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DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

IN SUPPORT OF TO L.D. 2126
“An Act Relating to Delegation of Nursing Activities and Tasks”
Sponsored by Representative Anne Perry

BEFORE THE JOINT STANDING COMMITTEE ON
HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES
Public Hearing: February 8, 2024 at 1:00 pm

Senator Baily, Representative Perry, and members of the Committee. I am Kim Esquibel, Executive Director for the State Board of Nursing. I am here today to speak in support of LD 2126.

In 1995, the legislature amended the definition of professional nursing to include coordination and oversight of patient care services by unlicensed assistive personnel. It was evident then to many stakeholders that the use of unlicensed assistive personnel was expanding and there was a need to ensure the registered nurse maintained a nursing presence in the coordination of these workers. This statutory change and the rule adopted to address this change, [Chapter 6 Coordination and Oversight of Unlicensed Assistive Personnel](#), created a two-tier level of responsibility for the registered nurse: direct responsibility under delegation for the certified nursing assistant; and indirect responsibility under coordination and oversight for all other unlicensed assistive personnel. The untoward effect of this was the placement of the responsibility of unlicensed assistive personnel with a non-nursing entity. The registered nurse could refuse to coordinate and oversee the care provided by unlicensed assistive personnel, but the registered nurse did not have the authority to prohibit the provision of services by unlicensed assistive personnel.

The use of unlicensed assistive personnel was in its infancy in 1995. That statutory change is now twenty-eight years old. The use of unlicensed assistive personnel has increased dramatically to fill gaps in the provision of healthcare in response to the increasing demand for health care workers. Delivery of care models have changed to promote licensed health care professionals to apply their skills in an efficient and effective manner by directing a pool of both licensed and unlicensed providers.



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From a regulatory perspective, most states have enacted legislation to address the role of licensed and unlicensed personnel and the role of the registered nurse. These changes ensure that registered nurses have the authority to practice at the helm of changes in nursing healthcare delivery models based on their specialized judgement and skill, and the application of the principles of biological, physical, and social sciences as acquired in a professional nursing program. The registered nurse delegates nursing tasks to ensure patient safety.

In its 2019 Government Evaluation Act report, the State Board of Nursing identified the need for Maine to align with national nursing delegation standards as an emerging topic. Unlike coordination and oversight, delegation is well defined in the [National Guidelines for Nursing Delegation](#) jointly adopted by the National Council of State Boards of Nursing and the American Nurses Association.

LD 2126 will allow Maine to align with national nursing delegation standards. The bill will replace “coordination and oversight” with “delegation” and will ensure the registered nurse has the direct responsibility to manage a team to allow flexibility in decision making, staff assignments, and outcomes of patient care based on the registered nurse’s professional judgement and assessment.

Thank you for the opportunity to comment. I would be happy to answer any questions now or at the work session.

02-380 MAINE STATE BOARD OF NURSING

Chapter 6 REGULATIONS RELATING TO COORDINATION AND OVERSIGHT OF PATIENT CARE SERVICES BY UNLICENSED HEALTH CARE ASSISTIVE PERSONNEL

SUMMARY: This chapter sets forth regulations governing coordination and oversight by registered professional nurses of patient care services provided by unlicensed health care assistive personnel.

Sec. 1. Definition

For purposes of this chapter, unlicensed health care assistive personnel are personnel who are not licensed by the board to practice nursing.

Sec. 2. Coordination and Oversight

1. General Authority

Except as otherwise provided by Chapter 5, and in accordance with this chapter, the registered professional nurse may coordinate and oversee unlicensed health care assistive personnel for specific tasks for specific patients, consistent with patient safety. Except as provided by 32 M.R.S.A. Section 2102(2)(G), the registered professional nurse shall not coordinate and oversee unlicensed health care assistive personnel for health counseling, teaching or any task that requires independent, specialized nursing knowledge, skill or judgment.

2. Elements of Coordination and Oversight

A. Factors to be considered

Factors to be considered by the nurse as to whether that nurse may coordinate his/her services with unlicensed health care assistive personnel, consistent with patient safety, include without limitation: acuity of the patient; stability of the condition of the patient; training and capability of the unlicensed health care assistive personnel; nature of the tasks; and the setting in which care is to be delivered.

