

New Jersey Board of Nursing Proposes Expanding the Range of Care Tasks That Nurses Can Delegate to Home Health Aides

by Mollie K. O'Brien

March 2015

Home health companies should be aware that, on March 3, 2015, the New Jersey State Board of Nursing ("Board") issued a comprehensive set of proposed amendments, repeals, and new rules relating to the delegation of nursing tasks and the certification and practice of homemaker-home health aides. The changes aim to broaden the power of registered professional nurses ("RNs") to delegate tasks to licensed practical nurses ("LPNs"), certified home health aides ("CHHAs"), and other assistive persons. As part of this initiative, the Board has also proposed stricter training and certification requirements for CHHAs and has specified supervision requirements and protocols that RNs must follow when delegating tasks. **Comments to the proposed changes are due to the Board by April 3, 2015.**

Delegation

Under the current regulations, the Board has sole authority for determining what tasks an RN may delegate to LPNs, CHHAs, and assistive persons.¹ The Board proposes to remove itself from that decision-making process and, instead, empower an RN to determine what tasks are appropriately delegated. The Board's proposal establishes protocols that an RN must follow before delegation, specifically:

- completing a patient needs assessment,
- determining whether the task can be safely delegated, and
- evaluating whether the delegate has the ability to perform the task.

¹ N.J.A.C. 13:37-6.1 *et seq.*

After the RN determines that delegation is appropriate, she or he must:

- communicate to the delegate how the task “relates to the patient’s needs, the plan of care, and directions for the task”;
- ensure that the delegate fully understands the communication; and
- if necessary, meet with the delegate face to face to ensure that the delegate understands and is capable of performing the task.

Where administration of medication has been delegated, the RN must also instruct the delegate that:

- each medication administration must be documented in the patient’s record, and
- all medication errors, adverse events, or failures in administration must be reported.

Once a task has been delegated, the RN must identify proper supervision for the delegate. All delegations effectuated by an RN must be documented in full and include the identity of the delegate and the steps taken, as required by the Board’s proposal.

Notably, the proposal prohibits RNs from delegating physical, psychological, and social assessments of a patient, because these tasks require professional nursing judgment and the formation of a plan of nursing care. Moreover, if the RN determines that a task is not appropriate for delegation, she or he is prohibited from delegating it.

In conjunction with these changes, the Board has proposed amending N.J.A.C. 13:37-14.3, which currently lists the duties of a CHHA, to instead limit the tasks that a CHHA can perform to only those that have been properly delegated by an RN.

CHHA Training and Certification

The Board’s proposal addresses CHHA training and certification requirements in N.J.A.C. 13:37-14 *et seq.* **This includes proposed changes regarding the agencies and institutions approved to provide training.** Under the proposal, agencies and institutions must apply to the Board annually and satisfy minimum criteria to secure training program approval. No list of “approved” training institutions will be included any longer, and language regarding national accrediting bodies is slated for deletion, because accreditation is not a criterion for training qualification.

N.J.A.C. 13:37:14.8 will provide program instructor requirements and will give the Board the right to conduct on-site visits of training programs and to deny or revoke program approval if standards are not being met. All programs will be required to inform students that a criminal background check is a prerequisite to certification, to administer competency evaluation examinations, and to provide instruction in the Board’s statutes

and rules. Additionally, there are proposed changes regarding program coordinators and instructors:

- Program Coordinators:
 - Program sponsors will no longer be required, and the previous requirements of a program sponsor will be combined with that of a program coordinator.
 - All program coordinators will be required to have four years of part-time work, two of which must be in community health nursing or home care.
 - The opportunity for those with a bachelor's or master's degree in a non-nursing field to apply for an exception will no longer be available (codifying the Board's belief that only those with a degree in nursing are appropriate for this educational training position).
- Instructors:
 - Instructors will be RNs who have worked either two years full time, with one year in community health or home care, or four years part time, with two years in community health or home care, all within the preceding five years.
 - Nursing assistants may provide instruction in certain areas of a training program, as long as her or his experience includes one year of full-time or two years of part-time experience in the subject being taught.

Additionally, the Board proposes amendments to the requirements for applications for certification:

- Applicants would be required to provide evidence of:
 - a criminal background check,
 - a successfully completed competency evaluation examination, and
 - proof of promised employment by a home care services agency.
- Application requirements for renewal of a certification or reactivation of an inactive certification would be modified to include guidance for effectuation of the standards contained in N.J.A.C. 13:37-14. For example:
 - activation of a previously inactive certification would require an application, a renewal fee, and proof of promise of employment by a home care services agency; and

- reinstatement of a suspended certification would require submission of an application, certification of employment during suspension period, a renewal fee for the current and prior biennial renewal periods, a reinstatement fee, and proof of promise of employment.

If there are any deficiencies in the renewal or reactivation process, education and/or monitoring may be required by the Board as a condition of reinstatement.

