



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Health- Nursing Care Quality Assurance Commission

- Preproposal Statement of Inquiry was filed as WSR ; or
 Expedited Rule Making--Proposed notice was filed as WSR ; or
 Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
 Supplemental Notice to WSR
 Continuance of WSR

Title of rule and other identifying information: (Describe Subject)

WAC 246-840-910 through 970 Nurse Delegation. This rule adds home care aides to the list of providers eligible for delegation and changes the term "licensed boarding homes" to "assisted living facilities". The rule reorders the definitions into alpha order.

Hearing location(s): Department of Health
 310 Israel Road SE
 Point Plaza East
 Room 153
 Tumwater WA 98501

Date: June 11 2013 Time: 4:00 p.m.

Submit written comments to:

Name: Mary Dale
 Address: PO Box 47864
 Olympia WA
 98504-7864
 e-mail: <http://www3.doh.wa.gov/policyreview/>
 fax 360-236-4738 by (date) 06/04/2013

Assistance for persons with disabilities: Contact

Louise Lloyd by 06/04/2013

TTY (800) 833-6388 or () 711

Date of intended adoption: 06/11/2013

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

ESHB 2314 passed in 2012 allows home care aides to accept delegation of nursing care tasks from a registered nurse. The rule change will expand the list of providers that registered nurses may delegate to in certain settings. SHB 2056 passed in 2012 changes the term licensed "boarding home" to "assisted living facility". The proposed rule removes the term licensed "boarding home" from the rules and adds "assisted living facility" to be consistent with the law.

Reasons supporting proposal:

Legislation was passed as ESHB 2314 (Chapter 164, Laws of 2012). This legislation will increase the availability of trained health care providers in long term care by adding home care aides to the list of providers that registered nurses may delegate to in certain settings. SHB 2056 (Chapter 10, Laws of 2012) removes the term licensed "boarding home" and replaces it with "assisted living facility". Rules need to be updated to be consistent with changes in both laws.

Statutory authority for adoption:

RCW 18.79.110, 18.79.260

Statute being implemented:

ESHB 2314 (2012) and SHB 2056 (2012)

Is rule necessary because of a:

- Federal Law? Yes No
 Federal Court Decision? Yes No
 State Court Decision? Yes No
 If yes, CITATION:

DATE 04/29/13

NAME (type or print)

Paula R. Meyer, MSN, RN

SIGNATURE

Paula R. Meyer MSN, RN

TITLE

Executive Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 29, 2013

TIME: 3:34 PM

WSR 13-10-058

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) Nursing Care Quality Assurance Commission

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Paula Meyer	111 Israel Rd SE, Tumwater WA 98501	360-236-4713
Implementation.... Paula Meyer	111 Israel Rd SE, Tumwater WA 98501	360-236-4713
Enforcement..... Paula Meyer	111 Israel Rd SE, Tumwater WA 98501	360-236-4713

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

No. Explain why no statement was prepared.

A small business economic impact statement (SBEIS) was not prepared. Under RCW 19.85.025 and 34.05.310(4)(e), a SBEIS is not required for a proposed rule where the content of the rule is explicitly and specifically dictated by statute.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

No: Please explain: The agency did not complete a cost benefit analysis under RCW 34.05.328. RCW 34.05.328(5)(b)(v)

exempts rules the content of which is explicitly and specifically dictated by statute.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-910 Purpose. This rule defines a consistent standard of nursing care with the delegation of nursing tasks to nursing assistants or home care aides. The registered nurse delegator makes independent professional decisions of the delegation of a nursing task. A licensed registered nurse may delegate specific nursing care tasks to nursing assistants or home care aides meeting certain requirements and providing care to individuals in a community-based care setting defined by RCW 18.79.260 (3)(e)(i) and to individuals in an in-home care setting defined by RCW 18.79.260 (3)(e)(ii). Before delegating a task, the registered nurse delegator determines that specific criteria are met and the patient is in a stable and predictable condition. Registered nurses delegating tasks are accountable to the Washington state nursing care quality assurance commission. The registered nurse delegator, home care aide and nursing assistant are each accountable for their own individual actions in the delegation process. No person may coerce a registered nurse into compromising patient safety by requiring the registered nurse to delegate. Registered nurse delegators shall not delegate the following care tasks:

- (1) Administration of medications by injection (by intramuscular, intradermal, subcutaneous, intraosseous, intravenous, or otherwise) with the exception of insulin injections.
- (2) Sterile procedures.
- (3) Central line maintenance.
- (4) Acts that require nursing judgment.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-920 Definitions. (~~For the purposes of this chapter,~~) The following definitions (~~in this section~~) apply to WAC 246-840-910 through 246-840-970.

