

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

October 8, 2019
10:00 a.m. Central Time
Gold's Building, Room 534
1033 O Street, Lincoln, Nebraska

The purpose of this hearing is to receive comments on proposed changes to Title 172, Chapter 99 of the Nebraska Administrative Code (NAC) – *Provision of Nursing Care*. This chapter provides the minimum standards for the provision, administration, and management of nursing care by licensed nurses and by unlicensed persons providing auxiliary service in support of nursing services. The proposed changes removes all duplicative statutory language from the regulations and removes any repetitive regulatory language found in 172 NAC 10. The proposed changes also updates standards for supervision and updates terminology and formatting.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Interested persons may attend the hearing and provide verbal or written comments or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 172	Prepared by: Ann Oertwich, RN
Chapter: 99	Date prepared: 06/27/2019
Subject: Regulations governing the provision of nursing care	Telephone: 402-471-0317

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact: None

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 99 PROVISION OF NURSING CARE

001. SCOPE AND AUTHORITY. This chapter provides for the minimum standards for the provision, administration, and management of nursing care by licensed nurses and by unlicensed persons providing auxiliary service in support of nursing services under the Nurse Practice Act, Nebraska Revised Statute (Neb. Rev. Stat.) §§ 38-2216.

002. DEFINITIONS. Definitions are set out in the Nurse Practice Act, the Uniform Credentialing Act, 172 Nebraska Administrative Code (NAC) 10, and this chapter.

002.01 ACCOUNTABILITY. The licensed nurse is responsible and answerable for decisions and action or inaction of self or others, and for the resultant consumer outcomes related to decisions and action or inaction.

002.01(A) UNLICENSED PERSON ACCOUNTABILITY. The unlicensed person is responsible and answerable for the action or inaction of self.

002.02 ASSESSMENT. A systematic evaluation of the consumer's condition and response to the therapy.

002.03 ASSIGNMENT. A licensed nurse appoints or designates another person the responsibility for performance of nursing interventions. Assignments are made to individuals who already have authority to provide nursing interventions either through licensure as a nurse or through delegation from a registered nurse. Assignment is not the transfer authority.

002.04 ASSIST. To provide aid or support in the performance of an activity.

002.05 AUTHORITY. The legal authority to provide nursing care granted through licensure as a registered nurse, licensure as a practical nurse, or through delegation from a registered nurse.

002.06 AUXILIARY PATIENT CARE SERVICES. Care provided by persons authorized, assigned or directed by licensed nurses or licensed practitioners in support of that professional's practice.

002.07 COMPETENCE. A state or quality of being competent or capable as a result of having the required knowledge, skills, and ability.

002.07(A) LICENSED NURSE COMPETENCE. The ability of the nurse to apply interpersonal, technical and decision-making skills at the level of knowledge consistent with the prevailing standard for the nurse's current nursing practice role.

002.07(B) UNLICENSED PERSON COMPETENCE. The ability of the unlicensed person to:

- (i) Utilize effective communication;
- (ii) Collect basic objective and subjective data;
- (iii) Perform selected non-complex nursing interventions safely, accurately, and according to standard procedures; and
- (iv) Seek guidance and direction when appropriate.

002.08 COUNSELING. The process of helping a consumer to recognize and cope with stressful psychological or social problems, to develop improved interpersonal relationships, and to promote personal growth. Counseling includes analysis of a situation, synthesis of information and experiences, and evaluation of the progress and productivity of consumers.

002.09 DELEGATION. The transference of authority, responsibility, and accountability to perform nursing interventions from one individual to another.

002.09(A) DELEGATION BY A REGISTERED NURSE. The transference of authority, responsibility, and accountability from a registered nurse to the unlicensed person to provide select non-complex nursing interventions on behalf of a registered nurse.

002.09(B) DELEGATION DECISION. Includes determining which nursing interventions may be delegated, selecting which unlicensed persons may provide the delegated interventions, determining the degree of detail and method to be used to communicate the delegation plan, and selecting a method of evaluation and supervision.

002.10 DIRECTION. The provision of guidance and supervision by a licensed nurse or licensed practitioner who is responsible to manage the provision of nursing interventions by another licensed or unlicensed person.

002.11 EMPLOYER GUIDELINES. Organizational policies or procedures that clearly delineate standards of care, job or role descriptions, and other work or care related guidelines.