The Board's proposals, in their entirety, and a summary prepared by the Board are available at http://www.njconsumeraffairs.gov/proposal/nur_proposal_02022015.htm.

What Should You Do?

To the extent that any of the foregoing proposals pose a significant concern to your organization, operationally or financially, then your organization should consider submitting comments. The Board is accepting comments until **April 3, 2015**.

* * *

*This Client Alert was authored by **Mollie K. O'Brien**. For additional information about the issues discussed in this Client Alert, please contact the author or the Epstein Becker Green attorney who regularly handles your legal matters.*

About Epstein Becker Green

Epstein Becker & Green, P.C., is a national law firm with a primary focus on health care and life sciences; employment, labor, and workforce management; and litigation and business disputes. Founded in 1973 as an industry-focused firm, Epstein Becker Green has decades of experience serving clients in health care, financial services, retail, hospitality, and technology, among other industries, representing entities from startups to Fortune 100 companies. Operating in offices throughout the U.S. and supporting clients in the U.S. and abroad, the firm's attorneys are committed to uncompromising client service and legal excellence. For more information, visit www.ebglaw.com.

IRS Circular 230 Disclosure

To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of: (i) avoiding any tax penalty, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

If you would like to be added to our mailing list or need to update your contact information, please contact Lisa C. Blackburn at lblackburn@ebglaw.com or 202-861-1887.

HEALTH CARE & LIFE SCIENCES

BALTIMORE

Helaine I. Fingold
Joshua J. Freemire
Thomas E. Hutchinson*
John S. Linehan

BOSTON

Emily E. Bajcsi
Barry A. Guryan

CHICAGO

Ryan R. Benz
Amy K. Dow
Kevin J. Ryan

HOUSTON

Mark S. Armstrong

LOS ANGELES

Adam C. Abrahms
Ted A. Gehring
Paul A. Gomez
J. Susan Graham

NEW YORK

Jeffrey H. Becker
Lindsay M. Borgeson
Michelle Capezza
Aime Dempsey
Kenneth W. DiGia
Jerrold I. Ehrlich
Gregory H. Epstein
Hanna Fox
James S. Frank
Arthur J. Fried
John F. Gleason
Robert D. Goldstein
Robert S. Groban, Jr.
Gretchen Harders
Bethany J. Hills
Jennifer M. Horowitz
Kenneth J. Kelly
Joseph J. Kempf, Jr.
Basil H. Kim
Stephanie G. Lerman
Leonard Lipsky
Purvi Badiani Maniar
Wendy G. Marcari
Eileen D. Millett
Shilpa Prem*
Jackie Selby
Catherine F. Silie
Victoria M. Sloan
Steven M. Swirsky
David E. Weiss
Benjamin M. Zegarelli

NEWARK

John D. Barry
Christina Burke
Joan A. Disler
James P. Flynn
Diana M. Fratto
Gary W. Herschman
Laurajane B. Kastner
Daniel R. Levy
Theodora McCormick
Maxine Neuhauser
Mollie K. O'Brien
Anjana D. Patel
Victoria Vaskov Sheridan
Erica F. Sibley
Scheherazade A. Wasty
Jack Wenik
Sheila A. Woolson

PRINCETON

Anthony Argiropoulos
Thomas Kane
Andrew Kaplan

SAN DIEGO

Kim Tyrrell-Knott

STAMFORD

Ted Kennedy, Jr.
David S. Poppick

WASHINGTON, DC

Alan J. Arville
Kirsten M. Backstrom
Clifford E. Barnes
James A. Boiani
Selena M. Brady
George B. Breen
Merlin J. Brittenham*
Lee Calligaro
Tanya V. Cramer
Anjali N.C. Downs
Jason E. Christ
Steven B. Epstein
John W. Eriksen
Wandaly E. Fernández
Daniel C. Fundakowski
Brandon C. Ge
Stuart M. Gerson
Daniel G. Gottlieb
M. Brian Hall, IV
Philo D. Hall
Douglas A. Hastings
Richard H. Hughes, IV*
Marshall E. Jackson Jr.
S. Lawrence Kocot
William G. Kopit
Ali Lakhani
Amy F. Lerman
Christopher M. Locke
Katherine R. Lofft
Mark E. Lutes
Teresa A. Mason

David E. Matyas
Colin G. McCulloch
Frank C. Morris, Jr.
Evan J. Nagler
Leslie V. Norwalk
René Y. Quashie
Jonah D. Retzinger
Serra J. Schlanger
Bonnie I. Scott
Deepa B. Selvam
Lynn Shapiro Snyder
Adam C. Solander
David B. Tatge
Daly D.E. Temchine
Bradley Merrill Thompson
Linda V. Tiano
Carrie Valiant
Patricia M. Wagner
Robert E. Wanerman
Meghan F. Weinberg
Constance A. Wilkinson
Kathleen M. Williams
Lesley R. Yeung

**Not Admitted to the Practice of Law*

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.