

# STATE OF NEW YORK

4584

2021-2022 Regular Sessions

## IN ASSEMBLY

February 4, 2021

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

AN ACT to amend the public health law and the social services law, in relation to the authority of nurse practitioners and physician assistants to prescribe certain services

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

1 Section 1. Subdivisions 4, 5 and 14 of section 3602 of the public  
2 health law, subdivisions 4 and 5 as amended by chapter 376 of the laws  
3 of 2015, subdivision 14 as added by chapter 622 of the laws of 1988, are  
4 amended to read as follows:

5 4. "Home health aide services" means simple health care tasks,  
6 personal hygiene services, housekeeping tasks essential to the patient's  
7 health and other related supportive services. Such services shall be  
8 prescribed by a physician, nurse practitioner, or physician assistant,  
9 acting within the professional's lawful scope of practice under title  
10 eight of the education law, in accordance with a plan of treatment for  
11 the patient and shall be under the supervision of a registered profes-  
12 sional nurse from a certified home health agency or, when appropriate,  
13 from a provider of a long term home health care program and of the  
14 appropriate professional therapist from such agency or provider when the  
15 aide carries out simple procedures as an extension of physical, speech  
16 or occupational therapy. [~~Such services may also be prescribed or~~  
17 ~~ordered by a nurse practitioner to the extent authorized by law and~~  
18 ~~consistent with subdivision three of section six thousand nine hundred~~  
19 ~~two of the education law and not prohibited by federal law or regu-~~  
20 ~~lation.~~]

21 5. "Personal care services" means services to assist with personal  
22 hygiene, dressing, feeding and household tasks essential to the  
23 patient's health. Such services shall be prescribed by a physician,  
24 nurse practitioner, or physician assistant, acting within the profes-

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

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1 sional's lawful scope of practice under title eight of the education  
2 law, in accordance with a plan of home care supervised by a registered  
3 professional nurse. [~~Such services may also be prescribed or ordered by~~  
4 ~~a nurse practitioner to the extent authorized by law and consistent with~~  
5 ~~subdivision three of section six thousand nine hundred two of the educa-~~  
6 ~~tion law and not prohibited by federal law or regulations.~~]

7 14. "AIDS home care program" means a coordinated plan of care and  
8 services provided at home to persons who are medically eligible for  
9 placement in a hospital or residential health care facility and who (a)  
10 are diagnosed [~~by a physician~~] as having acquired immune deficiency  
11 syndrome (AIDS), or (b) are deemed by a physician, [~~within his judg-~~  
12 ~~ment,~~] nurse practitioner, or physician assistant, acting within the  
13 professional's lawful scope of practice under title eight of the educa-  
14 tion law, to be infected with the etiologic agent of acquired immune  
15 deficiency syndrome, and who has an illness, infirmity or disability  
16 which can be reasonably ascertained to be associated with such  
17 infection. Such program shall be provided only by a provider of a long  
18 term home health care program specifically authorized pursuant to this  
19 article to provide an AIDS home care program or by an AIDS center, as  
20 defined in regulations promulgated by the commissioner, specifically  
21 authorized pursuant to this article to provide an AIDS home care  
22 program. Such program shall be provided in the person's home or in the  
23 home of a responsible relative, other responsible adult, adult care  
24 facilities specifically approved to admit or retain residents for such  
25 program, or in other residential settings as approved by the commis-  
26 sioner in conjunction with the commissioner of social services. Such program  
27 shall provide services including, but not be limited to, the full  
28 complement of health, social and environmental services provided by long  
29 term home health care programs in accordance with regulations promulgat-  
30 ed by the commissioner. Such programs shall also provide such other  
31 services as required by the commissioner to assure appropriate care at  
32 home for persons eligible under this section.

33 § 2. Paragraph (d) and subparagraph (i) of paragraph (e) of subdivi-  
34 sion 2 of section 365-a of the social services law, paragraph (d) as  
35 amended by chapter 59 of the laws of 1993, subparagraph (i) of paragraph  
36 (e) as amended by section 2 of part MM of chapter 56 of the laws of  
37 2020, are amended to read as follows:

38 (d) home health services provided in a recipient's home and prescribed  
39 by a physician, nurse practitioner, or physician assistant, acting with-  
40 in the professional's lawful scope of practice under title eight of the  
41 education law, including services of a nurse provided on a part-time or  
42 intermittent basis rendered by an approved home health agency or if no  
43 such agency is available, by a registered nurse, licensed to practice in  
44 this state, acting under the written orders of a physician, nurse prac-  
45 titioner, or physician assistant, acting within the professional's  
46 lawful scope of practice under title eight of the education law, and  
47 home health aide service by an individual or shared aide provided by an  
48 approved home health agency when such services are determined to be cost  
49 effective and appropriate to meet the recipient's needs for assistance  
50 subject to the provisions of [~~section three hundred sixty-seven-j and~~]  
51 section three hundred sixty-seven-o of this title;

