

5855--A

2015-2016 Regular Sessions

I N S E N A T E

June 9, 2015

Introduced by Sens. PARKER, BRESLIN, FUNKE, GALLIVAN, ORTT, ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Higher Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. Subparagraph (v) of paragraph a of subdivision 1 of section
2 6908 of the education law is renumbered subparagraph (vi) and a new
3 subparagraph (v) is added to read as follows:
4 (V) ADVANCED TASKS PROVIDED BY AN ADVANCED HOME HEALTH AIDE IN ACCORD-
5 ANCE WITH REGULATIONS DEVELOPED BY THE COMMISSIONER, IN CONSULTATION
6 WITH THE COMMISSIONER OF HEALTH WHICH, AT A MINIMUM, SHALL: (1) SPECIFY
7 THE ADVANCED TASKS THAT MAY BE PERFORMED BY ADVANCED HOME HEALTH AIDES
8 PURSUANT TO THIS SUBPARAGRAPH, WHICH SHALL INCLUDE THE ADMINISTRATION OF
9 MEDICATIONS WHICH ARE ROUTINE AND PREFILLED OR OTHERWISE PACKAGED IN A
10 MANNER THAT PROMOTES RELATIVE EASE OF ADMINISTRATION, PROVIDED THAT
11 ADMINISTRATION OF MEDICATIONS BY INJECTION, STERILE PROCEDURES, AND
12 CENTRAL LINE MAINTENANCE SHALL BE PROHIBITED. PROVIDED HOWEVER SUCH
13 PROHIBITION SHALL NOT APPLY TO INJECTIONS OF INSULIN FOR DIABETES CARE
14 OR TO INJECTIONS OF LOW MOLECULAR WEIGHT HEPARIN FOR DIABETES CARE, AND
15 PROVIDED FURTHER THAT A SYSTEM SHALL BE ESTABLISHED THAT ADDRESSES DRUG
16 DIVERSION; (2) SPECIFY THAT PARTICIPATION IN THIS PROGRAM SHALL BE
17 VOLUNTARY AND SUCH ADVANCED TASKS PROVIDED BY AN ADVANCED HOME HEALTH
18 AIDE SHALL BE AT THE OPTION OF THE INDIVIDUAL; (3) PROVIDE THAT ADVANCED
19 TASKS PERFORMED BY ADVANCED HOME HEALTH AIDES MAY BE PERFORMED ONLY
20 UNDER THE DIRECT SUPERVISION OF A REGISTERED PROFESSIONAL NURSE LICENSED
21 IN NEW YORK STATE AND EMPLOYED BY A HOME CARE SERVICES AGENCY LICENSED
22 OR CERTIFIED PURSUANT TO ARTICLE THIRTY-SIX OR HOSPICE PROGRAM CERTIFIED

