

ADVANCED HOME HEALTH AIDES ADVISORY WORKGROUP

Convened by the New York State Department of Health

GUIDANCE March 2015

I. INTRODUCTION

Governor Cuomo's 2015-16 Executive Budget includes a proposal to amend Article 139 of the Education Law, known as the Nurse Practice Act, to permit Advanced Home Health Aides to perform advanced tasks in home care and hospice settings, with appropriate training and upon assignment by registered nurses and under supervision by such nurses. This proposal will enable many more people with disabilities who are currently in institutional settings to live in home and community based settings or remain in home and community based settings and will help provide support to family caregivers and their loved ones.

A. BACKGROUND

In 2011, a workgroup convened by the Medicaid Redesign Team – 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 that they 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), permits individuals 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.

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). See Appendix A (Executive Budget Proposal).

This proposal is important because by allowing people to receive additional supports and services at home, it will support the State's efforts to ensure that individuals with disabilities receive the services and supports they need in the most integrated settings, consistent with the 1999 United States Supreme Court decision in *Olmstead v. L.C.* and Executive Order No. 84.

Further, the initiative is important to help the State advance its efforts under the State Plan Amendment (SPA) filed by the Department of Health under the Community First Choice Option (CFCO). In 2010, the CFCO was enacted as an incentive to overcome the institutional bias towards providing services and supports in institutions rather than in home and community based settings. CFCO is an optional program that states may implement under § 2401 of the Affordable Care Act, 42 U.S.C. § 1396n(k), and its implementing regulations, 42 C.F.R. Part 441, Subpart K, to expand the availability and access of Medicaid-funded home and community-based personal attendant programs.

CFCO pre-invests the savings of transitioning from institutional to community based services by providing additional funding to the states that select it, in order to ensure that individuals who are eligible for institutional placement can receive services and supports in home and community based settings. States that select CFCO are eligible to receive an increased federal match of six percent. The Department filed the SPA with the federal Centers for Medicare and Medicaid Services (CMS) in December 2013, indicating that certain CFCO services would be available to eligible Medicaid enrollees, but has not yet received CMS approval.

The legislative proposal also will provide crucial support to family caregivers by allowing paid aides to provide services for which they are currently responsible. It also will offer additional opportunities for career advancement for home health aides and provide flexibility to health care providers that serve individuals in the community, potentially increasing the availability of the home and community based services workforce. In addition, the proposal will promote safety by providing that such tasks are carried out by individuals with training and under supervision.

B. SUMMARY OF EXECUTIVE BUDGET PROPOSAL

Under the 2015-16 Executive Budget language, the Commissioner of Education would be required to issue regulations to specify the types of advanced tasks that registered nurses could assign to Advanced Home Health Aides, identify certain parameters for qualifications, training and competency of such aides, and provide that Advanced Home Health Aides could act only under the direct supervision of a licensed registered professional nurse employed by a home care services agency or a hospice program. See Appendix A (Executive Budget proposal). These tasks will expand the scope of people able to live in home and community based settings to include people who require assistance with health-related

tasks, consistent with Federal law and with New York State policy for people with disabilities.

Specifically, § 1 of the Executive Budget language would add new Education Law § 6908(1)(a)(v) to exempt from the Nurse Practice Act tasks provided by an Advanced Home Health Aide in accordance with regulations developed by the Commissioner of Education in consultation with the Commissioner of Health. At a minimum, such regulations would:

1. specify the types of tasks that may be performed by Advanced Home Health Aides (“advanced tasks”), which would include the administration of medications which are routine and prefilled or otherwise packaged in a manner that promotes relative ease of administration;
2. 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 and employed by a home care services agency licensed or certified pursuant to Public Health Law (PHL) Article 36 or a hospice program certified pursuant to PHL Article 40, where such nursing supervision would:
 - a. include training and periodic assessment of the performance of advanced tasks,
 - b. 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, and
 - c. include a comprehensive assessment of the individual’s needs;
3. provide that advanced tasks may be performed only in accordance with and pursuant to an authorized practitioner’s ordered care;
4. provide that only a home health aide who has at least one year of experience as a certified home health aide, has completed the requisite training and demonstrated competencies of an Advanced Home Health Aide, has successfully completed competency examinations satisfactory to the Commissioner, and meets other appropriate qualifications may perform advanced tasks as an Advanced Home Health Aide;
5. provide that only an individual who is listed in the Home Care Services Registry maintained by the Department of Health pursuant to PHL § 3613(9) 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 PHL § 3602(17) may perform advanced tasks and hold himself or herself out as an Advanced Home Health Aide;

6. establish minimum standards of training for the performance of advanced tasks by Advanced Home Health Aides, including
 - a. didactic training;
 - b. clinical training; and
 - c. a supervised clinical practicum with standards set forth by the Commissioner of Education;
7. 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;
8. 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;
9. provide that an Advanced Home Health Aide is not required nor permitted to assess the medication needs of an individual;
10. provide that an Advanced Home Health Aide shall not be authorized to perform any tasks or activities that are outside the scope of practice of a licensed practical nurse;
11. provide that an Advanced Home Health Aide shall document medication administration to each individual through the use of a medication administration record; and
12. provide that the supervising registered professional nurse shall retain the discretion to decide whether to assign advanced tasks to Advanced Home Health Aides and shall not be subject to coercion or the threat of retaliation.

