Healthcare

VANTAGE POINT®

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Scope of Practice Changes: Ten Keys to Safer Delegation

"Scope of practice" (SOP) is a key concept within the healthcare industry, defined as the activities that healthcare providers are permitted to perform in alignment with their professional license, education and clinical experience. SOP is typically delineated in state statutes and regulations. Where no state-specific regulatory guidance exists, competency is generally determined by certification, education, training and skills assessment, as well as guidance that may be issued by relevant professional associations.

SOP is evolving in the direction of greater flexibility due to a number of compelling factors – such as rising patient acuity, widespread professional burnout, the retirement of large numbers of physicians and nurses, and the stresses of the COVID-19 pandemic. In the face of vital challenges within our healthcare system, facilities have been subject to mounting pressure to deliver more services from every level of staff. This has resulted in an increased tendency to broaden the SOP of licensed providers, as well as to delegate tasks to non-licensed assistive personnel with lower levels of training.

Other circumstances also are affecting SOP decisions. Many states issued temporary practice waivers in response to the staffing crisis caused by the pandemic. As these waivers expire, questions about practice boundaries have arisen. In addition, there have been major efforts in recent years to expand the roles of nurse practitioners (NPs), physician assistants (PAs), emergency medical technicians and certified medical assistants, in order to expand access to care. (See "Evolving Roles for Non-physician Providers," page 2.)

As staffing challenges intensify (see statistics on staffing shortages on page 2), clinical managers are considering new approaches to maximize efficiency and address staffing deficits, while ensuring that healthcare providers and non-licensed assistive personnel work within their competency and legally authorized practice parameters.

In this issue…

This edition of *Vantage Point*® provides a decision-making framework, organized around 10 questions, to help administrators, healthcare providers or practice leaders identify and address risks associated with SOP and delegation standards, focusing on the following critical issues:

- **Increasing leadership and provider awareness** of SOP-related legal parameters.
- **Ensuring that tasks are properly delegated** by staff members within their statutory authority to do so.
- **Confirming that staff have the education, training and competence** to safely perform the delegated task.
- **Strengthening the approval process** for expanding SOP and delegation of tasks.
- **Determining whether patients/residents are appropriate candidates** to receive the approved care.
- **Enhancing compliance** with monitoring and supervisory requirements.
- **Maintaining ongoing communication** between delegating providers and assigned delegees.

1. Is the proposed practice expansion lawfully permitted?

SOP regulations – which typically are developed by state licensing boards or certification programs, or reflect national guidelines – help safeguard patients and residents by defining the services, procedures and tasks that different types of healthcare providers and staff are authorized to perform. If a facility violates a prescribed SOP regulation or guideline, and a patient/resident is injured as a result, it would be difficult to defend against a potential subsequent claim alleging improper authorization. Therefore, facilities contemplating any type of practice expansion must determine whether the activity in question falls within SOP regulations.

When considering SOP changes for licensed and regulated providers, begin by investigating the rules and guidance statements issued by state licensing boards, professional industry association standards or national certifying bodies, which can vary widely in terms of permissible delegation. In the event guidelines from different entities conflict, discuss the inconsistencies with legal counsel and prudently follow the most stringent guideline. By becoming conversant with the applicable guidelines, healthcare leaders and providers can help minimize delegation-related liability exposures. (For assistance with this inquiry process, see "Practice-related Resources" on page 3.)

2. Is the activity safe for delegation?

Decisions about expansion of practice boundaries frequently involve determining whether it is safe and permissible to delegate specific tasks. Before authorizing any changes in SOP, administrators, healthcare providers or practice leaders should determine which tasks and activities may be safely delegated, as well as those that should not be assigned to others.

The following questions can help healthcare organizations determine whether an activity is safe for delegation:

- **Is the task performed on a routine basis** within the healthcare setting?
- **Can the task be performed safely by non-licensed assistive personnel** guided by standing orders or directions?
- **Is the task relatively simple,** or does it involve making complex observations, interpretations and/or critical decisions?
- **Is the task invasive,** creating potentially life-threatening consequences for the patient/resident if performed incorrectly?
- **Do non-licensed staff members have the proper education,** training and competence to safely carry out the task?
- **Will a licensed healthcare provider be available for consultation** while the task is carried out, if applicable?
- **Are there sufficient human resources,** if on-site supervision is required?
- **What is the extent of liability for the provider and organization** if the task is delegated?

