

Oregon State Board of Nursing Interpretive Statement

Oregon State Board of Nursing and Oregon Department of Human Services Joint Statement LPN Practice in Oregon Department of Human Services-Licensed Settings and in Home-based Service/Support Programs

Statement of Purpose

The Purpose of this document is to:

- Clarify the dependent practice role of the licensed practical nurse (LPN) set forth in Oregon's Nurse Practice Act (NPA);
- Outline the responsibility of the registered nurse (RN) to provide clinical direction and supervision of LPN practice that occurs in the context of care of Oregon Department of Human Services (ODHS)-licensed settings and in ODHS home-based service/support programs; and
- Discuss duty to report and mandatory reporting requirements made of nurses.

Background/Significance

It has come to the attention of ODHS and the Oregon State Board of Nursing (OSBN) that some LPNs who practice as employees or contractors in ODHS-licensed settings and as Medicaid providers in ODHS home-based service/support programs are practicing independently (i.e., without clinical direction or supervision). At the LPN-level of licensure, there is no independent nursing practice.

OSBN Statement

Oregon's NPA establishes a dependent and clinically directed scope of practice at LPN-level of licensure. This practice limitation is not new; it has always been the law.

Clinical direction of LPN practice means the LPN's practice must occur within the parameters of the RN's established plan of care for a client or occur within the parameters of the licensed independent practitioner's (LIP) established treatment plan for a client. The RN or the LIP then directs the LPN to carry out interventions within the established plan with the client.

In carrying out interventions within the established plan with the client, the individual LPN is responsible to engage in their own *practice of nursing*. For the LPN this means recognizing the client's priority condition at the time of their interaction with the client - this is the LPN's *focused assessment*. From the focused assessment, the LPN prioritizes interventions when interacting with their client – this is the LPN's *focused plan of care*. The LPN is legally responsible to document their engagement in the *practice of nursing*.

OAR Chapter 851 Division 045 standards on safe nursing practice require the LPN to self-regulate their actions by practicing within the *context of care*. Context of care is defined in OAR Chapter 851 Division 006 of the NPA and means the environment where the practice of nursing occurs. Defining a specific context of care includes factors such as the laws and rules governing/applicable to the setting; the licensee's role within the setting; the policies and procedures of the setting; professional nursing practice standards applicable to the nursing activity; and the ability of the client to engage in their own care. The context of care can limit one's scope of nursing practice but can never expand scope beyond the legal parameters set forth in Oregon's NPA.

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ODHS Statement

The factors that define the context of care of the LPN who practices in an ODHS-licensed setting or who is an employee, contractor or provider for an ODHS home-based service/support program are many. Factors include the minimum health and safety requirements set forth by the Social Security Act (SSA) for providers that participate in Medicaid programs regulated by Centers for Medicare and Medicaid (CMS); Oregon's ODHS CMS-approved Home and Community-Based Waiver(s) to SSA requirements; Oregon laws and rules governing the ODHS-licensed settings and governing home-based services and supports; employer and program policies; position description or professional services contract; and more.

The nursing practice of the LPN who practices within the context of care of an ODHS-licensed setting or a home-based service/support program must be clinically directed and supervised by an RN.

OSBN and ODHS Statement

The following describes the legal framework for LPN practice under the clinical direction of the RN within the context of care of ODHS-licensed settings and ODHS home-based service/support programs.

The RN's independent scope of nursing practice allows for comprehensive assessment and development of the plan of care. The plan of care can only be authored by the RN.

The plan of care is developed through the RN's application of nursing knowledge in observing and assessing presenting situations, identifying priority client concerns, and generating the best possible evidence-based solution(s) to deliver safe nursing services.

In implementation of the plan of care, the RN may decide to assign activities or interventions from within the plan of care to an LPN to perform. The RN who assigns activities or interventions from within the plan of care to an LPN to perform is providing *clinical direction* of that LPN's practice.

The individual RN makes the decision to assign based on factors including the health, safety, and welfare of their client; the activities or interventions to be performed; the activities or interventions the LPN is already authorized to perform based on their LPN license and on their individual competencies; and the employer's and/or program's policies.

The individual LPN may only accept an assignment that is within LPN scope of practice, within their individual practice competencies, and for which performance of the activity or intervention is supported by the employer's or program's policies. Other factors informing the LPN's decision are located in OAR Chapter 851 Division 045.

In accepting and carrying out the assigned activities or interventions from the RN's plan of care, the LPN completes a *focused assessment* of the client (i.e., recognizing the client's priority condition at the time of their interaction with the client) and develops a *focused plan of care* (i.e., prioritization of interventions when interacting with the client). The LPN is responsible to communicate any concerns or issues regarding the implementation of the plan of care with the RN. The RN evaluates data communicated by the LPN to determine if the plan of care requires revision.

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Important:

- The LPN cannot independently formulate a revision to the RN's established plan of care or independently create a new plan of care outside of the client's known problems/risks.
- Only the RN holds the legal scope of practice authority to author a new plan of care for a client or to modify an existing plan to address a client's newly identified problem or issue.

The RN is responsible to provide clinical supervision of the LPN to whom an assignment has been made. Such clinical supervision is aligned with the RN's ongoing collection and analysis of data to evaluate the client's responses to interventions and progress toward identified outcomes. RN assignment and clinical supervision responsibilities are located in OAR Chapter 851 Division 045.

Both the RN and the LPN are individually accountable for their own nursing practice. Both remain individually responsible to advocate for the safety of their client and to advocate for the client to receive appropriate care.