In developing such regulations, the Commissioner of Education would be required to take into account the recommendations of the workgroup of stakeholders convened by the Commissioner of Health for the purpose of providing guidance on these requirements.

Section 2 of the legislation would add new PHL § 3602(17) to define Advanced Home Health Aides as home health aides who are authorized to provide advanced tasks as set forth in Education Law § 6908(1)(a)(v). The Commissioner

of Health would be required to issue regulations regarding such aides, which would include a process for the limitation or revocation of the aide's authorization to perform advanced tasks in appropriate cases.

Section 3 of the bill would add new PHL § 3613(9) to require the Department of Health to indicate within the Home Care Services Worker Registry when a home health aide has satisfied all applicable training and recertification requirements and has passed the applicable competency examinations necessary to perform advanced tasks as set forth in Education Law § 6908(1)(a)(v) and the associated regulations. Any limitation or revocation of the Advanced Home Health Aide's authorization also would be indicated on the registry.

Section 4 of the bill provides that in developing regulations under Education Law § 6908(1)(a)(v), the Commissioner of Education would be required to consider the recommendations of the workgroup of stakeholders convened by the Commissioner of Health to provide guidance on the tasks which may be performed by Advanced Home Health Aides pursuant to such section.

Under the proposal, the workgroup's guidance would include recommendations on:

1. the tasks that appropriately could be performed by Advanced Home Health Aides with appropriate training and supervision (advanced tasks);
2. the types of medications that Advanced Home Health Aides should be authorized to administer, including whether subcutaneous injectables and controlled substances should be authorized;
3. qualifications that must be satisfied by Advanced Home Health Aides to perform advanced tasks, including those related to experience, training, moral character, and examination requirements;
4. minimum training and education standards; and
5. adequate levels of supervision to be provided by nurses, including adherence to existing requirements for comprehensive assessment and any additional assessment that should be required, including when the individual receiving advanced tasks performed by an Advanced Home Health Aide experiences a significant change in condition.

These provisions would take effect October 1, 2015, with the regulations to be in place by that date.

C. ACTIVITIES OF THE WORKGROUP

As noted, the Executive Budget language provides that the regulations to be developed by the State Education Department would take into account a workgroup convened by the Department of Health for purposes of providing guidance. Governor's Program Bill No. 37 would have required the establishment of a workgroup of academic experts and stakeholder representatives to provide such guidance.

Although that legislation was not enacted, the Department convened the Advanced Home Health Aides Advisory Workgroup (Workgroup) in August 2014, comprised of members as described in the Program Bill: 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 for advanced tasks performed by Advanced Home Health Aides pursuant to statute, and other relevant consumers and others. See Appendix B (List of Workgroup Members).

The Workgroup met nine times between August 2014 and March 2015 to consider the issues and provide guidance to the Department of Health on advanced tasks that could safely be performed by home health aides in home care and hospice settings with appropriate training and supervision. This document sets forth the Workgroup's guidance.

Specifically, the Workgroup was charged with providing guidance on identifying:

- Tasks that could be performed safely by Advanced Home Health Aides, including administration of medication;
- The qualifications required for Advanced Home Health Aides, including minimum training and education standards; and
- The level of supervision to be provided by registered nurses to Advanced Home Health Aides.

The Workgroup was asked to work within the parameters of the proposed legislation, and generally did so. In a few instances, however, the Workgroup as a whole or individual members thereof suggested revisions to the legislation where necessary to effectuate specific Workgroup recommendations.

The guidance contained herein generally represents the consensus of the Workgroup on two of those areas. The guidance also reflects the positions of the members on the third topic, where a consensus was reached on some but not all matters. It must also be noted that several Workgroup members indicated that where they were able to participate in the consensus in certain areas, they did so

with the recommendation of further discussion or contingent upon resolution of other issues. Additionally, the State Education Department has been present for Workgroup discussions, but has not taken a position on the work of that body to date or on the Executive Budget proposal.

II. GUIDING PRINCIPLES

The Workgroup initially identified several overarching principles that would guide its work.

- The needs of the individual receiving services are specific to that individual.
- Advanced Tasks must be specifically described so that competency can be assessed and performance can be measured.
- A minimum level of standardized training and testing must be required so that it is clear what an Advanced Home Health Aide has been taught to do.
- Advanced Home Health Aides would receive training on these advanced tasks but would not necessarily perform them for each individual – they would do so only when assigned by a registered professional nurse based on his or her assessment of the aide’s competency.
- Advanced Home Health Aides should be trained in communication and reporting.
- These broad principles guided the Workgroup’s recommendations regarding which tasks safely can be assigned to Advanced Home Health Aides:
 - Advanced Home Health Aides should not be authorized to perform any task that requires nursing judgment and/or assessment, including assessing an individual’s need for medication.
 - Advanced Home Health Aides should not be authorized to perform any task that that requires sterile techniques.
 - Advanced Home Health Aides should not be authorized to perform any task that could potentially involve obstruction of an airway.
 - Advanced Home Health Aides may be authorized to administer medications when routine or pre-filled.