- (1) "Authorized representative" means a person allowed to provide written consent for health care on behalf of a patient who is not competent to consent. Such person shall be a member of one of the classes of persons as directed in RCW 7.70.065.
- (2) "Coercion" means to force or compel another, by authority, to do something that he/she would not otherwise choose to do.

(3) "Complex task" means that a nursing task may become more complicated because of:

- (a) The patient's condition;
- (b) The setting;
- (c) The nursing care task(s) and involved risks; and
- (d) The skill level required to perform the task.

The registered nurse delegator identifies and facilitates additional training of the nursing assistant or home care aide prior to delegation in these situations. The registered nurse delegator decides if the task is not delegable. In no case, may administration of medications by injection with the exception of insulin injections, sterile procedures and central line maintenance be delegated.

~~(4) ("Medication assistance" as defined in chapter 246-888 WAC does not require delegation by a licensed nurse.~~

~~(5) "Nursing assistant" means a nursing assistant registered under chapter 18.88A RCW or a nursing assistant-certified under chapter 18.88A RCW, providing support and care to individuals served by certified community residential programs for the developmentally disabled, to individuals residing in licensed adult family homes, to in-home care and to individuals residing in licensed boarding homes.~~

~~(6) "Outcome" means the end result or consequence of an action after following a plan of care.~~

~~(7) "Patient" means the individual receiving nursing care tasks. In the community residential settings, the patient may be a client, consumer, or resident.~~

~~(8) "Personal care services" as defined in WAC 388-106-0010 do not require delegation by a licensed nurse.~~

~~(9) "Procedure" means a series of steps with a desired result; a particular course of action or way of doing something.~~

~~(10) "Registered nurse delegation" means the registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the patient.~~

~~(11) "Supervision" means the guidance and evaluation by a registered nurse delegator for the accomplishment of a nursing task or activity, including the initial direction of the task or activity; periodic inspection at least every ninety days of the actual act of accomplishing the task or activity; and the authority to require corrective action.~~

~~(12) "Immediate supervision" means the registered nurse delegator is on the premises, within audible and visual range of the patient and the patient assessment by the registered nurse delegator occurs prior to the delegation of duties to any care giver.~~

~~(13) "Direct supervision" means the registered nurse delegator on the premises, quickly and easily available and the patient assessment by the registered nurse delegator occurs prior to the delegation of the duties to any care giver.~~

~~(14) "Indirect supervision" means the registered nurse delegator is not on the premises. The registered nurse delegator~~

~~previously provided written instructions for the care and treatment of the patient. The registered nurse delegator documents in the patient record the instruction to the nursing assistant, observation of the delegated task, and confirmation of the nursing assistant understanding the directions.~~

~~(15) "Stable and predictable condition" means the registered nurse delegator determines the patient's clinical and behavioral status is nonfluctuating and consistent. Stable and predictable may include a terminally ill patient whose deteriorating condition is expected. Stable and predictable may include a patient with sliding scale insulin orders. The registered nurse delegator determines the patient does not require frequent nursing presence and evaluation.)) "Direct supervision" means the registered nurse delegator on the premises, quickly and easily available and the patient assessment by the registered nurse delegator occurs prior to the delegation of the duties to any care giver.~~

(5) "Home care aide" means a person certified under chapter 18.88B RCW.

(6) "Immediate supervision" means the registered nurse delegator is on the premises, within audible and visual range of the patient and the patient assessment by the registered nurse delegator occurs prior to the delegation of duties to any care giver.

(7) "Indirect supervision" means the registered nurse delegator is not on the premises. The registered nurse delegator previously provided written instructions for the care and treatment of the patient. The registered nurse delegator documents in the patient record the instruction to the nursing assistant or home care aide, observation of the delegated task, and confirmation of the nursing assistant's or home care aide's understanding the directions.

(8) "Medication assistance" as defined in chapter 246-888 WAC does not require delegation by a licensed nurse.

(9) "Nursing assistant" means a nursing assistant-registered under chapter 18.88A RCW or a nursing assistant-certified under chapter 18.88A RCW, providing support and care to individuals served by certified community residential programs for the developmentally disabled, to individuals residing in licensed adult family homes, to in-home care and to individuals residing in assisted living facilities.

(10) "Outcome" means the end result or consequence of an action after following a plan of care.

(11) "Patient" means the individual receiving nursing care tasks. In the community residential settings, the patient may be a client, consumer, or resident.

