



Following an agreement between the Governor and Legislative leaders, legislation (S.8110 LaValle/A.10707 Glick) was passed that will authorize advanced home health aides (AHHAs) to perform certain advanced tasks, which remain to be defined, under the supervision of a registered professional nurse (RN) employed by a home care services agency (CHHAs and LHCSAs), a hospice program or an enhanced assisted living residence (EALR). In addition, the legislation: (1) adds hospice programs and EALRs to the definition of “home care services entity” for purposes of the Home Care Services Worker Registry; and (2) adds hospice programs to the definition of “provider” for purposes of the Criminal History Record Check (CHRC) Program administered by the Department of Health. While this legislation has not yet been delivered to the Governor, it is expected to be signed into law by the Governor when delivered. A copy of the legislation is [attached](#).

This memorandum addresses the impact of this legislation on home care services agencies and hospice programs, which will result in the following:

- Authorize home care services agencies, hospice programs, and EALRs to employ AHHA’s under the supervision of an employed RN to perform tasks that will be determined through regulations promulgated by the State Education Department (SED), in consultation with the Department of Health (DOH), beginning 18 months after the legislation is signed by the Governor and implementing regulations have been adopted;
- Effective immediately upon being signed into law by the Governor, hospice programs and EALRs will be subject to the provisions of the Home Care Services Worker Registry statute, which require home care services entities to obtain information from the Registry relating to a home care services worker prior to the worker beginning to provide home care services for that entity; and
- Effective on April 1, 2018, and applicable only to prospective employees, hospice programs will be required to submit criminal history record check requests through the Department’s CHRC Program for all prospective non-licensed employees providing direct patient care to patients or who have access to their property and belongings.

## **Summary of Provisions**

### 1. AHHA Scope of Tasks

The legislation directs SED, in consultation with DOH, to specify the advanced tasks that may be performed by an AHHA under the supervision of an RN employed by a home care services agency, a hospice program or an EALR through regulation. The legislation does provide that the scope of tasks will include the administration of medications which are routine and prefilled, or packaged in manner for ease of administration, but expressly prohibits the administration of medication by injection,<sup>1</sup> sterile procedures, and central line maintenance. It also will prohibit AHHAs from performing tasks that are outside the scope of practice of a licensed practical nurse (“LPN”) or tasks that have not been assigned by the supervising RN.

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<sup>1</sup> The legislation excludes certain injections from the prohibition of administration of medication by injection. The prohibition does not apply to injections for diabetes care, injections of low molecular weight heparin, and pre-filled auto-injections of naloxone and epinephrine for emergency purposes.

The development of AHHA tasks will include the recommendations of the Advanced Home Health Aide Workgroup. The Workgroup will provide guidance to SED and DOH on the advanced tasks which should be authorized to be performed by an AHHA. The recommendations are to be submitted by September 1, 2016.

## 2. AHHA Qualifications

The legislation establishes minimum requirements for certified home health aides to serve as an AHHA. Specifically, a certified home health aide must:

- Have at least one year of experience providing either home health or personal care services, or a combination of experience between providing these services that amount to one year of experience;
- Complete training requirements that will be established through regulations issued by SED;
- Complete competency examinations, which are to be developed by SED; and
- Meet any other qualifications established by SED through regulation.

In order for an AHHA to perform advanced tasks, the individual must be listed on the Home Care Services Worker Registry as having satisfied all applicable training requirements and passed the applicable competency examinations.

## 3. RN Supervision Requirements

The legislation authorizes a RN, while employed by a home care services agency, a hospice program or an EALR, to assign AHHAs to perform advanced tasks for patients and requires the RN to supervise the AHHA in the performance of assigned advanced tasks. It is important to note that while the legislation uses the term “direct supervision”, it does not require the supervising RN to be physically present at the site of service for an AHHA to perform advanced tasks. A RN is prohibited from assigning advanced tasks to an AHHA for a specific patient if the patient declines to be served by an AHHA.

Prior to assigning an AHHA to perform advanced tasks, the RN will be required to complete a nursing assessment of the patient to ascertain the patient’s health status and care needs and provide the AHHA with written patient-specific instructions for performing advanced tasks and criteria for identifying, reporting, and responding to complications.

In assigning advanced tasks to an AHHA, the supervising RN must:

- Ensure that the assigned advanced task is consistent with the patient’s ordered care by a practitioner;
- Provide case specific training to the AHHA and personally verify that the AHHA can safely and competently perform the advanced task based on the complexity of the task, the skill and experience of the AHHA, and the health status of the patient; and
- Determine that the AHHA is able to communicate with the patient receiving services and understand the patient’s needs.

