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

8110

I N S E N A T E

June 13, 2016

Introduced by Sen. LAVALLE -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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. Section 6908 of the education law is amended by adding a new subdivision 2 to read as follows:

2. THIS ARTICLE SHALL NOT BE CONSTRUED AS PROHIBITING ADVANCED TASKS PROVIDED BY AN ADVANCED HOME HEALTH AIDE IN ACCORDANCE WITH REGULATIONS DEVELOPED BY THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF HEALTH. AT A MINIMUM, SUCH REGULATIONS SHALL:

A. SPECIFY THE ADVANCED TASKS THAT MAY BE PERFORMED BY ADVANCED HOME HEALTH AIDES PURSUANT TO THIS SUBDIVISION. SUCH TASKS 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, STERILE PROCEDURES, AND CENTRAL LINE MAINTENANCE SHALL BE PROHIBITED. PROVIDED, HOWEVER, SUCH PROHIBITION SHALL NOT APPLY TO INJECTIONS OF INSULIN OR OTHER INJECTIONS FOR DIABETES CARE, TO INJECTIONS OF LOW MOLECULAR WEIGHT HEPARIN, AND TO PRE-FILLED AUTO-INJECTIONS OF NALOXONE AND EPINEPHRINE FOR EMERGENCY PURPOSES, AND PROVIDED, FURTHER, THAT ENTITIES EMPLOYING ADVANCED HOME HEALTH AIDES PURSUANT TO THIS SUBDIVISION SHALL ESTABLISH A SYSTEMATIC APPROACH TO ADDRESS DRUG DIVERSION;

B. 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, AS SET FORTH IN THIS SUBDIVISION AND SUBDIVISION EIGHT OF SECTION SIXTY-NINE HUNDRED NINE OF THIS ARTICLE, WHERE SUCH NURSE IS EMPLOYED BY A HOME CARE SERVICES AGENCY LICENSED OR CERTIFIED PURSUANT TO ARTICLE THIRTY-SIX OF THE PUBLIC HEALTH LAW, A HOSPICE PROGRAM CERTIFIED PURSUANT TO ARTICLE FORTY OF THE

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

LBD12075-01-6

PUBLIC HEALTH LAW, OR AN ENHANCED ASSISTED LIVING RESIDENCE LICENSED PURSUANT TO ARTICLE SEVEN OF THE SOCIAL SERVICES LAW AND CERTIFIED PURSUANT TO ARTICLE FORTY-SIX-B OF THE PUBLIC HEALTH LAW. SUCH NURSING SUPERVISION SHALL:

(I) INCLUDE TRAINING AND PERIODIC ASSESSMENT OF THE PERFORMANCE OF ADVANCED TASKS;

(II) 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 THE ADVANCED HOME HEALTH AIDE, AND THE HEALTH STATUS OF THE INDIVIDUAL FOR WHOM SUCH ADVANCED TASKS ARE BEING PERFORMED;

(III) INCLUDE A COMPREHENSIVE INITIAL AND THEREAFTER REGULAR AND ONGOING ASSESSMENT OF THE INDIVIDUAL'S NEEDS;

(IV) INCLUDE AS A REQUIREMENT THAT THE SUPERVISING REGISTERED PROFESSIONAL NURSE SHALL VISIT INDIVIDUALS RECEIVING SERVICES FOR THE PURPOSE OF SUPERVISING THE SERVICES PROVIDED BY ADVANCED HOME HEALTH AIDES NO LESS THAN ONCE EVERY TWO WEEKS AND INCLUDE AS A REQUIREMENT 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, PROVIDED THAT A REGISTERED PROFESSIONAL NURSE SHALL BE AVAILABLE TO VISIT AN INDIVIDUAL RECEIVING SERVICES AS NECESSARY TO PROTECT THE HEALTH AND SAFETY OF SUCH INDIVIDUAL; AND

(V) AS SHALL BE SPECIFIED BY THE COMMISSIONER, BE PROVIDED IN A MANNER THAT TAKES INTO ACCOUNT INDIVIDUAL CARE NEEDS, CASE MIX COMPLEXITY AND GEOGRAPHIC CONSIDERATIONS AND PROVIDE THAT THE NUMBER OF INDIVIDUALS SERVED BY A SUPERVISING REGISTERED PROFESSIONAL NURSE IS REASONABLE AND PRUDENT.

