

## I. Introduction

In 2016, the New York State Legislature passed legislation proposed by Governor Cuomo to authorize Advanced Home Health Aides to perform advanced tasks with appropriate training and upon assignment by registered nurses and under supervision by such nurses. The goal of the legislation is to enable more people to live in home and community based settings and provide support to family caregivers and their loved ones. See *Built to Lead, 2016 State of the State, Governor Andrew M. Cuomo*, at

[https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2016\\_State\\_of\\_the\\_State\\_Book.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2016_State_of_the_State_Book.pdf) (p. 271-72).

Among other things, the legislation requires the New York State Department of Health (DOH) to report by September 1, 2016, in consultation with the New York State Education Department (SED), on the recommendations of an advisory 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.

## II. Background

In 2011, a workgroup convened by the Medicaid Redesign Team (MRT) – the Workforce Flexibility and Change of Scope of Practice Work Group – recommended that home health aides be authorized to assist with the administration of routine medications and be certified to carry out an expanded range of tasks, upon assignment by a registered professional nurse. The specific list of tasks was to be identified through a stakeholder process. Authorizing the assignment of additional tasks by home health aides by registered professional nurses requires an amendment to the Nurse Practice Act.

The Nurse Practice Act, set forth 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, one exemption, found at Education Law § 6908(1)(a)(i), permits individuals who are not licensed as nurses to provide care to friends and family members with disabilities or illness.

In furtherance of the MRT Workgroup's recommendations, Governor Cuomo included proposals to make the necessary amendments to the Education Law in both his 2013-14 and 2014-15 Executive Budgets. In 2014, the Governor also released Program Bill No. 37, which combined the two concepts put forward by the

MRT Workgroup to create a single category of Advanced Home Health Aides. Subsequently, the Governor included the proposal in his 2015-16 Executive Budget (Health and Mental Hygiene Article VII legislation, Part J). Ultimately, in 2016, Governor's Program Bill No. 28 was passed by both houses of the Legislature and was enacted as Chapter 471 of the Laws of 2016.

### **III. Summary of the Law**

Section 1 of Chapter 471 added new Education Law § 6908(2) to allow advanced tasks to be performed by advanced home health aides in conformance with regulations issued by SED in consultation with DOH. Such regulations would specify the types of advanced tasks that could be performed by advanced home health aides, including 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 shall 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 Chapter 471 added new Education Law § 6909(8) to specify provisions for registered professional nurses who assign tasks to and supervise advanced home health aides, consistent with new Education Law § 6908(2).

Section 3 of Chapter 471 added new Education Law § 6906(9) to require licensed practical nurses to indicate, upon registration or re-registration with SED, if they are, or 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 § 11 of the law.

Section 4 of Chapter 471 added 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 Chapter 471 added 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 Education Law § 6908(2). In addition, DOH would be required to issue regulations related to the limitation or revocation of the advanced home health aide's authorization to perform advanced tasks in appropriate cases.

Section 6 of Chapter 471 amended 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 Chapter 471 renumbered existing PHL§ 3613(9) as subdivision 10 and added 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. In addition, DOH will indicate any limitation or revocation of the advanced home health aide's authorization on the Home Care Services Worker Registry.

Sections 8 and 9 of Chapter 471 amended PHL §§ 2899(6) and 2899-a(9) to add hospice programs to the definition of provider types required to conduct criminal history information checks on prospective employees for purposes of the Home Care Services Worker Registry. In addition, hospice programs will be considered for reimbursement for the costs of conducting such checks when funds are available. As set forth in Section 12 of Chapter 471, these provisions are only applicable to prospective employees.

Section 10 of Chapter 471 requires DOH to report by September 1, 2016, in consultation with SED, on the recommendations of a workgroup which was 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. (The work of the Advanced Home Health Aides Advisory Workgroup is described in Section IV of this report.)