The legislation also requires the supervising RN to perform ongoing supervision of the AHHA and patient being served by the AHHA. Specifically, it will require the supervising RN to visit each patient receiving services by an AHHA at least once every two weeks.

In addition, the employer (home care services agency, hospice program or EALR) must ensure that an employed RN is available by telephone to the AHHA 24-hours a day, seven days a week, and that an employed RN will be available to visit a patient receiving services from an AHHA as necessary to protect the health and safety of the patient.

It is expected that regulations developed by SED to implement this legislation will include additional requirements for supervising RNs.

#### 4. AHHA Implementation Timeline

The legislation provides for a delayed effective date in relation to the provisions authorizing AHHAs to perform advanced tasks. AHHAs will not be permitted to perform advanced tasks until 18 months after the legislation is signed by the Governor and after implementing regulations have been adopted.

#### 5. Home Care Services Worker Registry

The legislation adds hospice programs and EALRs to the definition of “home care services entity” for purposes of the Home Care Services Worker Registry statute (Public Health Law § 3613), which requires a “home care services entity” to check the certification status of a home care services worker prior to the worker beginning to provide home care services for that entity. Home care services worker is defined as “any person engaged in or applying to become engaged in providing home health aide services or personal care services”. It is our understanding that this requirement to obtain information from the Registry will apply to all home care services workers and personal care aides, not just individuals hired as an AHHA.

As discussed above, this provision is effective immediately upon the legislation being signed by the Governor.

#### 6. Criminal History Record Check (CHRC) Program

The legislation adds hospice programs to the definition of “provider” under the Criminal History Record Check (CHRC) Program administered by the Department of Health (Public Health Law § 2899). Home care services agencies and EALRs are already included in the definition of “provider” under this program.

This provision will require hospice programs to submit criminal history record check requests (including fingerprint cards) for all prospective non-licensed employees providing direct patient care or supervision. Licensed employees, those with professional licenses under Title 8 of the Education law, are not subject to the CHRC requirement. Prior guidance material on the CHRC Program identified the following employee types that are likely subject to the CHRC requirements: Certified Nursing Assistants, Home Health Aides, Personal Care Workers,

Licensed Practical Nurses and Registered Nurses working out of title, and all housekeeping, maintenance, dietary and activity employees. It is expected that AHHAs will be subject to the CHRC requirements.

While the results of the criminal history records check are pending, a provider may temporarily approve a prospective employee. If a prospective employee is not approved, or appeals the Department's decision, such employee must be immediately removed from providing direct care or supervision to patients, residents, or clients of the provider.

Currently, the CHRC request process requires the provider to cover the costs associated with requesting a criminal history record check, but this cost is eligible for reimbursement. This legislation amends statutory language to include hospice programs within the list of providers that are eligible to receive reimbursement for criminal history record check requests, within available appropriated funds.

As discussed above, these provisions will take effect on April 1, 2018 and apply only to prospective employees.

Please contact us with any questions that you may have.

# STATE OF NEW YORK

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## IN SENATE

June 13, 2016

Introduced by Sen. LAVALLE -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

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

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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- 1 public health law, or an enhanced assisted living residence licensed  
2 pursuant to article seven of the social services law and certified  
3 pursuant to article forty-six-B of the public health law. Such nursing  
4 supervision shall:
- 5 (i) include training and periodic assessment of the performance of  
6 advanced tasks;
- 7 (ii) be determined by the registered professional nurse responsible  
8 for supervising such advanced tasks based upon the complexity of such  
9 advanced tasks, the skill and experience of the advanced home health  
10 aide, and the health status of the individual for whom such advanced  
11 tasks are being performed;
- 12 (iii) include a comprehensive initial and thereafter regular and ongo-  
13 ing assessment of the individual's needs;
- 14 (iv) include as a requirement that the supervising registered profes-  
15 sional nurse shall visit individuals receiving services for the purpose  
16 of supervising the services provided by advanced home health aides no  
17 less than once every two weeks and include as a requirement that a  
18 registered professional nurse shall be available by telephone to the  
19 advanced home health aide twenty-four hours a day, seven days a week,  
20 provided that a registered professional nurse shall be available to  
21 visit an individual receiving services as necessary to protect the  
22 health and safety of such individual; and
- 23 (v) as shall be specified by the commissioner, be provided in a manner  
24 that takes into account individual care needs, case mix complexity and  
25 geographic considerations and provide that the number of individuals  
26 served by a supervising registered professional nurse is reasonable and  
27 prudent.
- 28 c. establish a process by which a registered professional nurse may  
29 assign advanced tasks to an advanced home health aide. Such process  
30 shall include, but not be limited to:
- 31 (i) allowing assignment of advanced tasks to an advanced home health  
32 aide only where such advanced home health aide has demonstrated to the  
33 satisfaction of the supervising registered professional nurse competency  
34 in every advanced task that such advanced home health aide is authorized  
35 to perform, a willingness to perform such advanced tasks, and the abili-  
36 ty to effectively and efficiently communicate with the individual  
37 receiving services and understand such individual's needs;
- 38 (ii) prohibiting assignment of advanced tasks to an advanced home  
39 health aide if the individual receiving services declines to be served  
40 by an advanced home health aide;
- 41 (iii) authorizing the supervising registered professional nurse to  
42 revoke any assigned advanced task from an advanced home health aide for  
43 any reason; and
- 44 (iv) authorizing multiple registered professional nurses to jointly  
45 agree to assign advanced tasks to an advanced home health aide, provided  
46 further that only one registered professional nurse shall be required to  
47 determine if the advanced home health aide has demonstrated competency  
48 in the advanced task to be performed;
- 49 d. provide that advanced tasks may be performed only in accordance  
50 with and pursuant to an authorized health practitioner's ordered care;
- 51 e. provide that only a certified home health aide may perform advanced  
52 tasks as an advanced home health aide when such aide has:
- 53 (i) at least one year of experience providing either home health or  
54 personal care services, or a combination of the same;

