NURSES’ SCOPE OF PRACTICE AND DELEGATION AUTHORITY

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When work performed by nurses is not consistent with state law, there is increased risk of adverse health care events and poor patient outcomes that creates legal liability for the facility as well as individual nurses. In correctional settings, reasons for inadequate or inappropriate staffing include lack of knowledge about correctional nursing and state law regarding scope of practice, financial constraints, and difficulty recruiting nursing personnel. This paper addresses the issue of the proper assignment of nursing personnel in correctional facilities based on scope of practice as defined by state boards of nursing.

Background

Nurses deliver the majority of health care in correctional settings and serve as the gatekeeper for inmate access to all other health services. They are the professionals most often employed to provide health care services for inmates, and they have more contact with patients than any other health care professional.

Nursing staff may include registered nurses (RN), licensed practical or vocational nurses (LPN or LVN), and assistive nursing personnel. Many correctional facilities also employ advanced practice registered nurses (APRN). Each of these types of professionals has differing educational preparation and practice requirements. In addition, the scope of practice defined in state law and administrative code differs. See the Appendix for definitions of each of these types of personnel and descriptions of work performed. While there is some overlap in the allowed scope of practice among these nursing personnel, one cannot wholly substitute for another. (The National Council of State Boards of Nursing provides contact information for state boards at https://www.ncsbn.org/contactbon.htm.)

The role of the facility’s responsible health authority (RHA) is to establish staffing, policies, procedures, job descriptions, and other written directives that are consistent with the state practice regulations. In the National Commission on Correctional Health Care’s Standards for Health Services, standard C-07 Staffing requires that a facility have a sufficient number of health staff of varying types to provide inmates with adequate and timely evaluation and treatment consistent with contemporary standards of care. Also, compliance indicator 3 in standard C-01 Credentials states, “Qualified health care professionals do not perform tasks beyond those permitted by their credentials.” The RHA must be familiar with the scope of practice for each type of health care personnel providing services and have measures in place to ensure that work assigned is consistent with scope of practice.

When work assigned to nurses is outside their lawful scope of practice, it puts patients at risk of receiving unsafe care and puts both individual personnel and the organization at risk of financial and other penalties. Practicing outside the nurse’s scope creates legal liability for both the individual and the organization in the event of an adverse event or poor patient outcome.

In addition, some nurses have the legal authority to delegate and supervise care provided by other nursing personnel; this is an essential function of the RN. The delegating nurse retains accountability for patient outcomes even when the specific tasks of care delivery are the responsibility of others. The delegating nurse is expected to know that the delegatee is capable of performing the delegated duty. Nursing personnel are also expected not to accept delegated tasks they are not qualified to perform. More information on this subject can be found in the Joint Statement on Delegation published by the National Council of State Boards of Nursing and the American Nurses Association (2006).
Recommendations

To ensure provision of appropriate health care, the RHA must be familiar with the scope of practice and regulations for the different types of nursing personnel at the facility, and ensure that all health care personnel practice within the scope of their license, qualifications, competency, and training. This is accomplished by the following measures:

- Job descriptions, policies, procedures, and other written directives that delineate the roles and activities to be performed by nursing personnel in the delivery of patient care are consistent with state law and practice regulations. They also are based on the American Nurses Association’s scope and standards of professional practice for correctional nursing (2013), as well as NCCHC standards A-02 Responsible Health Authority, G-02 Patients With Special Health Needs, G-06 Patients With Alcohol and Other Drug Problems, and I-03 Forensic Information (2014).

- Orientation of nursing personnel includes an evaluation of each individual’s competency so that assignments are appropriate to the skills and abilities of the individual and the nurse can supervise accordingly. Each individual’s competency in delivery of nursing care is reevaluated as part of the clinical performance enhancement program (see NCCHC standard C-02 Clinical Performance Enhancement, 2014).

- Nurse staffing and assignments are consistent with the state nurse practice act and based on the American Nurses Association’s scope and standards of professional practice for correctional nursing (2013) as well as NCCHC standards C-01 Credentials and C-07 Staffing (2014).

