Nurse Delegation and Consumer Direction in Home/Community Settings

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Context: Trends in Long Term Care

Rebalancing

- States and the federal government are moving to "rebalance" long-term care resources away from institutions and toward more integrated home and community settings
  - Cost
  - Consumer preference
  - Supreme Court Olmstead decision in 1999 requiring integration, more litigation in some states

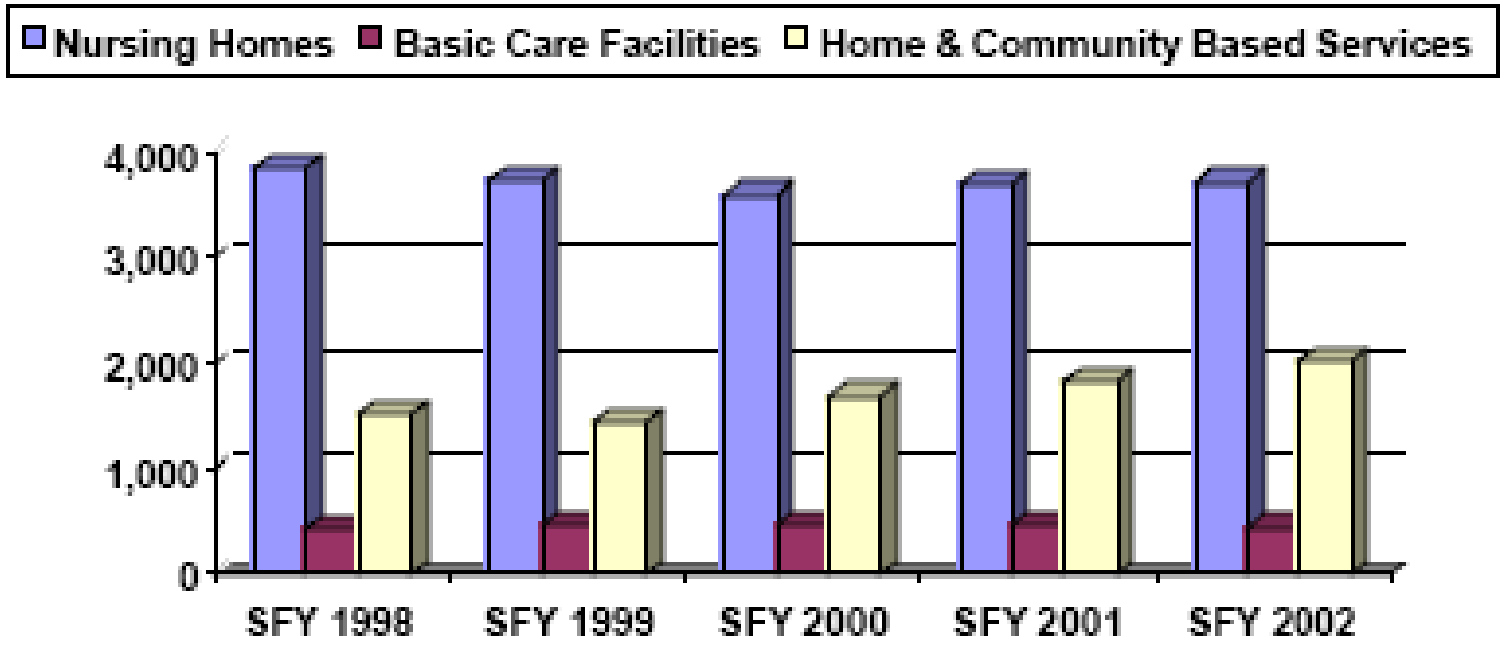
Long-Term Care in North Dakota

- In 2003, North Dakota ranked #1 in the nation in the rate of people over 65 in nursing homes and in Medicaid LTC spending.
- North Dakota's population is older and more rural compared with the nation, but is also less likely to have self-care limitations.
- North Dakota appears to have high quality nursing homes, with low staff turnover, low numbers of restraints, bedsores, and deficiencies. It also ranks 48th in the nation in the percent of residents paid for by Medicare or Medicaid.
- The number of people in nursing homes has remained pretty stable (3,900 to 3,700 from 1998-2002)
- The number of people served by community based services increased from less than 1,500 to over 2000 in the same period.

