

## WSR 22-19-006

## EMERGENCY RULES

## DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed September 9, 2022, 8:42 a.m., effective September 9, 2022, 8:42 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-840-930 and 246-841-405, amending specific training requirements for nursing assistants-registered (NARs) and home care aides (HCAs). These rules continue the initial emergency rules filed as WSR 22-07-046 on March 14, 2022, and later on July 12, 2022, as WSR 22-15-020.

The nursing care quality assurance commission (commission) is re-filing these emergency rules to continue to allow a registered nurse delegator to delegate nursing tasks to NARs or HCAs based on requirements established by the department of social and health services (DSHS). NARs and HCAs must complete basic caregiver training as part of their licensure requirements. DSHS provides this training, but was unable to do so during the coronavirus disease 2019 (COVID-19) pandemic and is currently experiencing significant delays due to the backlog. DSHS adopted permanent rules effective July 1, 2022, as WSR 22-12-081, which outline dates by which NARs and HCAs must complete basic caregiver training. These dates may extend through September 30, 2023, or within 120 days after the end of the COVID-19 training waivers established by the governor, whichever is later.

To align registered nurse delegator rules with nursing assistant rules, the commission is amending existing emergency rule language to reference DSHS's rules that describe when basic caregiver training must be completed based on hire or rehire date. The commission is also adding language that expands the documentation allowed for proof of training from a "certificate of completion" to "evidence as required by DSHS," as stated in DSHS's rule. This emergency rule will replace the existing emergency rule, filed as WSR 22-15-020, prior to the 120 day expiration because WAC 246-840-930 (8)(c)-(d) were amended by a separate rule making (WSR 22-12-026) and this rule must be updated to reflect the new language that has changed; the effect of the emergency rule has not changed.

Citation of Rules Affected by this Order: Amending WAC 246-840-930 and 246-841-405

Statutory Authority for Adoption: RCW 18.88A.060, 18.79.110.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The immediate amendment of existing rules is necessary for the preservation of public health, safety, and general welfare. DSHS is responsible for providing basic caregiver training for NARs and HCAs. Due to impacts on training caused by COVID-19, DSHS was not able to provide basic caregiver training for NARs and HCAs for a period of time. Commission emergency rules starting in April 2020 at the outset of the COVID-19 pandemic allowed NARs and HCAs to work without the required training. DSHS has since filed emergency and permanent rules that outline the dates by which HCAs and NARs must complete basic caregiver training dependent on hire and rehire dates.

The commission rules need to align with DSHS rules to assure NARs and HCAs can continue to provide necessary health care to patients.

This emergency rule will replace the existing emergency rule and will be refiled every 120 days until such time that DSHS can resume its standard training schedule, after the end of the training waivers established by gubernatorial proclamation.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: September 9, 2022.

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## OTS-3966.2

AMENDATORY SECTION (Amending WSR 22-12-026, filed 5/23/22, effective 9/9/22)

**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 delega-

tion. 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) Has completed both the basic caregiver training in accordance with dates established by the department of social and health services per WAC 388-71-0876, 388-71-0992, 388-112A-0081, 338-112A-0613, and core delegation training before performing any delegated task;

(c) Has evidence as required by the department of social and health services of successful completion of nurse delegation core training;

(d) Has evidence as required by the department of social and health services of successful completion of nurse delegation special focus on 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 30 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, 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 90 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 occur at least every 90 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 90 days.

[Statutory Authority: RCW 18.79.010, 18.79.110, and 18.79.260. WSR 22-12-026, § 246-840-930, filed 5/23/22, effective 9/9/22. Statutory Authority: RCW 18.79.110, 18.79.260, 2012 c 164, and 2012 c 10. WSR 13-15-063, § 246-840-930, filed 7/15/13, effective 8/15/13. Statutory Authority: RCW 18.79.110, 18.79.260, 18.88A060 [18.88A.060], and 18.88A.210. WSR 09-06-006, § 246-840-930, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 18.79.110, 18.79.260 (3) (f), 18.88A.210, 2003 c 140. WSR 04-14-065, § 246-840-930, filed 7/2/04, effective 7/2/04. Statutory Authority: Chapters 18.79 and 18.88A RCW. WSR 02-02-047, § 246-840-930, filed 12/27/01, effective 1/27/02. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-930, filed 6/18/97, effective 7/19/97; WSR 96-05-060, § 246-840-930, filed 2/19/96, effective 3/21/96.]

### OTS-3665.3

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

**WAC 246-841-405 Nursing assistant delegation.** Provision for delegation of certain tasks.

(1) Nursing assistants perform tasks delegated by a registered nurse for patients in community-based care settings or in-home care settings each as defined in RCW 18.79.260 (3) (e).

(2) Before performing any delegated task:

(a) Nursing assistants-registered must show ((the certificate of)) evidence as required by the department of social and health services of successful completion of both the basic caregiver training and the designated nurse delegation core ((delegation)) training from the department of social and health services to the registered nurse delegator. Nursing assistants-registered who were working or hired during the COVID-19 public health emergency must complete basic caregiver training by dates established by the department of social and health services per WAC 388-71-0876, 388-71-0992, 388-112A-0081, and 388-112A-0613.

(b) Nursing assistants-certified must show ((the certificate of)) evidence as required by the department of social and health services of successful completion of the core delegation training from the department of social and health services to the registered nurse delegator. Nursing assistants-certified who were working or hired during the COVID-19 public health emergency must complete basic caregiver training by dates established by the department of social and health services per WAC 388-71-0876, 388-71-0992, 388-112A-0081, and 388-112A-0613.

(c) All nursing assistants must comply with all applicable requirements of the nursing care quality assurance commission in WAC 246-840-910 through 246-840-970.

(d) All nursing assistants, registered and certified, who may be completing insulin injections must (~~give a certificate of completion of diabetic training from the department of social and health services~~) show evidence as required by the department of social and health services of successful completion of nurse delegation special focus on diabetes training to the registered nurse delegator.

(e) All nursing assistants must meet any additional training requirements identified by the nursing care quality assurance commission. Any exceptions to additional training requirements must comply with RCW 18.79.260 (3) (e) (v).

(3) Delegated nursing care tasks described in this section are:

(a) Only for the specific patient receiving delegation;

(b) Only with the patient's consent; and

(c) In compliance with all applicable requirements in WAC 246-840-910 through 246-840-970.

(4) A nursing assistant may consent or refuse to consent to perform a delegated nursing care task. The nursing assistant is responsible for their own actions with the decision to consent or refuse to consent and the performance of the delegated nursing care task.

(5) Nursing assistants shall not accept delegation of, or perform, the following nursing care tasks:

(a) Administration of medication by injection, with the exception of insulin injections;

(b) Sterile procedures;

(c) Central line maintenance;

(d) Acts that require nursing judgment.

[Statutory Authority: RCW 18.79.110, 18.79.260, 18.88A060 [18.88A.060], and 18.88A.210. WSR 09-06-006, § 246-841-405, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 18.88A.060 and 2003 c 140. WSR 04-14-064, § 246-841-405, filed 7/2/04, effective 7/2/04. Statutory Authority: Chapter 18.88A RCW. WSR 96-06-029, § 246-841-405, filed 2/28/96, effective 3/30/96.]