(12) "Personal care services" as defined in WAC 388-106-0010 do not require delegation by a licensed nurse.

(13) "Procedure" means a series of steps with a desired result; a particular course of action or way of doing something.

(14) "Registered nurse delegation" means the registered nurse transfers the performance of selected nursing tasks to competent nursing assistants or home care aides in selected situations. The registered nurse delegating the task retains the responsibility and

accountability for the nursing care of the patient.

(15) "Stable and predictable condition" means the registered nurse delegator determines the patient's clinical and behavioral status is nonfluctuating and consistent. Stable and predictable may include a terminally ill patient whose deteriorating condition is expected. Stable and predictable may include a patient with sliding scale insulin orders. The registered nurse delegator determines the patient does not require frequent nursing presence and evaluation.

(16) "Supervision" means the guidance and evaluation by a registered nurse delegator for the accomplishment of a nursing task or activity, including the initial direction of the task or activity; periodic inspection at least every ninety days of the actual act of accomplishing the task or activity; and the authority to require corrective action.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-930 Criteria for delegation. (1) Before delegating a nursing task, the registered nurse delegator decides the task is appropriate to delegate based on the elements of the nursing process: ASSESS, PLAN, IMPLEMENT, EVALUATE.

ASSESS

(2) The setting allows delegation because it is a community-based care setting as defined by RCW 18.79.260 (3)(e)(i) or an in-home care setting as defined by RCW 18.79.260 (3)(e)(ii).

(3) Assess the patient's nursing care needs and determine the patient's condition is stable and predictable. A patient may be stable and predictable with an order for sliding scale insulin or terminal condition.

(4) Determine the task to be delegated is within the delegating nurse's area of responsibility.

(5) Determine the task to be delegated can be properly and safely performed by the nursing assistant or home care aide. The registered nurse delegator assesses the potential risk of harm for the individual patient.

(6) Analyze the complexity of the nursing task and determine the required training or additional training needed by the nursing assistant or home care aide to competently accomplish the task. The registered nurse delegator identifies and facilitates any additional training of the nursing assistant or home care aide needed prior to delegation. The registered nurse delegator ensures the task to be delegated can be properly and safely performed by the nursing assistant or home care aide.

(7) Assess the level of interaction required. Consider language or cultural diversity affecting communication or the

ability to accomplish the task and to facilitate the interaction.

(8) Verify that the nursing assistant or home care aide:

(a) Is currently registered or certified as a nursing assistant or home care aide in Washington state without restriction;

(b) (~~As required in WAC 246-841-405 (2)(a), nursing assistants registered have~~) Has completed both the basic caregiver training and core delegation training before performing any delegated task;

(c) Has a certificate of completion issued by the department of social and health services indicating completion of the required core nurse delegation training;

(d) Has a certificate of completion issued by the department of social and health services indicating completion of diabetes training when providing insulin injections to a diabetic client; and

(e) Is willing and able to perform the task in the absence of direct or immediate nurse supervision and accept responsibility for their actions.

(9) Assess the ability of the nursing assistant or home care aide to competently perform the delegated nursing task in the absence of direct or immediate nurse supervision.

(10) If the registered nurse delegator determines delegation is appropriate, the nurse:

(a) Discusses the delegation process with the patient or authorized representative, including the level of training of the nursing assistant or home care aide delivering care.

(b) Obtains written consent. The patient, or authorized representative, must give written, consent to the delegation process under chapter 7.70 RCW. Documented verbal consent of patient or authorized representative may be acceptable if written consent is obtained within thirty days; electronic consent is an acceptable format. Written consent is only necessary at the initial use of the nurse delegation process for each patient and is not necessary for task additions or changes or if a different nurse (~~or~~), nursing assistant, or home care aide will be participating in the process.

PLAN

(11) Document in the patient's record the rationale for delegating or not delegating nursing tasks.

