



TO: The Honorable the Members of the Board of Regents

FROM: Johanna Duncan-Poitier

COMMITTEE: Professional Practice

TITLE OF ITEM: Memorandum of Understanding between Office of Mental Retardation and Developmental Disabilities and the State Education Department, and Administrative Memorandum #2003-01, i.e., Registered Nursing Supervision of Unlicensed Direct Care Staff in Residential Facilities Certified by the Office of Mental Retardation and Developmental Disabilities

DATE OF SUBMISSION: March 17, 2003

PROPOSED HANDLING: Discussion

RATIONALE FOR ITEM: To inform the Regents about an important collaboration between SED and OMRDD

STRATEGIC GOAL: Goal 3

AUTHORIZATION(S): 

SUMMARY:

An agreement has been reached between the State Education Department (SED) and the Office of Mental Retardation and Developmental Disabilities (OMRDD) relating to nursing services provided to patients by unlicensed staff within residential facilities operated or certified by OMRDD. Unlicensed persons can provide nursing services in these settings because of an exemption to the Nurse Practice Act that permits the provision of these services under "adequate nursing supervision" by registered professional nurses. This agreement between both agencies reflects joint efforts to clarify the existing degree of supervision and to set out appropriate standards to ensure a higher quality of patient care for these vulnerable populations in the future.

The attached Memorandum of Understanding between both agencies symbolizes exemplary cooperation between agencies responsible for the care of patients and the standards of practice of licensed health care professionals. It will bring a greater understanding of the supervision by registered professional nurses of unlicensed direct care staff who provide nursing services in residential facilities certified by OMRDD.

BACKGROUND

Subsection 6908(1)(b) of Article 139 of Education Law provides an exempt clause to the Nurse Practice Act that permits unlicensed assistive personnel, including developmental aides and direct care staff, to provide nursing services in institutions under the jurisdiction of or subject to the visitation of OMRDD, if adequate medical and nursing supervision is provided.

That exemption was originally included in the Nurse Practice Act in 1938 and retained when the law was revised in 1972. When the law was enacted in 1938, the nursing delivery system assured on-site supervision of non-licensed personnel by registered professional nurses when unlicensed aides render basic nursing services in institutions. Contemporary service delivery in the field of developmental disabilities includes the delivery of nursing services in widely diverse settings. Increasingly complex health care treatments are routinely provided in community rather than institutional settings. The result has been the proliferation of a wide range of nurse supervision models. The New York State Nurses Association (NYSNA), while continuing to urge repeal of the exemption, has also urged that the agencies work toward guidelines that promote quality of care within the context of the current law.

This situation has been further exacerbated by confusion within the affected nursing community over the definition of "adequate nursing supervision" in the language of the exemption. Over the years, OMRDD, which is a part of the State Department of Mental Hygiene, has disseminated written registered professional nurse (RN) supervision guidelines to the field. Nonetheless, nurses and members of the public raised many questions and concerns regarding the lack of appropriate nursing supervision of direct care staff in these settings.

Representatives from SED, OMRDD and the Office of Mental Health began meeting to address this matter. Beginning in the summer of 2000, representatives from SED's Office of Professional Responsibility, SED's Office of Counsel and the State Board for Nursing, together with representatives from OMRDD visited a representative sample of OMRDD certified facilities statewide to review the nature of nursing supervision being provided. The facilities visited included Intermediate Care Facilities for the Developmentally Disabled, Community Residences, and Individual Residential Alternatives located in Long Island, New York City, Western New York, the Southern Tier and the Capital District.

Those site visits revealed that nursing supervision practices appear to vary widely from residence to residence. In a cooperative effort, both agencies recognized a need to improve practice standards and better define the term "adequate nursing supervision" applicable to practice in those settings. The provision of safe patient care through adequate nursing supervision became the basis for discussions and negotiations during meetings held among representatives of the respective agencies between 2001 and this year.

