

GOVERNOR'S PROGRAM BILL

2016

MEMORANDUM

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

Purpose of Bill:

This bill would amend the Nurse Practice Act to authorize advanced home health aides to perform advanced tasks with appropriate training and supervision.

Summary of Provisions:

Section 1 of the bill would add a new Educ. L. § 6908(2) to exempt from the Nurse Practice Act (NPA), advanced tasks to be performed by advanced home health aides in conformance with regulations issued by the State Education Department ("SED") in consultation with the Department of Health ("DOH"). Such regulations would specify the types of advanced tasks that could be performed by advanced home health aides, which would include administering routine or prefilled medications, and would set forth the qualifications, training and competency requirements for advanced home health aides.

The regulations also would state that advanced tasks may be performed only in accordance with and pursuant to an authorized health practitioner's ordered care and only under the direct supervision of a licensed registered professional nurse employed by a home care services agency, a hospice program or an enhanced assisted living residence. In developing such regulations, SED would be required to take into account the recommendations of a workgroup of stakeholders convened by DOH for the purpose of providing guidance on these issues.

Section 2 of the bill would add a new Educ. L. § 6908(8) to specify provisions for registered professional nurses who assign tasks to and supervise advanced home health aides, consistent with the new Educ. L. § 6908(2).

Section 3 of the bill would add a new Educ. L. § 6906(9) to require licensed practical nurses to indicate, upon registration or re-registration with SED, if they have previously been authorized as an advanced home health aide. SED would provide such information to DOH for purposes of including it in the report required under § 10 of the bill.

Section 4 of the bill would add a new Public Health Law (PHL) § 206(30) to require DOH to refer to SED any instance in which a registered professional nurse engages in improper behavior while supervising an advanced home health aide.

Section 5 of the bill would add a new PHL § 3602(17) to define advanced home health aides as home health aides who are authorized to perform advanced tasks as set forth in Educ. L. § 6908(1)(a)(v) and regulations issued thereto. In addition, DOH would be required to issue regulations regarding advanced home health aides related to the advanced home health aide's authorization to perform advanced tasks in appropriate cases.

Section 6 of the bill would amend PHL § 3613(1)(a) to include hospice programs and enhanced assisted living residences in the definition of "home care services entity" for purposes of the Home Care Services Worker Registry.

Section 7 of the bill would renumber existing PHL § 3613(9) as subdivision 10 and add a new subdivision 9 to provide that DOH will indicate within the Home Care Services Worker Registry when a home health aide is qualified to serve as an advanced home health aide because he or she has satisfied all applicable training and competency requirements.

Sections 8 and 9 of the bill would amend PHL §§ 2899(6) and 2899-a(9) to provide for criminal history information checks for hospice workers serving individuals at home for purposes of the Home Care Services Worker Registry.

Section 10 of the bill would require DOH, in consultation with SED, to report by September 1, 2016 on the recommendations of the workgroup convened for the purpose of providing input on the tasks that could be performed by advanced home health aides and the qualifications and supervision of such aides.

Section 11 of the bill would require DOH, in consultation with SED, to issue a report by October 1, 2022, describing the implementation of the advanced home health aide initiative and setting forth any recommendations in connection therewith. The report would include information such as the number of advanced home health aides, the types of tasks they perform, the number of home health and personal care aides who became advanced home health aides, and the number of advanced home health aides who became licensed practical nurses.

Section 12 of the bill provides that the bill would take effect 18 months after enactment and expire on March 31, 2023.

Existing Law:

The Nurse Practice Act, set forth in Educ. L. Art. 139, generally limits the provision of nursing care to licensed nurses, with certain exemptions identified in Educ. L. § 6908. For example, Education Law § 6908(1)(a) permits persons who are not licensed as nurses to provide care to friends and family members with disabilities or illness, or to pay another individual to provide such services.

PHL § 3602 defines terms relevant to home care. In particular, PHL § 3602(4) defines "home health aide services" as meaning "simple health care tasks, personal hygiene services, housekeeping tasks essential to the patient's health and other related supportive services." PHL

§ 3602(5) defines “personal care services” as meaning “services to assist with personal hygiene, dressing, feeding and household tasks essential to the patient's health.”

PHL § 3613 requires DOH to establish the Home Care Services Worker Registry, identifying home care services workers – meaning individuals that provide home health aide services as defined in PHL § 3602(4) or personal care services as defined in PHL § 3062(5) – who have successfully completed a state-approved education or training program for home care services workers.

Statement in Support:

In 2011, the Workforce Flexibility and Change of Scope of Practice Work Group convened by the Medicaid Redesign Team (“MRT”) recommended, among other things: (1) authorizing home health aides to assist with the administration of routine, pre-poured medications; and (2) creating a certification for advanced home care aides who could carry out an expanded range of tasks to be developed through a stakeholder process established by DOH. These proposals were intended to increase access and quality of care, and to help reduce disparities for consumers of home and community based services in the Medicaid program.

This bill would authorize advanced home health aides to perform advanced tasks under the supervision of a registered professional nurse employed by a home care services agency, a hospice program or an enhanced assisted living residence. To serve as an advanced home health aide, a certified home health aide with at least one year of experience providing either home health or personal care services, or a combination thereof, would be required to meet appropriate training and competency standards, as detailed in regulations issued by SED in consultation with DOH and taking into consideration the guidance of a workgroup of stakeholders convened by DOH. The tasks which could be performed by advanced home health aides also would be identified in regulation, again taking into consideration the workgroup’s recommendations.

This bill would enable more people to live in home and community based settings, and further supports the State’s efforts to ensure that care is provided in the most integrated settings as required by *Olmstead v. L.C.*, 527 U.S. 581 (1999) and as emphasized in Exec. Order No. 84.

Budget Implications:

None.

Effective Date:

This bill would take effect 18 months after enactment, except that §§ 8 and 9 related to criminal history information checks for hospice programs would take effect April 1, 2018 and apply only to prospective employees. SED would be authorized to issue regulations and take other necessary steps within the 18 month period; however, no advanced tasks could be provided by advanced home health aides until such regulations are adopted. The new provisions would expire and be repealed March 31, 2023 unless extended.