

Proposed Rulemaking

Title

Promulgated by:
Arkansas State Board of Nursing

Title 17. Professions, Occupations, and Businesses

Chapter XXII. Arkansas State Board of Nursing, Department of Health

Subchapter A. Generally

Part 124. Delegation

Subpart 1. Generally

17 CAR § 124-101. Purpose.

(a)(1) Licensed nurses, within the parameters of their education and experience, are responsible for all nursing care that a client receives under their direction.

(2) Assessment of the nursing needs of a client, the plan of nursing actions, implementation of the plan, and evaluation of the plan under the direction of a registered professional nurse are essential components of nursing practice.

(3) Unlicensed personnel may be used to complement the licensed nurse in the performance of nursing functions, but such personnel cannot be used as a substitute for the licensed nurse.

(b)(1) Delegation by a licensed nurse shall fall within the definitions of Arkansas Code § 17-87-102.

(2) Delegation must:

(A) Occur within the framework of the job description of the delegatee and organizational policies and procedures; and

(B) Be in compliance with the Arkansas Nurse Practice Act.

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(3) The following sections govern the licensed nurse in delegating and supervising nursing tasks to unlicensed personnel in all settings.

17 CAR § 124-102. Criteria for delegation.

(a) Delegation of nursing tasks to unlicensed persons shall comply with the following requirements:

(1) A licensed nurse delegating the task is responsible for the:

(A) Nursing care given to the client; and

(B) Final decision regarding which nursing tasks can be safely delegated;

(2)(A) A licensed nurse must make an assessment of the client's nursing care needs prior to delegating the nursing task.

(B) Reference 17 CAR § 124-103 for exceptions;

(3) The nursing task must be one that:

(A) A reasonable and prudent licensed nurse would assess to be appropriately delegated;

(B) Would not require the unlicensed person to exercise nursing assessment, judgment, evaluation, or teaching skill; and

(C) Can be properly and safely performed by the unlicensed person involved without jeopardizing the client's welfare;

(4) A licensed nurse shall have:

(A) Written procedures available for the proper performance of each task;

and

(B) Documentation of the competency of the unlicensed person to whom the task is to be delegated;

(5) The delegating licensed nurse shall be readily available either in person or by telecommunication except as prohibited by other statute or rule;

(6) The licensed nurse shall be responsible for documentation of delegated tasks;

(7)(A) Unlicensed nursing students may work only as unlicensed nursing personnel.

(B) They may not represent themselves or practice as nursing students except as part of a scheduled clinical learning activity in the curriculum of an Arkansas State Board of Nursing-approved nursing program; and

(8) The licensed nurse shall adequately supervise the performance of delegated nursing tasks in accordance with the requirements of supervision that follow.

(b) **Supervision.** The degree of supervision required shall be determined by the licensed nurse after an evaluation of appropriate factors involved, including, but not limited to, the following:

- (1) The stability of the condition of the client;
- (2) The training and capability of the unlicensed person to whom the nursing task is delegated;
- (3) The nature of the nursing task being delegated; and
- (4) The proximity and availability of a licensed nurse to the unlicensed person when performing the nursing task.

17 CAR § 124-103. Specific nursing tasks that may be delegated without prior nursing assessment.

By way of example, and not in limitation, the following nursing tasks are ones that are within the scope of sound nursing practice to be delegated, provided the delegation is in compliance with Arkansas Code § 17-87-102 and the level of supervision required is determined by the nurse:

- (1) Noninvasive and nonsterile treatments unless otherwise prohibited by 17 CAR § 124-104 (relating to nursing tasks that may not be routinely delegated);
- (2) The collecting, reporting, and documentation of data including, but not limited to:
 - (A) Vital signs, height, weight, intake and output, urine test, and hematest results;
 - (B) Changes from baseline data established by the nurse;
 - (C) Environmental and safety situations;
 - (D) Client or family comments relating to the client's care; and

- (E) Behaviors related to the plan of care;
- (3) Ambulation, positioning, and turning;
- (4) Transportation of the client within a facility;
- (5) Personal hygiene;
- (6) Feeding, cutting up of food, or placing of meal trays;
- (7) Socialization activities;
- (8) Activities of daily living; and
- (9) Reinforcement of health teaching planned and/or provided by the registered nurse.

17 CAR § 124-104. Nursing tasks that may not be routinely delegated.

(a) Nursing tasks not included in 17 CAR § 124-103:

- (1) Are not usually within the scope of sound nursing judgment to delegate;
- and
- (2) May be delegated only in accordance with subsection (b) of this section.

(b) The nursing tasks of this section may be delegated to an unlicensed person only:

- (1) Under circumstances where a reasonable and prudent licensed nurse would find that the delegation does not jeopardize the client's safety and/or welfare;

- (2) If, in the judgment of the licensed nurse, the unlicensed person has the appropriate knowledge and skills to perform the nursing task or tasks in a safe and effective manner;

- (3) If the licensed nurse delegating the task is directly responsible for the nursing care given to the client;

- (4) If the agency, facility, or institution employing unlicensed personnel follows a current protocol for the instruction and training of unlicensed personnel performing nursing tasks under this subsection and that said protocol:

- (A) Is developed by and taught under the supervision of registered nurses currently employed in the facility; and

- (B) Includes:

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(i) The manner in which the instruction addresses the complexity of the delegated task;

(ii) The manner in which the unlicensed person demonstrates competency of the delegated task;

(iii) The mechanism for reevaluation of the competency; and

(iv) An established mechanism for identifying those individuals to whom nursing tasks under this subsection may be delegated; and

(5) If the protocol recognizes that the final decision as to what nursing tasks can be safely delegated in any specific situation is within the specific scope of the nurse's professional judgment.

