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:

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

b. provide that medication administration by nursing home medication 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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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 residential health care facility licensed or certified pursuant to the public health law. Such nursing supervision shall:

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

(ii) be determined by the registered professional nurse responsible for supervising such medication administration based upon the complexity of such medication administration, the skill and experience of the nursing home medication aide, and the health status of the individual for whom such medication administration is 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 medication for the purpose of supervising the medication administration provided by nursing home medication aides and include as a requirement that a registered professional nurse shall be available to the nursing home medication aide twenty-four hours a day, seven days a week, provided that a registered professional nurse shall be available to visit an individual receiving medication 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 and case mix complexity 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 medication administration to a nursing home medication aide. Such process shall include, but not be limited to:

(i) allowing assignment of medication administration to a nursing home medication aide only where such nursing home medication aide has demonstrated to the satisfaction of the supervising registered professional nurse competency in medication administration that such nursing home medication aide is authorized to perform, a willingness to perform such medication administration, and the ability to effectively and efficiently communicate with the individual receiving medication and understand such individual's needs;

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

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

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

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

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

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

(ii) completed the requisite training and demonstrated competencies of a nursing home medication 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 has 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 the public health law may perform medication administration pursuant to this subdivision and may hold himself or herself out as a nursing home medication aide;

g. establish minimum standards of training for the performance of medication administration by nursing home medication aides, including didactic training, clinical training, and a supervised clinical practicum with standards set forth by the commissioner of health;

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

i. prohibit a nursing home medication 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 a nursing home medication aide is not required nor permitted to assess the medication or medical needs of an individual;

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

l. provide that a nursing home medication aide shall document all 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 medication administration to nursing home medication aides under this program and shall not be subject to coercion, retaliation, or the threat of retaliation.

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

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

(a) Prior to assigning or modifying an assignment to perform medication administration, 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 nursing home medication aide written, individual-specific instructions for performing the medication administration and

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

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

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

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

(iii) the registered professional nurse determines that the nursing home medication aide is willing to perform such medication administration; and

(iv) the registered professional nurse determines that the nursing home medication 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 medication for the purpose of supervising the medication administration provided by nursing home medication aides; and

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

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

(10) 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 a nursing home medication aide pursuant to subdivision three 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 nursing home medication aides.

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

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

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

12. "Nursing home medication aides" means nursing home aides who are authorized to perform medication administration as delineated in subdivision three 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 nursing home medication aide's authorization to perform medication administration in appropriate cases.

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

5. The department shall indicate within the nursing home nurse aide 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, 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.