

GOVERNOR'S PROGRAM BILL

2014

MEMORANDUM

AN ACT to amend the education law, in relation to developing training curricula and competency requirements for tasks to be performed by advanced home health aides; to amend the public health law, in relation to defining advanced home health aides and indicating advanced home health aides on the home care services worker registry; in relation to the establishment of a workgroup to provide guidance on matters including, but not limited to, the tasks to be performed by advanced home health aides; and providing for the repeal of certain provisions upon expiration thereof

Purpose of Bill:

This bill would establish an exemption to the Nurse Practice Act and establish a program for "advanced home health aides" ("AHHAs") who would be authorized to perform advanced tasks with appropriate training and supervision.

Summary of Provisions:

Section 1 of the bill would add new Education Law § 6908(1)(a)(v) to exempt from the Nurse Practice Act tasks to be performed by AHHAs in conformance with regulations issued by the State Education Department ("SED") in consultation with the Department of Health ("DOH"). Such regulations would specify the advanced tasks that could be performed by AHHAs ("advanced tasks"), which would include administering routine or prefilled medications, and would set forth the qualifications, training and competency requirements for AHHAs. The regulations also would state that advanced tasks may be performed only in accordance with and pursuant to an authorized practitioner's ordered care and only under the direct supervision of a licensed registered professional nurse employed by a home care services agency or a hospice program. In developing such regulations, SED shall take into account the recommendations of a workgroup of stakeholders convened by DOH, in consultation with SED, pursuant to § 4 of the bill.

Section 2 of the bill would add new PHL § 3602(17) to define AHHAs as home health aides who are authorized to perform advanced tasks as set forth in Education Law § 6908(1) (a) (v) and regulations issued thereto. In addition, DOH would be required to issue regulations regarding AHHAs, which would include a process for the limitation or revocation of the AHHA's authorization to perform advanced tasks in appropriate cases.

Section 3 of the bill would add new PHL § 3613(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 AHHA because he or she has satisfied all applicable training and competency requirements. Any limitation or revocation of the AHHA's authorization would also be indicated on the registry.

Section 4 of the bill would require DOH, in consultation with SED, to convene a workgroup to provide guidance on the tasks which may be performed by AHHAs pursuant to new Education Law § 6908(1)(a)(v). Specifically, the workgroup would offer guidance on the tasks that could be performed by AHHAs, the types of medications they could administer, the qualifications required of AHHAs including minimum training and education standards, and the level of supervision that would be provided by nurses. The workgroup would be comprised of individuals from academic institutions with relevant expertise, representatives of home care, hospice providers, nurses, nurse educators, home health aides and pharmacists, representatives of individuals who may be eligible to receive services performed by AHHAs, and other relevant stakeholders.

Section 5 of the bill sets forth the effective date.

Existing Law:

The Nurse Practice Act, contained in Education Law Article 139, generally limits the provision of nursing care to licensed nurses, with certain exemptions identified in Education Law § 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, indicating 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. The Work Group indicated that these proposals were intended to increase quality of and access

to care and help reduce disparities for consumers of home and community based services in the Medicaid program. In particular, the Work Group noted that existing Nurse Practice Act exemptions allow families to pay an individual to provide services such as assistance with medication. The proposal to allow administration of routine medications would make this assistance available through Medicaid-funded services.

This bill would authorize AHHAs to perform advanced tasks under the supervision of a nurse employed by a home care services agency or a hospice program. To serve as an AHHA, a home health aide with at least one year of experience would have to meet appropriate training and competency requirements, as detailed in regulations issued by SED in consultation with DOH and developed with guidance from a workgroup of academic experts and stakeholders convened by DOH in consultation with SED. The tasks which could be performed by AHHAs also would be identified in regulation following consultation with the workgroup.

This initiative would offer flexibility to health care providers who serve individuals in the community who need assistance with medication and other tasks. This has the potential to increase the availability of the home and community based workforce and thus supports the State's efforts to ensure that care is provided in the least restrictive settings as required by *Olmstead v. L.C.*, 527 U.S. 581 (1999) and as emphasized in Governor Cuomo's Executive Order No. 84. For the same reason, the AHHA program would complement the State Plan Amendment that New York State has filed under the Community First Choice Option (CFCO), an optional program that states may implement under the Affordable Care Act, § 2401, to expand the availability and access of Medicaid-funded personal attendant programs. In addition, the initiative offers additional opportunities for career advancement for home health aides.

Budget Implications:

This legislation is not anticipated to have a fiscal impact to the State in the current fiscal year.

Effective Date:

As set forth in § 5 of the bill, the Nurse Practice Act exemption added to Education Law § 6908(1) (a) (v) by § 1 of the bill would take effect October 1, 2015. SED would be authorized to issue regulations on or before that date; however, no advanced tasks could be provided by AHHAs under the new Education Law provision until such regulations are adopted, and they could be performed only in conformance with such regulations. In addition, new PHL §§ 3602(17) and § 3613(9) added by §§ 2 and 3 of the bill, respectively, would take effect immediately. Section 4 of the bill, which requires the Commissioner of Health to convene the workgroup as soon as practicable, would take effect immediately and would expire and be deemed repealed on October 1, 2015.