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

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1 PURSUANT TO ARTICLE FORTY OF THE PUBLIC HEALTH LAW, WHERE SUCH NURSING
2 SUPERVISION (A) INCLUDES TRAINING AND PERIODIC ASSESSMENT OF THE
3 PERFORMANCE OF ADVANCED TASKS, (B) SHALL BE DETERMINED BY THE REGISTERED
4 PROFESSIONAL NURSE RESPONSIBLE FOR SUPERVISING SUCH ADVANCED TASKS BASED
5 UPON THE COMPLEXITY OF SUCH ADVANCED TASKS, THE SKILL AND EXPERIENCE OF
6 THE ADVANCED HOME HEALTH AIDE, AND THE HEALTH STATUS OF THE INDIVIDUAL
7 FOR WHOM SUCH ADVANCED TASKS ARE BEING PERFORMED, AND (C) INCLUDES A
8 COMPREHENSIVE INITIAL AND THEREAFTER REGULAR AND ONGOING ASSESSMENT OF
9 THE INDIVIDUAL'S NEEDS; PROVIDED THAT THE REGISTERED PROFESSIONAL NURSE
10 RESPONSIBLE FOR SUPERVISING SUCH ADVANCED TASKS SHALL VISIT INDIVIDUALS
11 RECEIVING ACUTE SERVICES NO LESS THAN ONCE PER MONTH AND INDIVIDUALS
12 RECEIVING MAINTENANCE CARE NO LESS THAN ONCE EVERY SIX MONTHS AND
13 PROVIDED FURTHER THAT A REGISTERED PROFESSIONAL NURSE SHALL BE AVAILABLE
14 BY TELEPHONE TO THE ADVANCED HOME HEALTH AIDE TWENTY-FOUR HOURS A DAY,
15 SEVEN DAYS A WEEK; THE COMMISSIONER OF HEALTH SHALL, IN CONSULTATION
16 WITH THE COMMISSIONER, DETERMINE APPROPRIATE STAFFING RATIOS TO ENSURE
17 ADEQUATE NURSING SUPERVISION THAT SHALL NOT EXCEED ONE FULL TIME EQUIV-
18 ALENT OF A REGISTERED PROFESSIONAL NURSE TO FIFTY INDIVIDUALS RECEIVING
19 SERVICES; (4) ESTABLISH A PROCESS BY WHICH A REGISTERED PROFESSIONAL
20 NURSE MAY DELEGATE ADVANCED TASKS TO AN ADVANCED HOME HEALTH AIDE
21 PROVIDED THAT SUCH PROCESS SHALL INCLUDE, BUT NOT BE LIMITED TO (A)
22 ALLOWING DELEGATION OF ADVANCED TASKS TO AN ADVANCED HOME HEALTH AIDE
23 ONLY WHERE SUCH ADVANCED HOME HEALTH AIDE HAS DEMONSTRATED TO THE SATIS-
24 FACTION OF THE SUPERVISING REGISTERED PROFESSIONAL NURSE COMPETENCY IN
25 EVERY ADVANCED TASK THAT SUCH ADVANCED HOME HEALTH AIDE IS AUTHORIZED TO
26 PERFORM, (B) AUTHORIZING THE SUPERVISING REGISTERED PROFESSIONAL NURSE
27 TO REVOKE ANY DELEGATED ADVANCED TASK FROM AN ADVANCED HOME HEALTH AIDE
28 FOR ANY REASON, AND (C) AUTHORIZING MULTIPLE REGISTERED PROFESSIONAL
29 NURSES TO JOINTLY AGREE TO DELEGATE ADVANCED TASKS TO AN ADVANCED HOME
30 HEALTH AIDE, PROVIDED FURTHER THAT ONLY ONE REGISTERED PROFESSIONAL
31 NURSE SHALL BE REQUIRED TO DETERMINE THE ADVANCED HOME HEALTH AIDE HAS
32 DEMONSTRATED COMPETENCY IN THE ADVANCED TASK TO BE PERFORMED; (5)
33 PROVIDE THAT ADVANCED TASKS MAY BE PERFORMED ONLY IN ACCORDANCE WITH AND
34 PURSUANT TO AN AUTHORIZED PRACTITIONER'S ORDERED CARE; (6) PROVIDE THAT
35 ONLY A HOME HEALTH AIDE WHO HAS AT LEAST ONE YEAR OF EXPERIENCE AS A
36 CERTIFIED HOME HEALTH AIDE, HAS COMPLETED THE REQUISITE TRAINING AND
37 DEMONSTRATED COMPETENCIES OF AN ADVANCED HOME HEALTH AIDE AS DETERMINED
38 BY THE COMMISSIONER OF HEALTH, HAS SUCCESSFULLY COMPLETED COMPETENCY
39 EXAMINATIONS SATISFACTORY TO AND DEVELOPED OR APPROVED BY THE COMMIS-
40 SIONER OF HEALTH AND MEETS OTHER APPROPRIATE QUALIFICATIONS AS DETER-
41 MINED BY THE COMMISSIONER OF HEALTH MAY PERFORM ADVANCED TASKS AS AN
42 ADVANCED HOME HEALTH AIDE; (7) PROVIDE THAT ONLY AN INDIVIDUAL WHO IS
43 LISTED IN THE HOME CARE SERVICES REGISTRY MAINTAINED BY THE DEPARTMENT
44 OF HEALTH PURSUANT TO SECTION THIRTY-SIX HUNDRED THIRTEEN OF THE PUBLIC
45 HEALTH LAW AS HAVING SATISFIED ALL APPLICABLE TRAINING REQUIREMENTS AND
46 HAVING PASSED THE APPLICABLE COMPETENCY EXAMINATIONS AND WHO MEETS OTHER
47 REQUIREMENTS AS SET FORTH IN REGULATIONS ISSUED BY THE COMMISSIONER OF
48 HEALTH PURSUANT TO SUBDIVISION SEVENTEEN OF SECTION THIRTY-SIX HUNDRED
49 TWO OF THE PUBLIC HEALTH LAW MAY PERFORM ADVANCED TASKS PURSUANT TO THIS
50 SUBPARAGRAPH AND MAY HOLD HIMSELF OR HERSELF OUT AS AN ADVANCED HOME
51 HEALTH AIDE; (8) ESTABLISH MINIMUM STANDARDS OF TRAINING FOR THE
52 PERFORMANCE OF ADVANCED TASKS BY ADVANCED HOME HEALTH AIDES, INCLUDING
53 (A) DIDACTIC TRAINING, (B) CLINICAL TRAINING, AND (C) A SUPERVISED CLIN-
54 ICAL PRACTICUM WITH STANDARDS SET FORTH BY THE COMMISSIONER OF HEALTH;
55 (9) PROVIDE THAT ADVANCED HOME HEALTH AIDES SHALL RECEIVE CASE-SPECIFIC
56 TRAINING ON THE ADVANCED TASKS TO BE ASSIGNED BY THE SUPERVISING NURSE,

