

# STATE OF NEW YORK

7377--A

2017-2018 Regular Sessions

## IN ASSEMBLY

April 25, 2017

Introduced by M. of A. JENNE, JAFFEE, ORTIZ, BLAKE, MONTESANO -- Multi-Sponsored by -- M. of A. COOK, GIGLIO -- 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 and the public health law, in relation to authorizing certain nursing home medication 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 3 to read as follows:

3. This article shall not be construed as prohibiting the administration of medication by a nursing home medication aide certified pursuant to section twenty-eight hundred three-j of the public health law as added by chapter seven hundred seventeen of the laws of nineteen hundred eighty-nine in residential health care facilities, as defined in article twenty-eight of the public health law, in the county of St. Lawrence, in accordance with regulations developed by the commissioner, in consultation with the commissioner of health. At a minimum, such regulations shall:

a. authorize 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 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 epinephrine for emergency purposes, and provided, further, that entities employing nursing home medication aides pursuant

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

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1 to this subdivision shall establish a systematic approach to address  
2 drug diversion;

3 b. provide that medication administration by nursing home medication  
4 aides may be performed only under the direct supervision of a registered  
5 professional nurse licensed in New York state, as set forth in this  
6 subdivision and subdivision eight of section sixty-nine hundred nine of  
7 this article, where such nurse is employed by a residential health care  
8 facility licensed or certified pursuant to the public health law. Such  
9 nursing supervision shall:

10 (i) include training and periodic assessment of the performance of  
11 medication administration;

12 (ii) be determined by the registered professional nurse responsible  
13 for supervising such medication administration based upon the complexity  
14 of such medication administration, the skill and experience of the nurs-  
15 ing home medication aide, and the health status of the individual for  
16 whom such medication administration is being performed;

17 (iii) include a comprehensive initial and thereafter regular and ongo-  
18 ing assessment of the individual's needs;

19 (iv) include as a requirement that the supervising registered profes-  
20 sional nurse shall visit individuals receiving medication for the  
21 purpose of supervising the medication administration provided by nursing  
22 home medication aides and include as a requirement that a registered  
23 professional nurse shall be available to the nursing home medication  
24 aide twenty-four hours a day, seven days a week, provided that a regis-  
25 tered professional nurse shall be available to visit an individual  
26 receiving medication as necessary to protect the health and safety of  
27 such individual; and

28 (v) as shall be specified by the commissioner, be provided in a manner  
29 that takes into account individual care needs and case mix complexity  
30 and provide that the number of individuals served by a supervising  
31 registered professional nurse is reasonable and prudent;

32 c. establish a process by which a registered professional nurse may  
33 assign medication administration to a nursing home medication aide. Such  
34 process shall include, but not be limited to:

35 (i) allowing assignment of medication administration to a nursing home  
36 medication aide only where such nursing home medication aide has demon-  
37 strated to the satisfaction of the supervising registered professional  
38 nurse competency in medication administration that such nursing home  
39 medication aide is authorized to perform, a willingness to perform such  
40 medication administration, and the ability to effectively and efficient-  
41 ly communicate with the individual receiving medication and understand  
42 such individual's needs;

43 (ii) prohibiting assignment of medication administration to a nursing  
44 home medication aide if the individual receiving services declines to be  
45 served by a nursing home medication aide;

46 (iii) authorizing the supervising registered professional nurse to  
47 revoke any assigned medication administration from a nursing home medi-  
48 cation aide for any reason; and

49 (iv) authorizing multiple registered professional nurses to jointly  
50 agree to assign medication administration to a nursing home medication  
51 aide, provided further that only one registered professional nurse shall  
52 be required to determine if the nursing home medication aide has demon-  
53 strated competency in the medication administration to be performed;

54 d. provide that medication administration may be performed only in  
55 accordance with and pursuant to an authorized health practitioner's  
56 ordered care;

1 e. provide that only a certified nursing home medication aide may  
2 perform medication administration as a nursing home medication aide when  
3 such aide has:

4 (i) at least one year of experience providing residential health care  
5 services;

6 (ii) completed the requisite training and demonstrated competencies of  
7 a nursing home medication aide as determined by the commissioner in  
8 consultation with the commissioner of health;

9 (iii) successfully completed competency examinations satisfactory to  
10 the commissioner in consultation with the commissioner of health; and

11 (iv) meets other appropriate qualifications as determined by the  
12 commissioner in consultation with the commissioner of health;

13 f. provide that only an individual who has satisfied all applicable  
14 training requirements and having passed the applicable competency exam-  
15 inations and who meets other requirements as set forth in regulations  
16 issued by the commissioner of health pursuant to the public health law  
17 may perform medication administration pursuant to this subdivision and  
18 may hold himself or herself out as a nursing home medication aide;

19 g. establish minimum standards of training for the performance of  
20 medication administration by nursing home medication aides, including  
21 didactic training, clinical training, and a supervised clinical practi-  
22 cum with standards set forth by the commissioner of health;

23 h. provide that nursing home medication aides shall receive case-spe-  
24 cific training on the medication administration to be assigned by the  
25 supervising nurse, provided that additional training shall take place  
26 whenever additional medication administration is assigned;

27 i. prohibit a nursing home medication aide from holding himself or  
28 herself out, or accepting employment as, a person licensed to practice  
29 nursing under the provisions of this article;

30 j. provide that a nursing home medication aide is not required nor  
31 permitted to assess the medication or medical needs of an individual;

32 k. provide that a nursing home medication aide shall not be authorized  
33 to perform any activities pursuant to this subdivision that are outside  
34 the scope of practice of a licensed practical nurse or that have not  
35 been appropriately assigned by the supervising registered professional  
36 nurse;

37 l. provide that a nursing home medication aide shall document all  
38 medication administration to each individual through the use of a medi-  
39 cation administration record; and

40 m. provide that the supervising registered professional nurse shall  
41 retain the discretion to decide whether to assign medication adminis-  
42 tration to nursing home medication aides under this program and shall  
43 not be subject to coercion, retaliation, or the threat of retaliation.