(12) Provide specific, written delegation instructions to the nursing assistant or home care aide with a copy maintained in the patient's record that includes:

(a) The rationale for delegating the nursing task;

(b) The delegated nursing task is specific to one patient and is not transferable to another patient;

(c) The delegated nursing task is specific to one nursing assistant or one home care aide and is not transferable to another nursing assistant or home care aide;

(d) The nature of the condition requiring treatment and purpose of the delegated nursing task;

(e) A clear description of the procedure or steps to follow to perform the task;

(f) The predictable outcomes of the nursing task and how to effectively deal with them;

(g) The risks of the treatment;

(h) The interactions of prescribed medications;

(i) How to observe and report side effects, complications, or unexpected outcomes and appropriate actions to deal with them, including specific parameters for notifying the registered nurse delegator, health care provider, or emergency services;

(j) The action to take in situations where medications and/or treatments and/or procedures are altered by health care provider orders, including:

(i) How to notify the registered nurse delegator of the change;

(ii) The process the registered nurse delegator uses to obtain verification from the health care provider of the change in the medical order; and

(iii) The process to notify the nursing assistant or home care aide of whether administration of the medication or performance of the procedure and/or treatment is delegated or not;

(k) How to document the task in the patient's record;

(l) Document teaching done and a return demonstration, or other method for verification of competency; and

(m) Supervision shall occur at least every ninety days. With delegation of insulin injections, the supervision occurs at least weekly for the first four weeks, and may be more frequent.

(13) The administration of medications may be delegated at the discretion of the registered nurse delegator, including insulin injections. Any other injection (intramuscular, intradermal, subcutaneous, intraosseous, intravenous, or otherwise) is prohibited. The registered nurse delegator provides to the nursing assistant or home care aide written directions specific to an individual patient.

IMPLEMENT

(14) Delegation requires the registered nurse delegator teach the nursing assistant or home care aide how to perform the task, including return demonstration or other method of verification of competency as determined by the registered nurse delegator.

(15) The registered nurse delegator is accountable and responsible for the delegated nursing task. The registered nurse delegator monitors the performance of the task(s) to assure compliance with established standards of practice, policies and procedures and appropriate documentation of the task(s).

EVALUATE

(16) The registered nurse delegator evaluates the patient's responses to the delegated nursing care and to any modification of the nursing components of the patient's plan of care.

(17) The registered nurse delegator supervises and evaluates the performance of the nursing assistant or home care aide,

including direct observation or other method of verification of competency of the nursing assistant or home care aide. The registered nurse delegator reevaluates the patient's condition, the care provided to the patient, the capability of the nursing assistant or home care aide, the outcome of the task, and any problems.

(18) The registered nurse delegator ensures safe and effective services are provided. Reevaluation and documentation occurs at least every ninety days. Frequency of supervision is at the discretion of the registered nurse delegator and may be more often based upon nursing assessment.

(19) The registered nurse must supervise and evaluate the performance of the nursing assistant or home care aide with delegated insulin injection authority at least weekly for the first four weeks. After the first four weeks the supervision shall occur at least every ninety days.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-940 Washington state nursing care quality assurance commission community-based and in-home care setting delegation decision tree.

(1)	Does the patient reside in one of the following settings? A community-based care setting as defined by RCW 18.79.260 (3)(e)(i) or an in-home care setting as defined by RCW 18.79.260 (3)(e)(ii).	No →	Do not delegate
Yes ↓			
(2)	Has the patient or authorized representative given consent to the delegation?	No →	Obtain the written, informed consent
Yes ↓			
(3)	Is RN assessment of patient's nursing care needs completed?	No →	Do assessment, then proceed with a consideration of delegation
Yes ↓			
(4)	Does the patient have a stable and predictable condition?	No →	Do not delegate
Yes ↓			
(5)	Is the task within the registered nurse's scope of practice?	No →	Do not delegate
Yes ↓			

(6)	Is the nursing assistant <u>or home care aide</u> , registered or certified and properly trained in the nurse delegation for nursing assistants <u>or home care aides</u> ? Is the nursing assistant <u>or home care aide</u> trained in diabetes care and insulin injections when delegating insulin?	No →	Do not delegate
Yes ↓			
(7)	Does the delegation exclude the administration of medications by injection other than insulin, sterile procedures or central line maintenance?	No →	Do not delegate
Yes ↓			
(8)	Can the task be performed without requiring judgment based on nursing knowledge?	No →	Do not delegate
Yes ↓			
(9)	Are the results of the task reasonably predictable?	No →	Do not delegate
Yes ↓			
(10)	Can the task be safely performed according to exact, unchanging directions?	No →	Do not delegate
Yes ↓			
(11)	Can the task be performed without a need for complex observations or critical decisions?	No →	Do not delegate
Yes ↓			
(12)	Can the task be performed without repeated nursing assessments?	No →	Do not delegate
Yes ↓			
(13)	Can the task be performed properly?	No →	Do not delegate
Yes ↓			
(14)	Is appropriate supervision available? With insulin injections, the supervision occurs at least weekly for the first four weeks.	No →	Do not delegate
Yes ↓			
(15)	There are no specific laws or rules prohibiting the delegation?	No →	Do not delegate
Yes ↓			
(16)	Task is delegable		

WAC 246-840-950 How to make changes to the delegated tasks.