Advanced Home Health Aides should not be authorized to administer intramuscular, intravenous, or intracutaneous injections, but may be authorized to administer certain subcutaneous injections with a relative low risk of complications and only when prefilled.

III. ADVANCED TASK RECOMMENDATIONS

As noted above, the regulations required under the Executive Budget language would specify the types of advanced tasks that could be performed by Advanced Home Health Aides when assigned to do so and supervised by a registered nurse. At a minimum, the bill provides that an Advanced Home Health Aide may not be authorized to perform any tasks or activities that are outside the scope of practice of a licensed practical nurse. Advanced tasks would, however, include the administration of medications which are routine and prefilled or otherwise packaged in a manner that promotes relative ease of administration. The language further stated that the Workgroup would provide guidance on the advanced tasks and in particular on the types of medications that Advanced Home Health Aides may be authorized to administer, including whether subcutaneous injectables and controlled substances may be authorized. Further, the bill notes that Advanced Home Health Aides would not be required or permitted to assess an individual's medication needs.

After many hours of analysis and discussion, the Workgroup formed a general agreement as to the tasks that could be performed safely by an Advanced Home Health Aide with appropriate training and supervision. The Home Care Association of New York State (HCA) questioned several of the tasks recommended made by the Workgroup, but all other members reached agreement on the body of advanced tasks reflected on Appendix C (Advanced Task Matrix).

Appendix C is a revised version of the existing matrix used by the Department of Health and the State Education Department to identify tasks that currently are permissible or not permissible for home health aides to carry out. The current matrix also identifies "special circumstances," which allows certain tasks which are not routinely taught in home health aide training programs to be provided by home health aides to "self-directing" individuals, as long as they are trained in the specific task to be performed.

The special circumstances tasks identified on the matrix assisted the Workgroup in initially identifying tasks that potentially could be carried out by Advanced Home Health Aides, or "advanced tasks." However, the advanced tasks would not be restricted based on whether an individual is or is not "self-directing;" instead, the focus would be on the supervising registered nurse's assessment of the individual's needs and the competency of the Advanced Home Health Aide.

The Advanced Task Matrix attached as Appendix C includes a column reflecting the activities that the Workgroup agrees can be carried out by Advanced Home Health Aides, assuming appropriate training and supervision. The "non-permissible" column refers to home health aides and should not be applied to any task marked in the Advanced Home Health Aides section.

IV. RECOMMENDED QUALIFICATIONS, TRAINING AND COMPETENCY

The proposed legislation provides that only a home health aide who has at least one year of experience as a certified home health aide, has completed the requisite training and demonstrated competencies of an Advanced Home Health Aide, has successfully completed competency examinations and meets other appropriate qualifications may perform advanced tasks as an Advanced Home Health Aide. The regulations would have to establish minimum standards of training for the performance of advanced tasks by Advanced Home Health Aides, including: (1) didactic training; (2) clinical training; and (3) a supervised clinical practicum with standards set forth by the Commissioner. Further, the bill specifies that the Workgroup would provide guidance on the qualifications that must be satisfied by Advanced Home Health Aides to perform advanced tasks, including those related to experience, training, moral character, and examination requirements, as well as on minimum training and education standards.

A. EXPERIENCE

As noted, the proposed legislation would require at least one year of experience as a home health aide. The Workgroup recognized that while the Home Care Registry currently reflects the date that an individual has become certified as a home health aide and shows whether the aide was employed, it does not reflect the nature of the services provided to each individual client; *i.e.*, whether they are personal care or home health aide tasks. The Workgroup therefore recommends that the legislative proposal be amended to reflect that the individual interested in becoming an Advanced Home Health Aide should be certified as a certified home health aide for at least a year, but that the services provided may be either personal care or home health aide services.

B. TRAINING

The Workgroup recommended areas of training which should be provided to Advanced Home Health Aides and an approximate number of hours for each such area. These are minimum recommended training times and topics; training programs may choose to spend additional time. The Workgroup generally agreed that it would require, at a minimum, approximately 40 additional hours of training and education to prepare a home health aide to become qualified to perform these additional advanced tasks. However, additional assessment and training would be required by a supervising nurse on a patient specific basis.

The Workgroup also identified three modules of training that should be included in an approved curriculum: (1) Fundamentals; (2) Medication Administration; and (3) Other Tasks.

1. Module 1 – Fundamentals

First, the Workgroup noted that Advanced Home Health Aide training program should begin with a module on Fundamentals. This would provide advanced aides with training in guiding principles, the roles of the Advanced Home Health Aide and supervising nurse, and communications and reporting.

a. Guiding Principles

Training programs should ensure that Advanced Home Health Aides understand the imperative to provide culturally competent services in the most integrated setting, as well as the overarching principle that each individual served has their own individualized needs.

b. Roles and Responsibilities

The Workgroup felt that it was important that the Advanced Home Health Aide understand their roles and responsibilities as well as those of the supervising nurses.

c. Communications and Reporting

The Workgroup believed that it would be important for Advanced Home Health Aides to develop the skills needed to accurately report information to the members of the care team as well as to address problems in communications that may arise.

