

STATE OF NEW YORK

7187

2023-2024 Regular Sessions

IN ASSEMBLY

May 12, 2023

Introduced by M. of A. EPSTEIN -- 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~~]
50 the official 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. Effective immediately, the addition, amendment and/or
5 repeal of any rule or regulation necessary for the implementation of
6 this act on its effective date are authorized to be made and completed
7 on or before such effective date.