B. The nurse's responsibility

The nurse who coordinates and oversees services provided by unlicensed health care assistive personnel shall do the following:

- (1) identify the needs of the patient, consulting the plan of care
- (2) identify the task to be performed by the unlicensed health care assistive personnel
- (3) provide directions regarding the task to be performed
- (4) determine the ability of the unlicensed health care assistive personnel to perform the task
- (5) monitor reporting and documentation of the task
- (6) ensure that the unlicensed assistive personnel assigned to that nurse's patient reports directly to the nurse for the performance of nursing tasks
- (7) evaluate performance of the task and patient outcome, and initiate corrective action when necessary.

Statutory Authority: 32 M.R.S.A. Sections 2102(2)(H) and 2153(A)(1)

Effective Date: July 27, 1997

National Guidelines for Nursing Delegation

Effective Date: **4/29/2019**
Status: **Replaces NCSBN and ANA 2010 Joint Statement on Delegation**
Written by: **NCSBN – ANA**
Jointly Adopted by: **NCSBN Board of Directors / ANA Board of Directors**

I. Purpose

Delegation is an essential nursing skill. Building on previous work of NCSBN and the American Nurses Association (ANA), this joint statement reflects an effort to standardize the nursing delegation process based on research findings and evidence in the literature and is applicable to all levels of nursing licensure (advanced practice registered nurse [APRN], registered nurse [RN], licensed practical/vocational nurse [LPN/VN]) where the nurse practice act (NPA) is silent.

These guidelines can be applied to:

- APRNs when delegating to RNs, LPN/VNs and assistive personnel (AP)
- RNs when delegating to LPN/VNs and AP
- LPN/VNs (as allowed by their state/jurisdiction) when delegating to AP.

Note: These guidelines do not apply to the transfer of responsibility for care of a patient between licensed health care providers (e.g., RN to another RN or LPN/VN to another LPN/VN), which is considered a handoff (Agency for Healthcare Research and Quality, 2015).

Introduction

Health care is continuously changing and necessitates adjustment for evolving roles and responsibilities of licensed health care providers and assistive personnel. The abilities to delegate, assign and supervise are critical competencies for every RN. It is important to note that states/jurisdictions have different laws and rules/regulations about delegation, and it is the responsibility of all licensed nurses to know what is permitted in their jurisdiction. When certain nursing care needs to be delegated, it is imperative that the delegation process and the jurisdiction NPA be clearly understood so that it is safely, ethically and effectively carried out.

The decision of whether or not to delegate or assign is based upon the RN's judgment concerning the condition of the patient, the competence of all members of the nursing team and the degree of supervision that will be required of the RN if a task is delegated. The difference between **delegation** and **assignment** has been a source of debate for years.

Definitions

Accountability: “To be answerable to oneself and others for one’s own choices, decisions and actions as measured against a standard...” (American Nurses Association, 2015, p. 41).

Delegated Responsibility: A nursing activity, skill or procedure that is transferred from a licensed nurse to a delegatee.

Delegatee: One who is delegated a nursing responsibility by either an APRN, RN or LPN/VN (where jurisdiction NPA allows), is competent to perform it and verbally accepts the responsibility. A delegatee may be an RN, LPN/VN or AP.

Delegator: One who delegates a nursing responsibility. A delegator may be APRN, RN, or LPN/VN (where jurisdiction NPA allows).

Assignment: The routine care, activities and procedures that are within the authorized scope of practice of the RN or LPN/VN or part of the routine functions of the AP.

Licensed Nurse: A licensed nurse includes APRNs, RNs and LPN/VNs. In some states/jurisdictions, LPN/VNs may be allowed to delegate.

Assistive Personnel (AP): Any assistive personnel trained to function in a supportive role, regardless of title, to whom a nursing responsibility may be delegated. This includes but is not limited to certified nursing assistants or aides (CNAs), patient care technicians, CMAs, certified medication aids, and home health aides (*formerly referred to as “unlicensed” assistive personnel [UAP]*).