002.12 LICENSED HEALTH CARE PROFESSIONAL. An individual who holds an active license to practice a defined scope of practice.

002.13 NURSING CARE. The application of the nursing process to individuals, families, and groups which results in the performance of any act expressing judgment or skill based upon principles of the biological, physical, behavioral, and nursing sciences as defined through rules promulgated by the Board of Nursing in accordance with Neb. Rev. Stat. § 38-2216.

002.14 NURSING INTERVENTION. The initiation and completion of consumer focused actions necessary to accomplish the goals defined in the plan of care.

002.14(A) COMPLEX NURSING INTERVENTIONS. Nursing interventions that require nursing judgment to safely alter standard procedures in accordance with the needs of the individual; or require nursing judgment to determine how to proceed from one step to the next; or require the multi-dimensional application of the nursing process.

002.14(B) NON-COMPLEX NURSING INTERVENTIONS. Nursing interventions which can be safely performed according to exact directions, do not require alternation of the standard procedure, and for which the results and consumer responses are predictable.

002.15 NURSING PROCESS. A scientific method used by licensed nurses to ensure the quality of consumer care which includes assessment, nursing diagnosis, planning, implementation and evaluation.

002.16 PROTOCOL. A written, step by step process or algorithm that is created and approved by a registered nurse or licensed practitioner that guides subjective and objective data collection, and defines interventions based upon collected data.

002.17 STABLE OR PREDICTABLE. A situation where the individual's clinical and behavioral status and nursing care needs are determined by a registered nurse or licensed practitioner to be non-fluctuating and consistent or where the fluctuations are expected and the interventions are planned, including those individuals whose deteriorating condition is expected.

002.18 SUPERVISION. The provision of oversight, which includes maintaining accountability to determine whether or not nursing care is adequate and delivered appropriately.

002.18(A) DIRECT SUPERVISION. The responsible licensed nurse or licensed practitioner is physically present in the clinical area and is available to assess, evaluate or respond immediately.

002.18(B) INDIRECT SUPERVISION. The responsible licensed nurse or licensed practitioner is available through telecommunication or periodically for direct inspection and evaluation for direction, consultation and collaboration.

002.19 UNLICENSED PERSON. A person who does not have a license to practice nursing and who functions in an assistant or subordinate role to the licensed nurse. Unlicensed persons receive authority to provide selected non-complex nursing interventions through delegation from a registered nurse.

003. MINIMUM STANDARDS FOR NURSING CARE. For purposes of this chapter, the following minimum standards apply:

003.01 REGISTERED NURSE. Based on independent, dependent, and interdependent functions, a registered nurse conducts and documents nursing assessments, utilizes all data to identify and document responses to actual or potential health conditions and make a

nursing diagnosis, develops and implements a plan of care, and evaluates responses to that plan of care.

003.02 LICENSED PRACTICAL NURSE. At the direction of a registered nurse or licensed practitioner, a licensed practical nurse contributes to the nursing assessment and nursing diagnosis, participates in the development and implementation of the plan of care, and contributes to the evaluation of responses of care or the nursing care plan.

003.03 UNLICENSED PERSON. As assigned, delegated, or directed by a registered nurse or as assigned and directed by a licensed practical nurse, the unlicensed person contributes to the assessment, planning, implementation and evaluation of the plan of care.

004. STANDARDS FOR DELEGATION. Registered nurses may delegate nursing interventions or tasks to be performed by unlicensed persons. A registered nurse retains accountability for the application of the nursing process and outcomes of care in making a delegation decision.

004.01 DELEGATION PROCESS. Registered nurses must use a systematic delegation decision making process based upon nursing education, a body of nursing knowledge, and nursing judgment to delegate in a manner that allows for safe, accountable, and responsible provision for nursing care.

004.01(A) REGISTERED NURSE RESPONSIBILITIES. A registered nurse must:

- (i) Determine the consumer's needs and when to delegate;
- (ii) Determine the competency of unlicensed person or delegatee selected to complete the task;
- (iii) Determine the method of supervision;
- (iv) Communicate the plan to the delegatee;
- (v) Retain accountability for the individual delegation decision, the delegation plan, and evaluation of the delegation outcomes.

