§ 6908. Exempt persons. 1. This article shall not be construed:

a. As prohibiting (i) the domestic care of the sick, disabled or injured by any family member, household member or friend, or person employed primarily in a domestic capacity who does not hold himself or herself out, or accept employment as a person licensed to practice nursing under the provision of this article; provided that if such person is remunerated, the person does not hold himself or herself out as one who accepts employment for performing such care; or the administration of medications or treatment by child day care providers or employees or caregivers of child day care programs where such providers, employees or caregivers are acting under the direction and authority of a parent of a child, legal guardian, legal custodian, or an adult in whose care a child has been entrusted and who has been authorized by the parent to consent to any health care for the child and in compliance with the regulations of the office of children and family services pertaining to the administration of medications and treatment; or

(ii) any person from the domestic administration of family remedies; or

(iii) the providing of care by a person acting in the place of a person exempt under clause (i) of this paragraph, but who does hold himself or herself out as one who accepts employment for performing such care, where nursing services are under the instruction of a licensed nurse, or under the instruction of a patient or family or household member determined by a registered professional nurse to be self-directing and capable of providing such instruction, and services are provided under section three hundred sixty-five-f of the social services law; or

(iv) the furnishing of nursing assistance in case of an emergency; or

(v) tasks provided by a direct support staff in programs certified or approved by the office for people with developmental disabilities, when performed under the supervision of a registered professional nurse 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 his or her

professional judgment, which tasks are to be performed based upon the complexity of the tasks, the skill and experience of the direct support staff, and the health status of the individual being cared for; (2) only a direct support staff who has completed training as required by the commissioner of the office for people with developmental disabilities may perform tasks pursuant to this subparagraph; (3) appropriate protocols shall be established to ensure safe administration of medications; (4) a direct support staff shall not assess the medication needs of an individual; (5) adequate nursing supervision is provided, including training and periodic inspection of performance of the tasks. The amount and type of nursing supervision shall be determined by the registered professional nurse responsible for supervising such task based upon the complexity of the tasks, the skill and experience of the direct support staff, and the health status of the individual being cared for; (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 himself or herself, or accept employment, as a person licensed to practice nursing under the provisions of this article; (8) 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; and (10) appropriate staffing ratios shall be determined by the office for people with developmental disabilities and the department to ensure adequate nursing supervision. 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. Individuals providing supervision or 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;

b. As including services given by attendants in institutions under the jurisdiction of or subject to the visitation of the state department of mental hygiene if adequate medical and nursing supervision is provided;

c. As prohibiting such performance of nursing service by students enrolled in registered schools or programs as may be incidental to their course of study;

d. As prohibiting or preventing the practice of nursing in this state by any legally qualified nurse or practical nurse of another state, province, or country whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of such engagement provided such person does not represent or hold himself or herself out as a nurse or practical nurse registered to practice in this state;

e. As prohibiting or preventing the practice of nursing in this state during an emergency or disaster by any legally qualified nurse or practical nurse of another state, province, or country who may be recruited by the American National Red Cross or pursuant to authority vested in the state civil defense commission for such emergency or disaster service, provided such person does not represent or hold himself or herself out as a nurse or practical nurse registered to practice in this state;

f. As prohibiting or preventing the practice of nursing in this state, in obedience to the requirements of the laws of the United States, by any commissioned nurse officer in the armed forces of the United States or by any nurse employed in the United States veterans administration or United States public health service while engaged in the performance of the actual duties prescribed for him or her under the United States statutes, provided such person does not represent or hold himself or herself out as a nurse registered to practice in this state; or

g. As prohibiting the care of the sick when done in connection with the practice of the religious tenets of any church.

h. As prohibiting the provision of psychotherapy as defined in subdivision two of section eighty-four hundred one of this title to the extent permissible within the scope of practice of nursing as defined in this title, by any not-for-profit corporation or education corporation providing services within the state and operating under a waiver pursuant to section sixty-five hundred three-a of this title, provided that such entities offering such psychotherapy services shall only provide such services through an individual appropriately licensed or otherwise authorized to provide such services or a professional entity authorized by law to provide such services.

* 2. This article shall not be construed as prohibiting advanced tasks provided by an advanced home health aide in accordance with regulations developed by the commissioner, in consultation with the commissioner of health. At a minimum, such regulations shall:

a. specify the advanced tasks that may be performed by advanced home health aides pursuant to this subdivision. Such tasks shall include 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, sterile procedures, and central line maintenance 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 naloxone and epinephrine for emergency purposes, and provided, further, that entities employing advanced home health aides pursuant to this subdivision shall establish a systematic approach to address drug diversion;

b. provide that advanced tasks performed by advanced home health aides may be performed only under the direct supervision of a registered 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 home care services agency licensed or certified pursuant to article thirty-six of the public health law, a hospice program certified pursuant to article forty of the public health law, or an enhanced assisted living residence licensed pursuant to article seven of the social services law and certified pursuant to article forty-six-B of the public health law. Such nursing supervision shall:

(i) include training and periodic assessment of the performance of advanced tasks;

(ii) be determined by the registered professional nurse responsible for supervising such advanced tasks based upon the complexity of such advanced tasks, the skill and experience of the advanced home health aide, and the health status of the individual for whom such advanced tasks are 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 services for the purpose of supervising the services provided by advanced home health aides no less than once every two weeks and include as a requirement that a registered professional nurse shall be available by telephone to the advanced home health aide twenty-four hours a day, seven days a week, provided that a registered professional nurse shall be available to visit an individual receiving services 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, case mix complexity and geographic considerations 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 advanced tasks to an advanced home health aide. Such process shall include, but not be limited to:

(i) allowing assignment of advanced tasks to an advanced home health aide only where such advanced home health aide has demonstrated to the satisfaction of the supervising registered professional nurse competency

in every advanced task that such advanced home health aide is authorized to perform, a willingness to perform such advanced tasks, and the ability to effectively and efficiently communicate with the individual receiving services and understand such individual's needs;

(ii) prohibiting assignment of advanced tasks to an advanced home health aide if the individual receiving services declines to be served by an advanced home health aide;

(iii) authorizing the supervising registered professional nurse to revoke any assigned advanced task from an advanced home health aide for any reason; and

(iv) authorizing multiple registered professional nurses to jointly agree to assign advanced tasks to an advanced home health aide, provided further that only one registered professional nurse shall be required to determine if the advanced home health aide has demonstrated competency in the advanced task to be performed;

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

e. provide that only a certified home health aide may perform advanced tasks as an advanced home health aide when such aide has:

(i) at least one year of experience providing either home health or personal care services, or a combination of the same;

(ii) completed the requisite training and demonstrated competencies of an advanced home health 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 is listed in the home care services registry maintained by the department of health pursuant to section thirty-six hundred thirteen of the public health law as having 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 subdivision seventeen of section thirty-six hundred two of the public health law may perform advanced tasks pursuant to this subdivision and may hold himself or herself out as an advanced home health aide;

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

h. provide that advanced home health aides shall receive case-specific training on the advanced tasks to be assigned by the supervising nurse, provided that additional training shall take place whenever additional advanced tasks are assigned;

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

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

l. provide that an advanced home health aide shall document all advanced tasks provided to an individual, including 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 advanced tasks to advanced home health aides under this program and shall not be subject to coercion, retaliation, or the threat of retaliation; in developing such regulations, the commissioner shall take into account the

recommendations of a workgroup of stakeholders convened by the commissioner of health in consultation with the commissioner for the purpose of providing guidance on the foregoing.

* NB Repealed March 31, 2029