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:

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

(v) tasks provided by a direct support staff in non-facility based programs certified or approved by the office for people with developmental disabilities, when performed under the instruction of a service recipient, family, or household member and pursuant to a memorandum of understanding between the office for people with developmental disabilities and the department, in accordance with and pursuant to an authorized practitioner's ordered care, provided that:

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

(A) the complexity of the tasks;

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

(C) the health status and specific care needs of the service recipient; and

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

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

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

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

(4) appropriate protocols shall be established to ensure safe administration of medications;

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

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

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

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

(9) the registered professional nurse shall ensure that there is a consumer specific medication sheet for each medication that is administered;

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

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

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

(13) no direct support staff shall perform tasks under this subparagraph until the office for people with developmental disabilities and the department have entered into a memorandum of understanding to effectuate the provisions of this subparagraph. The office for people with developmental disabilities shall complete a criminal background check pursuant to section 16.33 of the mental hygiene law and an agency background check pursuant to section 16.34 of the mental hygiene law on the direct support staff prior to the commencement of any provision of service provided under this subparagraph if such direct support staff is a new hire. Licensed registered professional nurses and individuals providing direct support tasks pursuant to this subparagraph shall have

protection pursuant to sections seven hundred forty and seven hundred forty-one of the labor law, where applicable; or

§ 2. This act shall take effect eighteen months after it shall have become a law, and shall expire and be deemed repealed July 1, 2029. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.