The Workgroup felt it important to stress, however, that all of the principles articulated in the Fundamentals Module would be reinforced throughout the remaining training modules. Similarly, these principles should be reinforced as part of the case-specific training provided by the supervising nurse and throughout the regular ongoing interaction with the nurse.

The Workgroup anticipated that the training in Fundamentals would require approximately eight hours.

2. Medication Administration

Second, the Workgroup recommended a training module on the administration of medications. This would include oral, topical, injectables, intra-aural, nasal and ocular, rectal and vaginal, and medicated baths.

The Workgroup anticipated that this training would require approximately 20 hours.

3. Other Tasks

Third, the Workgroup recommended a training module on other non-medication administration tasks.

- Orientation to health related tasks;
- Performing simple measurements and tests;
- Complex modified diets;
- Assisting with the use of prescribed medical equipment;
- Supplies and devices;
- Assisting with special skin care;
- Assisting with a dressing change; and
- Assisting with ostomy care.

The Workgroup anticipated that this training would require approximately 12 hours.

C. COMPETENCY ASSESSMENT AND TESTING

The Workgroup expressed that instructors will assess the competency of students on an ongoing basis throughout the various training modules.

In addition, written testing should occur after each module. The written examination would take approximately one hour for each module for a total of three hours which, when added to the estimated minimum 40 hours of training, would bring a training program to a minimum of 43 hours for training and competency testing.

V. NURSING SUPERVISION RECOMMENDATIONS

As set forth in the proposed legislation, Advanced Home Health Aides would be authorized to carry out advanced tasks only as assigned by and under the direct supervision of a registered professional nurse licensed in New York State and employed by a home care services agency or a hospice program, where such nursing supervision: (1) includes training and periodic assessment of the performance of advanced tasks; (2) shall 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; and (3) includes a comprehensive assessment of the individual's needs. Additionally, under the bill, the regulations would provide that Advanced Home Health Aides shall receive case-specific training on the advanced tasks to be assigned by the supervising nurse, with additional training taking place whenever additional advanced tasks are assigned or modified.

The Workgroup considered several aspects of supervision, including the need for initial orientation visits and ongoing supervision. Workgroup members agreed that supervision involves both client-centered supervision and supervision of the aides.

A. INITIAL ORIENTATION VISITS

There was a consensus among Workgroup members that there needs to be an initial in-home visit during which the supervising registered nurse (RN) works to orient the Advanced Home Health Aide to the needs of the individual receiving services, identifies the tasks that could be performed by the aide for the individual, trains the aide in performing those tasks, and satisfies himself or herself in the aide's competency to perform the tasks.

Some Workgroup members recommended requiring a specific number of additional in-home orientation visits within the first month of an Advanced Home Health Aide's assignment to a particular patient. Specifically, the New York State Nurses Association (NYSNA) recommended one to two visits in the first week, depending on the complexity of the tasks assigned. If necessary, the second orientation visit would occur within a week after the first and then two additional visits within the first month.

Other members thought that additional orientation visits may be necessary and appropriate in some cases but not in others, and that this should be left to the discretion of the nurse based on the circumstances.

The Workgroup recognized that there are some logistical challenges involved if an individual is receiving services from multiple Advanced Home Health Aides who work different shifts.

In particular, Workgroup member Center for Disability Rights (CDR) raised the point that an individual receiving around-the-clock support might have as many as five or six aides, and that requiring the nurse to visit each aide multiple times in the first two weeks might render the Advanced Home Health Aide program cost-prohibitive for those individuals. CDR advised that denial of access to the program would be a form of discrimination on the basis of disability in violation of the Americans with Disabilities Act, and that regulation of the program must not create any situations in which individuals are likely to be discriminated against on the basis of their disability.

B. ONGOING SUPERVISION

Once an Advanced Home Health Aide has been oriented and the supervising RN is comfortable that they are competent to perform the assigned tasks, an appropriate minimum level of ongoing supervision will be necessary to assess the Advanced Home Health Aide's compliance with standards in administering

tasks and to assess the current condition of the client (e.g., one on-site visit/assessment every XX days).

The Workgroup agreed that the need for additional visits or schedule of visits would be based upon the assessment of the nurse regarding the abilities of the Advanced Home Health Aide and the complexity of the tasks being assigned/performed. The Workgroup also concluded that RNs would need to be on call 24/7 to consult with an Advanced Home Health Aide, answer questions from the aide, and respond to issues that arise, but it would not necessarily have to be the same nurse that assigned the task in the first instance.

The Center for Disability Rights and other Workgroup members suggested that it would be worthwhile to distinguish between nurse supervision of the aide's compliance with standards in administering tasks, and the nurse's supervision of the current condition of the client. With respect to supervision of the aide, frequent mandatory supervision will increase costs and impose logistical problems that interfere with the individual's life and integration into the community, particularly for individuals with multiple aides. These members raised the point that that nurse supervision of the client might be sufficient to ensure the client's safety, with supervision of the aide taking place on a more occasional, as-needed basis.

