



**ADMINISTRATIVE MEMORANDUM (ADM) - #2015-03**

**To:** Directors of Developmental Disabilities State Operations Offices  
Directors of Developmental Disabilities Regional Offices  
Executive Directors of Agencies Providing Services

**From:** Helene DeSanto  
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Office for People With Developmental Disabilities (OPWDD)

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Deputy Commissioner  
Office of the Professions  
New York State Education Department (SED)

**Date:** April 1, 2015

**Subject:** Registered Professional Nurse Supervision of Unlicensed Direct Support  
Professionals in Programs Approved by the Office for People With Developmental  
Disabilities

**Suggested Distribution:**

Registered Professional Nurses  
Licensed Practical Nurses  
Quality Compliance Staff  
Direct Support Professionals  
Administrative Staff  
Program Staff  
Registered Providers

**PURPOSE**

This ADM has been developed pursuant to New York State Education Law §6908(1) (a) (v), to:

- (1) identify the programs authorized to utilize direct support professionals to provide certain nursing tasks under the supervision of a registered professional nurse; and

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- (2) define criteria for providing high quality, person centered, nursing services to individuals with intellectual/developmental disabilities, who participate in such programs.

### **APPLICABILITY**

This ADM applies to providers of Home and Community Based Services (HCBS) waiver services approved or certified by OPWDD pursuant to Mental Hygiene Law section 16.03(a)(4). This ADM applies to services provided by registered professional nurses and direct support professionals to individuals with intellectual/developmental disabilities in their private homes and while accompanying the individuals in the community, in settings not certified by OPWDD.

This ADM does not apply to services in facilities licensed by other state agencies to provide personal care and supervision, healthcare, or habilitation services, such as hospitals and adult care facilities, or to OPWDD certified Article 16 clinics. This ADM does not apply to services provided in community residences or in intermediate care facilities certified by OPWDD; these services are covered by Administrative Memorandum 2003-1 and the 2003 Memorandum of Understanding between SED and OPWDD.

### **DEFINITIONS**

#### **Individual**

For purposes of this ADM, an individual is a person with an intellectual/developmental disability who lives in a private home that is not certified by OPWDD or another governmental entity and receives habilitation services or respite care services from an approved HCBS provider.

#### **Approved Provider**

An approved provider is a not-for-profit corporation certified by OPWDD pursuant to Mental Hygiene Law section 16.03(a)(4) to provide HCBS habilitation services or respite care services to individuals in a private home and in other community settings that are not certified by OPWDD.

#### **Registered Professional Nurse (RN)**

An RN is an individual who is licensed to practice registered professional nursing pursuant to Education Law §6902(1).

#### **Licensed Practical Nurse (LPN)**

An LPN is an individual who is licensed to practice nursing pursuant to Education Law §6902(2).

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### **Direct Support Professional (DSP)**

Approved providers employ or contract with DSPs to provide habilitation or respite care services to individuals in their homes and while accompanying the individuals in community settings. DSPs provide a wide variety of person-centered supports and services to individuals. For the purposes of this ADM, a DSP is an employee or contractor of an approved provider who provides direct care services, and who, regardless of job title, is responsible for providing the day-to-day hands-on care, training, guidance, direction, assistance, support, etc. to individuals receiving supports and services in a private home or community setting that is not certified by OPWDD (see also, 14 NYCRR 633.99(cm)).

### **Habilitation and Respite Care Services**

For the purposes of this ADM, habilitation and respite care services are person-centered supports and services provided by the approved provider pursuant to the OPWDD HCBS waiver program that help individuals with intellectual/developmental disabilities to live at home and participate fully in community life. Habilitation and respite care services may include nursing services provided by RNs, LPNs, and, pursuant to this ADM, DSPs.

### **Nursing Tasks**

For the purposes of this ADM, nursing tasks are tasks that may be delegated in writing by an RN to a DSP, and may include the following:

- bladder catheterization care (except for the insertion or removal of indwelling catheters or procedures requiring sterile technique);
- non-sterile dressing changes;
- glucose monitoring tests using medical devices approved by the FDA for over-the-counter use, if used for a single individual;
- respiratory care tasks, such as basic spirometry, oxygen administration, and nebulizer treatments;
- permanent gastrostomy or jejunostomy tube feedings;
- colostomy care that does not require sterile technique.
- basic medication administration tasks (e.g., topical, eye/ear/nose drops, enemas, suppositories, and some routinely administered oral medications); and
- subcutaneous injections of diabetes-related medications and emergency injections (including, but not limited to, epinephrine, narcan, glucagon);

For the purpose of this ADM, the following activities and services shall not be delegated to a DSP and shall not be performed by a DSP:

- any activity that is outside the scope of practice of a licensed practical nurse;
- the administration of medications or fluids parenterally (except for subcutaneous injections of diabetes-related medications or emergency injections [including but not limited to epinephrine, narcan, glucagon, as described above]);

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- any services that are inconsistent with care ordered or prescribed by a physician, physician assistant, nurse practitioner, dentist, or podiatrist;
- the administration of controlled substances, except for federal Schedule IV and Schedule V controlled substances prescribed to treat seizure disorders or another developmental disability;
- the insertion or removal of indwelling catheters;
- any services requiring sterile technique; and,
- any nursing care that requires professional nursing judgment, including the assessment of the medication needs of an individual served by OPWDD.