MEMORANDUM OF UNDERSTANDING

In February of this year, Executive Deputy Commissioner Helene DeSanto on behalf of OMRDD and Deputy Commissioner Johanna Duncan-Poitier on behalf of SED signed the attached Memorandum of Understanding for RN nursing supervision. The Memorandum of Understanding is an agreement between both agencies that sets forth the provisions of OMRDD Administrative Memorandum - #2003-01, which contains the nursing supervision guidelines. The Memorandum of Understanding also stipulates that the nursing supervision guidelines shall be promulgated as formal OMRDD regulations, a draft of which has been shared with SED for comment.

The Administrative Memorandum provides a clear understanding of the role of the registered professional nurse when providing supervision of unlicensed direct care staff. It addresses issues such as:

- Applicability—setting out the sites responsible for implementing the nurse supervision requirements;
- Definition of relevant terms;
- Frequency of nursing visits, which shall be no less than once a week;
- Availability of nursing staff for consultation on a twenty-four hour basis;
- Responsibility for development of a plan of nursing services for any patient with a health related diagnosis requiring nursing services;
- Guidelines for the Registered Nurse selection of permissible tasks to be assigned to direct care staff;
- Requirements for the training of new direct care staff;
- Responsibility for annual clinical performance evaluations; and
- Staffing ratios

The joint effort that led to the Memorandum of Understanding was needed because the language in the exemption to the Nurse Practice Act did not provide sufficient guidance to the type and amount of registered professional nursing supervision that would be considered "adequate." While some have suggested the exemption should be removed from the statute, those suggestions have not met with legislative approval. OMRDD would urge that the exemption is essential to the continued operation of its current network of small, individualized, home-like and integrated community facilities. The best course of action currently is to work with OMRDD to ensure that the appropriate level of registered nursing supervision is provided to unlicensed staff in the performance of nursing functions. The Office of Professions, including the leadership of the Board of Nursing, strongly supports both documents (the MOU and OMRDD Administrative Memorandum #2003-01), and believes that under the existing exemption the standards delineated in the Administrative Directive Memorandum will provide needed safeguards for the individuals who live in residential facilities operated and/or certified by OMRDD.

Attachment

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
NEW YORK STATE OFFICE OF MENTAL RETARDATION
AND DEVELOPMENTAL DISABILITIES AND
THE NEW YORK STATE EDUCATION DEPARTMENT
REGARDING REGISTERED NURSING SUPERVISION
OF UNLICENSED DIRECT CARE STAFF
IN RESIDENTIAL FACILITIES CERTIFIED BY THE
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

WHEREAS, the Office of Mental Retardation and Developmental Disabilities (OMRDD) is responsible for the delivery of services for individuals with developmental disabilities throughout New York State; and

WHEREAS, the New York State Education Department (SED) is responsible for issuing licenses to registered professional nurses and licensed practical nurses; and

WHEREAS, OMRDD and SED wish to define the appropriate level of supervision that is to be provided by registered professional nurses to unlicensed OMRDD direct care staff who perform tasks or activities commonly identified as nursing procedures pursuant to §6908(1)(b) of the New York State Education Law;

NOW, THEREFORE, OMRDD and SED hereby agree as follows:

1. The nursing supervision administrative memorandum which is attached hereto establishes the appropriate level of supervision that is to be provided by registered professional nurses to unlicensed OMRDD direct care staff who perform tasks or activities commonly identified as nursing procedures pursuant to §6908(1)(b) of the New York State Education Law.
2. OMRDD shall request approval from the Governor's Office of Regulatory Reform to add a provision to the regulations set forth in 14 NYCRR which incorporates the attached nursing supervision administrative memorandum by reference.
3. OMRDD shall confer with designated representatives of SED regarding public comments and suggestions made by the Governor's Office of Regulatory Reform relating to such regulatory proposal.
4. OMRDD shall incorporate review of adherence to the attached administrative memorandum within its routine survey of OMRDD certified community-based residential facilities.

5. The attached administrative memorandum may be amended only in writing by mutual agreement of designated representatives of the undersigned parties.