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

4 (iii) successfully completed competency examinations satisfactory to  
5 the commissioner in consultation with the commissioner of health; and

6 (iv) meets other appropriate qualifications as determined by the  
7 commissioner in consultation with the commissioner of health;

8 f. provide that only an individual who is listed in the home care  
9 services registry maintained by the department of health pursuant to  
10 section thirty-six hundred thirteen of the public health law as having  
11 satisfied all applicable training requirements and having passed the  
12 applicable competency examinations and who meets other requirements as  
13 set forth in regulations issued by the commissioner of health pursuant  
14 to subdivision seventeen of section thirty-six hundred two of the public  
15 health law may perform advanced tasks pursuant to this subdivision and  
16 may hold himself or herself out as an advanced home health aide;

17 g. establish minimum standards of training for the performance of  
18 advanced tasks by advanced home health aides, including didactic train-  
19 ing, clinical training, and a supervised clinical practicum with stand-  
20 ards set forth by the commissioner of health;

21 h. provide that advanced home health aides shall receive case-specific  
22 training on the advanced tasks to be assigned by the supervising nurse,  
23 provided that additional training shall take place whenever additional  
24 advanced tasks are assigned;

25 i. prohibit an advanced home health aide from holding himself or  
26 herself out, or accepting employment as, a person licensed to practice  
27 nursing under the provisions of this article;

28 j. provide that an advanced home health aide is not required nor  
29 permitted to assess the medication or medical needs of an individual;

30 k. provide that an advanced home health aide shall not be authorized  
31 to perform any advanced tasks or activities pursuant to this subdivision  
32 that are outside the scope of practice of a licensed practical nurse or  
33 any advanced tasks that have not been appropriately assigned by the  
34 supervising registered professional nurse;

35 l. provide that an advanced home health aide shall document all  
36 advanced tasks provided to an individual, including medication adminis-  
37 tration to each individual through the use of a medication adminis-  
38 tration record; and

39 m. provide that the supervising registered professional nurse shall  
40 retain the discretion to decide whether to assign advanced tasks to  
41 advanced home health aides under this program and shall not be subject  
42 to coercion, retaliation, or the threat of retaliation; in developing  
43 such regulations, the commissioner shall take into account the recommen-  
44 dations of a workgroup of stakeholders convened by the commissioner of  
45 health in consultation with the commissioner for the purpose of provid-  
46 ing guidance on the foregoing.

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

49 8. A registered professional nurse, while working for a home care  
50 services agency licensed or certified pursuant to article thirty-six of  
51 the public health law, a hospice program certified pursuant to article  
52 forty of the public health law, or an enhanced assisted living residence  
53 licensed pursuant to article seven of the social services law and certi-  
54 fied pursuant to article forty-six-B of the public health law may, in  
55 accordance with this subdivision, assign advanced home health aides to  
56 perform advanced tasks for individuals pursuant to the provisions of



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1 subdivision two of section sixty-nine hundred eight of this article and  
2 supervise advanced home health aides who perform assigned advanced  
3 tasks.