North Dakota—People Served

People Served by Long Term Care Services Paid for by the Department of Human Services

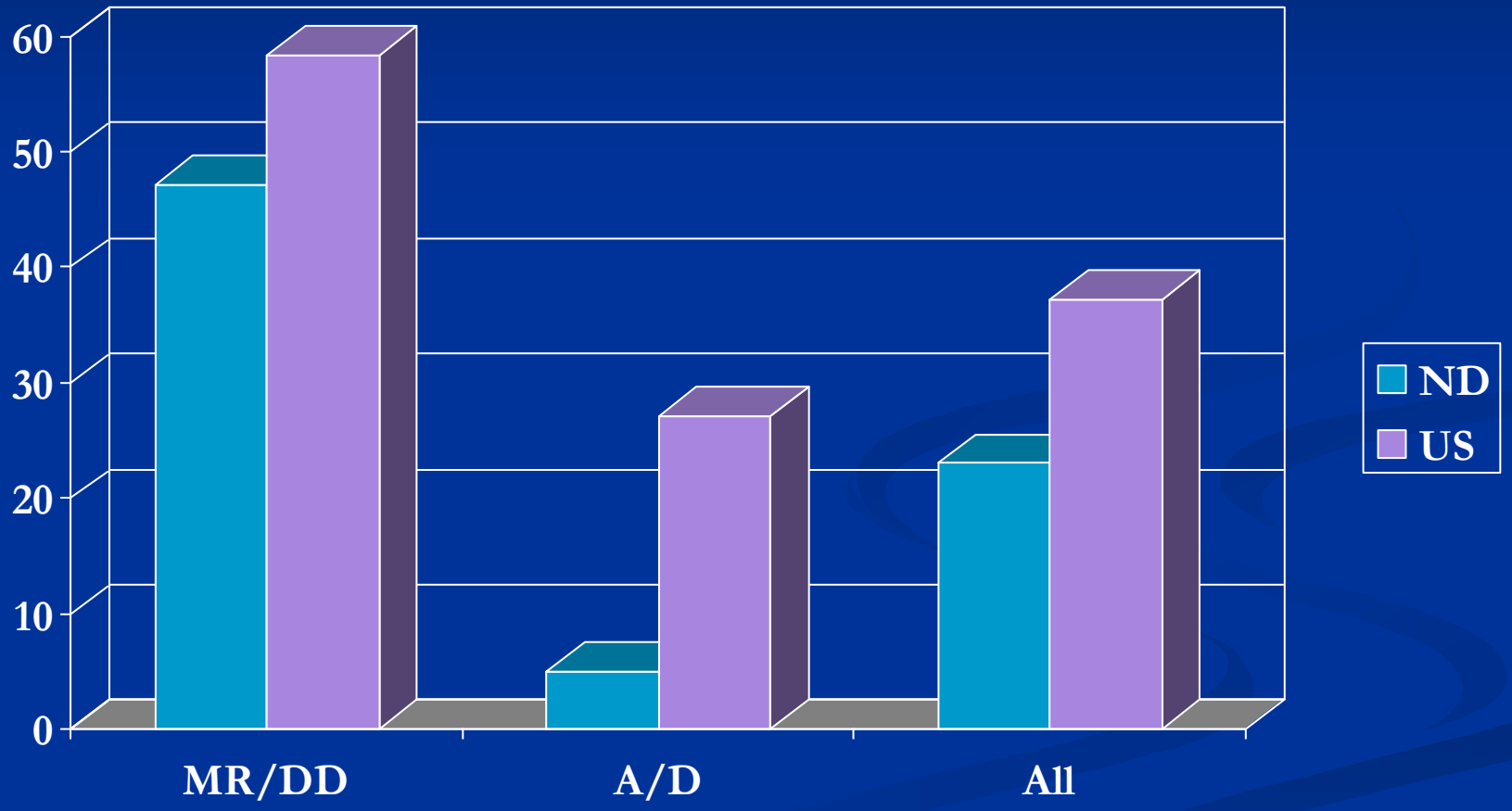
Monthly Average



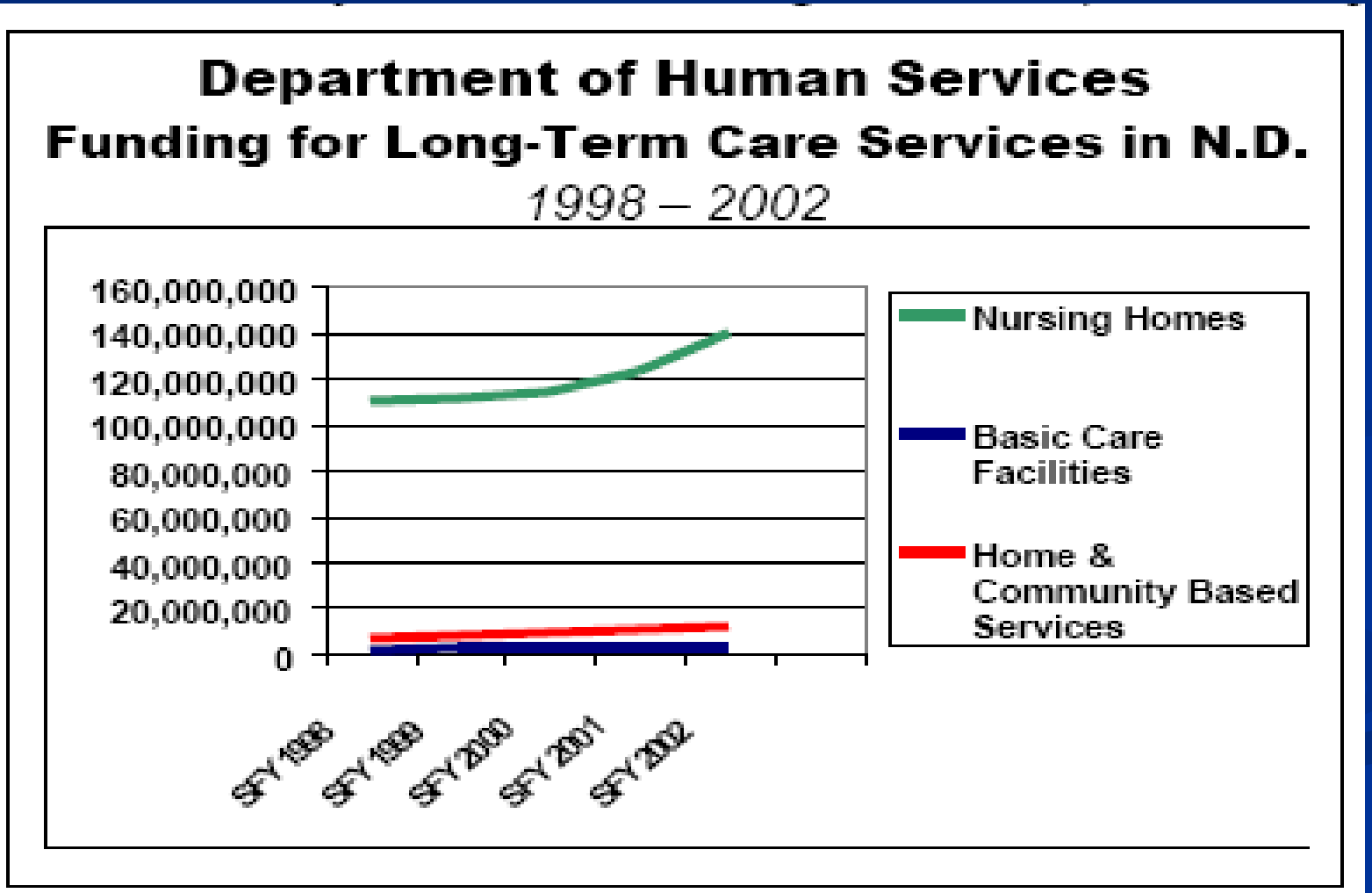
North Dakota LTC Spending

- From 2001 to 2003, North Dakota budgeted 7 times more for nursing home spending than for spending on home and community based services (21% of the budget versus 3%)
- In 2002, the average cost per nursing home client was $37,801 annually versus $13,777 annually for the average Medicaid waiver client who was eligible for nursing home care but elected home and community-based services.
  - Thus, the nursing home cost 2.7 times more on average.
- For elderly or disabled people, North Dakota spends more than 5 times the national average on institutions instead of home or community based services (5% versus 27%).

% Medicaid Dollars Spent in Community Settings, 2005



North Dakota LTC Spending



Changes in North Dakota LTC and Nursing Practice

- It looks as if North Dakota is relying on home and community-based services to pick up the increased demand for long-term care services.
- In addition, North Dakota was just made part of the federal Money Follows the Person Rebalancing Demonstration, with a commitment to transition 110 people out of institutions in the next several years.
- What does this mean for nursing practice?

Community-Based LTC & Nursing Practice

- As states move toward serving more people in community settings, they may need to restructure the way nursing care is delivered and utilize nurses more as care managers than as task providers
- This can work for routine tasks done for consumers in stable health conditions
- You will see Oregon and Washington mentioned frequently—for their Medicaid clients who are older or disabled, they both spend more than half their budgets in the community.
  - Washington serves 3 times more people in the community than in nursing facilities.

Nursing Care in the Community: Delegation and Consumer Direction

Definitions

- Nurse delegation
  - After assessing the consumer and the aide, the nurse instructs the aide in how to perform the task and demonstrates, then has the aide demonstrate the task to document competency.
  - The nurse provides written instructions for the aide and continues to monitor the consumer.
- Consumer direction
  - The consumer (or his/her non-nurse designate) instructs and directs the aide in the tasks with which the consumer needs assistance. While they may enlist a nurse in teaching a task, and some programs may require initial nurse approval, there is no ongoing nurse involvement with the aide.