When performing a fundamental skill on the job, the delegatee is considered to be carrying out an assignment. The routine care, activities and procedures assigned are those which would have been included in the delegatee’s basic educational program. A licensed nurse is still responsible for ensuring an assignment is carried out completely and correctly. Delegation is allowing a delegatee to perform a specific nursing activity, skill, or procedure that is beyond the delegatee’s traditional role and not routinely performed. This applies to licensed nurses as well as AP. Regardless of the current role of the delegatee (RN, LPN/ VN or AP), delegation can be summarized as follows:

- A delegatee is allowed to perform a specific nursing activity, skill or procedure that is outside the traditional role and basic responsibilities of the delegatee’s current job.
- The delegatee has obtained the additional education and training, and validated competence to perform the care/delegated responsibility. The context and processes associated with competency validation will be different for each activity, skill or procedure being delegated. Competency validation should be specific to the knowledge and skill needed to safely perform the delegated responsibility as well as to the level of practitioner (i.e., RN, LPN/VN, AP) to whom the activity, skill or procedure has been delegated. The licensed nurse who delegates the “responsibility” maintains overall accountability for the patient. However, the delegatee bears the responsibility for the delegated activity, skill or procedure.

- The licensed nurse cannot delegate nursing judgment or any activity that will involve nursing judgment or critical decision making.
- Nursing responsibilities are delegated by someone who has the authority to delegate.
- The delegated responsibility is within the delegator’s scope of practice.
- When delegating to a licensed nurse, the delegated responsibility must be within the parameters of the delegatee’s authorized scope of practice under the NPA. Regardless of how the state/jurisdiction defines delegation, as compared to assignment, appropriate delegation allows for transition of a responsibility in a safe and consistent manner. Clinical reasoning, nursing judgment and critical decision making cannot be delegated.

The delegation process is multifaceted. It begins with the administrative level of the organization including: determining nursing responsibilities that can be delegated, to whom, and what circumstances; developing delegation policies and procedures; periodically evaluating delegation processes; and promoting positive culture/work environment. The licensed nurse must be responsible for determining patient needs and when to delegate, ensure availability to delegate, evaluate outcomes of and maintain accountability for delegated responsibility. Finally, the delegatee must accept activities based on their competency level, maintain competence for delegated responsibility and maintain accountability for delegated activity.



Five Rights of Delegation

Right task: The activity falls within the delegatee's job description or is included as part of the established written policies and procedures of the nursing practice setting. The facility needs to ensure the policies and procedures describe the expectations and limits of the activity and provide any necessary competency training.

Right circumstance: The health condition of the patient must be stable. If the patient's condition changes, the delegatee must communicate this to the licensed nurse, and the licensed nurse must reassess the situation and the appropriateness of the delegation.

Right person: The licensed nurse along with the employer and the delegatee is responsible for ensuring that the delegatee possesses the appropriate skills and knowledge to perform the activity.

Right directions and communication: Each delegation situation should be specific to the patient, the licensed nurse and the delegatee. The licensed nurse is expected to communicate specific instructions for the delegated activity to the delegatee; the delegatee, as part of two-way communication, should ask any clarifying questions. This communication includes any data that need to be collected, the method for collecting the data, the time frame for reporting the results to the licensed nurse, and additional information pertinent to the situation. The delegatee must understand the terms of the delegation and must agree to accept the delegated activity. The licensed nurse should ensure that the delegatee understands that she or he cannot make any decisions or modifications in carrying out the activity without first consulting the licensed nurse.

Right supervision and evaluation: The licensed nurse is responsible for monitoring the delegated activity, following up with the delegatee at the completion of the activity, and evaluating patient outcomes. The delegatee is responsible for communicating patient information to the licensed nurse during the delegation situation. The licensed nurse should be ready and available to intervene as necessary. The licensed nurse should ensure appropriate documentation of the activity is completed.

Source: NCSBN. (1995, 1996)

Guidelines for Delegation

Employer/Nurse Leader Responsibilities

1. The employer must identify a nurse leader responsible for oversight of delegated responsibilities for the facility. If there is only one licensed nurse within the practice setting, that licensed nurse must be responsible for oversight of delegated responsibilities for the facility.

Rationale: The nurse leader has the ability to assess the needs of the facility, understand the type of knowledge and skill needed to perform a specific nursing responsibility, and be accountable for maintaining a safe environment for patients. He or she is also aware of the knowledge, skill level and limitations of the licensed nurses and AP. Additionally, the nurse leader is positioned to develop appropriate staffing models that take into consideration the need for delegation. Therefore, the decision to delegate begins with a thorough assessment by a nurse leader designated by the institution to oversee the process.

2. The designated nurse leader responsible for delegation, ideally with a committee (consisting of other nurse leaders) formed for the purposes of addressing delegation, must determine which nursing responsibilities may be delegated, to whom and under what circumstances. The nurse leader must be aware of the state/jurisdiction's NPA and the laws/rules and regulations that affect the delegation process and ensure all institution policies are in accordance with the law.