New York State Office of Mental
Retardation and Developmental
Disabilities

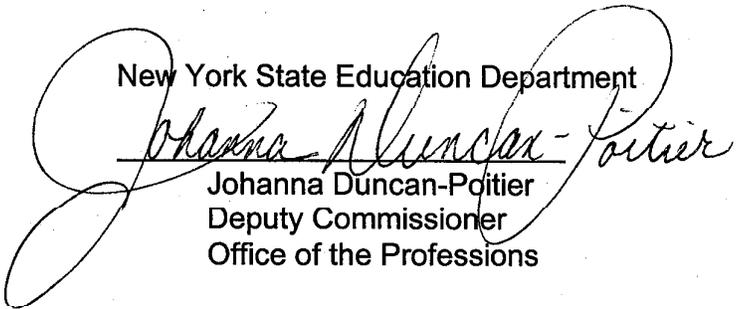
Dated: 2/10/03



Helene DeSanto
Executive Deputy Commissioner

New York State Education Department

Dated: 2/18/03



Johanna Duncan-Poitier
Deputy Commissioner
Office of the Professions

George E. Pataki
Governor



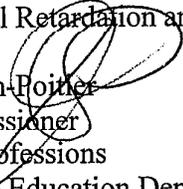
Thomas A. Maul
Commissioner

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OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES
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Administrative Memorandum - #2003-01

To: Directors of Developmental Disabilities Services Offices
Executive Directors of Agencies Providing Residential Services

From: Helene DeSanto 
Executive Deputy Commissioner
Office of Mental Retardation and Developmental Disabilities


~~Johanna Duncan-Foister~~
Deputy Commissioner
Office of the Professions
New York State Education Department

Subject: Registered Nursing Supervision of Unlicensed Direct Care Staff in Residential Facilities
Certified by the Office of Mental Retardation and Developmental Disabilities

Date: January 2003

Suggested Distribution:

Registered Professional Nurses
Licensed Practical Nurses
Quality Compliance Staff
Program/Direct Care Staff
Administrative Staff

Purpose

This administrative memorandum has been developed to define the appropriate level of supervision, by a registered professional nurse, that is to be provided to unlicensed direct care staff who perform tasks or activities commonly identified as nursing procedures pursuant to § 6908(1)(b) of New York State Education Law.



Providing supports and services for people with developmental disabilities and their families.



OMR 26.04 (9-96)

Applicability

This directive applies to all certified community-based residences, with the exception of family care homes, where two or more consumers receive services, including Intermediate Care Facilities (ICFs), Community Residences (CRs), and Individual Residential Alternatives (IRAs). This directive and the provisions of §6908(1)(b) of the New York State Education Law do not apply to non-certified residential settings.

Definitions

A Registered Professional Nurse (RN) shall be responsible for the supervision of unlicensed direct care staff in the performance of nursing tasks and activities. It is the responsibility of the employing agency to ensure that all staff is adequately trained regarding the elements of clinical nursing supervision, and the difference between clinical nursing supervision and administrative supervision.

Adequate nursing supervision is the provision of guidance by an RN for the accomplishment of a nursing procedure, including:

- initial training of the task or activity; and
- periodic inspection of the actual act of accomplishing the task or activity.

The amount and type of nursing supervision required will be determined by the RN responsible for supervising the task or activity, and will depend upon:

- the complexity of the task;
- the skill, experience and training of the staff; and
- the health conditions and health status of the consumer.

Frequency of Visits

The frequency of visits to certified community-based residences with two or more consumers shall be at the discretion of the RN responsible for supervision but in no case shall visits occur less frequently than once a week.

Professional Nursing Availability

There shall be an RN available to unlicensed direct care staff 24 hours a day, 7 days a week. The RN must be either on site or immediately available by telephone. The residence RN or, during off-hours, the RN on-call will be immediately notified of changes in medical orders for a consumer and/or of changes in a consumer's health status.

Plan of Nursing Services

The RN is responsible for developing an individualized plan for nursing services for any consumer who requires nursing care, including those who require medication administration for diagnosed medical conditions. Such plans will be updated at least annually or whenever there is a significant change in the consumer's condition.

The RN shall document that direct care staff have been educated about the chronic conditions and related health care needs of each consumer in their care.