Evolving Roles for Non-physician Providers

Recently, there has been debate both at the state and national level concerning the proper scope of practice for Advanced Practice Nurse Practitioners (NPs) and Physician Assistants (PAs). Proponents of expanding NP and PA roles cite cost-effectiveness and improved access to primary care in rural areas. On the other hand, opponents contend that physicians, NPs and PAs have dissimilar education and training, potentially resulting in unclear role delineation and patient confusion. Given the legislative changes relating to scope of practice and permitted functions, it is important to remain abreast of state licensing statutes, as they can vary widely.

New and expanded roles also are emerging for emergency medical technicians (EMTs) and certified medical assistants. For example, some EMTs now work as "community paramedics" (CPs), serving populations with limited access to primary care due to reductions in public health funding and providing services once performed by public health and visiting nurses. While this expanded role supports communities with limited healthcare services, it may create a risk exposure in the event that CPs function outside of their customary scope of practice.

Potential Staff Shortages in the Healthcare Industry

Even before the COVID-19 pandemic began, the industry forecasted widespread staffing shortages. Predicted provider shortfalls include …

- 54,000 – 139,000 physicians by 2033, according to the Association of American Medical Colleges.
- 440,000 home health aides and 29,000 nurse practitioners by 2025, according to the Mercer Project.
- 175,900 new nursing positions each year through 2029, according to the Bureau of Labor Statistics, "Employment Projections 2019-2029."
- 510,394 nurses by 2030, according to "United States Registered Nurse Workforce Report Card and Shortage Forecast: A Revisit."

Delegation decisions should be guided by written criteria and reflect state practice authorizations and/or national guidelines. In addition, they must not compromise patient well-being or be motivated primarily by financial considerations. Delegation protocols and related information – including assessment of competence to perform the task in question – should be comprehensively documented in practice agreements, job descriptions and/or personnel files.

The following resources offer guidance on delegating tasks to both licensed and non-licensed healthcare staff:

- Barrow, J.M. and Sharma, S. "Five Rights of Nursing Delegation." *StatPearls*, updated July 26, 2021.
- National Guidelines for Nursing Delegation, issued by the National Council of State Boards of Nursing, effective April 29, 2019.
- Physician Assistants: Supervision Requirements, compiled by the National Conference of State Legislatures, Scope of Practice Policy.
- Principles for Delegation by Registered Nurses to Unlicensed Assistive Personnel, published by the American Nursing Association.
- Scope of Practice Alignment with Job Tasks for Paraprofessionals and Addiction Counselors, a report issued by the Behavioral Health Workforce Research Center, University of Michigan, School of Public Health.

For additional recommendations on safe delegation, see CNA *Vantage Point*®, "Nonphysician Providers: A Guide to Safer Delegation," 2019 update.

3. Do industry or regional norms support the proposed delegation?

Scope of practice changes should reflect professional norms and align with industry standards. Facility leaders and providers are advised to review federal, state and regional practice patterns, asking these essential questions before rendering a final decision:

- **Has the profession evolved toward acceptance** of delegating the assigned skill or task?
- **Is the change in practice supported** by evidence-based literature?
- **Would the proposed activity tend to be performed by a reasonable and prudent peer** in a similar situation?
- **Do other licensed providers in the field find it acceptable** to permit non-licensed assistive personnel to perform the task with appropriate training?
- **Is patient/resident care enhanced** by the expansion in skill or service?
- **Is the task or activity relatively simple,** with a predictable outcome and a low level of risk?
- **Must the task be performed by a licensed provider** or by someone working under a licensed provider's direct supervision?
- **How do peer organizations assess the ability of delegees** to safely perform the task?

4. Does the non-licensed staff member's skill set demonstrably align with the task?

Any change in clinical practice requires that the staff member be capable of performing the activity safely and effectively. Even if state law and/or delegation guidelines sanction the task, it may not be within the individual's demonstrated competency and skill set.