004.01(B) UNLICENSED PERSON RESPONSIBILITIES. An unlicensed person must:

- (i) Accept activities based on his or her own competence level;
- (ii) Maintain competence for the delegated responsibility;
- (iii) Maintain accountability for the delegated activity or task;
- (iv) Communicate with a registered nurse regarding competence, variations in care, and data gathered from the task.

004.01(C) NURSING SERVICE ADMINISTRATOR RESPONSIBILITIES. A nursing services administrator must:

- (i) Determine nursing responsibilities that can be delegated, including to whom and under what circumstances;
- (ii) Develop delegation guidelines such as employer guidelines; and
- (iii) Provide adequate resources for delegation to occur.

004.02 DELEGATION PLAN. A registered nurse develops, implements and retains accountability for evaluation of delegation plan outcomes. The delegation plan includes:

004.02(A) ASSESSMENT. A registered nurse must assess the consumer's health status, analyze the data, and identify the consumer's specific goals, nursing care needs, and necessary interventions. This must include assessment of:

- (i) Stability of the consumer's condition;
- (ii) Experience and competency of the unlicensed persons providing nursing interventions;
- (iii) Level of nursing judgment required for the delegated nursing interventions; and
- (iv) Willingness and ability of the consumer to be involved in the management of his or her own care.

004.02(B) PLANNING. A registered nurse must develop and communicate a plan that includes delegation of the right task, the right circumstance, right person, right directions and communication, and the right supervision and evaluation.

004.02(C) INTERVENTIONS. A registered nurse must select and identify nursing interventions or tasks which may be delegated. Selected interventions must:

- (i) Frequently occur or reoccur in the daily care of a consumer or group of consumers;
- (ii) Not require the unlicensed person to exercise independent nursing judgment;
- (iii) Not require complex or multi-dimensional application of the nursing process;
- (iv) Be those for which the results of the intervention are predictable and the potential risk is minimal; and
- (v) Utilize a standard and unchanging procedure.

004.02(D) EVALUATION. A registered nurse is responsible and accountable to evaluate consumer's responses as well as outcomes of the delegated nursing interventions. Evaluation methods include:

- (i) Obtaining feedback from unlicensed persons;
- (ii) Providing feedback to unlicensed persons;
- (iii) Measuring consumer response and goal attainment related to the delegated interventions; and
- (iv) Altering the delegation plan as indicated by consumer responses.

004.03 COMMUNICATION. Implementing the delegation plan must include communication regarding competency and comfort of the unlicensed person regarding performing the task, exact directions, conditions for feedback and reporting, as well as the method of supervision. This may include:

004.03(A) INSTRUCTION OR VERIFICATION. A registered nurse must instruct and assess, verify, and identify the unlicensed person's:

- (i) Competency for the task on an individual and consumer specific needs basis;
- (ii) Understanding of the delegation plan, including specific parameters, signs and symptoms of problems or issues to report, and method of supervision; and
- (iii) Feedback on if the task was completed with consumer response.

004.04 SUPERVISION OF THE DELEGATEE. A registered nurse must determine the method of supervision on an individual basis and identify any other licensed nurses who have been assigned the responsibility of supervision. Registered nurses may utilize both direct and indirect methods of supervision. Registered nurses may assign the responsibility of

supervision within the delegation plan to other licensed nurses only if the conditions of the supervision have been defined and communicated within the plan.

005. STANDARDS FOR DIRECTION. Registered nurses, licensed practical nurses, and licensed practitioners may provide direction in the provision and management of consumer care. The method and degree of direction may vary based upon consumer condition, the interventions to be applied, and the qualification and competency of the person providing the interventions.

005.01 REGISTERED NURSES. Registered nurses can provide direction to the following:

- (A) Licensed practical nurses;
- (B) Care teams which may include other licensed health care professionals; and
- (C) Unlicensed persons.

005.02 LICENSED PRACTICAL NURSES. Licensed practical nurses provide direction to unlicensed persons providing auxiliary patient care services.

005.03 STANDARDS FOR DIRECTION TO A LICENSED PRACTICAL NURSE. A licensed practical nurse receives direction from either a registered nurse or licensed practitioner, based on the following standards:

005.03(A) INSTRUCTION OR GUIDANCE. Direction must be sufficient to assure the provision of safe nursing care can be provided, meeting consumer needs;

005.03(B) ASSESSMENT. Direction may include identification of any specific assessment data to be collected relative to consumer condition, consumer diagnosis, and presenting signs and symptoms of the consumer;

005.03(C) INTERVENTIONS. Direction may include identification of specific interventions to be applied based upon the collected assessment data and consumer response to interventions; and

005.03(D) SUPERVISION. Direction must include the provision of supervision to a licensed practical nurse. Supervision may include direct, indirect, or a combination of both methods. Indirect supervision can be provided through protocols.