C. ESTABLISH A PROCESS BY WHICH A REGISTERED PROFESSIONAL NURSE MAY ASSIGN ADVANCED TASKS TO AN ADVANCED HOME HEALTH AIDE. SUCH PROCESS SHALL INCLUDE, BUT NOT BE LIMITED TO:

(I) ALLOWING ASSIGNMENT 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, A WILLINGNESS TO PERFORM SUCH ADVANCED TASKS, AND THE ABILITY TO EFFECTIVELY AND EFFICIENTLY COMMUNICATE WITH THE INDIVIDUAL RECEIVING SERVICES AND UNDERSTAND SUCH INDIVIDUAL'S NEEDS;

(II) PROHIBITING ASSIGNMENT OF ADVANCED TASKS TO AN ADVANCED HOME HEALTH AIDE IF THE INDIVIDUAL RECEIVING SERVICES DECLINES TO BE SERVED BY AN ADVANCED HOME HEALTH AIDE;

(III) AUTHORIZING THE SUPERVISING REGISTERED PROFESSIONAL NURSE TO REVOKE ANY ASSIGNED ADVANCED TASK FROM AN ADVANCED HOME HEALTH AIDE FOR ANY REASON; AND

(IV) AUTHORIZING MULTIPLE REGISTERED PROFESSIONAL NURSES TO JOINTLY AGREE TO ASSIGN ADVANCED TASKS TO AN ADVANCED HOME HEALTH AIDE, PROVIDED FURTHER THAT ONLY ONE REGISTERED PROFESSIONAL NURSE SHALL BE REQUIRED TO DETERMINE IF THE ADVANCED HOME HEALTH AIDE HAS DEMONSTRATED COMPETENCY IN THE ADVANCED TASK TO BE PERFORMED;

D. PROVIDE THAT ADVANCED TASKS MAY BE PERFORMED ONLY IN ACCORDANCE WITH AND PURSUANT TO AN AUTHORIZED HEALTH PRACTITIONER'S ORDERED CARE;

E. PROVIDE THAT ONLY A CERTIFIED HOME HEALTH AIDE MAY PERFORM ADVANCED TASKS AS AN ADVANCED HOME HEALTH AIDE WHEN SUCH AIDE HAS:

(I) AT LEAST ONE YEAR OF EXPERIENCE PROVIDING EITHER HOME HEALTH OR PERSONAL CARE SERVICES, OR A COMBINATION OF THE SAME;

(II) COMPLETED THE REQUISITE TRAINING AND DEMONSTRATED COMPETENCIES OF AN ADVANCED HOME HEALTH AIDE AS DETERMINED BY THE COMMISSIONER IN CONSULTATION WITH THE COMMISSIONER OF HEALTH;

(III) SUCCESSFULLY COMPLETED COMPETENCY EXAMINATIONS SATISFACTORY TO THE COMMISSIONER IN CONSULTATION WITH THE COMMISSIONER OF HEALTH; AND

(IV) MEETS OTHER APPROPRIATE QUALIFICATIONS AS DETERMINED BY THE COMMISSIONER IN CONSULTATION WITH THE COMMISSIONER OF HEALTH;

F. PROVIDE THAT ONLY AN INDIVIDUAL WHO IS LISTED IN THE HOME CARE SERVICES REGISTRY MAINTAINED BY THE DEPARTMENT OF HEALTH PURSUANT TO 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 SUBDIVISION AND MAY HOLD HIMSELF OR HERSELF OUT AS AN ADVANCED HOME HEALTH AIDE;

G. ESTABLISH MINIMUM STANDARDS OF TRAINING FOR THE PERFORMANCE OF ADVANCED TASKS BY ADVANCED HOME HEALTH AIDES, INCLUDING DIDACTIC TRAINING, CLINICAL TRAINING, AND A SUPERVISED CLINICAL PRACTICUM WITH STANDARDS SET FORTH BY THE COMMISSIONER OF HEALTH;

H. 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;

I. 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;

J. PROVIDE THAT AN ADVANCED HOME HEALTH AIDE IS NOT REQUIRED NOR PERMITTED TO ASSESS THE MEDICATION OR MEDICAL NEEDS OF AN INDIVIDUAL;

K. PROVIDE THAT AN ADVANCED HOME HEALTH AIDE SHALL NOT BE AUTHORIZED TO PERFORM ANY ADVANCED TASKS OR ACTIVITIES PURSUANT TO THIS SUBDIVISION THAT ARE OUTSIDE THE SCOPE OF PRACTICE OF A LICENSED PRACTICAL NURSE OR ANY ADVANCED TASKS THAT HAVE NOT BEEN APPROPRIATELY ASSIGNED BY THE SUPERVISING REGISTERED PROFESSIONAL NURSE;

L. PROVIDE THAT AN ADVANCED HOME HEALTH AIDE SHALL DOCUMENT ALL ADVANCED TASKS PROVIDED TO AN INDIVIDUAL, INCLUDING MEDICATION ADMINISTRATION TO EACH INDIVIDUAL THROUGH THE USE OF A MEDICATION ADMINISTRATION RECORD; AND

M. 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 SHALL NOT BE SUBJECT TO COERCION, RETALIATION, OR THE THREAT OF RETALIATION; 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.