1 PROVIDED THAT ADDITIONAL TRAINING SHALL TAKE PLACE WHENEVER ADDITIONAL
2 ADVANCED TASKS ARE ASSIGNED; (10) PROHIBIT AN ADVANCED HOME HEALTH AIDE
3 FROM HOLDING HIMSELF OR HERSELF OUT, OR ACCEPTING EMPLOYMENT AS, A
4 PERSON LICENSED TO PRACTICE NURSING UNDER THE PROVISIONS OF THIS ARTI-
5 CLE; (11) PROVIDE THAT AN ADVANCED HOME HEALTH AIDE IS NOT REQUIRED NOR
6 PERMITTED TO ASSESS THE MEDICATION OR MEDICAL NEEDS OF AN INDIVIDUAL;
7 (12) PROVIDE THAT AN ADVANCED HOME HEALTH AIDE SHALL NOT BE AUTHORIZED
8 TO PERFORM ANY ADVANCED TASKS OR ACTIVITIES PURSUANT TO THIS SUBPARA-
9 GRAPH THAT ARE OUTSIDE THE SCOPE OF PRACTICE OF A LICENSED PRACTICAL
10 NURSE OR ANY ADVANCED TASKS THAT HAVE NOT BEEN APPROPRIATELY DELEGATED
11 BY THE SUPERVISING REGISTERED PROFESSIONAL NURSE; (13) PROVIDE THAT AN
12 ADVANCED HOME HEALTH AIDE SHALL DOCUMENT MEDICATION ADMINISTRATION TO
13 EACH INDIVIDUAL THROUGH THE USE OF A MEDICATION ADMINISTRATION RECORD;
14 (14) PROVIDE THAT THE SUPERVISING REGISTERED PROFESSIONAL NURSE SHALL
15 RETAIN THE DISCRETION TO DECIDE WHETHER TO ASSIGN ADVANCED TASKS TO
16 ADVANCED HOME HEALTH AIDES UNDER THIS PROGRAM AND THE ADVANCED HOME
17 HEALTH AIDE SHALL RETAIN THE DISCRETION TO REFUSE A DELEGATED ADVANCED
18 TASK AND SHALL NOT BE SUBJECT TO COERCION OR THE THREAT OF RETALIATION;
19 (15) NOTWITHSTANDING ANY PROVISIONS OF SECTIONS SEVEN HUNDRED FORTY AND
20 SEVEN HUNDRED FORTY-ONE OF THE LABOR LAW TO THE CONTRARY, THE
21 PROTECTIONS PROVIDED IN SUCH SECTIONS SHALL APPLY TO INDIVIDUALS PROVID-
22 ING SUPERVISION OR ADVANCED TASKS PURSUANT TO THIS SUBPARAGRAPH; AND
23 (16) PROVIDE THAT NO ADVANCED TASKS, OTHER THAN ADMINISTRATION OF MEDI-
24 CATION, MAY BE PERFORMED PRIOR TO JANUARY FIRST, TWO THOUSAND EIGHTEEN;
25 PROVIDED THAT IN DEVELOPING SUCH REGULATIONS, THE COMMISSIONER SHALL
26 TAKE INTO ACCOUNT THE RECOMMENDATIONS OF A WORKGROUP OF STAKEHOLDERS
27 CONVENED BY THE COMMISSIONER OF HEALTH IN CONSULTATION WITH THE COMMIS-
28 SIONER FOR THE PURPOSE OF PROVIDING GUIDANCE ON THE FOREGOING; OR

