

STATE OF NEW YORK

7704--A

2023-2024 Regular Sessions

IN ASSEMBLY

June 6, 2023

Introduced by M. of A. McMAHON -- 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, in relation to expanding the description of certain services which are not prohibited by statutes governing the practice of nursing

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

1 Section 1. Subparagraph (v) of paragraph (a) of subdivision 1 of
2 section 6908 of the education law is renumbered subparagraph (vi) and a
3 new subparagraph (v) is added to read as follows:

4 (v) tasks provided by a direct support staff in non-facility based
5 programs certified or approved by the office for people with develop-
6 mental disabilities, when performed under the instruction of a service
7 recipient, family, or household member and pursuant to a memorandum of
8 understanding between the office for people with developmental disabili-
9 ties and the department, in accordance with and pursuant to an author-
10 ized practitioner's ordered care, provided that:

11 (1) a registered professional nurse determines, in their professional
12 judgment, which tasks are to be performed based upon:

13 (A) the complexity of the tasks;

14 (B) the skill and experience of the direct support staff;

15 (C) the health status and specific care needs of the service recipi-
16 ent; and

17 (D) the service recipient, family, or household member is able to
18 effectively and efficiently communicate with the direct support staff
19 providing tasks;

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

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1 (2) only a direct support staff that has completed training as
2 required by the commissioner of the office for people with developmental
3 disabilities may perform tasks pursuant to this subparagraph;

4 (3) only a service recipient, family, or household member who has
5 completed training as required by the commissioner of the office for
6 people with developmental disabilities may instruct a direct support
7 staff pursuant to this subparagraph, provided that such course may be
8 satisfactorily completed through distance learning methods which evince
9 that all participants are in attendance for the duration of the course
10 and are able to ask questions of the instructor;

11 (4) appropriate protocols shall be established to ensure safe adminis-
12 tration of medications;

13 (5) a direct support staff shall not assess the medication needs of an
14 individual;

15 (6) a direct support staff shall not be authorized to perform any
16 tasks or activities pursuant to this subparagraph that are outside the
17 scope of practice of a licensed practical nurse;

18 (7) a direct support staff shall not represent themselves, or accept
19 employment, as a person licensed to practice nursing under the
20 provisions of this article;

21 (8) a direct support staff providing medication administration, tube
22 feeding, or diabetic care shall be separately certified, and shall be
23 recertified on an annual basis;

24 (9) the registered professional nurse shall ensure that there is a
25 consumer specific medication sheet for each medication that is adminis-
26 tered;

27 (10) in the event that a registered professional nurse determines that
28 the service recipient, family, or household member is not capable of
29 providing such instruction, a direct support staff shall not provide
30 tasks pursuant to this subparagraph. In the event of any disagreement
31 between a registered professional nurse and a service recipient, family,
32 or household member regarding such capability, then the registered
33 professional nurse's determination shall prevail;

34 (11) a direct support staff shall not provide any tasks unless a
35 registered professional nurse has determined that such task may be
36 performed;

37 (12) adequate nursing supervision is provided, including training and
38 periodic inspection of performance of the tasks, provided however, that
39 the supervising registered professional nurse shall visit individuals
40 receiving services no less than once every two weeks and shall be avail-
41 able by telephone to the direct support staff twenty-four hours a day,
42 seven days a week, provided further, that a registered professional
43 nurse shall be available to visit the service recipient as necessary to
44 protect the health and safety of such recipient;

45 (13) no direct support staff shall perform tasks under this subpara-
46 graph until the office for people with developmental disabilities and
47 the department have entered into a memorandum of understanding to effec-
48 tuate the provisions of this subparagraph. The office for people with
49 developmental disabilities shall complete a criminal background check
50 pursuant to section 16.33 of the mental hygiene law and an agency back-
51 ground check pursuant to section 16.34 of the mental hygiene law on the
52 direct support staff prior to the commencement of any provision of
53 service provided under this subparagraph if such direct support staff is
54 a new hire. Licensed registered professional nurses and individuals
55 providing direct support tasks pursuant to this subparagraph shall have

1 protection pursuant to sections seven hundred forty and seven hundred
2 forty-one of the labor law, where applicable; or
3 § 2. This act shall take effect eighteen months after it shall have
4 become a law, and shall expire and be deemed repealed July 1, 2029.
5 Effective immediately, the addition, amendment and/or repeal of any rule
6 or regulation necessary for the implementation of this act on its effec-
7 tive date are authorized to be made and completed on or before such
8 effective date.