Rationale: A systematic approach to the delegation process fosters communication and consistency of the process throughout the facility.

3. Policies and procedures for delegation must be developed. The employer/nurse leader must outline specific responsibilities that can be delegated and to whom these responsibilities can be delegated. The policies and procedures should also indicate what may not be delegated. The employer must periodically review the policies and procedures for delegation to ensure they remain consistent with current nursing practice trends and that they are consistent with the state/jurisdiction's NPA (institution/employer policies can be more restrictive, but not less restrictive).

Rationale: Policies and procedures standardize the appropriate method of care and ensure safe practices. Having a policy and procedure specific to delegation and delegated responsibilities eliminates questions from licensed nurses and AP about what can be delegated and how they should be performed.

4. The employer/nurse leader must communicate information about delegation to the licensed nurses and AP and educate them about what responsibilities can be delegated. This information should include the competencies of delegates who can safely perform a specific nursing responsibility.

Rationale: Licensed nurses must be aware of the competence level of staff and expectations for delegation (as described within the policies and procedures) in order to make informed decisions on whether or not delegation is appropriate for the given situation. Licensed nurses maintain accountability for the patient. However, the delegatee has responsibility for the delegated activity, skill or procedure.

Employer/Nurse Leader Responsibilities (continued)

5. All delegates must demonstrate knowledge and competency on how to perform a delegated responsibility. Therefore, the employer/nurse leader is responsible for providing access to training and education specific to the delegated responsibilities. This applies to all RNs, LPN/VNs and AP who will be delegates. Competency validation should follow education and competency testing should be kept on file. Competency must be periodically evaluated to ensure continued competency. The context and processes associated with competency validation will be different for each activity, skill or procedure being delegated. Competency validation should be specific to the knowledge and skill needed to safely perform the delegated responsibility as well as to the level of practitioner (i.e., RN, LPN/VN, AP) to whom the activity, skill, or procedure has been delegated.

Rationale: This ensures that competency of the delegatee is determined not only at the beginning of the delegation process, but on an ongoing basis, as well.

6. The nurse leader responsible for delegation, along with other nurse leaders and administrators within the facility, must periodically evaluate the delegation process. The licensed nurse and/or his or her manager (if applicable) must report any incidences to the nurse leader responsible for delegation. A decision should be made about corrective action, including if further education and training are needed, or if that individual should not be allowed to perform a specific delegated responsibility.

Rationale: Patient safety should always be the priority for a health care setting. If any compromises in care are noted, immediate action must be taken. Gravlin and Bittner (2010) identified that evaluation of the effectiveness of the delegation process and resolution of any issues is critical to delegation.

7. The employer/nurse leader must promote a positive culture and work environment for delegation.

Rationale: A positive culture nurtures effective communication and collaboration in order to create an environment supportive of patient directed care.

Licensed Nurse Responsibilities

Any decision to delegate a nursing responsibility must be based on the needs of the patient or population, the stability and predictability of the patient's condition, the documented training and competence of the delegatee, and the ability of the licensed nurse to supervise the delegated responsibility and its outcome, with special consideration to the available staff mix and patient acuity. Additionally, the licensed nurse must consider the state/jurisdiction's provisions for delegation and the employer's policies and procedures prior to making a final decision to delegate. Licensed nurses must be aware that delegation is at the nurse's discretion, with consideration of the particular situation. The licensed nurse maintains accountability for the patient, while the delegatee is responsible for the delegated activity, skill or procedure. If, under the circumstances, a nurse does not feel it is appropriate to delegate a certain responsibility to a delegatee, the delegating nurse should perform the activity him/herself.

1. The licensed nurse must determine when and what to delegate based on the practice setting, the patients' needs and condition, the state/jurisdiction's provisions for delegation, and the employer policies and procedures regarding delegating a specific responsibility. The licensed nurse must determine the needs of the patient and whether those needs are matched by the knowledge, skills and abilities of the delegatee and can be performed safely by the delegatee. The licensed nurse cannot delegate any activity that requires clinical reasoning, nursing judgment or critical decision making. The licensed nurse must ultimately make the final decision whether an activity is appropriate to delegate to the delegatee based on the Five Rights of Delegation (*NCSBN, 1995, 1996*).

Rationale: The licensed nurse, who is present at the point of care, is in the best position to assess the needs of the patient and what can or cannot be delegated in specific situations.