C. SUPERVISION LEVELS

One Workgroup member, the New York State Nurses Association (NYSNA), noted that it would be critical to mandate an appropriate level of nursing supervision. NYSNA proposed addressing this by providing a clear and concrete definition of nursing supervision (including minimum standards for site visits to observe the work of the aide and assess the condition of the person receiving the services) and limiting the number of AHHAs that a RN could supervise by imposing "staffing ratios." To allow the Workgroup to finalize its recommendations, NYSNA asserted that the specifics of this could be left to regulation, but recommended that "staffing ratios" be required in legislation.

NYSNA recommended that the final regulations adopted by the Commissioner of Education include an upper limit on the number of Advanced Home Health Aides that can be supervised by an RN to ensure adequate nursing supervision, oversight and education of the Advanced Home Health Aide, with the proviso that the RN retains the discretion to determine a lower number based on assessment and judgment. The upper limit would be determined by an advisory committee to the Commissioner of Education, which would include representatives of home care and hospice providers and nurses, representatives of individuals who may be eligible to receive services provided by Advanced Home Health Aides, and other relevant stakeholders.

Other Workgroup members recognized the significance of the issue but expressed concern about attempting to impose a “one size fits all” solution in this area given the wide potential variation in the complexity of the tasks required. They felt this should be left to the RN’s assessment and judgment as such factors as travel time, number and complexity of tasks assigned to each Advanced Home Health Aide under supervision, the competency of the Advanced Home Health Aide, the number of site visits necessary to properly supervise each Advanced Home Health Aide, the number of site visits necessary to assess the health status of the client, and other relevant factors such as ability to respond to issues/questions/problems that arise while an Advanced Home Health Aide is working with an individual.

Home care agency representatives noted that providers need to be able to manage their resources, particularly in light of the challenges they face in the managed care environment, and that enforcing a specific limit could add to the administrative burden and cost. LeadingAge New York in particular opposed staffing ratios.

Disability rights advocates and others in the Workgroup noted that the supervision needs of individuals receiving long-term services and supports might vary by orders of magnitude, and that a ratio would not be able to account for this variation in supervision. Either it will be so high as to be ineffectual, or it will be so low that it will needlessly limit the scope of the Advanced Home Health Aide program. In light of the goal of this program to increase the opportunities for people with disabilities to live in home and community based settings, such a limitation might undermine the whole program. At best, it could keep people with high supervision needs from living in home and community settings, contrary to their rights under *Olmstead* and a form of discrimination on the basis of disability in violation of the ADA.

Workgroup members agreed that they all shared the goal of creating a workable structure and that in developing regulations as part of this effort, the State Education Department, in consultation with the Department of Health, should review existing federal and state requirements to ensure that any new requirements are not duplicative. Moreover, the Commissioner should strive to streamline the regulations to reduce the administrative burden on providers, and take into account the range and complexity of the tasks that may be assigned to Advanced Home Health Aides.

D. SUPERVISION PARAMETERS

NYSNA also suggested adding language to the proposed statutory provisions requiring Advanced Home Health Aides to document not only medication administration, but all advanced tasks/treatments, to increase the effectiveness of supervision and to catch errors or need for further training. The Workgroup agreed to make such recommendation.

The Workgroup also recognized the concern that nurses who fulfill their responsibilities under the law not be unduly held liable for errors or other harmful acts by aides under their supervision. The New York Association of Health Care Providers (HCP) suggested similar protection for home care agencies that utilize Advanced Home Health Aides. The Workgroup recommended further study of this issue so that provisions could be included in the statute that are consistent with other provisions of New York State law.

VI. THRESHOLD IMPLEMENTATION ISSUES

As indicated, the guidance contained herein represents the consensus of the Workgroup on advanced tasks and minimum training times, and reflects the discussion on the topic of supervision, where a consensus has not yet been achieved on all aspects. In certain cases, Workgroup members raised issues they felt required emphasis and concerns that they thought should be subject to further consideration or addressed in conjunction with the enactment of the legislation. Several of those issues are highlighted herein.

The Center for Disability Rights emphasized the significance of the Advanced Home Health Aides in carrying out the Supreme Court's recognition in *Olmstead v. L.C.* that people with disabilities have the right to receive services and supports in "the most integrated setting appropriate to the needs of the individual." Specifically, the legislative changes are necessary to ensure that people with disabilities and the elderly are able to live in integrated settings consistent with their rights under *Olmstead*. Further, the CDR reiterated that the Advanced Home Health Aides initiative also will enable New York State to leverage considerable additional Federal funding through broad implementation of the Community First Choice Option.

Some members of the Workgroup thought that it would be helpful to have additional clarification to understand how the curriculum will be developed. LeadingAge New York recommended that the State solicit applications, supported by funding, for the development of the curriculum, to include both testing and evaluation components. Further, members expressed interest in making sure that training programs are approved by the State and held to consistent standards, and that efforts be made to ensure that a sufficient number of programs are approved throughout the State. HCA and HCP also noted that provider-based training programs should be eligible and funded to the same extent as other training programs.

