

PROGRAM BILL #28

Legislative Bill Drafting Commission
12075-01-6

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

EDUCLA
(Relates to authorizing certain
advanced home health aides to
perform certain advanced tasks)

Ed L. advanced home health aides

AN ACT

to amend the education law and the
public health law, in relation to
authorizing certain advanced home
health aides to perform certain
advanced tasks; and providing for
the repeal of such provisions upon
expiration thereof

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

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal:

| | | | | |
|-----------------|--------------------------|----------------|-----------------|-------------------------|
| s15 Addabbo | s31 Espaillat | s27 Hoylman | s25 Montgomery | s56 Robach |
| s52 Akshar | s49 Farley | s09 Kaminsky | s40 Murphy | s10 Sanders |
| s46 Amedore | s17 Felder | s63 Kennedy | s54 Nozzolio | s23 Savino |
| s11 Avella | s02 Flanagan | s34 Klein | s58 O'Mara | s41 Serino |
| s42 Bonacic | s55 Funke | s28 Krueger | s62 Ortt | s29 Serrano |
| s04 Boyle | s59 Gallivan | s24 Lanza | s60 Panepinto | s51 Seward |
| s44 Breslin | s12 Gianaris | s39 Larkin | s21 Parker | s26 Squadron |
| s38 Carlucci | s22 Golden | s37 Latimer | s13 Peralta | s16 Stavisky |
| s14 Comrie | s47 Griffo | s01 LaValle | s30 Perkins | s35 Stewart- Cousins |
| s03 Croci | s20 Hamilton | s45 Little | s19 Persaud | s53 Valesky |
| s50 DeFrancisco | s06 Hannon | s05 Marcellino | s61 Ranzenhofer | s08 Venditto |
| s32 Diaz | s36 Hassell- Thompson | s43 Marchione | s48 Ritchie | s57 Young |
| s18 Dilan | | s07 Martins | s33 Rivera | |

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

| | | | | |
|------------------|------------------|------------------|-------------------------|-----------------|
| a049 Abbate | a034 DenDekker | a011 Jean-Pierre | a003 Murray | a076 Seawright |
| a092 Abinanti | a054 Dilan | a135 Johns | a133 Nojay | a087 Sepulveda |
| a084 Arroyo | a081 Dinowitz | a077 Joyner | a037 Nolan | a027 Simanowitz |
| a035 Aubry | a147 DiPietro | a094 Katz | a130 Oaks | a052 Simon |
| a120 Barclay | a115 Duprey | a074 Kavanagh | a069 O'Donnell | a036 Simotas |
| a106 Barrett | a004 Englebright | a142 Kearns | a051 Ortiz | a104 Skartados |
| a060 Barron | a109 Fahy | a040 Kim | a091 Otis | a099 Skoufis |
| a082 Benedetto | a071 Farrell | a131 Kolb | a132 Palmesano | a022 Solages |
| a042 Bichotte | a126 Finch | a105 Lator | a002 Palumbo | a114 Stec |
| a079 Blake | a008 Fitzpatrick | a013 Lavine | a088 Paulin | a110 Steck |
| a117 Blankenbush | a124 Friend | a134 Lawrence | a141 Peoples- Stokes | a127 Stirpe |
| a098 Brabenec | a095 Galef | a050 Lentol | a058 Perry | a112 Tedisco |
| a026 Braunstein | a137 Gantt | a125 Linares | a086 Pichardo | a001 Thiele |
| a044 Brennan | a007 Garbarino | a072 Linares | a089 Pretlow | a061 Titone |
| a119 Brindisi | a148 Giglio | a102 Lopez | a073 Quart | a031 Titus |
| a138 Bronson | a080 Gjonaj | a123 Lupardo | a019 Ra | a055 Walker |
| a093 Buchwald | a066 Glick | a010 Lupinacci | a012 Raia | a146 Walter |
| a118 Butler | a023 Goldfeder | a121 Magee | a006 Ramos | a041 Weinstein |
| a103 Cahill | a150 Goodell | a129 Magnarelli | a043 Richardson | a024 Weprin |
| a065 Cancel | a075 Gottfried | a064 Malliotakis | a078 Rivera | a059 Williams |
| a062 Castorina | a005 Graf | a030 Markey | a056 Robinson | a113 Woerner |
| a145 Ceretto | a100 Gunther | a090 Mayer | a068 Rodriguez | a143 Wozniak |
| a047 Colton | a046 Harris | a108 McDonald | a067 Rosenthal | a070 Wright |
| a032 Cook | a139 Hawley | a014 McDonough | a025 Rozic | a096 Zebrowski |
| a144 Corwin | a083 Heastie | a017 McKevitt | a116 Russell | a020 |
| a085 Crespo | a028 Hevesi | a107 McLaughlin | a149 Ryan | a033 |
| a122 Crouch | a048 Hikind | a038 Miller | a009 Saladino | |
| a021 Curran | a018 Hooper | a015 Montesano | a111 Santabarbara | |
| a063 Cusick | a128 Hunter | a136 Morelle | a016 Schimel | |
| a045 Cymbrowitz | a029 Hyndman | a057 Mosley | a140 Schimminger | |
| a053 Davila | a097 Jaffee | a039 Moya | | |