44 § 2. Section 6909 of the education law is amended by adding a new  
45 subdivision 9 to read as follows:

46 9. A registered professional nurse, while working for a residential  
47 health care facility licensed or certified pursuant to the public health  
48 law, may, in accordance with this subdivision, assign nursing home medi-  
49 cation aides to perform medication administration for individuals pursu-  
50 ant to the provisions of subdivision three of section sixty-nine hundred  
51 eight of this article and supervise nursing home medication aides who  
52 perform assigned medication administration.

53 (a) Prior to assigning or modifying an assignment to perform medica-  
54 tion administration, the registered professional nurse shall:

55 (i) complete a nursing assessment to ascertain the client's current  
56 health status and care needs; and

1 (ii) provide to the nursing home medication aide written, individual-  
2 specific instructions for performing the medication administration and  
3 criteria for identifying, reporting and responding to problems or  
4 complications.

5 (b) The registered professional nurse shall not assign medication  
6 administration unless:

7 (i) the medication administration to be assigned is consistent with an  
8 authorized health practitioner's ordered care;

9 (ii) the registered professional nurse provides case specific training  
10 to the nursing home medication aide and personally verifies that the  
11 nursing home medication aide can safely and competently perform the  
12 medication administration;

13 (iii) the registered professional nurse determines that the nursing  
14 home medication aide is willing to perform such medication adminis-  
15 tration; and

16 (iv) the registered professional nurse determines that the nursing  
17 home medication aide is able to effectively and efficiently communicate  
18 with the individual receiving services and understand such individual's  
19 needs.

20 (c) The supervising registered professional nurse shall:

21 (i) visit individuals receiving medication for the purpose of super-  
22 vising the medication administration provided by nursing home medication  
23 aides; and

24 (ii) conduct regular and ongoing assessment of the individual's needs.

25 § 3. Section 6906 of the education law is amended by adding a new  
26 subdivision 10 to read as follows:

27 (10) In conjunction with and as a condition of each triennial regis-  
28 tration, the department shall ask and a licensed practical nurse shall  
29 indicate whether the licensed practical nurse is or has previously been  
30 authorized as a nursing home medication aide pursuant to subdivision  
31 three of section sixty-nine hundred eight of this article. The depart-  
32 ment shall provide responses to the department of health and the depart-  
33 ment of health shall include such information in reports related to  
34 nursing home medication aides.

35 § 4. Section 206 of the public health law is amended by adding a new  
36 subdivision 31 to read as follows:

37 31. The commissioner shall notify the commissioner of education in any  
38 instance in which a registered professional nurse engages in improper  
39 behavior while supervising a nursing home medication aide pursuant to  
40 subdivision three of section sixty-nine hundred eight of the education  
41 law.

42 § 5. Section 2801 of the public health law is amended by adding a new  
43 subdivision 12 to read as follows:

44 12. "Nursing home medication aides" means nursing home aides who are  
45 authorized to perform medication administration as delineated in subdi-  
46 vision three of section sixty-nine hundred eight of the education law  
47 and regulations issued by the commissioner of education relating there-  
48 to. The commissioner shall promulgate regulations regarding such aides,  
49 which shall include a process for the limitation or revocation of the  
50 nursing home medication aide's authorization to perform medication  
51 administration in appropriate cases.

52 § 6. Section 2803-j of the public health law, as added by chapter 717  
53 of the laws of 1989, is amended by adding a new subdivision 5 to read as  
54 follows:

55 5. The department shall indicate within the nursing home nurse aide  
56 registry when a nursing home nurse aide has satisfied all applicable

training and recertification requirements and has passed the applicable competency examinations necessary to perform medication administration pursuant to subdivision three of section sixty-nine hundred eight of the education law and regulations issued thereto. Any limitation or revocation of the nursing home medication aide's authorization also shall be indicated on the registry.

§ 7. On or before October 1, 2024, the commissioner of health shall, in consultation with the commissioner of education, issue a report on the implementation of nursing home medication aides in the state. Such report shall include the number of nursing home medication aides authorized pursuant to this act; the number of nursing home nurse aides that became authorized to perform medication administration; the number of nursing home medication aides that became registered as licensed practical nurses; the types of medication that nursing home medication aides are administering; the number of complaints pertaining to medication administration provided by nursing home medication aides that were reported to the department of health; and the number of nursing home medication 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 nursing home medication aides pursuant to this act, and any recommendations related thereto.

§ 8. This act shall take effect immediately; provided that:

a. sections one and three of this act shall take effect two years 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 medication administration shall be performed pursuant to the provisions of subdivision three 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 medication administration 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 nursing home medication aide training and the satisfaction of competency examination requirements.

b. this act shall expire and be deemed repealed March 31, 2025.