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

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

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

11 (b) The registered professional nurse shall not assign an advanced  
12 task unless:

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

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

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

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

25 (c) The supervising registered professional nurse shall:

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

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

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

32 (9) In conjunction with and as a condition of each triennial registra-  
33 tion, the department shall ask and a licensed practical nurse shall  
34 indicate whether the licensed practical nurse is or has previously been  
35 authorized as an advanced home health aide pursuant to subdivision two  
36 of section sixty-nine hundred eight of this article. The department  
37 shall provide responses to the department of health and the department  
38 of health shall include such information in reports related to advanced  
39 home health aides.

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

42 30. The commissioner shall notify the commissioner of education in any  
43 instance in which a registered professional nurse engages in improper  
44 behavior while supervising an advanced home health aide pursuant to  
45 subdivision two of section sixty-nine hundred eight of the education  
46 law.

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

49 17. "Advanced home health aides" means home health aides who are  
50 authorized to perform advanced tasks as delineated in subdivision two of  
51 section sixty-nine hundred eight of the education law and regulations  
52 issued by the commissioner of education relating thereto. The commis-  
53 sioner shall promulgate regulations regarding such aides, which shall  
54 include a process for the limitation or revocation of the advanced home  
55 health aide's authorization to perform advanced tasks in appropriate  
56 cases.

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

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

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

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

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

26 6. "Provider" shall mean any residential health care facility licensed  
27 under article twenty-eight of this chapter; or any certified home health  
28 agency, licensed home care services agency or long term home health care  
29 program certified under article thirty-six of this chapter; any hospice  
30 program certified pursuant to article forty of this chapter; or any  
31 adult home, enriched housing program or residence for adults licensed  
32 under article seven of the social services law.

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

36 (a) In the event that funds are appropriated in any given fiscal year  
37 for the reimbursement for the costs of providing such criminal history  
38 information, reimbursement shall be made available in an equitable and  
39 direct manner for the projected cost of the fee established pursuant to  
40 law by the division of criminal justice services for processing a crimi-  
41 nal history information check, the fee imposed by the federal bureau of  
42 investigation for a national criminal history check, and costs associ-  
43 ated with obtaining the fingerprints to all providers licensed, but not  
44 certified under article thirty-six of this chapter, providers certified  
45 under article forty of this chapter, and all adult care facilities  
46 licensed under article seven of the social services law, including those  
47 that are subject to this article and are unable to access direct  
48 reimbursement from state and/or federal funded health programs.

49 § 10. On or before September 1, 2016, the commissioner of health  
50 shall, in consultation with the commissioner of education, issue a  
51 report to the governor and the chairs of the senate and assembly health  
52 and higher education committees setting forth the recommendations of the  
53 workgroup convened by the commissioner of health for the purpose of  
54 providing guidance on the performance of advanced tasks which may be  
55 performed by advanced home health aides.

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1 § 11. On or before October 1, 2022, the commissioner of health shall,  
2 in consultation with the commissioner of education, issue a report on  
3 the implementation of advanced home health aides in the state. Such  
4 report shall include the number of advanced home health aides authorized  
5 pursuant to this act; the number of home health aides and personal care  
6 aides that became authorized to perform advanced tasks; the number of  
7 advanced home health aides that became registered as licensed practical  
8 nurses; the types of advanced tasks that advanced home health aides are  
9 performing; the number of complaints pertaining to services provided by  
10 advanced home health aides that were reported to the department of  
11 health; and the number of advanced home health aides who had their  
12 authorization limited or revoked. Such report shall provide recommenda-  
13 tions to the governor and the chairs of the senate and assembly health  
14 and higher education committees regarding the implementation of home  
15 health aides pursuant to this act, and any recommendations related ther-  
16 eto.

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

18 a. sections one and three of this act shall take effect eighteen  
19 months after this act shall have become a law. Effective immediately,  
20 the commissioner of education is authorized to adopt or amend regu-  
21 lations and take such other actions as are necessary to implement the  
22 provisions of sections one and two of this act on or before such effec-  
23 tive date; provided, further, that no advanced tasks shall be performed  
24 pursuant to the provisions of subdivision two of section 6908 of the  
25 education law, as added by section one of this act, on or before such  
26 effective date; provided further, that no advanced tasks shall be  
27 performed pursuant to such provisions until such regulations are adopted  
28 and except in conformance with such regulations including in conformance  
29 with the provisions of such regulations related to the completion of  
30 advanced home health aide training and the satisfaction of competency  
31 examination requirements; and provided, further, that sections eight and  
32 nine of this act shall take effect April 1, 2018 and shall apply only to  
33 prospective employees.

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

**NEW YORK STATE SENATE  
INTRODUCER'S MEMORANDUM IN SUPPORT  
submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S8110

**SPONSOR:** LAVALLE

**TITLE OF BILL:** 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.