1) Single House Bill (introduced and printed separately in either or
both houses). Uni-Bill (introduced simultaneously in both houses and printed
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2
signed copies of bill and 4 copies of memorandum in support (single house);
or 4 signed copies of bill and 8 copies of memorandum
in support (uni-bill).

1 Section 1. Section 6908 of the education law is amended by adding a
2 new subdivision 2 to read as follows:

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

7 a. specify the advanced tasks that may be performed by advanced home
8 health aides pursuant to this subdivision. Such tasks shall include the
9 administration of medications which are routine and prefilled or other-
10 wise packaged in a manner that promotes relative ease of administration,
11 provided that administration of medications by injection, sterile proce-
12 dures, and central line maintenance shall be prohibited. Provided,
13 however, such prohibition shall not apply to injections of insulin or
14 other injections for diabetes care, to injections of low molecular
15 weight heparin, and to pre-filled auto-injections of naloxone and
16 epinephrine for emergency purposes, and provided, further, that entities
17 employing advanced home health aides pursuant to this subdivision shall
18 establish a systematic approach to address drug diversion;

19 b. provide that advanced tasks performed by advanced home health aides
20 may be performed only under the direct supervision of a registered
21 professional nurse licensed in New York state, as set forth in this
22 subdivision and subdivision eight of section sixty-nine hundred nine of
23 this article, where such nurse is employed by a home care services agen-
24 cy licensed or certified pursuant to article thirty-six of the public
25 health law, a hospice program certified pursuant to article forty of the
26 public health law, or an enhanced assisted living residence licensed
27 pursuant to article seven of the social services law and certified

1 pursuant to article forty-six-B of the public health law. Such nursing
2 supervision shall:

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

5 (ii) be determined by the registered professional nurse responsible
6 for supervising such advanced tasks based upon the complexity of such
7 advanced tasks, the skill and experience of the advanced home health
8 aide, and the health status of the individual for whom such advanced
9 tasks are being performed;

10 (iii) include a comprehensive initial and thereafter regular and ongo-
11 ing assessment of the individual's needs;

12 (iv) include as a requirement that the supervising registered profes-
13 sional nurse shall visit individuals receiving services for the purpose
14 of supervising the services provided by advanced home health aides no
15 less than once every two weeks and include as a requirement that a
16 registered professional nurse shall be available by telephone to the
17 advanced home health aide twenty-four hours a day, seven days a week,
18 provided that a registered professional nurse shall be available to
19 visit an individual receiving services as necessary to protect the
20 health and safety of such individual; and

21 (v) as shall be specified by the commissioner, be provided in a manner
22 that takes into account individual care needs, case mix complexity and
23 geographic considerations and provide that the number of individuals
24 served by a supervising registered professional nurse is reasonable and
25 prudent.

26 c. establish a process by which a registered professional nurse may
27 assign advanced tasks to an advanced home health aide. Such process
28 shall include, but not be limited to:

1 (i) allowing assignment of advanced tasks to an advanced home health
2 aide only where such advanced home health aide has demonstrated to the
3 satisfaction of the supervising registered professional nurse competency
4 in every advanced task that such advanced home health aide is authorized
5 to perform, a willingness to perform such advanced tasks, and the abili-
6 ty to effectively and efficiently communicate with the individual
7 receiving services and understand such individual's needs;

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

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

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

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

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

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

25 (ii) completed the requisite training and demonstrated competencies of
26 an advanced home health aide as determined by the commissioner in
27 consultation with the commissioner of health;

1 (iii) successfully completed competency examinations satisfactory to
2 the commissioner in consultation with the commissioner of health; and
3 (iv) meets other appropriate qualifications as determined by the
4 commissioner in consultation with the commissioner of health;
5 f. provide that only an individual who is listed in the home care
6 services registry maintained by the department of health pursuant to
7 section thirty-six hundred thirteen of the public health law as having
8 satisfied all applicable training requirements and having passed the
9 applicable competency examinations and who meets other requirements as
10 set forth in regulations issued by the commissioner of health pursuant
11 to subdivision seventeen of section thirty-six hundred two of the public
12 health law may perform advanced tasks pursuant to this subdivision and
13 may hold himself or herself out as an advanced home health aide;
14 g. establish minimum standards of training for the performance of
15 advanced tasks by advanced home health aides, including didactic train-
16 ing, clinical training, and a supervised clinical practicum with stand-
17 ards set forth by the commissioner of health;
18 h. provide that advanced home health aides shall receive case-specific
19 training on the advanced tasks to be assigned by the supervising nurse,
20 provided that additional training shall take place whenever additional
21 advanced tasks are assigned;
22 i. prohibit an advanced home health aide from holding himself or
23 herself out, or accepting employment as, a person licensed to practice
24 nursing under the provisions of this article;
25 j. provide that an advanced home health aide is not required nor
26 permitted to assess the medication or medical needs of an individual;
27 k. provide that an advanced home health aide shall not be authorized
28 to perform any advanced tasks or activities pursuant to this subdivision