Some members expressed concerns about the ability to implement the legislative proposal for several reasons, including that the proposal is not accompanied by dedicated funding to support curriculum development, training program costs, increased wages for Advanced Home Health Aides, increased nursing supervision costs, or other expenses. In part, representatives of home care agencies, hospice programs, and long term home health care programs noted concerns about challenges arising from the provisions of services as anticipated in the legislation in

a managed care environment. In particular, HCA, HCP and LeadingAge emphasized their concern that they will find it difficult to implement the legislation absent increased reimbursement rates.

Workgroup members New York Chapter of the Assisted Living Federation Association of America (ALFA) and LeadingAge New York, with the support of AARP, recommended that the legislation be expanded to include Enhanced Assisted Living Residences that are certified to provide enhanced services. This would allow such residences to retain Advanced Home Health Aides directly, as long as they are supervised by RNs, rather than obtaining such services through a home care agency or hospice program. Other members of the Workgroup felt that this was worthy of further discussion.

Finally, the Workgroup agreed that it would be important to review the progress of the Advanced Home Health Aides initiative for the purpose of identifying and recommending resolution of any implementation issues that may arise once the program is underway. The Department agreed that it would convene the Workgroup again two years after the legislation takes effect so that it could conduct an initial review of progress and issue a written report setting forth any such recommendations. Further, the Department will continue to work with Workgroup members and other stakeholders during development of the regulations and thereafter to facilitate the implementation of the initiative.

VII. CONCLUSION

The Workgroup made a great deal of progress in carrying out its charge and reached a consensus on most of the matters before it. A number of important issues that must be addressed for implementation to be successful were identified, and all the Workgroup members committed to continued participation in discussions to work through the challenges.

While recognizing the additional work that needs to be carried out to promote the successful implementation of the Advanced Home Health Aides initiative, the Department of Health concludes that the guidance of the Workgroup is of a sufficient level of detail such that it informs the regulations that would be issued in conformance with the legislation. Accordingly, the Executive Budget proposal should move forward, particularly given the significant opportunity it presents to transform the home care system in a way that will improve of the lives of individuals with disabilities and family caregivers.

APPENDIX A

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1 discovered as a result of seeking immediate health care as defined in
2 paragraph (b) of subdivision three of section 220.78 of the penal law,
3 for either another person or him or herself because such person is experi-
4 encing a drug or alcohol overdose or other life threatening medical
5 emergency as defined in paragraph (a) of subdivision three of section
6 220.78 of the penal law.

7 Criminal possession of a controlled substance in the seventh degree is
8 a class A misdemeanor.

9 § 5. Paragraph (g) of subdivision 2 of section 850 of the general
10 business law, as amended by chapter 812 of the laws of 1980, is amended
11 to read as follows:

12 (g) Hypodermic syringes, needles and other objects, used or designed
13 for the purpose of parenterally injecting controlled substances into the
14 human body; provided, however, hypodermic syringes and needles obtained
15 and possessed from the state's syringe exchange and pharmacy and medical
16 provider-based expanded syringe access programs shall not be considered
17 drug-related paraphernalia;

18 § 6. Paragraph (c) of subdivision 1 of section 3381 of the public
19 health law, as amended by chapter 178 of the laws of 2010, is amended to
20 read as follows:

21 (c) by a pharmacy licensed under article one hundred thirty-seven of
22 the education law, health care facility licensed under article twenty-
23 eight of this chapter or a health care practitioner who is otherwise
24 authorized to prescribe the use of hypodermic needles or syringes within
25 his or her scope of practice; provided, however, that such sale or
26 furnishing: (i) shall only be to a person eighteen years of age or
27 older; and (ii) [~~shall be limited to a quantity of ten or less hypodermic~~
28 ~~needles or syringes, and (iii)] shall be in accordance with subdivi-
29 sion five of this section.~~

30 § 7. Paragraph (a) of subdivision 5 of section 3381 of the public
31 health law, as amended by section 9-a of part B of chapter 58 of the
32 laws of 2007, is amended to read as follows:

33 (d) In addition to the requirements of paragraph (c) of subdivision
34 one of this section, a pharmacy licensed under article one hundred thir-
35 ty-seven of the education law may sell or furnish hypodermic needles or
36 syringes only if such pharmacy [~~(i) does not advertise to the public~~
37 ~~the availability for retail sale or furnishing of hypodermic needles or~~
38 ~~syringes without a prescription, and (ii) at any location where hypo-~~
39 ~~dermic needles or syringes are kept for retail sale or furnishing,]~~
40 stores such needles and syringes in a manner that makes them available
41 only to authorized personnel and not openly available to customers.

42 § 8. This act shall take effect immediately.