As a general rule, tasks delegated to non-licensed assistive personnel should not require independent assessment or a high degree of problem-solving ability. In some cases, these staff members should undergo proctoring sessions, in order to demonstrate their competence. These sessions should be documented in personnel files and job performance reviews, including primary credentials, continuing education courses and the dates and results of competency testing.

5. Is the patient/resident an appropriate candidate for delegated care?

Delegation-related decisions must be guided by safety considerations. In general, patients/residents who are acutely ill, or suffer from unstable chronic conditions with unpredictable outcomes, are not good candidates for delegation. When patients/residents require comprehensive assessment, skilled intervention and/or higher levels of observation, delegation decisions should be made on a case-by-case basis to safeguard against indiscriminate levels of care.

Practice-related Resources

The following online resources offer discipline-specific guidance on practice-related questions:

- Behavioral health providers.
- Licensed practical nurses.
- Medical assistants.
- Medical imaging technicians.
- Nurse practitioners.
- Pharmacists.
- Physicians.
- Physician assistants.
- Registered nurses.

(Scroll down to page 6.)

6. Are written protocols implemented to support safe delegation?

When physicians, NPs and PAs are delegating care to nurses, technicians and non-licensed assistive personnel, organizations should rely upon written protocols that clearly define the activity to be performed, as well as the requisite supervision required by the delegating provider. Protocols also should address the need for a licensed provider and/or rescue equipment to be readily available in the event of an emergency.

Written protocols should be designed to …

- **Articulate the individual steps** that comprise the delegated task.
- **Expressly grant licensed providers the authority to delegate certain tasks** to designated staff members.
- **Identify excluded types of patients/residents,** including any clinical contraindications.
- **Convey expectations to all parties,** including documentation requirements.
- **List sources of information and resources** to answer questions that may arise during or after the episode of care.
- **Include parameters for communication and collaboration,** noting when direct supervision of a delegee is required, as well as when the licensed provider must be informed of questions or issues that have arisen.

7. Do written protocols support two-way communication between delegating providers and assistive personnel?

The delegator must ensure that the assigned staff member is aware of the nature and risks of the task, and accepts responsibility for performing it correctly and safely. The following communication strategies can help reinforce the staff member's understanding of the task and enhance accountability:

- **Describe the task in clear and concise terms.** For example, when delegating medication administration, identify the drug to be given, its intended effect, proper dosage, possible adverse reactions or side effects, and actions to be taken in an emergency.
- **Explain the rationale for delegation.** Emphasize why the task is important, how it connects to patient/resident care or service plans and why a non-physician can safely perform it.
- **Instruct the delegee to repeat back key information,** especially in the case of higher-risk tasks, such as administration of medications.
- **Specify communication checkpoints.** For example, team rounds, case conferences and bedside huddles present opportunities to promote two-way communication, as well as to revise protocols, if necessary.
- **Formalize accountability.** Written protocols should clearly convey the selected staff member's authority to complete the task.

8. Is the delegating provider assigned responsibility for supervising the assigned staff member?

Proper supervision is fundamental to ensuring that delegated tasks are performed safely and that licensed providers and non-licensed assistive personnel function within their permitted SOP. When delegating tasks to non-licensed personnel, monitoring should be mandatory.

Written supervisory guidelines should focus on the following performance indicators, at a minimum:

- **Basic skills** and level of competence.
- **Compliance** with practice protocols and task proficiency.
- **Urgency of response** to unexpected situations.
- **Openness of communication** with the delegating provider.
- **Accuracy** of documentation and timeliness of progress reports.
- **Transparency** in error reporting and overall reliability.

Supervising providers are also expected to review selected patient/resident healthcare information records, in order to evaluate the assigned staff member's compliance with written policy directives and applicable standards of care. Assessment results and other performance-related findings should be documented in the staff member's personnel file.

9. Are authorized SOP changes routinely evaluated in terms of patient/resident safety as well as efficiency?

Facilities also must evaluate SOP changes in relation to patient/resident safety, compliance requirements, and provider competence and capabilities. Observed lapses in approved practice should be addressed through supplemental training or staff reassignment. In addition, practice protocols should be approved by supervising providers, facility leadership and/or the governing body, as well as evaluated annually to ensure that they remain compliant with applicable laws and regulations. For questions to ask during the evaluation process, see the gap analysis tool on page 5.