The RN shall ensure that there is a consumer specific medication sheet for each medication that is administered. This sheet shall include all of the information required by 14 NYCRR §633.17(a)(17)(iii).

Nursing Procedures

It shall be the responsibility of the Registered Professional Nurse to determine which nursing procedures unlicensed direct care staff will be allowed to perform, and which unlicensed staff will be allowed to perform them. The Registered Professional Nurse shall exercise professional judgement as to when delegation is unsafe and/or not in the consumer's best interest.

When making a decision regarding a nursing task or activity, the RN shall assess the following:

- complexity of the task;
- condition/stability of the consumer; and
- training, skill and experience of the staff involved, including relevant factors related to the individual's ability to safely provide nursing services.

In no case will an RN allow direct care staff to perform a nursing procedure that is outside the scope of practice of an LPN.

Training

RNs who do not have previous experience in the field of mental retardation/developmental disabilities (MR/DD) nursing will be required to complete an orientation for registered nurses in MR/DD nursing within three months of being hired.

It is the responsibility of the RN to provide initial and on-going training to unlicensed direct care staff in all nursing tasks and/or functions that they will perform. The RN must periodically review that the performance of unlicensed staff is consistent with standards of care and training.

Medication administration, tube feeding and diabetic care shall be taught utilizing a standard curriculum approved by the Office of Mental Retardation and Developmental Disabilities (OMRDD).

Diabetic care shall be taught by either:

- A Certified Diabetic Educator (CDE). In those instances where the CDE is not a RN, the administration of insulin shall be taught by an RN;

OR

- An RN who has successfully completed an OMRDD approved train-the-trainer course to teach diabetes care to unlicensed direct care staff. Approval to teach diabetic care to unlicensed direct care staff shall be for a period of one year. Continued approval will be dependent upon completion of annual knowledge/skill maintenance training.

Unlicensed direct care staff will be separately certified for medication administration, tube feeding and insulin administration and shall be recertified on an annual basis.

Resident managers who have not previously completed the didactic portion of the OMRDD-approved medication administration curriculum shall be required to do so. However, residence managers will not be certified to administer medication unless they are also designated as "staff providing direct care services" as defined in 14 NYCRR §633.99 [See Attachment]

It is the intent of the regulation that the staff not only has the responsibility for direct care in the job description, but that they are also actually providing direct hands-on care. It is recognized that many unit supervisors and/or house managers do routinely provide direct care to consumers. Each agency must determine which supervisors and/or house managers within their agency meet the letter, the spirit and the intent of the regulation.

Clinical Evaluations

The RN shall conduct annual clinical performance evaluations for unlicensed direct care staff for procedures that include but are not limited to medication administration. This evaluation shall become part of the employee's annual performance evaluation.

Staffing Ratios

The following items shall be considered when establishing an RN/consumer ratio for RNs assigned to provide nursing services in community based residences:

- the health status/stability of the consumers;
- the type of residential facility;
- the actual number of direct care staff, both full and part time, who are to be trained and supervised;
- the number of Licensed Practical Nurses to be supervised;
- the number of certified residences involved, their geographic location and proximity to each other and proximity to health care providers; and
- the degree of additional nursing services provided by external nursing agencies.

Based on the evaluation of these factors, the provider agency shall establish a registered nurse/consumer ratio that ensures consistently adequate nursing supervision. In no instance shall this ratio to exceed one full time equivalent of an RN to 50 consumers (1:50). Some ratios will need to be significantly less than this based upon evaluation of the above factors.

RN/consumer ratios shall be re-evaluated within one week if there are any significant changes in any of the factors listed above and RN assignments adjusted accordingly.

If an RN is acting as the supervising nurse for the agency and also has responsibility for one or more residences, only that portion of her/his time that is devoted to the residences may be used in calculating the ratio.

Effective Date

May 1, 2003

Contact Information

For additional information, contact Kathleen Keating, RN, MSN, CNP, Director of Health Services, NYS OMRDD at 518-473-9697 or by e-mail at Kathleen.Keating@omr.state.ny.us.

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