43

PART J

44 Section 1. Subparagraph (v) of paragraph a of subdivision 1 of section
45 6908 of the education law is relettered subparagraph (vi) and a new
46 subparagraph (v) is added to read as follows:

47 (v) tasks provided by an advanced home health aide in accordance with
48 regulations developed in consultation with the commissioner of health
49 which, at a minimum, shall: (1) specify the types of tasks that may be
50 performed by advanced home health aides pursuant to this subparagraph
51 ("advanced tasks"), which shall include the administration of medica-
52 tions which are routine and prefilled or otherwise packaged in a manner
53 that promotes relative ease of administration; (2) provide that advanced
54 tasks performed by advanced home health aides may be performed only

1 under the direct supervision of a registered professional nurse licensed
2 in New York state and employed by a home care services agency licensed
3 or certified pursuant to article thirty-six of the public health law or
4 hospice program certified pursuant to article forty of the public health
5 law, where such nursing supervision (A) includes training and periodic
6 assessment of the performance of advanced tasks, (B) shall be determined
7 by the registered professional nurse responsible for supervising such
8 advanced tasks based upon the complexity of such advanced tasks, the
9 skill and experience of the advanced home health aide, and the health
10 status of the individual for whom such advanced tasks are being
11 performed, and (C) includes a comprehensive assessment of the individ-
12 ual's needs; (3) provide that advanced tasks may be performed only in
13 accordance with and pursuant to an authorized practitioner's ordered
14 care; (4) provide that only a home health aide who has at least one year
15 of experience as a certified home health aide, has completed the requi-
16 site training and demonstrated competencies of an advanced home health
17 aide, has successfully completed competency examinations satisfactory to
18 the commissioner and meets other appropriate qualifications may perform
19 advanced tasks as an advanced home health aide; (5) provide that only an
20 individual who is listed in the home care services registry maintained
21 by the department of health pursuant to subdivision nine of section
22 thirty-six hundred thirteen of the public health law as having satisfied
23 all applicable training requirements and having passed the applicable
24 competency examinations and who meets other requirements as set forth in
25 regulations issued by the commissioner of health pursuant to subdivision
26 seventeen of section thirty-six hundred two of the public health law may
27 perform advanced tasks pursuant to this subparagraph and may hold
28 himself or herself out as an advanced home health aide; (6) establish
29 minimum standards of training for the performance of advanced tasks by
30 advanced home health aides, including (A) didactic training, (B) clin-
31 ical training, and (C) a supervised clinical practicum with standards
32 set forth by the commissioner; (7) provide that advanced home health
33 aides shall receive case-specific training on the advanced tasks to be
34 assigned by the supervising nurse, provided that additional training
35 shall take place whenever additional advanced tasks are assigned; (8)
36 prohibit an advanced home health aide from holding himself or herself
37 out, or accepting employment as, a person licensed to practice nursing
38 under the provisions of this article; (9) provide that an advanced home
39 health aide is not required nor permitted to assess the medication needs
40 of an individual; (10) provide that an advanced home health aide shall
41 not be authorized to perform any tasks or activities pursuant to this
42 subparagraph that are outside the scope of practice of a licensed prac-
43 tical nurse; (11) provide that an advanced home health aide shall docu-
44 ment medication administration to each individual through the use of a
45 medication administration record; and (12) provide that the supervising
46 registered professional nurse shall retain the discretion to decide
47 whether to assign advanced tasks to home health aides under this program
48 and shall not be subject to coercion or the threat of retaliation; in
49 developing such regulations, the commissioner shall take into account
50 the recommendations of the workgroup of stakeholders convened by the
51 commissioner of health for the purpose of providing guidance on the
52 foregoing; or

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

55 17. "Advanced home health aides" means home health aides who are
56 authorized to perform advanced tasks as delineated in subparagraph (v)

1 of paragraph a of subdivision one of section six thousand nine hundred
2 eight of the education law and regulations issued by the commissioner of
3 education, in consultation with the commissioner of health, relating
4 thereto. The commissioner shall promulgate regulations regarding such
5 aides, which shall include a process for the limitation or revocation of
6 the advanced home health aide's authorization to perform advanced tasks
7 in appropriate cases.

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

11 9. The department shall indicate within the home care services worker
12 registry when a home health aide has satisfied all applicable training
13 and recertification requirements and has passed the applicable competen-
14 cy examinations necessary to perform advanced tasks pursuant to subpara-
15 graph (v) of paragraph a of subdivision one of section six thousand nine
16 hundred eight of the education law and regulations issued thereto. Any
17 limitation or revocation of the advanced home health aide's authori-
18 zation also shall be indicated on the registry.

19 § 4. In developing regulations required under subparagraph (v) of
20 paragraph a of subdivision 1 of section 6908 of the education law, as
21 added by section one of this act, the commissioner of education shall
22 consider the recommendations of the workgroup of stakeholders convened
23 by the commissioner of health, to provide guidance on the tasks which
24 may be performed by advanced home health aides pursuant to such section
25 including but not limited to recommendations encompassing the following
26 matters:

27 (a) the tasks that appropriately could be performed by advanced home
28 health aides with appropriate training and supervision ("advanced
29 tasks");

30 (b) the types of medications that advanced home health aides should be
31 authorized to administer, including whether subcutaneous injectables and
32 controlled substances should be authorized;

33 (c) qualifications that must be satisfied by advanced home health
34 aides to perform advanced tasks, including those related to experience,
35 training, moral character, and examination requirements;

36 (d) minimum training and education standards; and

37 (e) adequate levels of supervision to be provided by nurses, including
38 adherence to existing requirements for comprehensive assessment and any
39 additional assessment that should be required, including when the indi-
40 vidual receiving advanced tasks performed by an advanced home health
41 aide experiences a significant change in condition.

