



To: Executive Directors, Voluntary Providers
Directors, Developmental Disabilities State Operated Offices
Directors, Developmental Disabilities Regional Offices

From: Roger Bearden 
Deputy Commissioner and General Counsel

Megan O'Connor-Hebert 
Deputy Commissioner, Division of Quality Improvement

Date: April 22, 2015

Re: Update on the Nurse Practice Act Exemption Clause

The purpose of this Memorandum is to provide you with an update on the Nurse Practice Act (NPA) Exemption Clause. The NPA Exemption Clause, initially enacted by Chapter 58 of the Laws of 2014, expanded the exemption for the provision of certain nursing tasks performed by direct support professionals to include programs approved, funded and/or authorized by OPWDD (i.e., Home and Community Based Services delivered in non-certified settings, in addition to the already existing exemption for certified residential settings). This year's 2015-16 Enacted Budget includes additional changes necessary to fully implement the NPA Exemption Clause in non-certified settings throughout OPWDD's service system.

At this time, OPWDD and the State Education Department (SED) have finalized a Memorandum of Understanding (MOU) that provides the authorization for OPWDD to move forward with an implementation plan that will include the following components:

- Development of the framework for issuing the required operating certificates to providers for the provision of all authorized HCBS waiver services. This process will also include the issuance of operating certificates to providers to authorize the provision of nursing services under certain HCBS waiver services. The new process for issuing such operating certificates will ultimately replace OPWDD's HCBS Waiver Provider Agreement review process when fully effectuated.
- Issuance of guidance to provider agencies regarding expectations, standards, and timelines.
- Approved Medication Administration Personnel (AMAP) Training curriculum and practice revisions.

While OPWDD is moving forward to develop this implementation plan, direct support professionals should not be performing tasks in non-certified settings covered by the new MOU until such time as the appropriate operating certificate is issued for the related waiver service. There is no change to the existing MOU in certified settings and agencies should continue to comply with the provisions governing existing certified settings.

We will keep you apprised of our progress in developing an implementation plan and timeline for full implementation of the NPA exemption in non-certified settings. OPWDD anticipates providing further information in June.

If you have any questions regarding the authorized delivery of nursing services, please contact the OPWDD Director of Nursing and Health Services at (518) 474-3558.

cc: Central Office Leadership Team
Willowbrook Task Force
Provider Associations