIONER OF EDUCATION RELATING THERETO. THE COMMISSIONER SHALL PROMULGATE REGULATIONS REGARDING SUCH AIDES, WHICH SHALL INCLUDE TRAINING, DEMONSTRATED COMPETENCIES, COMPETENCY EXAMINATIONS, AND OTHER APPROPRIATE QUALIFICATIONS, AS WELL AS A PROCESS FOR THE LIMITATION OR REVOCATION OF THE ADVANCED HOME HEALTH AIDE'S AUTHORIZATION TO PERFORM ADVANCED TASKS IN APPROPRIATE CASES.

S 4. Subdivision 9 of section 3613 of the public health law is renumbered subdivision 10 and a new subdivision 9 is added to read as follows:

9. THE DEPARTMENT SHALL INDICATE WITHIN THE HOME CARE SERVICES WORKER REGISTRY WHEN A HOME HEALTH AIDE HAS SATISFIED ALL APPLICABLE TRAINING AND RECERTIFICATION REQUIREMENTS AND HAS PASSED THE APPLICABLE COMPETENCY EXAMINATIONS NECESSARY TO PERFORM ADVANCED TASKS PURSUANT TO SUBPARAGRAPH (V) OF PARAGRAPH A OF SUBDIVISION ONE OF SECTION SIXTY-NINE HUNDRED EIGHT OF THE EDUCATION LAW AND REGULATIONS ISSUED THERETO. ANY LIMITATION OR REVOCATION OF THE ADVANCED HOME HEALTH AIDE'S AUTHORIZATION ALSO SHALL BE INDICATED ON THE REGISTRY.

S 5. The commissioner of health, in consultation with the commissioner of education, shall convene a workgroup of stakeholders to provide guid-

ance on the advanced tasks which may be performed by advanced home health aides pursuant to subparagraph (v) of paragraph a of subdivision 1 of section 6908 of the education law, which shall encompass matters including but not limited to:

(a) the advanced tasks that appropriately could be performed by advanced home health aides with appropriate training and supervision;

(b) the types of medications that advanced home health aides should be authorized to administer, including whether controlled substances should be authorized;

(c) qualifications that must be satisfied by advanced home health aides to perform such advanced tasks, including those related to experience, training, moral character, and examination requirements;

(d) minimum training and education standards; and

(e) adequate levels of supervision to be provided by nurses, including adherence to existing requirements for comprehensive assessment and any additional assessment that should be required, including when the individual receiving advanced tasks performed by an advanced home health aide experiences a significant change in condition.

On or before March 1, 2015, the commissioner of health shall, in consultation with the commissioner of education, issue a report to the governor and the chairs of the senate and assembly health and higher education committees setting forth the recommendations of the workgroup.

The members of such workgroup shall include individuals from academic institutions with relevant expertise, representatives of home care providers, hospice providers, nurses, nurse educators, home health aides and pharmacists, representatives of individuals who may be eligible for advanced tasks performed by advanced home health aides pursuant to such statute, and other relevant stakeholders.

S 6. On or before January 1, 2019, the commissioner of health shall, in consultation with the commissioner of education, issue a report on the implementation of advanced home health aides in the state. Such report shall include the number of advanced home health aides authorized pursuant to this act; the types of advanced tasks that advanced home health aides are performing; the number of individuals who were moved out of institutionalized settings as a direct result of this act; the extent to which advanced home health aides contributed to the improvement of quality care of these individuals; the number of adverse outcomes, including medication errors, that were reported to the department of health; any reports of or issues with drug diversion; and the number of advanced home health aides who had their authorization limited or revoked. Such report shall provide recommendations to the governor and the chairs of the senate and assembly health and higher education committees regarding the extension and/or alteration of these provisions and make any other recommendations related to the implementation of advanced home health aides pursuant to this act.

S 7. This act shall take effect immediately; provided that:

a. section one of this act shall take effect January 1, 2016. Effective immediately, the commissioner of education is authorized to adopt or amend regulations necessary to implement the provisions of section one of this act on or before such effective date; provided, further, that no advanced tasks shall be performed pursuant to the provisions of subparagraph (v) of paragraph a of subdivision 1 of section 6908 of the education law, as added by section one of this act, until such regulations are adopted and except in conformance with such regulations;

b. section five of this act shall expire and be deemed repealed March 31, 2015;

c. the commissioner of health shall convene the workgroup of stakeholders established pursuant to section five of this act as soon as practicable; and

d. this act shall expire and be deemed repealed June 30, 2019.