

**REGULATORY RESEARCH COMMITTEE
VIRGINIA BOARD OF HEALTH PROFESSIONS
VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS**

INVITATION TO COMMENT ON THE NEED TO REGULATE COMMUNITY HEALTH WORKERS

The Virginia Board of Health Professions is authorized by statute to advise the Governor, the General Assembly, and the Department of Health Professions' Director on matters related to the regulation or deregulation of health care professions and occupations (see §54.1-2510 of the *Code of Virginia*). In its efforts to keep abreast of new and developing health care occupations, the Board has instituted a research project to review emerging professions periodically and to evaluate the need for regulation.

At its November 10, 2009 meeting, the Board voted to conduct a sunrise review of Community Health Workers based upon the request of Catherine Bodkin, LCSW, MSHA, VA Department of Health. Concurrent with this study, the Board is examining the Grand-Aide program, a pilot program using Community Health Workers. The Board held a public hearing on January 9, 2010, to receive comment on the need to regulate Community Health Workers in Virginia. On March 16th, the Board received an advance draft of the Grand-Aide training manual for its review.

The Board is now seeking additional comment on the risk of harm and scope of practice issues posed by Grand-Aides and other Community Health Workers.

For reference, commenters are referred to the *Criteria for Evaluating the Need to Regulate a Healthcare Profession or Occupation* appended to the end of this invitation,* to the draft report, *Study into the Need to Regulate Community Health Workers: Exposure Draft Summary of Research to Date*, to the public comment received earlier, and to the Grand-Aide training manual. These documents are posted to the Board of Health Professions website: <http://www.dhp.virginia.gov/bhp/> under the "Announcements" section.

Additionally, and specifically regarding scope of practice issues, the Board refers commenters to *Virginia Administrative Code* §18VAC90-20, *Regulations Governing the Practice of Nursing*, and in particular Part VIII, §18VAC90-20-420 et seq., *Delegation of Nursing Tasks and Procedures*. A copy of these regulations is appended to the end of this document. Information on nursing regulations is available on the Board of Nursing's website: <http://www.dhp.virginia.gov/nursing/>.

A public hearing to receive comment relative to this study will be held on May 26, 2010 beginning at 10:00 a.m. at the following address:

**Virginia Department of Health Professions
9960 Mayland Drive, 2nd Floor Conference Center
Richmond Virginia 23233-1463**

For map and directions, the following link is provided <http://www.dhp.virginia.gov/about/directions.htm>.

Comments should be framed so as to respond to the issues described in the Criteria and to the existing regulations noted above. Written comment will be accepted until 5:00 p.m. on **June 9, 2010** and should be sent to Elizabeth A. Carter, Ph.D. at the Virginia Board of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463. Comment may also be sent via e-mail to Elizabeth.Carter@dhp.virginia.gov or faxed to (804) 527-4466.

* For a more detailed explanation of the Board's sunrise review policies and procedures, refer to **Guidance Document 75-2** [Appropriate Criteria in Determining the Need for Regulation of Any Health Care Occupation or Professions, revised February 1998](#).

Criteria for Evaluating the Need to Regulate a Healthcare Profession or Occupation

Based upon the principles of occupational and professional regulation established by the General Assembly, the Board has adopted the following criteria to guide evaluations of the need for regulation of health occupations and professions. Initially adopted in October of 1991, these criteria were reaffirmed by the Board in February 1998 pursuant to the results of a study mandated by §54.1-2409.2 of the Code of Virginia.

Criterion One: Risk of Harm to the Consumer

The unregulated practice of the health occupation will harm or endanger the public health, safety, or welfare. The harm is recognizable and not remote or dependent on tenuous argument. The harm results from: (a) practices inherent in the occupation, (b) characteristics of the clients served, (c) the setting or supervisory arrangements for the delivery of health services, or (d) from any combination of these factors.

Criterion Two: Specialized Skills and Training

The practice of the health occupation requires specialized education and training, and the public needs to have benefits by assurance of initial and continuing occupational competence.

Criterion Three: Autonomous Practice

The functions and responsibilities of the practitioner require independent judgment and the members of the occupational group practice autonomously.

Criterion Four: Scope of Practice

The scope of practice is distinguishable from other licensed, certified, and registered occupations, in spite of possible overlapping of professional duties, methods of examination, instrumentation, or therapeutic modalities.

Criterion Five: Economic Impact

The economic costs to the public of regulating the occupational group are justified. These costs result from restriction of the supply of practitioner, and the cost of operation of regulatory boards and agencies.

Criterion Six: Alternative to Regulation

There are no alternatives to State regulation of the occupation which adequately protect the public. Inspections and injunctions, disclosure of requirements, and the strengthening of consumer protection laws and regulations are examples of methods of addressing the risk for public harm that do not require regulation of the occupation or profession.

Criterion Seven: Least Restrictive Regulation

When it is determined that State regulation of the occupation or profession is necessary, the least restrictive level of occupational regulation consistent with public protection will be recommended to the Governor, the General Assembly and the Director of the Department of Health Professions.

Part VIII. Delegation of Nursing Tasks and Procedures.