10. Is insurance coverage affected by the proposed change?

Before authorizing any expansion of practice or delegation of tasks, facilities and providers should review their insurance coverage in consultation with their professional liability insurance carrier, as some policies may exclude certain healthcare professionals unless specifically added by endorsement. Licensed providers practicing at less than their prescribed scope (e.g., an NP working as an RN) must nonetheless be insured at their full level of licensure, as in the event of a claim, they will be held to their highest level of knowledge and licensure.

Gap Analysis Tool: Delegating Care to Non-licensed Assistive Personnel

This tool is designed to help healthcare facilities evaluate and improve their delegation-related authorization process.

Area of Analysis	Yes/No	Comments
Preliminary Actions		
State laws, rules and regulations relating to delegation are proactively reviewed in consultation with clinical leadership, risk management personnel and legal counsel.		
A panel of healthcare leaders and providers is established to review and approve requested changes in practice.		
The following preliminary inquiries are addressed by the review panel, and the answers are documented:		
• **Is the delegated task or activity within the prescribed scope of practice** of the delegating party?		
• **What is the rationale for authorization,** if licensing or regulatory requirements are silent on delegation powers?		
• **Is there evidence that the designated activities can be safely delegated,** based upon industry, professional or governmental sources?		
• **Will the benefits of the task delegation outweigh attendant risks,** based upon a documented decision-making process?		
• **Is entry level training sufficient to prepare non-licensed assistive personnel** to perform the task or activity?		
• **Do competency measures exist** for the delegated task?		
• **Are there ethical concerns** associated with the delegation?		
Policy Considerations		
A policy is drafted prohibiting improper delegation of tasks to non-licensed assistive personnel, including activities that require independent assessment, diagnosis, evaluation of clinical data or unsupervised patient/resident monitoring.		
Written delegation protocols are developed, which include:		
• **Specific steps** of the assigned procedure and clinical contraindications.		
• **Expected outcome** of the activity.		
• **Time frame** for completion.		
• **Documentation requirements** for supervisor and assignee.		
• **Response to unexpected events,** including whom and when to call.		
• **Frequency of progress reports** to supervising providers.		
• **Restrictions on the authority** of non-licensed assistive personnel.		
Delegating providers are required to supervise non-licensed personnel, directly observing them when appropriate.		
Available practice standards are cited in written protocols.		
Delegation protocols are subject to annual review by leadership.		
Decision Criteria		
Delegation decisions are subject to written criteria, including the following considerations, among others:		
• **The task is a common element** of patient/resident care.		
• **The task requires minimal modification** for different patients/residents.		
• **The outcome is highly predictable** when the task is performed correctly.		

Area of Analysis	Yes/No	Comments
Decision Criteria (continued)		
• **The completed task is unlikely to produce significant or rapid change** in the patient's/resident's clinical status.		
• **The activity does not involve independent assessment,** clinical judgment or data interpretation.		
• **The clinical setting has adequate equipment and backup personnel,** enabling non-licensed staff to safely perform the delegated activity.		
Training, Selection and Assessment for Non-licensed Assistive Personnel		
Training requirements are memorialized in writing for delegated tasks.		
Relevant training is reviewed and approved by the delegating provider.		
The assigned non-licensed staff member is certified in the specific task or activity, if applicable, and the certification is documented.		
Non-licensed assistive personnel are observed and evaluated to ensure that they possess sufficient knowledge and skills to perform the delegated task(s).		
Task proficiency is reassessed on an annual basis and recertified.		
Assessment findings are documented in the personnel file.		
Patient/Resident Selection		
The patient/resident is screened for contraindications that may affect response to the delegated intervention.		
The intervention is permitted to proceed only if the patient's/resident's health status is stable, and no other risk factors are present.		
The patient/resident is assessed as a suitable candidate by the supervising provider, with findings noted in the healthcare information record.		
Communication Requirements		
The following clinical occurrences are promptly reported by non-licensed assistive personnel to supervising providers:		
• **Unexpected side effects** of the delegated intervention.		
• **Sudden deterioration** in the patient's/resident's condition.		
• **Transfer** to a higher level of care.		
• **Inability to perform the delegated task,** for any reason.		
• **Complaints** from patients/residents/families regarding delegation.		
Unexpected occurrences are escalated to the next supervisory level in the event that supervising providers fail to respond appropriately in a timely manner.		
Non-licensed assistive personnel are instructed to disclose their qualifications to patients/residents when performing delegated tasks.		
Documentation Needs		
A list of approved non-licensed assistive personnel is maintained by administration, and reviewed and updated at least quarterly.		
A record of delegation is established, including documentation of the following information, at a minimum:		
• **The assigned non-licensed staff member's date of hire,** applicable education and hours of orientation completed.		
• **Dates of proficiency training** and/or skills proctoring.		
• **Level of competency** and restrictions on delegation.		