Warning signs of a medical emergency always warrant immediate contact with emergency medical services (9-1-1).

Protection of the Public

The practice of nursing that occurs in ODHS-licensed settings and in ODHS home-based service/support programs largely exists without collegial nursing oversight or peer review processes utilized in hospitals and acute care practice settings. This necessitates each individual nurse to purposefully adhere to the legal standards of Oregon's NPA - standards that exist for the protection of the public. This applies regardless of job title or practice role (e.g., private duty, direct care, facility-based, administration, corporate, management, regulation, consultation) and means:

- Ensuring that any role, intervention or activity to be performed is:
 - Not prohibited by the NPA or prohibited by any other applicable law, rule, regulation, or accreditation standard;
 - Consistent with professional and specialty nursing standards and with evidence-based nursing and health care literature; and
 - Supported by practice setting/program policies and procedures.
- Ensuring that prior to the acceptance and engagement in any role, intervention or activity, the necessary education has been completed and current competency demonstrated and documented.
- Addressing unsafe nursing practice immediately.
- Ensuring unsafe practice and unsafe practice conditions are reported to the appropriate regulatory agency.

This also means adhering to OAR 851-045-0090 duty to report standards and all State of Oregon mandatory reporting laws requiring actions by nurses (e.g., ORS chapter 678, ORS chapter 676, ORS chapter 418, ORS chapter 124, ORS chapter 146, ORS chapter 430, and ORS chapter 441).

The OAR 851-045-0090 duty to report require the nurse to self-report the Board of Nursing their dismissal from a practice position due to unsafe practice or conduct derogatory to the standards of nursing. The

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nurse in an administrative or supervisory position who has terminated another nurse must also make a report of that nurse to the Board. This includes State of Oregon administered programs that utilize nurses as independent providers of nursing services. Failure to report to the OSBN may result in civil penalties.

To access Oregon's NPA, visit the OSBN website at www.oregon.gov/OSBN. For information regarding ODHS-licensed settings and home-based service/support programs visit the ODHS website at www.oregon.gov/dhs.

References

- Medicaid.gov – State Waivers List. Oregon. Waiver Authority: 1915 (b4), 1915 (c).
https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/index.html?search_api_fulltext=&items_per_page=50&page=8#content
- Oregon Department of Human Services (n.d.). Developmental Disabilities Provider and Partner Resources: Children's Intensive In-Home Services (CIIS) Provider Tools.
- Oregon Revised Statute Chapter 124 — Abuse Prevention and Reporting; Civil Action for Abuse.
- Oregon Revised Statute Chapter 146 — Investigations of Deaths, Injuries and Missing Persons.
- Oregon Revised Statute Chapter 410 — Senior and Disability Services.
- Oregon Revised Statute Chapter 418 — Child Welfare Services
- Oregon Revised Statute Chapter 676 — Health Professions Generally.
- Oregon Revised Statute Chapter 678 — Nurses; Long Term Care Administrators.
- Oregon Secretary of State. Oregon Administrative Rules Chapter 410 Division 120 Medical Assistance Programs.
- Oregon Secretary of State. Oregon Administrative Rules Chapter 410 Division 132 Private Duty Nursing Services.
- Oregon Secretary of State. Oregon Administrative Rules Chapter 411 Division 4: Home and Community-Based Services and Settings and Person-Centered Service Planning. Oregon Department of Human Services, Aging and People with Disabilities and Developmental Disabilities.
- Oregon Secretary of State. Oregon Administrative Rules Chapter 411 Division 033 In-Home Care Agencies Providing Medicaid In-Home Services.
- Oregon Secretary of State. Oregon Administrative Rules Chapter 411 Division 051 Adult Foster Homes For Older Adults or Adults With Physical Disabilities - Standards of Care.
- Oregon Secretary of State. Oregon Administrative Rules Chapter 411 Division 54 Residential Care and Assisted Living Facilities.
- Oregon Secretary of State. Oregon Administrative Rules Chapter 411 Division 057 Division Endorsed Memory Care Communities.
- Oregon Secretary of State. Oregon Administrative Rules Chapter 411 Division 300 Children's Intensive In-Home Services (CIIS).
- Oregon Secretary of State. Oregon Administrative Rules Chapter 411 Division 325 24-Hour Residential Programs and Settings for Children and Adults with Intellectual or Developmental Disabilities.
- Oregon Secretary of State. Oregon Administrative Rules Chapter 411 Division 340 Support Service Brokerages for Adults with Intellectual or Developmental Disabilities.

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Oregon Secretary of State. Oregon Administrative Rules Chapter 411 Division 346 Foster Homes for Children With Intellectual or Developmental Disabilities.

Oregon Secretary of State. Oregon Administrative Rules Chapter 851 Division 45: Standards and Scope of Practice for the Licensed Practical Nurse and Registered Nurse.

Oregon State Board of Nursing. *Oregon State Board of Nursing Scope of Practice Decision Making Guideline for All Licensed Nurses*. Oregon State Board of Nursing.

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History of Document:

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The Oregon State Board of Nursing (OSBN) is authorized by Oregon Revised Statutes Chapter 678 to exercise general supervision over the practice of nursing in Oregon to include regulation of nursing licensure, education, and practice in order to assure that the citizens of Oregon receive safe and effective care. The OSBN further interprets statute and rule and issues opinions in the form of Policy and Interpretive Statements. These policies and interpretive statements are advisory in nature and issued as guidelines for safe nursing practice.