52 (i) personal care services, including personal emergency response  
53 services, shared aide and an individual aide, subject to the provisions  
54 of subparagraphs (ii), (iii), (iv), (v) and (vi) of this paragraph,  
55 furnished to an individual who is not an inpatient or resident of a  
56 hospital, nursing facility, intermediate care facility for individuals

1 with intellectual disabilities, or institution for mental disease, as  
2 determined to meet the recipient's needs for assistance when cost effec-  
3 tive and appropriate, and when prescribed by a qualified independent  
4 physician, nurse practitioner, or physician assistant, acting within the  
5 professional's lawful scope of practice under title eight of the educa-  
6 tion law, selected or approved by the department of health, in accord-  
7 ance with the recipient's plan of treatment and provided by individuals  
8 who are qualified to provide such services, who are supervised by a  
9 registered nurse and who are not members of the recipient's family, and  
10 furnished in the recipient's home or other location;

11 § 3. Paragraph (b) of subdivision 1 of section 364-i of the social  
12 services law, as amended by chapter 693 of the laws of 1996, is amended  
13 to read as follows:

14 (b) a physician, nurse practitioner, or physician assistant, acting  
15 within the professional's lawful scope of practice under title eight of  
16 the education law, certifies that such applicant no longer requires  
17 acute hospital care, but still requires medical care which can be  
18 provided by a certified home health agency, long term home health care  
19 program, hospice or residential health care facility;

20 § 4. Subdivisions 2, 3 and 5 of section 367-c of the social services  
21 law, subdivisions 2 and 3 as amended by chapter 636 of the laws of 1980,  
22 subdivision 5 as amended by chapter 165 of the laws of 1991, are amended  
23 to read as follows:

24 2. If a person eligible to receive services under the provisions of  
25 this title who requires care, treatment, maintenance, nursing or other  
26 services in a nursing home desires to remain and is deemed by [~~his~~] the  
27 person's physician, nurse practitioner, or physician assistant, acting  
28 within the professional's lawful scope of practice under title eight of  
29 the education law, able to remain in [~~his~~] the person's own home or the  
30 home of a responsible relative or other responsible adult if the neces-  
31 sary services are provided, such person or [~~his~~] the person's represen-  
32 tative shall so inform the local social services official. If a long  
33 term home health care program as defined under article thirty-six of the  
34 public health law is provided in the social services district for which  
35 [~~he~~] the official has authority, such official shall authorize an  
36 assessment under the provisions of section thirty-six hundred sixteen of  
37 the public health law. If the results of the assessment indicate that  
38 the person can receive the appropriate level of care at home, the offi-  
39 cial shall prepare for that person a plan for the provision of services  
40 comparable to those that would be rendered in a nursing home. In devel-  
41 oping such plan, the official shall consult with those persons perform-  
42 ing the assessment. The services shall be provided by a certified home  
43 health agency, hospital, or residential health care facility authorized  
44 by the commissioner of health under article thirty-six of the public  
45 health law to provide a long term home health care program. At the time  
46 of the initial assessment, and at the time of each subsequent assessment  
47 performed under the provisions of section thirty-six hundred sixteen of  
48 the public health law, or more often if the person's needs require, the  
49 official shall establish a monthly budget in accordance with which [~~he~~] the official  
50 shall authorize payment for the services provided under  
51 such plan. Total monthly expenditures made under this title for such  
52 person shall not exceed a maximum of seventy-five per cent, or such  
53 lesser percentage as may be determined by the commissioner, of the aver-  
54 age of the monthly rates payable under this title for nursing home  
55 services within the social services district for which the official has  
56 authority. However, if a continuing assessment of the person's needs

1 demonstrates that [~~he~~] the person requires increased services, the  
2 social services official may authorize the expenditure of any amount  
3 accrued under this section during the past twelve months as a result of  
4 the expenditures for that person not exceeding such maximum. If an  
5 assessment of the person's needs demonstrates that [~~he~~] the person  
6 requires services the payment for which would exceed such monthly maxi-  
7 mum, but it can be reasonably anticipated that total expenditures for  
8 required services for such person will not exceed such maximum calcu-  
9 lated over a one year period, the social services official may authorize  
10 payment for such services.