(1) **Medication.** The registered nurse delegator discusses with the nursing assistant or home care aide the process for continuing, rescinding, or adding medications to the delegation list when the changes occur:

(a) The registered nurse delegator verifies the change in medication or a new medication order with the health care provider;

(b) If the medication dosage or type of medication changes or for the same problem (i.e., one medication is deleted and another is substituted) and the patient remains in a stable and predictable condition, delegation continues at the registered nurse delegator's discretion; and

(c) If a new medication is added, the registered nurse delegator reviews the criteria and process for delegation prior to delegating the administration of the new medication to the nursing assistant or home care aide. The registered nurse delegator maintains the authority to decide if the new medication can be delegated immediately, if a site visit is warranted prior to delegation, or if delegation is no longer appropriate. If delegation is rescinded, the registered nurse delegator initiates and participates in developing an alternative plan to meet the needs of the patient.

(2) **Treatments and/or procedures.**

(a) The registered nurse delegator verifies the change in the medical order with the health care provider.

(b) The registered nurse delegator decides if the new treatment or procedure can be delegated immediately, if a site visit is warranted prior to delegation, or if delegation is no longer appropriate. If rescinding delegation, the registered nurse delegator initiates and participates in developing an alternative plan to meet the needs of the patient.

Transferring delegation to another registered nurse.

(3) The registered nurse delegator may transfer the delegation process to another registered nurse. The registered nurse assuming responsibility assesses the patient, the skills of the nursing assistant or home care aide, and the plan of care. The registered nurse is accountable and responsible for the delegated task. The registered nurse delegator must document the following in the patient's record:

(a) The reason and justification for another registered nurse assuming responsibility for the delegation;

(b) The registered nurse assuming responsibility must agree, in writing, to perform the supervision; and

(c) The nursing assistant or home care aide and patient have been informed of this change.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-960 Rescinding delegation. (1) The registered nurse delegator may rescind delegation of the nursing task based on the following circumstances which may include, but are not limited to:

(a) The registered nurse delegator believes patient safety is being compromised;

(b) The patient's condition is no longer stable and predictable;

(c) When the frequency of staff turnover makes delegation impractical to continue in the setting;

(d) A change in the nursing assistant's or home care aide's willingness or competency to do the task;

(e) When the task is not being performed correctly;

(f) When the patient or authorized representative requests rescinding the delegation;

(g) When the facility's license lapsed; or

(h) When caregivers are not currently registered, certified, or have restrictions to practice.

(2) In the event delegation is rescinded, the registered nurse delegator initiates and participates in developing an alternative plan to provide continuity of the task or assumes responsibility for performing the task.

(3) The registered nurse delegator documents the reason for rescinding delegation of the task and the plan for continuing the task.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-970 Accountability, liability, and coercion. (1) The registered nurse delegator and nursing assistant or home care aide are accountable for their own individual actions in the delegation process. While the delegated task becomes the responsibility of the nursing assistant or home care aide, the registered nurse delegator retains overall accountability for the nursing care of the patient.

(2) Under RCW 18.79.260 (3)(d)(iv), delegating nurses acting within their delegation authority shall be immune from liability for any action performed in the course of their delegation duties.

(3) Under RCW 18.88A.230(1), nursing assistants and under RCW 18.88B.070(3), home care aides following written delegation instructions from registered nurse delegators for delegated tasks shall be immune from liability.

(4) Complaints regarding delegation of nursing tasks may be reported to the aging and adult services administration of the

department of social and health services or via a toll-free telephone number.

(5) All complaints related to registered nurse delegators shall be referred to the nursing care quality assurance commission.

(6) All complaints related to nursing assistants or home care aides performing delegated tasks shall be referred to the secretary of health.

(7) Under RCW 18.79.260 (3)(c), no person may coerce the registered nurse delegator into compromising patient safety by requiring the nurse to delegate if the registered nurse delegator determines it is inappropriate to do so. Registered nurse delegators shall not be subject to any employer reprisal or disciplinary action by the Washington nursing care quality assurance commission for refusing to delegate tasks or refusing to provide the required training for delegation if the nurse determines delegation may compromise patient safety.

(8) Under RCW 18.88A.230(2), nursing assistants and under RCW 18.88B.070(4), home care aides shall not be subject to any employer reprisal or disciplinary action by the secretary for refusing to accept delegation of a nursing task based on patient safety issues.