Area of Analysis	Yes/No	Comments
Documentation Needs (continued)		
• **Written instructions issued** on how to safely complete the activity.		
• **Name of supervising provider** and degree of supervision exercised.		
• **Dates that the supervising provider observed the non-licensed staff member** completing the assigned task.		
A written Delegation of Authority is signed by the supervising provider for all delegated tasks and activities.		
A written Acceptance of Delegation is signed by the assigned staff member, accepting responsibility for the task and acknowledging understanding of its nature, clinical expectations and documentation/communication requirements.		
Patient/resident healthcare information records are audited on a routine basis to ensure timely, complete and accurate documentation of delegated tasks.		
Clinical Supervision		
Non-licensed assistive personnel undergo periodic observation by supervisors when performing delegated tasks and activities.		
A protocol is drafted stipulating when delegating providers must be on-site for direct monitoring of non-licensed assistive personnel.		
Adequate time is allotted for non-licensed assistive personnel to complete the activity and for supervisors to follow up and evaluate their performance.		
Performance problems are reported, and supervising providers follow up with delegees when issues arise.		
Supervising providers are held ultimately responsible for the safe completion of all delegated tasks.		
Evaluation		
A formal process is created to evaluate the effectiveness of delegation procedures, including these inquiries, among others:		
• **Was the delegated task or activity performed correctly** and according to written practice protocol?		
• **Were the patient's/resident's needs met** in a safe and efficient way?		
• **Was the desired outcome achieved** for the patient/resident?		
• **Was there timely and effective communication** between the non-licensed staff member and the supervising provider?		
• **Were any significant challenges encountered** while performing the delegated task?		
• **Were any problems or concerns voiced** by the patient, resident or family?		
Results of the evaluation process are communicated throughout the setting via quality assurance and performance improvement channels.		
Delegees are assessed on an annual basis by supervising providers.		
A select number of healthcare information records are audited quarterly to assess compliance with delegation-related documentation expectations.		

Changes in practice scope and increased task delegation are hallmarks of today's healthcare industry. If authorized and implemented properly, with full consideration given to safety and compliance risks, practice changes can become an effective strategy for addressing staffing shortages. However, ill-considered delegations may result in serious medical errors and consequent claims. By asking the 10 questions highlighted in this publication, healthcare facilities can help ensure that expanded practice scope does not result in increased professional liability exposure.

Quick Links

- Bean, M. and Masson, G. "The Less-discussed Consequence of Healthcare's Labor Shortage." *Becker's Hospital Review*, October 4, 2021.
- CNA *inBrief*® 2018-1 "Advanced Practice Providers: Policy, Protocol and Contract Issues."
- "Implementation of PA Modernization." *Oregon Medical Board Report*, Winter 2022, volume 134:1.
- "Improving Quality of Care Through Better Delegation," a PowerPoint presentation for aging services settings. Prepared by the Pennsylvania Health Care Association, May 2017.
- Wagner, E. "Improving Patient Care Outcomes Through Better Delegation-Communication Between Nurses and Assistive Personnel." *Journal of Nursing Care Quality*, April/June 2018, volume 33:2, pp. 187-93. Available for purchase or by subscription.

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