18VAC90-20-420. Definitions.

"Delegation" means the authorization by a registered nurse to an unlicensed person to perform selected nursing tasks and procedures in accordance with this part.

"Supervision" means guidance or direction of a delegated nursing task or procedure by a qualified, registered nurse who provides periodic observation and evaluation of the performance of the task and who is accessible to the unlicensed person.

"Unlicensed person" means an appropriately trained individual, regardless of title, who receives compensation, who functions in a complementary or assistive role to the registered nurse in providing direct patient care or carrying out common nursing tasks and procedures, and who is responsible and accountable for the performance of such tasks and procedures. With the exception of certified nurse aides, this shall not include anyone licensed or certified by a health regulatory board who is practicing within his recognized scope of practice.

18VAC90-20-430. Criteria for delegation.

A. Delegation of nursing tasks and procedures shall only occur in accordance with the plan for delegation adopted by the entity responsible for client care. The delegation plan shall comply with provisions of this chapter and shall provide:

1. An assessment of the client population to be served;
2. Analysis and identification of nursing care needs and priorities;
3. Establishment of organizational standards to provide for sufficient supervision which assures safe nursing care to meet the needs of the clients in their specific settings;
4. Communication of the delegation plan to the staff;
5. Identification of the educational and training requirements for unlicensed persons and documentation of their competencies; and
6. Provision of resources for appropriate delegation in accordance with this part.

B. Delegation shall be made only if all of the following criteria are met:

1. In the judgment of the delegating nurse, the task or procedure can be properly and safely performed by the unlicensed person and the delegation does not jeopardize the health, safety and welfare of the client.
2. The delegating nurse retains responsibility and accountability for nursing care of the client, including nursing assessment, planning, evaluation, documentation and supervision.
3. Delegated tasks and procedures are within the knowledge, area of responsibility and skills of the delegating nurse.
4. Delegated tasks and procedures are communicated on a client-specific basis to an unlicensed person with clear, specific instructions for performance of activities, potential complications, and expected results.
5. The person to whom a nursing task has been delegated is clearly identified to the client as an unlicensed person by a name tag worn while giving client care and by personal communication by the delegating nurse when necessary.

C. Delegated tasks and procedures shall not be reassigned by unlicensed personnel.

D. Nursing tasks shall only be delegated after an assessment is performed according to the provisions of 18VAC90-20-440.

18VAC90-20-440. Assessment required prior to delegation.

Prior to delegation of nursing tasks and procedures, the delegating nurse shall make an assessment of the client and unlicensed person as follows:

1. The delegating nurse shall assess the clinical status and stability of the client's condition, shall determine the type, complexity and frequency of the nursing care needed and shall delegate only those tasks which:

- a. Do not require the exercise of independent nursing judgment;
- b. Do not require complex observations or critical decisions with respect to the nursing task or procedure;
- c. Frequently recur in the routine care of the client or group of clients;
- d. Do not require repeated performance of nursing assessments;
- e. Utilize a standard procedure in which the tasks or procedures can be performed according to exact, unchanging directions; and
- f. Have predictable results and for which the consequences of performing the task or procedures improperly are minimal and not life threatening.

2. The delegating nurse shall also assess the training, skills and experience of the unlicensed person and shall verify the competency of the unlicensed person in order to determine which tasks are appropriate for that unlicensed person and the method of supervision required.

18VAC90-20-450. Supervision of delegated tasks.

A. The delegating nurse shall determine the method and frequency of supervision based on factors which include, but are not limited to:

1. The stability and condition of the client;
2. The experience and competency of the unlicensed person;
3. The nature of the tasks or procedures being delegated; and
4. The proximity and availability of the registered nurse to the unlicensed person when the nursing tasks will be performed.

B. In the event that the delegating nurse is not available, the delegation shall either be terminated or delegation authority shall be transferred by the delegating nurse to another registered nurse who shall supervise all nursing tasks delegated to the unlicensed person, provided the registered nurse meets the requirements of 18VAC90-20-430 B 3.

C. Supervision shall include but not be limited to:

1. Monitoring the performance of delegated tasks;
2. Evaluating the outcome for the client;
3. Ensuring appropriate documentation; and
4. Being accessible for consultation and intervention.

D. Based on an ongoing assessment as described in 18VAC90-20-440, the delegating nurse may determine that delegation of some or all of the tasks and procedures is no longer appropriate.

18VAC90-20-460. Nursing tasks that shall not be delegated.

A. Nursing tasks that shall not be delegated are those which are inappropriate for a specific, unlicensed person to perform on a specific patient after an assessment is conducted as provided in 18VAC90-20-440.

B. Nursing tasks that shall not be delegated to any unlicensed person are:

1. Activities involving nursing assessment, problem identification, and outcome evaluation which require independent nursing judgment;
2. Counseling or teaching except for activities related to promoting independence in personal care and daily living;
3. Coordination and management of care involving collaboration, consultation and referral;
4. Emergency and nonemergency triage;
5. Administration of medications except as specifically permitted by the Virginia Drug Control Act (§54.1-3400 et seq. of the Code of Virginia); and
6. Circulating duties in an operating room.