42 § 5. This act shall take effect October 1, 2015; provided, however,
43 that the commissioner of education shall adopt or amend regulations
44 necessary to implement the provisions of subparagraph (v) of paragraph a
45 of subdivision 1 of section 6908 of the education law, as added by
46 section one of this act, by such effective date; provided, further, that
47 no advanced tasks may be performed pursuant to such provision until such
48 regulations are adopted and except in conformance with such regulations.

49

PART K

50 ~~Section 1. Subdivisions 1, 2 and 3 of section 2802 of the public~~
51 ~~health law, subdivisions 1 and 2 as amended by section 58 of part A of~~
52 ~~chapter 58 of the laws of 2010, subdivision 3 as amended by chapter 609~~
53 ~~of the laws of 1992 and paragraph (e) of subdivision 3 as amended by~~
54 ~~chapter 731 of the laws of 1993, are amended to read as follows:~~

APPENDIX B

APPENDIX B

ADVANCED HOME HEALTH AIDES ADVISORY WORKGROUP Members

- 1199SEIU United Healthcare Workers East: Helen Schaub, Vice President, New York Director of Policy and Legislation; Faith Wiggins, Director of the 1199SEIU Bill Michelson Home Care Education Fund
- AARP: David McNally, New York Manager of Government Affairs and Advocacy; Bill Ferris, State Legislative Representative
- American Nurses Association: Karen Ballard, MA, RN, FAAN, Executive Director; Marilyn Dollinger, DNS, FNP, RN, Associate Dean, Wegmans School of Nursing
- BOCES: Paula Negri, Health Careers Principal, Capital Region BOCES
- Center for Disability Rights: Bruce Darling, President/CEO; Stephanie Woodward, Director of Advocacy; Adam Prizio, Policy Analyst
- Center for Health Workforce Studies, University at Albany: Jean Moore, Director
- Chain Pharmacy Association of New York State: Kimberly DeMagistris, PharmD, RPh, Pharmacy Clinical Coordinator, Price Chopper Supermarkets;
- City University of New York: Dr. William Ebenstein, University Dean for Health and Human Services
- Consumer Directed Personal Assistance Association of New York State: Bryan O'Malley, Executive Director
- Columbia University School of Nursing: Bobbie Berkowitz, Ph.D., RN, FAAN, Dean
- Home Care Association of New York State: Al Cardillo, Executive Vice President
- Hospice & Palliative Care Association of New York State: Beth Mahar, Director of Member Services
- LeadingAge New York: James Clyne, Jr., President/CEO; Alyssa Lovelace, Government Relations Analyst; Cheryl Udell, Community Services Policy Analyst
- New York Association of Independent Living Association: Lindsay Miller, MPH, Executive Director
- New York State Association of Health Care Providers: Christy Johnson, President; Megan Tangjerd, MPA, Senior Associate for Public Policy
- New York Association of Psychiatric Rehabilitation Services, Inc. (NYAPRS): Briana Gilmore, Director of Public Policy
- New York Organization of Nurse Executives and Leaders: Claire Murray, Executive Director
- New York State Nurses Association: Susan Mitnick, Regulatory Specialist; Leon Bell, Political Director; Martha Wilcox, RN, Sullivan County Health Department, Board Member; Carol Ann Lemon, RN, Lobbyist; Judith Berek, Consultant
- New York University College of Nursing, Hartford Institute for Geriatric Nursing: Tara Cortes, Ph.D, RN, FAAN, Executive Director
- Paraprofessional Health Initiative: Carol Rodat, New York Policy Director; Peggy Powell, National Director, Workforce & Curriculum Development

- Pharmacists Society of the State of New York: Kelly Flynn, Pharmacist
- New York Chapter of the Assisted Living Federation of America: Ginger Landy, Co-Director, NY ALFA; (Michele O'Connor, Legislative Director
- New York State Department of Health: Lisa Ullman, Office of Primary Care and Health Systems Management (OPCHSM); Barry Gray, OPCHSM; Caleb Wistar, OPCHSM; Rebecca Fuller Gray, OPCHSM; JoAnn Tyler, OPCHSM; Cherlyn Fay, OPCHSM; Darleen Cieply, OPCHSM; Mark Kissinger, Division of Long Term Care (DLTC); Margaret Willard, DLTC; Alicia Segura, DLTC; Karen Meier, DLTC; Shaymaa Mousa, M.D., M.P.H., Office of the Commissioner of Health; Hope Plavin, Office of Quality and Patient Safety; Sandy Jensen, Division of Legal Affairs (DLA); James Tardy, DLA; Jane McLaughlin, Office of Government Affairs
- New York State Office for People With Developmental Disabilities: Kate Marlay, Deputy Director, Division of Person-Centered Supports; Jill Pettinger; Victoria Schultz; Martha Schunk