STATE OF NEW YORK

3048

2019-2020 Regular Sessions

IN ASSEMBLY

January 28, 2019

Introduced by M. of A. SEAWRIGHT -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to including nurse practitioners as a provider of services for purposes of collaborative drug therapy management; and to amend chapter 21 of the laws of 2011 amending the education law relating to authorizing pharmacists to perform collaborative drug therapy management with physicians in certain settings, in relation to making the authorization for pharmacists to perform collaborative drug therapy management permanent

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 6801-a of the education law, as amended by chapter 238 of the laws of 2015, is amended to read as follows:

§ 6801-a. Collaborative drug therapy management [~~demonstration program~~]. 1. As used in this section, the following terms shall have the following meanings:

a. "Board" shall mean the state board of pharmacy as established by section sixty-eight hundred four of this article.

b. "Clinical services" shall mean the collection and interpretation of patient data for the purpose of initiating, modifying and monitoring drug therapy with associated accountability and responsibility for outcomes in a direct patient care setting.

c. "Collaborative drug therapy management" shall mean the performance of clinical services by a pharmacist relating to the review, evaluation and management of drug therapy to a patient, who is being treated by a physician **or nurse practitioner** for a specific disease or associated disease states, in accordance with a written agreement or protocol with a voluntarily participating physician **or nurse practitioner** and in accordance with the policies, procedures, and protocols of the facility. Such agreement or protocol as entered into by the physician **or nurse practitioner** and a pharmacist, may include, and shall be limited to:

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

LBD04907-01-9

(i) adjusting or managing a drug regimen of a patient, pursuant to a patient specific order or protocol made by the patient's physician **or nurse practitioner**, which may include adjusting drug strength, frequency of administration or route of administration. Adjusting the drug regimen shall not include substituting or selecting a different drug which differs from that initially prescribed by the patient's physician **or nurse practitioner** unless such substitution is expressly authorized in the written order or protocol. The pharmacist shall be required to immediately document in the patient record changes made to the patient's drug therapy and shall use any reasonable means or method established by the facility to notify the patient's other treating physicians **or nurse practitioners** with whom he or she does not have a written agreement or protocol regarding such changes. The patient's physician **or nurse practitioner** may prohibit, by written instruction, any adjustment or change in the patient's drug regimen by the pharmacist;

(ii) evaluating and, only if specifically authorized by the protocol and only to the extent necessary to discharge the responsibilities set forth in this section, ordering disease state laboratory tests related to the drug therapy management for the specific disease or disease state specified within the written agreement or protocol; and

(iii) only if specifically authorized by the written agreement or protocol and only to the extent necessary to discharge the responsibilities set forth in this section, ordering or performing routine patient monitoring functions as may be necessary in the drug therapy management, including the collecting and reviewing of patient histories, and ordering or checking patient vital signs, including pulse, temperature, blood pressure and respiration.

d. "Facility" shall mean: (i) a [~~teaching hospital or general~~] hospital, [~~including any diagnostic center, treatment center, or hospital-based outpatient department~~] as defined in **subdivision one of** section twenty-eight hundred one of the public health law; or (ii) a nursing home with an on-site pharmacy staffed by a licensed pharmacist; provided, however, for the purposes of this section the term "facility" shall not include dental clinics, dental dispensaries, residential health care facilities and rehabilitation centers.

[~~For the purposes of this section, a "teaching hospital" shall mean a hospital licensed pursuant to article twenty-eight of the public health law that is eligible to receive direct or indirect graduate medical education payments pursuant to article twenty-eight of the public health law.~~] **In addition, a facility may also include up to fifteen community-practice sites, selected by the department in consultation with the department of health, where pharmacists and physicians or nurse practitioners may propose to enter into collaborative arrangements, pursuant to the provisions of this section. Such sites shall be selected based upon a review of applications submitted to the department by such pharmacists and physicians or nurse practitioners, which demonstrate that the applicants can satisfy the requirements of this section.**

e. "Physician" **or "nurse practitioner"** shall mean the physician **or nurse practitioner** selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient for the disease and associated disease states that are the subject of the collaborative drug therapy management.

f. "Written agreement or protocol" shall mean a written document, pursuant to and consistent with any applicable state or federal requirements, that addresses a specific disease or associated disease states and that describes the nature and scope of collaborative drug therapy

management to be undertaken by the pharmacists, in collaboration with the participating physician **or nurse practitioner** in accordance with the provisions of this section.