1 that are outside the scope of practice of a licensed practical nurse or
2 any advanced tasks that have not been appropriately assigned by the
3 supervising registered professional nurse;

4 l. provide that an advanced home health aide shall document all
5 advanced tasks provided to an individual, including medication adminis-
6 tration to each individual through the use of a medication adminis-
7 tration record; and

8 m. provide that the supervising registered professional nurse shall
9 retain the discretion to decide whether to assign advanced tasks to
10 advanced home health aides under this program and shall not be subject
11 to coercion, retaliation, or the threat of retaliation; in developing
12 such regulations, the commissioner shall take into account the recommen-
13 dations of a workgroup of stakeholders convened by the commissioner of
14 health in consultation with the commissioner for the purpose of provid-
15 ing guidance on the foregoing.

16 § 2. Section 6909 of the education law is amended by adding a new
17 subdivision 8 to read as follows:

18 8. A registered professional nurse, while working for a home care
19 services agency licensed or certified pursuant to article thirty-six of
20 the public health law, a hospice program certified pursuant to article
21 forty of the public health law, or an enhanced assisted living residence
22 licensed pursuant to article seven of the social services law and certi-
23 fied pursuant to article forty-six-B of the public health law may, in
24 accordance with this subdivision, assign advanced home health aides to
25 perform advanced tasks for individuals pursuant to the provisions of
26 subdivision two of section sixty-nine hundred eight of this article and
27 supervise advanced home health aides who perform assigned advanced
28 tasks.

1 (a) Prior to assigning or modifying an assignment to perform an
2 advanced task, the registered professional nurse shall:

3 (i) complete a nursing assessment to ascertain the client's current
4 health status and care needs; and

5 (ii) provide to the advanced home health aide written, individual-spe-
6 cific instructions for performing the advanced task and criteria for
7 identifying, reporting and responding to problems or complications.

8 (b) The registered professional nurse shall not assign an advanced
9 task unless:

10 (i) the advanced task to be assigned is consistent with an authorized
11 health practitioner's ordered care;

12 (ii) the registered professional nurse provides case specific training
13 to the advanced home health aide and personally verifies that the
14 advanced home health aide can safely and competently perform the
15 advanced task;

16 (iii) the registered professional nurse determines that the advanced
17 home health aide is willing to perform such advanced task; and

18 (iv) the registered professional nurse determines that the advanced
19 home health aide is able to effectively and efficiently communicate with
20 the individual receiving services and understand such individual's
21 needs.

22 (c) The supervising registered professional nurse shall:

23 (i) visit individuals receiving services for the purpose of supervis-
24 ing the services provided by advanced home health aides no less than
25 once every two weeks; and

26 (ii) conduct regular and ongoing assessment of the individual's needs.

27 § 3. Section 6906 of the education law is amended by adding a new
28 subdivision 9 to read as follows:

1 (9) In conjunction with and as a condition of each triennial registra-
2 tion, the department shall ask and a licensed practical nurse shall
3 indicate whether the licensed practical nurse is or has previously been
4 authorized as an advanced home health aide pursuant to subdivision two
5 of section sixty-nine hundred eight of this article. The department
6 shall provide responses to the department of health and the department
7 of health shall include such information in reports related to advanced
8 home health aides.

9 § 4. Section 206 of the public health law is amended by adding a new
10 subdivision 30 to read as follows:

11 30. The commissioner shall notify the commissioner of education in any
12 instance in which a registered professional nurse engages in improper
13 behavior while supervising an advanced home health aide pursuant to
14 subdivision two of section sixty-nine hundred eight of the education
15 law.

16 § 5. Section 3602 of the public health law is amended by adding a new
17 subdivision 17 to read as follows:

18 17. "Advanced home health aides" means home health aides who are
19 authorized to perform advanced tasks as delineated in subdivision two of
20 section sixty-nine hundred eight of the education law and regulations
21 issued by the commissioner of education relating thereto. The commis-
22 sioner shall promulgate regulations regarding such aides, which shall
23 include a process for the limitation or revocation of the advanced home
24 health aide's authorization to perform advanced tasks in appropriate
25 cases.