11 3. If a person eligible to receive services under the provisions of  
12 this title who requires health related care and services in an interme-  
13 diate care facility desires to remain and is deemed by [~~his~~] the  
14 person's physician, nurse practitioner, or physician assistant, acting  
15 within the professional's lawful scope of practice under title eight of  
16 the education law, able to remain in [~~his~~] the person's own home or the  
17 home of a responsible relative or other responsible adult if the neces-  
18 sary services are provided, such person or [~~his~~] the person's represen-  
19 tative shall so inform the local social services official. If a long  
20 term home health care program as defined under article thirty-six of the  
21 public health law is provided in the social services district for which  
22 [~~he~~] the official has authority, such official shall authorize an  
23 assessment under the provisions of section thirty-six hundred sixteen of  
24 the public health law. If the results of the assessment indicate that  
25 the person can receive the appropriate level of care at home, the offi-  
26 cial shall prepare for that person a plan for the provision of services  
27 comparable to those that would be rendered in an intermediate care  
28 facility. In developing such plan, the official shall consult with those  
29 persons performing the assessment. The services shall be provided by a  
30 certified home health agency, hospital, or residential health care  
31 facility authorized by the commissioner of health under article thirty-  
32 six of the public health law to provide a long term home health care  
33 program. At the time of the initial assessment and at the time of each  
34 subsequent assessment performed under the provisions of section thirty-  
35 six hundred sixteen of the public health law, or more often if the  
36 person's needs require, the official shall establish a monthly budget in  
37 accordance with which [~~he~~] the official shall authorize payment for the  
38 services provided under that plan. Total monthly expenditures made under  
39 this title for such person shall not exceed a maximum of seventy-five  
40 per cent, or such lesser percentage as may be determined by the commis-  
41 sioner, of the average of the monthly rates paid under this title for  
42 the provision of health related care and services in intermediate care  
43 facilities within the social services district for which the official  
44 has authority. However, if a continuing assessment of the person's needs  
45 demonstrates that [~~he~~] the person requires increased services, the  
46 social services official may authorize the expenditure of any amount  
47 accrued under this section during the past twelve months as a result of  
48 the expenditures for that person not exceeding such maximum. If an  
49 assessment of the person's needs demonstrates that [~~he~~] the person  
50 requires services the payment for which would exceed such monthly maxi-  
51 mum, but it can be reasonably anticipated that total expenditures for  
52 required services for such person will not exceed such maximum calcu-  
53 lated over a one year period, the social services official may authorize  
54 payment for such services.

55 5. If a person eligible to receive services under the provisions of  
56 this title who is medically eligible for care, treatment, maintenance,

1 nursing or other services in a nursing home or is medically eligible for  
2 health related care and services in an intermediate care facility  
3 desires to and is deemed by [~~his or her~~] the person's physician, nurse  
4 practitioner, or physician assistant, acting within the professional's  
5 lawful scope of practice under title eight of the education law, able to  
6 remain in an adult care facility, other than a shelter for adults, which  
7 is able and willing to retain such person if the necessary services are  
8 provided, such person or [~~his or her~~] the person's representatives shall  
9 so inform the local social services official. If a long term home health  
10 care program is provided in a social services district, an official of  
11 such district shall authorize an assessment under the provisions of  
12 section three thousand six hundred sixteen of the public health law. If  
13 the results of the assessment indicate that the person can receive the  
14 appropriate level of care at such location, and meets the appropriate  
15 standards for continued stay for such facility as are established by law  
16 and regulation, such official shall prepare for that person a plan for  
17 the provision of services. In developing such plan, the official shall  
18 consult with those persons performing the assessment and with the opera-  
19 tor of the adult care facility. The services shall be provided by a long  
20 term home health care program authorized pursuant to article thirty-six  
21 of the public health law, provided, however that notwithstanding the  
22 provisions of section three thousand six hundred sixteen of such law,  
23 services shall not be provided prior to the completion of the assess-  
24 ment. At the time of the initial assessment and at the time of each  
25 subsequent assessment performed under the provisions of section three  
26 thousand six hundred sixteen of the public health law, or more often if  
27 the person's needs require, the official shall establish a monthly budg-  
28 et in accordance with which [~~he~~] the official shall authorize payment  
29 for the services provided under that plan, provided, however that no  
30 services shall be authorized in the plan which the operator of the  
31 facility is required by law and regulation to provide. The long term  
32 home health care program providing services authorized in such plan  
33 shall be solely responsible for managing and providing or arranging for  
34 such authorized services. The operator of the adult care facility shall  
35 be solely responsible for managing and providing those services which  
36 the facility is required by law or regulation to provide. However, the  
37 two entities shall collaborate to assure coordination. Total monthly  
38 expenditures made under this title for such person shall not exceed a  
39 maximum of fifty percent, or such lesser percentage as may be determined  
40 by the commissioner, of the average of the monthly rates paid under this  
41 title for the provision of nursing home services or health related care  
42 and services in intermediate care facilities, whichever is appropriate,  
43 within the social services district for which the official has authori-  
44 ty. However, if a continuing assessment of the person's needs demon-  
45 strates that he or she requires increased services, the social services  
46 official may authorize the expenditure of any amount accrued under this  
47 section during the past twelve months as a result of the expenditures  
48 for that person not exceeding such maximum. If an assessment of the  
49 person's needs demonstrates that [~~he or she~~] the person requires  
50 services the payment for which would exceed such monthly maximum, but it  
51 can be reasonably anticipated that total expenditures for required  
52 services for such person will not exceed such maximum calculated over a  
53 one year period, the social services official may authorize payment for  
54 such services. The provisions of this subdivision shall not be deemed to  
55 alter standards for admission to an adult care facility nor shall the

1 admission of a person into such facility be contingent on such person's  
2 enrollment in a long term home health care program.

3 § 5. This act shall take effect on the sixtieth day after it shall  
4 have become a law, provided that the commissioner of health may make  
5 regulations pertaining thereto on or before such effective date.