2. The licensed nurse must communicate with the delegatee who will be assisting in providing patient care. This should include reviewing the delegatee's assignment and discussing delegated responsibilities, including information on the patient's condition/stability, any specific information pertaining to a certain patient (e.g., no blood draws in the right arm), and any specific information about the patient's condition that should be communicated back to the licensed nurse by the delegatee.

Rationale: Communication must be a two-way process involving both the licensed nurse delegating the activity and the delegatee being delegated the responsibility. Evidence shows that the better the communication between the nurse and the delegatee, the more optimal the outcome (Corazzini, Anderson, Mueller, Hunt-McKinney et al., 2013). The licensed nurse must provide information about the patient and care requirements. This includes any specific issues related to any delegated responsibilities. These instructions should include any unique patient requirements. The licensed nurse must instruct the delegatee to regularly communicate the status of the patient.

Licensed Nurse Responsibilities (continued)

3. The licensed nurse must be available to the delegatee for guidance and questions, including assisting with the delegated responsibility, if necessary, or performing it him/herself if the patient's condition or other circumstances warrant doing so.

Rationale: Delegation calls for nursing judgment throughout the process. The final decision to delegate rests in the hands of the licensed nurse as he or she has overall accountability for the patient.

4. The licensed nurse must follow up with the delegatee and the patient after the delegated responsibility has been completed.

Rationale: The licensed nurse who delegates the "responsibility" maintains overall accountability for the patient, while the delegatee is responsible for the delegated activity, skill or procedure.

5. The licensed nurse must provide feedback information about the delegation process and any issues regarding delegatee competence level to the nurse leader. Licensed nurses in the facility need to communicate, to the nurse leader responsible for delegation, any issues arising related to delegation and any individual that they identify as not being competent in a specific responsibility or unable to use good judgment and decision making.

Rationale: This will allow the nurse leader responsible for delegation to develop a plan to address the situation.

Delegatee Responsibilities

Everyone is responsible for the well-being of patients. While the nurse is ultimately accountable for the overall care provided to a patient, the delegatee shares the responsibility for the patient and is fully responsible for the delegated activity, skill or procedure.

1. The delegatee must accept only the delegated responsibilities that he or she is appropriately trained and educated to perform and feels comfortable doing given the specific circumstances in the health care setting and patient's condition. The delegatee should confirm acceptance of the responsibility to carry out the delegated activity. If the delegatee does not believe he or she has the appropriate competency to complete the delegated responsibility, then the delegatee should not accept the delegated responsibility. This includes informing the nursing leadership if he or she does not feel he or she has received adequate training to perform the delegated responsibility, is not performing the procedure frequently enough to do it safely, or his or her knowledge and skills need updating.

Rationale: The delegatee shares the responsibility to keep patients safe and this includes only performing activities, skills or procedures in which he or she is competent and comfortable doing.

Delegatee Responsibilities (continued)

2. The delegatee must maintain competency for the delegated responsibility.

Rationale: Competency is an ongoing process. Even if properly taught, the delegatee may become less competent if he or she does not frequently perform the procedure. Given that the delegatee shares the responsibility for the patient, the delegatee also has a responsibility to maintain competency.

3. The delegatee must communicate with the licensed nurse in charge of the patient. This includes any questions related to the delegated responsibility and follow-up on any unusual incidents that may have occurred while the delegatee was performing the delegated responsibility, any concerns about a patient's condition, and any other information important to the patient's care.

Rationale: The delegatee is a partner in providing patient care. He or she is interacting with the patient/family and caring for the patient. This information and two-way communication is important for successful delegation and optimal outcomes for the patient.

4. Once the delegatee verifies acceptance of the delegated responsibility, the delegatee is accountable for carrying out the delegated responsibility correctly and completing timely and accurate documentation per facility policy. The delegatee cannot delegate to another individual. If the delegatee is unable to complete the responsibility or feels as though he or she needs assistance, the delegatee should inform the licensed nurse immediately so the licensed nurse can assess the situation and provide support. Only the licensed nurse can determine if it is appropriate to delegate the activity to another individual. If at any time the licensed nurse determines he or she needs to perform the delegated responsibility, the delegatee must relinquish responsibility upon request of the licensed nurse.

Rationale: Only a licensed nurse can delegate. In addition, because they are responsible, they need to provide direction, determine who is going to carry out the delegated responsibility, and assist or perform the responsibility him/herself, if he or she deems that appropriate under the given circumstances.

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