26 § 6. Paragraph (a) of subdivision 1 of section 3613 of the public
27 health law, as added by chapter 594 of the laws of 2008, is amended to
28 read as follows:

1 (a) "Home care services entity" means a home care services agency or
2 other entity providing home care services subject to this article or
3 exempt under section thirty-six hundred nineteen of this article, a
4 hospice program certified pursuant to article forty of this chapter
5 providing routine care at home under the hospice benefit, or an enhanced
6 assisted living residence licensed under article seven of the social
7 services law and certified under article forty-six-B of this chapter
8 providing enhanced assisted living services.

9 § 7. Subdivision 9 of section 3613 of the public health law is renun-
10 bered subdivision 10 and a new subdivision 9 is added to read as
11 follows:

12 9. The department shall indicate within the home care services worker
13 registry when a home health aide has satisfied all applicable training
14 and recertification requirements and has passed the applicable competen-
15 cy examinations necessary to perform advanced tasks pursuant to subdivi-
16 sion two of section sixty-nine hundred eight of the education law and
17 regulations issued thereto. Any limitation or revocation of the advanced
18 home health aide's authorization also shall be indicated on the regis-
19 try.

20 § 8. Subdivision 6 of section 2899 of the public health law, as
21 amended by chapter 94 of the laws of 2014, is amended to read as
22 follows:

23 6. "Provider" shall mean any residential health care facility licensed
24 under article twenty-eight of this chapter; or any certified home health
25 agency, licensed home care services agency or long term home health care
26 program certified under article thirty-six of this chapter; any hospice
27 program certified pursuant to article forty of this chapter; or any

1 adult home, enriched housing program or residence for adults licensed
2 under article seven of the social services law.

3 § 9. Paragraph (a) of subdivision 9 of section 2899-a of the public
4 health law, as amended by section 23 of part A of chapter 60 of the laws
5 of 2014, is amended to read as follows:

6 (a) In the event that funds are appropriated in any given fiscal year
7 for the reimbursement for the costs of providing such criminal history
8 information, reimbursement shall be made available in an equitable and
9 direct manner for the projected cost of the fee established pursuant to
10 law by the division of criminal justice services for processing a crimi-
11 nal history information check, the fee imposed by the federal bureau of
12 investigation for a national criminal history check, and costs associ-
13 ated with obtaining the fingerprints to all providers licensed, but not
14 certified under article thirty-six of this chapter, providers certified
15 under article forty of this chapter, and all adult care facilities
16 licensed under article seven of the social services law, including those
17 that are subject to this article and are unable to access direct
18 reimbursement from state and/or federal funded health programs.

19 § 10. On or before September 1, 2016, the commissioner of health
20 shall, in consultation with the commissioner of education, issue a
21 report to the governor and the chairs of the senate and assembly health
22 and higher education committees setting forth the recommendations of the
23 workgroup convened by the commissioner of health for the purpose of
24 providing guidance on the performance of advanced tasks which may be
25 performed by advanced home health aides.

26 § 11. On or before October 1, 2022, the commissioner of health shall,
27 in consultation with the commissioner of education, issue a report on
28 the implementation of advanced home health aides in the state. Such

1 report shall include the number of advanced home health aides authorized
2 pursuant to this act; the number of home health aides and personal care
3 aides that became authorized to perform advanced tasks; the number of
4 advanced home health aides that became registered as licensed practical
5 nurses; the types of advanced tasks that advanced home health aides are
6 performing; the number of complaints pertaining to services provided by
7 advanced home health aides that were reported to the department of
8 health; and the number of advanced home health aides who had their
9 authorization limited or revoked. Such report shall provide recommenda-
10 tions to the governor and the chairs of the senate and assembly health
11 and higher education committees regarding the implementation of home
12 health aides pursuant to this act, and any recommendations related ther-
13 eto.

14 § 12. This act shall take effect immediately; provided that:

15 a. sections one and three of this act shall take effect eighteen
16 months after this act shall have become a law. Effective immediately,
17 the commissioner of education is authorized to adopt or amend regu-
18 lations and take such other actions as are necessary to implement the
19 provisions of sections one and two of this act on or before such effec-
20 tive date; provided, further, that no advanced tasks shall be performed
21 pursuant to the provisions of subdivision two of section 6908 of the
22 education law, as added by section one of this act, on or before such
23 effective date; provided further, that no advanced tasks shall be
24 performed pursuant to such provisions until such regulations are adopted
25 and except in conformance with such regulations including in conformance
26 with the provisions of such regulations related to the completion of
27 advanced home health aide training and the satisfaction of competency
28 examination requirements; and provided, further, that sections eight and

1 nine of this act shall take effect April 1, 2018 and shall apply only to
2 prospective employees.

3 b. this act shall expire and be deemed repealed March 31, 2023.