2. a. A pharmacist who meets the experience requirements of paragraph b of this subdivision and who is **either** employed by or otherwise affiliated with a facility **or is participating with a community-practice site selected pursuant to paragraph d of subdivision one of this section** shall be permitted to enter into a written agreement or protocol with a physician **or nurse practitioner** authorizing collaborative drug therapy management, subject to the limitations set forth in this section, within the scope of such employment [~~or~~]**,** affiliation **or participation**.

b. A participating pharmacist must:

(i)(A) have been awarded either a master of science in clinical pharmacy or a doctor of pharmacy degree;

(B) maintain a current unrestricted license; and

(C) have a minimum of two years experience, of which at least one year of such experience shall include clinical experience in a health facility, which involves consultation with physicians **or nurse practitioners** with respect to drug therapy and may include a residency at a facility involving such consultation; or

(ii)(A) have been awarded a bachelor of science in pharmacy;

(B) maintain a current unrestricted license; and

(C) within the last seven years, have a minimum of three years experience, of which at least one year of such experience shall include clinical experience in a health facility, which involves consultation with physicians **or nurse practitioners** with respect to drug therapy and may include a residency at a facility involving such consultation; and

(iii) meet any additional education, experience, or other requirements set forth by the department in consultation with the board.

c. Notwithstanding any provision of law, nothing in this section shall prohibit a licensed pharmacist from engaging in clinical services associated with collaborative drug therapy management, in order to gain experience necessary to qualify under clause (C) of subparagraph (i) or (ii) of paragraph b of this subdivision, provided that such practice is under the supervision of a pharmacist that currently meets the referenced requirement, and that such practice is authorized under the written agreement or protocol with the physician **or nurse practitioner**.

d. Notwithstanding any provision of this section, nothing herein shall authorize the pharmacist to diagnose disease. In the event that a treating physician **or nurse practitioner** may disagree with the exercise of professional judgment by a pharmacist, the judgment of the treating physician **or nurse practitioner** shall prevail.

3. The physician **or nurse practitioner** who is a party to a written agreement or protocol authorizing collaborative drug therapy management shall be employed by or otherwise affiliated with the same facility with which the pharmacist is also employed or affiliated.

4. The existence of a written agreement or protocol on collaborative drug therapy management and the patient's right to choose to not participate in collaborative drug therapy management shall be disclosed to any patient who is eligible to receive collaborative drug therapy management. Collaborative drug therapy management shall not be utilized unless the patient or the patient's authorized representative consents, in writing, to such management. If the patient or the patient's authorized representative consents, it shall be noted on the patient's medical record. If the patient or the patient's authorized representative who consented to collaborative drug therapy management chooses to no longer

participate in such management, at any time, it shall be noted on the patient's medical record. In addition, the existence of the written agreement or protocol and the patient's consent to such management shall be disclosed to the patient's primary physician **or nurse practitioner** and any other treating physician **or nurse practitioner** or healthcare provider.

5. Participation in a written agreement or protocol authorizing collaborative drug therapy management shall be voluntary, and no patient, physician **or nurse practitioner**, pharmacist, or facility shall be required to participate.

6. Nothing in this section shall be deemed to limit the scope of practice of pharmacy nor be deemed to limit the authority of pharmacists and physicians **or nurse practitioners** to engage in medication management prior to the effective date of this section and to the extent authorized by law.

§ 2. Section 5 of chapter 21 of the laws of 2011 amending the education law relating to authorizing pharmacists to perform collaborative drug therapy management with physicians in certain settings, as amended by section 5 of part DD of chapter 57 of the laws of 2018, is amended to read as follows:

§ 5. This act shall take effect on the one hundred twentieth day after it shall have become a law[~~, provided, however, that the provisions of sections two, three, and four of this act shall expire and be deemed repealed July 1, 2020~~]; provided, however, that the amendments to subdivision 1 of section 6801 of the education law made by section one of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 8 of chapter 563 of the laws of 2008, when upon such date the provisions of section one-a of this act shall take effect; provided, further, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.

§ 3. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.