

STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : BOARD OF NURSING
BOARD OF NURSING : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Board of Nursing to repeal N 6.02 (10m) (Note); to amend N 6.02 (5), 6.03 (1) (c), 6.04 (1) (a), (2) (b); to create N 6.02 (13); and to repeal and recreate N 6.02 (10m), relating to delegated acts.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Subchapter I of ch. 441, Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), and 441.01 (3), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides an examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 227.11 (2) (a), Stats., “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...”

Section 441.01 (3), Stats., provides “[t]he board may (...) establish rules to prevent unauthorized persons from practicing professional nursing. It shall approve all rules for the administration of this chapter in accordance with ch. 227.”

Related statute or rule:

Subchapter I of ch. 441, Stats.

Plain language analysis:

Section N 6 contains the standards of practice for registered nurses and licensed practical nurses, which includes delegated acts. The Board of Nursing has reviewed and updated ch. N 6 with the following changes:

— Extension of the definition of “delegated acts”.

- More general definition of “provider” to broaden the range of professionals who are authorized to delegate acts.
- Addition of a definition of “unlicensed assistive personnel (UAP)”.
- Inclusion of UAPs as staff who could be performing interventions under the directing or supervision of registered nurses.
- Replacement of the term “assignments” to “delegated acts” under standards of practice for licensed practical nurses.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Illinois:

The Illinois Nurse Practice Act in their Compiled Statutes do not mention a definition of “delegated act”, “delegation”, or “unlicensed assistive personnel”. However, a definition of “delegation” can be found in the Illinois Administrative Code Section 1300.20, and it states that “‘delegation’ means transferring to a specific individual the authority to perform a specific nursing intervention, in a specific situation”. The section indicates that a registered nurse can delegate medication administration to other licensed nurses or to unlicensed personnel in community-based or in-home care settings as long as certain parameters established in the section have been met. The section also specifies the actions that are prohibited to delegate, such as delegating medication administration to unlicensed personnel in any institutional or long-term facility.

Iowa:

Neither Iowa’s Statutes nor Administrative Code contain a definition of “delegated acts” or “delegation”. The Administrative Code contains a definition of “unlicensed assistive personnel” as “an individual who is trained to function in an assistive role to the registered nurse and licensed practical nurse in the provision of nursing care activities as delegated by the registered nurse or licensed practical nurse” [655 IAC 6.1(152)].

Iowa’s Administrative Code specifies the parameters that a registered nurse must comply with when delegating tasks to another registered nurse or licensed practical nurse. The Code also specifies that a registered nurse can delegate tasks to unlicensed assistive personnel (UAP) under certain circumstances, which include ensuring that the UAP has appropriate education and training and has demonstrated competency to perform the delegated tasks, that the task does not exceed the UAP scope of employment and that the tasks pose minimal risk to the patient [655 IAC 6.2(7)].

Michigan:

Michigan does not have a specific Nurse Practice Act in its Statutes. Instead, Michigan has an act that regulates the practice of nursing along with other health professions, which is part of the Michigan Public Health Code contained within the Statutes. In this act, there is a definition of “delegation” as “authorization granted by a licensee to a licensed or unlicensed individual to perform selected acts, tasks, or functions that fall within the scope of practice of the delegator and that are not within the scope of practice of the delegatee

and that, in the absence of the authorization, would constitute illegal practice of a licensed profession” [333 MCL Section 16104]

Delegation parameters are detailed in the Michigan’s Administrative Code and state that a registered nurse may delegate tasks only within the registered nurse’s scope of practice and that the registered nurse holds ultimate responsibility for the delegated acts performed by the delegatee within the scope of the delegation. It also states that the registered nurse has to determine the qualifications, knowledge, and skills of the delegatee before the delegation, and that the registered nurse is responsible for supervising and evaluating the performance of the delegatee. [MI Admin. Code R 338.10104]

Minnesota:

The Minnesota Statutes contains the Nurse Practice Act that provides a definition of “delegation” as a “transfer of authority to another nurse or competent, unlicensed assistive person to perform a specific nursing task or activity in a specific situation” [MN Stats. 148.171 Subd. 7a.] and also provides a definition of “unlicensed assistive personnel” as “any unlicensed person to whom nursing tasks or activities may be delegated or assigned, as approved by the board” [MN Stats. 148.171 Subd. 24.] The Nurse Practice Act in Minnesota does not mention parameters for delegation outside of the basic practice standards of professional nurses, though the Statutes mention that “delegating or accepting delegation of a nursing function or a prescribed health care function when the delegation or acceptance could reasonably be expected to result in unsafe or ineffective patient care” is considered unprofessional conduct. [MN Stats. 148.261 (8)]

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing the provisions of chapter N 6 and nursing practice standards from the adjacent states (Illinois, Iowa, Michigan, and Minnesota). The Board provided input and feedback to determine any changes or updates needed in addition to reviewing comments from subject matter experts from the Department of Health Services, Department of Public Instruction, and Wisconsin Nurses Association.

Fiscal estimate and economic impact analysis:

The fiscal estimate and economic impact analysis are attached.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rules will be posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local governmental units, and individuals.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-2112.

Agency contact person:

Sofia Anderson, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Sofia Anderson, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing to be held on May 9, 2024, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. N 6.02 (5) is amended to read:

(5) “Delegated act” means acts delegated to a registered nurse or licensed practical nurse or acts delegated by a registered nurse.

SECTION 2. N 6.02 (10m) is repealed and recreated to read:

(10m) “Provider” means any licensed professional who is legally authorized to delegate acts within the scope of their practice.

SECTION 3. N 6.02 (10m) (Note) is repealed.

SECTION 4. N 6.02 (13) is created to read:

(13) “Unlicensed Assistive Personnel (UAP)” means any person who is not licensed under ch. 441, Stats., and who is at least 18 years old to whom nursing tasks or activities may be delegated and has received the appropriate education and documented training required to perform the delegated acts.

SECTION 5. N 6.03 (1) (c) is amended to read:

(c) *Intervention.* Intervention is the nursing action to implement the plan of care by directly administering care or by directing and supervising nursing acts delegated to L.P.N.’s or ~~less skilled assistants~~ UAPs.

SECTION 6. N 6.04 (1) (a) is amended to read:

(a) Accept only patient care assignments delegated acts which the L.P.N. is competent to perform.

SECTION 7. N 6.04 (2) (b) is amended to read:

(b) Perform delegated acts beyond basic nursing care under the direct supervision of an R.N. or provider. An L.P.N. shall, upon request of the board, provide documentation of his or her nursing education, training or experience which prepares the L.P.N. to competently perform these assignments delegated acts.

SECTION 8. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)