### **DELEGATION OF NURSING TASKS**

#### **Initial Assessment**

With respect to each new individual served by an approved provider, the approved provider, in collaboration with an RN employed by or under contract with the approved provider, shall review the individual's nursing needs, if any. If the RN determines that the individual requires nursing services, the RN shall complete a comprehensive assessment of the individual to determine whether nursing tasks, in whole or in part, can be delegated to DSPs with adequate training and nursing supervision.

The comprehensive nursing assessment must include the following information:

- (1) the individual's current health status and a review of the individual's psychosocial, functional, behavioral, and cognitive status as they relate to the provision of nursing services to the individual at home or in community settings;
- (2) the individual's strengths, goals, and care preferences;
- (3) current medical or nursing treatments ordered or prescribed by the individual's physician, nurse practitioner, or other qualified health professional; and
- (4) a review of all medications that the individual is currently taking to identify any potential issues (e.g., significant adverse effects, duplicate drug therapy, ineffective drug therapy, significant drug interactions, or non-compliance with drug therapy).

An RN shall update the comprehensive nursing assessment as frequently as the individual's condition warrants.

#### **Delegation Decisions**

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It shall be the responsibility of the RN to determine, using professional nursing judgment, whether any and which nursing tasks can be delegated to DSPs and which DSPs will be authorized and trained to perform the delegated tasks. The RN shall exercise professional judgment as to when delegation is unsafe and/or not in the individual's best interest.

When making a decision regarding the delegation of a nursing task, the RN shall consider the following:

- complexity of the task;
- condition/stability of the individual;
- training and abilities of the DSP involved, including relevant factors related to the DSP's ability to safely provide nursing services; and
- input from the individual or the individual's representative, if any.

The RN shall not delegate any nursing tasks to a DSP unless the RN determines that:

- (1) adequate equipment, supplies, and medications are available in the individual's home or in the community setting, if applicable, to perform the delegated nursing tasks appropriately;
- (2) the DSP has demonstrated to the RN that the DSP can perform the delegated nursing tasks safely and competently in the individual's home or in the community setting, if applicable;
- (3) the individual's medical condition is stable and predictable; and
- (4) the individual or the individual's representative (if any) agrees to have nursing tasks provided by DSPs.

### **Documenting Delegation Decisions**

The RN shall develop an individualized plan of nursing services based on the comprehensive nursing assessment of the individual, which identifies the nursing services to be provided to the individual, including delegated nursing tasks. An RN who delegates the performance of nursing tasks shall note in the individualized plan of nursing services a description of the nursing task, the name of the DSP(s) to whom the task is delegated, the date of delegation, the RN who will initially be assigned to supervise the DSP(s), and the RN's signature. The RN may include specific recommendations relating to the RN supervision of the delegated tasks. The RN shall promptly document in the individualized plan of nursing services any changes or termination of a delegation along with the RN's signature.

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A delegating RN shall provide written individual-specific instructions for performing each delegated nursing task and criteria for identifying, reporting, or responding to problems or complications to the qualified DSPs to whom the nursing task is delegated.

An RN shall document in the plan of nursing services the delegation of nursing tasks to qualified DSPs as well as any changes in or termination of nursing tasks. The RN shall provide the DSP with written individual-specific instructions for performing each delegated nursing task and criteria for identifying, reporting, or responding to problems or complications.

In cases of staffing shortages where a qualified DSP is not available, an approved provider may assign an LPN or RN to perform the nursing tasks.

### **RN Supervision of DSPs**

An RN shall be responsible for the supervision of DSPs in the performance of nursing tasks and activities. The approved provider shall ensure that each RN who supervises the performance of nursing tasks shall be: (1) thoroughly familiar with each individual's health status and nursing care plan and care needs; (2) informed of the approved provider's policy and procedures relating to the delegation of and supervision of nursing tasks performed by DSPs; (3) in receipt of required training relating to the supervision of nursing tasks provided by the DSPs; (4) authorized to oversee and direct care rendered by DSPs; and (5) capable of personally visiting the individual whenever necessary to protect the health and safety of the individual and prevent unnecessary emergency room visits.