S 2. Section 6909 of the education law is amended by adding a new subdivision 8 to read as follows:

8. A REGISTERED PROFESSIONAL NURSE, WHILE WORKING FOR A HOME CARE SERVICES AGENCY LICENSED OR CERTIFIED PURSUANT TO ARTICLE THIRTY-SIX OF THE PUBLIC HEALTH LAW, A HOSPICE PROGRAM CERTIFIED PURSUANT TO ARTICLE FORTY OF THE PUBLIC HEALTH LAW, OR AN ENHANCED ASSISTED LIVING RESIDENCE LICENSED PURSUANT TO ARTICLE SEVEN OF THE SOCIAL SERVICES LAW AND CERTIFIED PURSUANT TO ARTICLE FORTY-SIX-B OF THE PUBLIC HEALTH LAW MAY, IN ACCORDANCE WITH THIS SUBDIVISION, ASSIGN ADVANCED HOME HEALTH AIDES TO PERFORM ADVANCED TASKS FOR INDIVIDUALS PURSUANT TO THE PROVISIONS OF

SUBDIVISION TWO OF SECTION SIXTY-NINE HUNDRED EIGHT OF THIS ARTICLE AND SUPERVISE ADVANCED HOME HEALTH AIDES WHO PERFORM ASSIGNED ADVANCED TASKS.

(A) PRIOR TO ASSIGNING OR MODIFYING AN ASSIGNMENT TO PERFORM AN ADVANCED TASK, THE REGISTERED PROFESSIONAL NURSE SHALL:

(I) COMPLETE A NURSING ASSESSMENT TO ASCERTAIN THE CLIENT'S CURRENT HEALTH STATUS AND CARE NEEDS; AND

(II) PROVIDE TO THE ADVANCED HOME HEALTH AIDE WRITTEN, INDIVIDUAL-SPECIFIC INSTRUCTIONS FOR PERFORMING THE ADVANCED TASK AND CRITERIA FOR IDENTIFYING, REPORTING AND RESPONDING TO PROBLEMS OR COMPLICATIONS.

(B) THE REGISTERED PROFESSIONAL NURSE SHALL NOT ASSIGN AN ADVANCED TASK UNLESS:

(I) THE ADVANCED TASK TO BE ASSIGNED IS CONSISTENT WITH AN AUTHORIZED HEALTH PRACTITIONER'S ORDERED CARE;

(II) THE REGISTERED PROFESSIONAL NURSE PROVIDES CASE SPECIFIC TRAINING TO THE ADVANCED HOME HEALTH AIDE AND PERSONALLY VERIFIES THAT THE ADVANCED HOME HEALTH AIDE CAN SAFELY AND COMPETENTLY PERFORM THE ADVANCED TASK;

(III) THE REGISTERED PROFESSIONAL NURSE DETERMINES THAT THE ADVANCED HOME HEALTH AIDE IS WILLING TO PERFORM SUCH ADVANCED TASK; AND

(IV) THE REGISTERED PROFESSIONAL NURSE DETERMINES THAT THE ADVANCED HOME HEALTH AIDE IS ABLE TO EFFECTIVELY AND EFFICIENTLY COMMUNICATE WITH THE INDIVIDUAL RECEIVING SERVICES AND UNDERSTAND SUCH INDIVIDUAL'S NEEDS.

(C) THE SUPERVISING REGISTERED PROFESSIONAL NURSE SHALL:

(I) VISIT INDIVIDUALS RECEIVING SERVICES FOR THE PURPOSE OF SUPERVISING THE SERVICES PROVIDED BY ADVANCED HOME HEALTH AIDES NO LESS THAN ONCE EVERY TWO WEEKS; AND

(II) CONDUCT REGULAR AND ONGOING ASSESSMENT OF THE INDIVIDUAL'S NEEDS.

S 3. Section 6906 of the education law is amended by adding a new subdivision 9 to read as follows:

(9) IN CONJUNCTION WITH AND AS A CONDITION OF EACH TRIENNIAL REGISTRATION, THE DEPARTMENT SHALL ASK AND A LICENSED PRACTICAL NURSE SHALL INDICATE WHETHER THE LICENSED PRACTICAL NURSE IS OR HAS PREVIOUSLY BEEN AUTHORIZED AS AN ADVANCED HOME HEALTH AIDE PURSUANT TO SUBDIVISION TWO OF SECTION SIXTY-NINE HUNDRED EIGHT OF THIS ARTICLE. THE DEPARTMENT SHALL PROVIDE RESPONSES TO THE DEPARTMENT OF HEALTH AND THE DEPARTMENT OF HEALTH SHALL INCLUDE SUCH INFORMATION IN REPORTS RELATED TO ADVANCED HOME HEALTH AIDES.

