

# STATE OF NEW YORK

4375

2021-2022 Regular Sessions

## IN ASSEMBLY

February 4, 2021

Introduced by M. of A. WALCZYK -- 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 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:

1 Section 1. Section 6908 of the education law is amended by adding a  
2 new subdivision 3 to read as follows:

3 3. This article shall not be construed as prohibiting the adminis-  
4 tration of medication by a nursing home medication aide certified pursu-  
5 ant to section twenty-eight hundred three-j of the public health law as  
6 added by chapter seven hundred seventeen of the laws of nineteen hundred  
7 eighty-nine in residential health care facilities, as defined in article  
8 twenty-eight of the public health law, in the county of St. Lawrence, in  
9 accordance with regulations developed by the commissioner, in consulta-  
10 tion with the commissioner of health. At a minimum, such regulations  
11 shall:

12 a. authorize the administration of medications which are routine and  
13 prefilled or otherwise packaged in a manner that promotes relative ease  
14 of administration, provided that administration of medications by  
15 injection shall be prohibited. Provided, however, such prohibition shall  
16 not apply to injections of insulin or other injections for diabetes  
17 care, to injections of low molecular weight heparin, and to pre-filled  
18 auto-injections of epinephrine for emergency purposes, and provided,  
19 further, that entities employing nursing home medication aides pursuant  
20 to this subdivision shall establish a systematic approach to address  
21 drug diversion;

22 b. provide that medication administration by nursing home medication  
23 aides may be performed only under the direct supervision of a registered

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

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1 professional nurse licensed in New York state, as set forth in this  
2 subdivision and subdivision eight of section sixty-nine hundred nine of  
3 this article, where such nurse is employed by a residential health care  
4 facility licensed or certified pursuant to the public health law. Such  
5 nursing supervision shall:

6 (i) include training and periodic assessment of the performance of  
7 medication administration;

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

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

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

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

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

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

39 (ii) prohibiting assignment of medication administration to a nursing  
40 home medication aide if the individual receiving services declines to be  
41 served by a nursing home medication aide;

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

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

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

53 e. provide that only a certified nursing home medication aide may  
54 perform medication administration as a nursing home medication aide when  
55 such aide has:

1 (i) at least one year of experience providing residential health care  
2 services;

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

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

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

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

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

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

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

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

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

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

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

41 § 2. Section 6909 of the education law is amended by adding a new  
42 subdivision 10 to read as follows:

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

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

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

54 (ii) provide to the nursing home medication aide written, individual-  
55 specific instructions for performing the medication administration and

1 criteria for identifying, reporting and responding to problems or  
2 complications.

3 (b) The registered professional nurse shall not assign medication  
4 administration unless:

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

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

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

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

18 (c) The supervising registered professional nurse shall:

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

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

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

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

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

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

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

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

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

53 5. The department shall indicate within the nursing home nurse aide  
54 registry when a nursing home nurse aide has satisfied all applicable  
55 training and recertification requirements and has passed the applicable  
56 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, 2027, 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, 2028.