For the purposes of this ADM, adequate nursing supervision of the performance of nursing tasks by a DSP involves:

- initial individual-specific training regarding the nursing task to be delegated to a DSP and verification that the DSP can competently perform the delegated nursing task(s) in the individual's home;
- monitoring and periodic inspection of the DSP's performance of the delegated nursing tasks;
- providing guidance, direction, and other assistance to a DSP by phone or in person, relating to delegated nursing tasks;
- soliciting feedback from the individual or the individual's representative, regarding services rendered by the DSP; and
- responding to the individual's nursing care needs by phone or in person, as needed, to ensure that the individual is safe and receiving good quality nursing care.

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:

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- the complexity of the task;
- the skill, experience and training of the DSP; and
- the health conditions and health status of the individual being served.

### Training

The approved provider shall ensure that all RNs who do not have previous experience in the field of nursing for individuals with intellectual/developmental disabilities complete an orientation for registered nurses in developmental disabilities nursing within three months of being hired. The approved provider shall ensure that the new RN completes such orientation before being assigned to supervise or delegate the performance of nursing tasks to DSPs without clinical oversight by a qualified RN with experience in provision of nursing services to individuals with intellectual/developmental disabilities.

The approved provider shall ensure that all DSPs complete all OPWDD required training relating to nursing tasks. It is the responsibility of the delegating and supervising RN to provide initial and on-going individual-specific training to DSPs for all nursing tasks that DSPs will perform. The supervising RN must periodically review the performance of DSPs to verify that the DSP's care is consistent with written individual-specific instructions for performing each delegated nursing task and for responding to problems or complications.

The approved provider shall ensure that medication administration, tube feeding and diabetic care is taught utilizing a standard curriculum approved by OPWDD.

The approved provider shall ensure that diabetic care is taught by either:

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

### OR

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

The approved provider shall ensure that DSPs are separately certified for medication administration, tube feeding, and insulin administration by the RN employed by or under contract with the approved provider, and shall be recertified on an annual basis.

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### **Availability of RNs to DSPs**

The approved provider shall ensure that one or more qualified RNs are available to provide adequate supervision of DSPs in the provision of nursing tasks when DSPs are performing such tasks on behalf of the individual, 24 hours a day, 7 days a week. The RN must be either on site or immediately available by telephone when necessary to ensure that the individual is safe and to prevent unnecessary emergency room visits. The approved provider shall ensure that all supervising RNs (including supervising RNs working during off-hours or on-call), will be immediately notified of changes in medical orders for an individual and/or of changes in an individual's health status. This notification may be provided by the DSP or by other staff working with the individual at the time a change occurs (e.g., by the DSP who accompanied an individual to a medical appointment that resulted in a new medical order; an individual becomes ill or injured while under the care of the assigned DSP or other staff member, etc.)

### **Frequency of Visits by RNs**

The frequency of visits to sites where DSPs provide nursing tasks shall be at the discretion of the RN responsible for supervision but in no case shall visits occur less frequently than once during the month in which such nursing tasks are delivered.

### **Plan of Nursing Services**

The RN is responsible for developing an individualized Plan of Nursing Services (PONS) for any individual 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 individual's condition. The PONS shall identify the RN(s) who delegated each nursing task and the nursing tasks that were delegated. The approved provider and the delegating RN must assure and document that the DSPs to whom the nursing tasks have been delegated have received and maintained all required training.

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

The RN shall ensure that there is an individual 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).

### **Clinical Performance Evaluations**

The RN shall conduct annual clinical performance evaluations for unlicensed DSPs for procedures that include, but are not limited to, medication administration, insulin administration, and tube feeding. This evaluation shall become part of the employee's annual performance evaluation.

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### **Staffing Ratios**

The approved provider is responsible for ensuring that adequate, qualified staffing is available at all times to meet the specific nursing care needs of individuals. The approved provider shall consider the following when establishing an RN/individual ratio for RNs assigned to provide nursing services in programs subject to this ADM:

- the health status/stability of the individuals;
- the type of facility or program;
- the actual number of DSPs, both full and part time, who are to be trained and supervised;
- the number of LPNs to be supervised;
- the number of locations, ease of access 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 approved provider shall establish a registered nurse/individual ratio that ensures consistently adequate nursing supervision. In no instance shall this ratio exceed one full time equivalent of an RN to 35 individuals (1:35). RN supervisors, in conjunction with the RNs, shall routinely and/or as necessary evaluate the ratio of RNs to individuals. Some ratios will need to be significantly less than this based upon the evaluation of the above factors.

RN/individual 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 approved provider and also has responsibility for one or more locations, only that portion of her/his time that is devoted to the locations may be used in calculating the ratio.

### **CONTACT INFORMATION**

For additional information, contact OPWDD Director of Nursing and Health Services, (518) 474-3558.