S 4. Section 206 of the public health law is amended by adding a new subdivision 30 to read as follows:

30. 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 SUBDIVISION TWO OF SECTION SIXTY-NINE HUNDRED EIGHT OF THE EDUCATION LAW.

S 5. 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 SUBDIVISION TWO 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 A PROCESS FOR THE LIMITATION OR REVOCATION OF THE ADVANCED HOME HEALTH AIDE'S AUTHORIZATION TO PERFORM ADVANCED TASKS IN APPROPRIATE CASES.

S 6. Paragraph (a) of subdivision 1 of section 3613 of the public health law, as added by chapter 594 of the laws of 2008, is amended to read as follows:

(a) "Home care services entity" means a home care services agency or other entity providing home care services subject to this article or exempt under section thirty-six hundred nineteen of this article, A HOSPICE PROGRAM CERTIFIED PURSUANT TO ARTICLE FORTY OF THIS CHAPTER PROVIDING ROUTINE CARE AT HOME UNDER THE HOSPICE BENEFIT, OR AN ENHANCED ASSISTED LIVING RESIDENCE LICENSED UNDER ARTICLE SEVEN OF THE SOCIAL SERVICES LAW AND CERTIFIED UNDER ARTICLE FORTY-SIX-B OF THIS CHAPTER PROVIDING ENHANCED ASSISTED LIVING SERVICES.

S 7. 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 SUBDIVISION TWO 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 8. Subdivision 6 of section 2899 of the public health law, as amended by chapter 94 of the laws of 2014, is amended to read as follows:

6. "Provider" shall mean any residential health care facility licensed under article twenty-eight of this chapter; or any certified home health agency, licensed home care services agency or long term home health care program certified under article thirty-six of this chapter; ANY HOSPICE PROGRAM CERTIFIED PURSUANT TO ARTICLE FORTY OF THIS CHAPTER; or any adult home, enriched housing program or residence for adults licensed under article seven of the social services law.

S 9. Paragraph (a) of subdivision 9 of section 2899-a of the public health law, as amended by section 23 of part A of chapter 60 of the laws of 2014, is amended to read as follows:

(a) In the event that funds are appropriated in any given fiscal year for the reimbursement for the costs of providing such criminal history information, reimbursement shall be made available in an equitable and direct manner for the projected cost of the fee established pursuant to law by the division of criminal justice services for processing a criminal history information check, the fee imposed by the federal bureau of investigation for a national criminal history check, and costs associated with obtaining the fingerprints to all providers licensed, but not certified under article thirty-six of this chapter, PROVIDERS CERTIFIED UNDER ARTICLE FORTY OF THIS CHAPTER, and all adult care facilities licensed under article seven of the social services law, including those that are subject to this article and are unable to access direct reimbursement from state and/or federal funded health programs.

S 10. On or before September 1, 2016, 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 convened by the commissioner of health for the purpose of providing guidance on the performance of advanced tasks which may be performed by advanced home health aides.

S 11. On or before October 1, 2022, 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 number of home health aides and personal care aides that became authorized to perform advanced tasks; the number of advanced home health aides that became registered as licensed practical nurses; the types of advanced tasks that advanced home health aides are performing; the number of complaints pertaining to services provided by advanced home health aides that were reported to the department of health; 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 implementation of home health aides pursuant to this act, and any recommendations related thereto.

S 12. This act shall take effect immediately; provided that:

a. sections one and three of this act shall take effect eighteen months after this act shall have become a law. Effective immediately, the commissioner of education is authorized to adopt or amend regulations and take such other actions as are necessary to implement the provisions of sections one and two of this act on or before such effective date; provided, further, that no advanced tasks shall be performed pursuant to the provisions of subdivision two of section 6908 of the education law, as added by section one of this act, on or before such effective date; provided further, that no advanced tasks shall be performed pursuant to such provisions until such regulations are adopted and except in conformance with such regulations including in conformance with the provisions of such regulations related to the completion of advanced home health aide training and the satisfaction of competency examination requirements; and provided, further, that sections eight and nine of this act shall take effect April 1, 2018 and shall apply only to prospective employees.

b. this act shall expire and be deemed repealed March 31, 2023.