- The RHA establishes the authority and expectation that delegation and supervision of other nursing personnel in the delivery of nursing care is an essential duty of RNs. Job descriptions, policies, procedures, and other written directives concerning delegation and supervision are consistent with state law and the Joint Statement on Delegation published by the National Council of State Boards of Nursing and the American Nurses Association (2006).

- Nursing personnel are provided with a means to refuse assignments that are not consistent with the nurse practice act or that they are not sufficiently competent to perform. Education, training, and clinical supervision are provided to assist nursing personnel in achieving necessary competencies. (See NCCHC standard C-02 Clinical Performance Enhancement, 2014.) Inappropriate assignments are brought to the attention of the RHA for review and resolution.

If the nursing staff mix or nurse assignments do not allow for adherence to the state nurse practice act, the RHA must resolve the discrepancy in a timely and efficient manner, and, if applicable, work with those responsible for designation and funding of staffing positions to correct the problem. In addition, staff should be educated regarding their role and responsibilities so that they understand the need to complete assigned duties as designated by the RHA based on the state nurse practice act. Finally, the RHA’s collaboration with nursing personnel or the chief nursing officer/director of nursing helps to ensure that state scope of practice laws are interpreted correctly and that implementation of any recommended changes in staffing and assignments is successful.

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Appendix: Definitions and Descriptions of the Different Types of Nursing Personnel

**Registered nurse (RN):** There are three educational routes to become an RN:
1. Two years of education in an accredited nursing program at a community college and graduation with an associate's degree in nursing
2. Three years of education in a hospital-affiliated accredited school of nursing and graduation with a nursing diploma
3. Four years of education in an accredited nursing program at a college or university and graduation with a baccalaureate degree in nursing
An RN must have a license to practice as a registered nurse issued by the board of nursing in the state where the nurse is working. State nurse practice acts consistently define the RN as providing comprehensive nursing care that includes independent assessment of patients' health needs, planning and implementation of care, and ongoing evaluation of the patient and his or her response to care provided. RNs independently provide health education to patients as well as other personnel (health care and custody). RNs also are responsible for coordination and safe delivery of medically ordered treatment, and in doing so delegate and supervise care delivered by licensed practical/vocational nurses and other assistive personnel.

**Licensed practical nurse (LPN) or licensed vocational nurse (LVN):** Has graduated from an accredited nursing program at a technical school or community college after at least 12 months of education. An individual must also have a license to practice as an LPN or LVN issued by the board of nursing in the state where the person is working. Generally, the LPN/LVN has a more limited and technical scope of practice directed by the RN or physician. The RN or physician supervises the LPN/LVN's performance and retains responsibility for the patient's plan of care. The LPN/LVN's scope of practice is quite varied from state to state. These variations concern the extent to which the LPN/LVN may delegate and supervise care, compare data to normal and make decisions about patient care, independently plan and provide patient education, and administer intravenous fluids and blood products. In most states, LPN/LVNs do not independently develop or change a patient's plan of care and do not perform triage, according to the National Council of State Boards of Nursing.

**Nursing assistive personnel:** Have training to perform certain tasks such as caring for bed patients, monitoring a patient's condition, and assisting patients with ambulation and other activities of daily living. In the primary care setting, assistive personnel may take vital signs, room patients, and assist the provider during the appointment. Nursing assistants may give medication and perform other procedures such as respiratory care with additional training. Some correctional facilities employ emergency medical technicians (EMTs) and paramedics to assist with emergency medical response. EMTs and paramedics have received training in how to respond to medical emergencies and are certified by a state agency to perform these duties as part of an emergency response network. Work performed by nursing assistive personnel has been delegated by a nurse who provides supervision while retaining responsibility for the patient's plan of care.

**Advanced practice registered nurse (APRN):** Has at least two years of graduate-level education resulting in a master's degree in nursing and licensure as a nurse practitioner, midwife, nurse anesthetist, or APRN by the state board of nursing in which the nurse is working. The APRN is considered a primary care provider and is responsible for the diagnosis and treatment of patients with medical and psychiatric conditions.
Resources