Section 11 of Chapter 471 requires DOH to issue a report by October 1, 2022, in consultation with SED, describing the implementation of the advanced home health aide initiative and setting forth any recommendations. The report will 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, the number of advanced home health aides who became licensed practical nurses, the number of complaints received regarding services provided by advanced home health aides, and the number of advanced home health aides who had their authorization limited or revoked.

Section 12 of Chapter 471 provides that §§ 1 and 3 of the law take effect 18 months after enactment, meaning May 28, 2018, and authorizes the Commissioner of Education to adopt or amend regulations and take such other actions as are necessary to implement §§ 1 and 2 of the law prior to such effective date. The section specifies that no advanced tasks shall be performed pursuant to Education Law § 6908(2) until such regulations are adopted, and may not be performed except by persons who complete the training and satisfy competency requirements pursuant to those regulations. In addition, §§ 8 and 9, related to the addition of hospice programs to the list of providers required to conduct criminal history information checks will take effect April 1, 2018. The law sunsets on March 31, 2023 if not extended.

#### IV. Workgroup Guidance

Although the referenced legislation had not yet been enacted, in the fall of 2014, the Department of Health convened a workgroup of stakeholders for the purpose of obtaining guidance in identifying the advanced tasks that would be included in implementing regulations, if authorized by legislation. In March 2015, the Advanced Home Health Aide Advisory Workgroup issued a guidance document which identified advanced tasks that could safely be performed by home health aides with appropriate training and supervision and set forth recommendations regarding the qualifications, training and competency of such aides.

It should be noted that the Workgroup Guidance includes a proposed matrix of tasks that could be performed by advanced home health aides. This draft document, entitled “Matrix of Permissible and Non-Permissible Activities Home Health Aide (HHA) Services, Revised to Include Advanced Home Health Aide (AHHA) as proposed by the Advanced Home Health Aides Advisory Workgroup,” is **NOT** in effect. It represents recommendations included as an appendix to the guidance developed by the Workgroup, and reflects the Workgroup’s recommendations for tasks that could be carried out if a law was enacted authorizing Advanced Home Health Aides. The Matrix of Permissible and Non-Permissible Activities for Home Health Aide Services has not yet been updated by the New York State Department of Health or endorsed by the New York State Education Department.

While the law has now been enacted (Chapter 471 of 2016) and, as noted above, § 1 of such law requires SED to take the Workgroup’s recommendations into account when it develops regulations, those regulations have not yet been issued. Accordingly, the matrix developed by the Workgroup is not in effect. As reiterated by

§ 12 of Chapter 471, no advanced tasks shall be performed pursuant to the new Education Law § 6908(2) prior to the effective date of May 28, 2018, and advanced tasks may only be performed pursuant to Education Law § 6908(2) after regulations are adopted and by persons who complete the training and satisfy competency requirements as set forth in the regulations.

## V. Implementation

As indicated by the summary of Chapter 471 in Section III above, implementation of the new law will involve the following steps:

- **SED Regulations.** SED will issue regulations, taking into consideration the Workgroup Guidance. Stakeholder input on the development of these regulations will be sought, and proposed regulations will be published in the New York State Register for purposes of obtaining public comment.
- **DOH Regulations.** DOH will issue regulations related to the advanced home health aide's authorization to perform advanced tasks in appropriate cases. Stakeholder input on the development of these regulations will be sought, and proposed regulations will be published in the New York State Register for purposes of obtaining public comment.
- **Training Programs.** Consistent with its regulations, SED, in consultation with DOH, will develop criteria for a standardized training program with didactic and clinical components and competency exam and the approval of training programs. DOH and SED will approve training programs, consistent with the criteria developed pursuant to the regulations.
- **Inclusion of Hospice in the Home Care Services Worker Registry and the criminal history information system.** Hospice employees will be added to the Home Care Services Worker Registry and hospice programs will be added to the criminal history information check system.
- **2022 Report.** DOH will 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. DOH intends to reconvene the members of the Advisory Workgroup along with other stakeholders to seek their input for this purpose.