005.04 LICENSED PRACTICAL NURSE REQUIREMENTS. A licensed practical nurse must practice nursing only under circumstances in which direction is provided by a registered nurse or licensed practitioner.

005.04(A) COMPETENCE. A license practical nurse must exercise competence in providing and directing nursing interventions;

005.04(B) CONSULTATION OR COLLABORATION. A licensed practical nurse must initiate consultation or collaboration according to observed signs and symptoms of deviations from normal health status, and according to the directions specified by a registered nurse or licensed practitioner; and

005.04(C) DIRECTION. A licensed practical nurse must provide nursing interventions according to the direction and instructions identified by a registered nurse or licensed practitioner. Direction can be provided by protocols.

006. STANDARDS FOR ASSIGNMENT. Licensed nurses may assign the responsibility for performance of nursing interventions to other persons in the provision and management of nursing care. Licensed nurses may also have nursing interventions assigned to them by other licensed nurses or licensed practitioners.

006.01 ASSIGNMENT BY LICENSED NURSES TO OTHER LICENSED NURSES. Registered nurses and licensed practical nurses are responsible for maintaining their competence for the practice role. Competence may be assessed or evaluated by the employer, nursing service administrator, or another licensed nurse, but is ultimately the responsibility of the licensed nurse. The nurse assigning care is responsible to assess the competence of the nurse accepting the care assignment. Nurses must:

- (A) Assign only those nursing interventions authorized by the level of nursing for which the nurse receiving the assignment is licensed; and
- (B) Assign only those nursing interventions for which the nurse making the assignment has reason to believe the nurse receiving the assignment is competent to provide.

006.02 LICENSED NURSES ACCEPTING ASSIGNMENT. Registered nurses and licensed practical nurses must:

- (A) Accept only those assignments authorized by the level of nursing for which the nurse receiving the assignment is licensed;
- (B) Accept only those assignment for which he or she has the required knowledge, skills, and abilities;
- (C) Acknowledge personal limitations in knowledge and skills, and communicate the need for specialized instruction prior to accepting any assignments; and
- (D) Give sufficient notice of intent to refuse an assignment so as to allow the nurse making the assignment to make alternative arrangements for the assignment.

006.03 LICENSED NURSES PROVIDING ASSIGNMENT TO UNLICENSED PERSONS. Registered nurses and licensed practical nurses must:

- (A) Make assignments only to those unlicensed persons authorized by registered nurse delegation; and
- (B) Determine assignments within the framework of the delegation plan as described in Section 004 of this chapter. Registered nurses and licensed practical nurses may limit assignments according to competency of the unlicensed person and the current nursing care needs of the consumer condition.

007. STANDARDS FOR SUPERVISION. Registered nurses, licensed practical nurses, and licensed practitioners all provide some degree of supervision in the provision and management of nursing care.

007.01 REGISTERED NURSES. Registered nurses can provide supervision to the following:

- (A) Licensed practical nurses;
- (B) Care teams which may include other licensed health care professionals; and
- (C) Unlicensed persons.

007.02 DIRECT VERSUS INDIRECT SUPERVISION. The method and degree of supervision may vary based upon consumer condition, the interventions to be applied, and the qualification and competency of the person providing the interventions.

007.02(A) DIRECT SUPERVISION. Appropriate circumstances for direct supervision are when consumer conditions and responses to interventions are not stable or predictable, and when the consumer is not competent to make informed decisions or provide necessary information thereby requiring frequent assessment by a registered nurse or licensed practitioner.

- (i) Licensed practical nurses must provide direction to unlicensed persons only through direct supervision.

007.02(B) INDIRECT SUPERVISION. If protocols are used to provide direction to a licensed practical nurse, indirect supervision by a registered nurse or licensed practitioner is required. This must include:

- (i) Periodic inspection and evaluation, the frequency of which must be determined by a registered nurse or licensed practitioner; and
- (ii) Availability of a registered nurse or licensed practitioner, or appropriate substitute, to a licensed practical nurse by telecommunication for consultation and collaboration.