29 S 2. Section 206 of the public health law is amended by adding a new
30 subdivision 30 to read as follows:

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

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

38 17. "ADVANCED HOME HEALTH AIDES" MEANS HOME HEALTH AIDES WHO ARE
39 AUTHORIZED TO PERFORM ADVANCED TASKS AS DELINEATED IN SUBPARAGRAPH (V)
40 OF PARAGRAPH A OF SUBDIVISION ONE OF SECTION SIXTY-NINE HUNDRED EIGHT OF
41 THE EDUCATION LAW AND REGULATIONS ISSUED BY THE COMMISSIONER OF EDUCA-
42 TION RELATING THERETO. THE COMMISSIONER SHALL PROMULGATE REGULATIONS
43 REGARDING SUCH AIDES, WHICH SHALL INCLUDE TRAINING, DEMONSTRATED COMPE-
44 TENCIES, COMPETENCY EXAMINATIONS, AND OTHER APPROPRIATE QUALIFICATIONS,
45 AS WELL AS A PROCESS FOR THE LIMITATION OR REVOCATION OF THE ADVANCED
46 HOME HEALTH AIDE'S AUTHORIZATION TO PERFORM ADVANCED TASKS IN APPROPRI-
47 ATE CASES.

48 S 4. Subdivision 9 of section 3613 of the public health law is renum-
49 bered subdivision 10 and a new subdivision 9 is added to read as
50 follows:

51 9. THE DEPARTMENT SHALL INDICATE WITHIN THE HOME CARE SERVICES WORKER
52 REGISTRY WHEN A HOME HEALTH AIDE HAS SATISFIED ALL APPLICABLE TRAINING
53 AND RECERTIFICATION REQUIREMENTS AND HAS PASSED THE APPLICABLE COMPETEN-
54 CY EXAMINATIONS NECESSARY TO PERFORM ADVANCED TASKS PURSUANT TO SUBPARA-
55 GRAPH (V) OF PARAGRAPH A OF SUBDIVISION ONE OF SECTION SIXTY-NINE
56 HUNDRED EIGHT OF THE EDUCATION LAW AND REGULATIONS ISSUED THERETO. ANY

1 LIMITATION OR REVOCATION OF THE ADVANCED HOME HEALTH AIDE'S AUTHORI-
2 ZATION ALSO SHALL BE INDICATED ON THE REGISTRY.

3 S 5. In developing regulations required under subparagraph (v) of
4 paragraph a of subdivision 1 of section 6908 of the education law, as
5 added by section one of this act, the commissioner of education shall
6 take into consideration the recommendations of the workgroup of stake-
7 holders convened by the commissioner of health to provide guidance on
8 the tasks which may be performed by advanced home health aides pursuant
9 to such section including, but not limited to, recommendations encom-
10 passing the following matters:

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

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

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

19 (d) minimum training and education standards; and

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

25 On or before July 1, 2016, the commissioner of health shall, in
26 consultation with the commissioner of education, issue a report to the
27 governor and the chairs of the senate and assembly health and higher
28 education committees setting forth the recommendations of the workgroup.

29 S 6. On or before January 1, 2020, the commissioner of health shall,
30 in consultation with the commissioner of education, issue a report on
31 the implementation of advanced home health aides in the state. Such
32 report shall include the number of advanced home health aides authorized
33 pursuant to this act; the types of advanced tasks that advanced home
34 health aides are performing; the number of individuals who were moved
35 out of institutionalized settings as a direct result of this act; the
36 extent to which advanced home health aides contributed to the improve-
37 ment of quality care of these individuals; the number of adverse
38 outcomes, including medication errors, that were reported to the depart-
39 ment of health; any reports of or issues with drug diversion; and the
40 number of advanced home health aides who had their authorization limited
41 or revoked. Such report shall provide recommendations to the governor
42 and the chairs of the senate and assembly health and higher education
43 committees regarding the extension and/or alteration of these provisions
44 and make any other recommendations related to the implementation of
45 advanced home health aides pursuant to this act.

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

47 a. section one of this act shall take effect January 1, 2017. Effec-
48 tive immediately, the commissioner of education is authorized to adopt
49 or amend regulations necessary to implement the provisions of section
50 one of this act on or before such effective date; provided, further,
51 that no advanced tasks shall be performed pursuant to the provisions of
52 subparagraph (v) of paragraph a of subdivision 1 of section 6908 of the
53 education law, as added by section one of this act, until such regu-
54 lations are adopted and except in conformance with such regulations; and

55 b. this act shall expire and be deemed repealed June 30, 2020.