17 CAR § 124-105. Nursing tasks that shall not be delegated.

By way of example and not in limitation, the following are nursing tasks that are not within the scope of sound nursing judgment to delegate:

(1) Physical, psychological, and social assessment that requires nursing:

(A) Judgment;

(B) Intervention;

(C) Referral; or

(D) Follow-up;

(2) Formulation of the plan of nursing care and evaluation of the client's response to the care rendered;

(3) Specific tasks involved in the implementation of the plan of care that require nursing judgment or intervention;

(4) The responsibility and accountability for client health teaching and health counseling that:

(A) Promotes client education; and

(B) Involves the client's significant others in accomplishing health goals;

(5) Administration of any medications or intravenous therapy, including blood or blood products except as allowed by:

(A) Medication Assistant-Certified, 17 CAR pt. 127; ~~and~~

(B) Arkansas State Board of Nursing School Nurse Roles and Responsibilities Practice Guidelines; and

(C) APRN Delegation to Unlicensed Healthcare Workers, 17 CAR § 123-402(h);

(6) Receiving or transmitting verbal or telephone orders; and

(7) Registered nurse practitioners and advanced practice nurses shall not delegate to unlicensed ancillary staff the calling in of prescriptions to the pharmacy.

17 CAR § 124-106. Transference of delegated nursing tasks.

(a) It is the responsibility of the licensed nurse to:

(1) Assess each client prior to delegation of a nursing task; and

(2) Determine that the unlicensed person has the competence to perform the nursing task in that client's situation.

(b) The licensed nurse shall not transfer delegated tasks to other clients under the care of the unlicensed person.

(c) In delegating personal care, a licensed nurse is not required to assess each client but must periodically assess the competence of the caregiver in those activities.

17 CAR § 124-107. Exclusions.

This part shall not be construed to apply to:

(1) The gratuitous nursing care of the sick by family or friends;

(2) The furnishing of nursing care where treatment is by prayer or spiritual means alone;

(3) Acts done by persons licensed by any board or agency of the State of Arkansas if such acts are authorized by such licensing statutes;

(4) Nursing tasks performed by nursing students enrolled in Arkansas State Board of Nursing-approved nursing programs while practicing under the direct supervision of qualified faculty or preceptors;

(5) The instruction and/or supervision of licensed nurses by registered professional nurses in the proper performance of tasks as a part of a state-approved training/education course designed to prepare persons to obtain certification;

(6) Nursing tasks performed by paramedic/emergency medical technician students enrolled in state-approved programs while practicing under the direct supervision of qualified faculty or preceptors;

(7) The performance in the school setting of nursing procedures necessary for students to achieve activities of daily living as cited in the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 – 1485, and which are routinely performed by the student or the student's family in the home setting;

(8)(A) The acts of unlicensed persons responding to an emergency.

(B) This exclusion shall not be construed as permitting licensed nurses to delegate routinely to unlicensed persons;

(9) Health maintenance activities performed by a designated care aide in the home, as defined in the Consumer Directed Care Act, Arkansas Code § 17-87-103(12);

(10) The drawing and measuring of glucagon or insulin by a trained employee of a city or county detention center as defined in Arkansas Code § 17-87-103(14);

(11) The administration of an emergency dose of medication to a public school student who is diagnosed with an adrenal insufficiency by trained volunteer public school personnel; or

(12) The administration of:

(A) A seizure rescue medication;

(B) Medication prescribed to treat seizure disorder symptoms; or

(C) A manual dose of a prescribed electrical stimulation using a vagus nerve stimulator magnet.

17 CAR § 124-108. Consumer directed care.

(a) Health maintenance activities that are routinely performed by the family in the home setting may be provided by a designated care aide for a:

(1) Competent adult at the direction of the adult; or

(2) Minor child or incompetent adult at the direction of a caretaker.

(b)(1) "Caretaker" means:

(A) A person who is directly and personally involved in providing care for a minor child or incompetent adult; and

(B) The parent, foster parent, family member, friend, or legal guardian of the minor child or incompetent adult receiving care.

(2) "Designated care aide" means the person hired to provide care for the:

(A) Competent adult;

(B) Minor child; or

(C) Incompetent adult.

(3) "Health maintenance activities" mean activities that the minor child or adult is unable to perform for himself or herself, including oral medications.

(c)(1) The attending physician, advanced practice registered nurse, or registered nurse must determine a designated care aide under the direction of a competent adult or caretaker can safely perform the activity in the minor child's or adult's home.

(2) "Home" shall not include:

(A) A nursing home;

(B) An assisted living facility;

(C) A residential care facility;

(D) An intermediate care facility; or

(E) A hospice care facility.

(d) Health maintenance activities that are not exempted by the Consumer Directed Care Act, Arkansas Code § 17-87-103(12), include:

(1) Physical, psychological, and social assessment that requires nursing:

(A) Judgment;

(B) Intervention;

(C) Referral; or

(D) Follow-up;

(2) Formulation of the plan of nursing care and evaluation of the client's response to the care rendered;

- (3) Tasks that require nursing judgment or intervention;
 - (4) Teaching and health counseling;
 - (5) Administration of any injectable medications (intradermal, subcutaneous, intramuscular, intravenous, intraosseous, or any other form of injection) or intravenous therapy; and
 - (6) Receiving or transmitting verbal or telephone orders.
- (e) The designated care aide must demonstrate the ability to safely perform the health maintenance activity.