What Kinds of Tasks Might Aides Perform in Home/Community Settings?

- Routine health maintenance activities (with predictable outcomes) for consumers in stable condition. Examples of tasks could be:
  - Routine medications
  - Bowel and bladder regimes
  - Tube feeding

Where is Delegation vs. Direction Appropriate?

- Not all consumers have family or friends to instruct their aide if the consumer him or herself is unable to demonstrate the task.
  - For example, a consumer requiring intermittent catheterization probably cannot instruct an aide in this task if they cannot perform it.
- Not all consumers are comfortable instructing/directing, even if they are willing to have an aide perform the task.

Advantages of Delegation, Direction

- Delegation
  - Nursing oversight and involvement
    - One finding from an evaluation of the implementation of delegation in Washington State was that it brought nursing involvement into situations where it had been lacking.
- Self-Direction
  - Freedom for the consumer
    - Some consumers are uneasy with the "medical model" approach that they associate with nurses, and prefer to have control over their aide.

How Can Delegation/Self-Direction Benefit Consumers?

- Many consumers with health maintenance needs prefer to remain in their home or a community setting rather than going to an institution.
- It is widely accepted that aides can assist with activities of daily living, but some consumers have regular needs for tasks that go beyond these activities (e.g., insulin shots, intermittent catheterization).
- It is widely accepted that the consumer his or herself or that the consumers family can perform these tasks, and programs increasingly allow consumers to hire and direct aides for these tasks (National Cash and Counseling demonstration).

How Can Delegation/Self-Direction Benefit Consumers?(cont.)

- If self-direction will not work, the consumer may face unwanted institutionalization, because it is difficult to employ a nurse to travel to the consumer's home several times a day to perform these tasks.
- If there is an aide already working with the consumer in the home setting, the aide may be able to perform these health maintenance tasks with training from a nurse. If the nurse, consumer and aide can agree that this will work, it can be a benefit for all involved.

Is Consumer Direction Legal in ND?

- Aside from family members, the answer appears to be no.
- Exemptions to the Nurse Practice Act appear to apply only to family and medications or feeding in regulated settings (NDCC 43-12.1-04)
- Language in nursing regulations on UAP: "Unlicensed assistive persons are responsible to the licensed nurse to assist with client care rather than be independently accountable to the client." (Section 54-05-04-01)
  - A recent HCBS waiver renewal (Apr07)refers to 54-05-04 in discussing what aides can do
- A January 2007 report from the Real Choice Rebalancing Grant indicates that ND Disabilities Advocacy Consortium is reviewing exemptions and delegation regulations.

Elements to consider with UAP

- What will be required of UAP:
  - Registration? (most states)
  - Criminal background check? (most states)
  - Classroom training/Certification? (varies—for UAP working in institutions this is very common; some require for UAP working in home care as well)

UAP practice models

- **Consumer direction**—UAP supervised by consumer; no direct relationship between UAP and health care provider, though provider may teach UAP
  - State may require registration, criminal background check and training or certification before allowing.
- **Delegation**—UAP trained in a *specific* task for a *specific* consumer by a *specific* nurse, who oversees care
  - State may require registration, criminal background check and training or certification before allowing.
- **Certification**—UAP receives a general training and has own "scope of practice," outlined in laws/regs but is generally supervised by a nurse.
  - All elements from previous slide will be required

Consumer Direction Examples

Nebraska

- Nebraska created an exemption in the 1990s for consumer directed care:
  - **71-1,132.30. Health maintenance activities; authorized.** The Nurse Practice Act … does not prohibit performance of health maintenance activities by a designated care aide for a competent adult at the direction of such adult or at the direction of a caretaker for a minor child or incompetent adult. Health maintenance activities … enable the minor child or adult to live in his or her home and community. Such activities are those specialized procedures, beyond activities of daily living, which the minor child or adult is unable to perform for himself or herself and which the attending physician or registered nurse determines can be safely performed in the home and community by a designated care aide as directed by a competent adult or caretaker. A competent adult … has the capability and capacity to make an informed decision. … caretaker means a person who (1)is directly and personally involved in providing care for a minor child or incompetent adult and (2) is the parent, foster parent, family member, friend, or legal guardian of such minor child or incompetent adult.

Arkansas

- The Consumer Directed Care Act of 2005, based on Nebraska's language, exempted consumer-directed aides in home settings from the Nurse Practice Act, while requiring that they demonstrate task proficiency to a nurse or doctor.
  - Evaluating this proficiency does not constitute delegation or lead to a responsibility for ongoing monitoring on the part of the nurse or doctor.

Arkansas cont.

- Not all activities were exempted. The following are not:
  - a. Physical, psychological, and social assessment which requires nursing judgment, intervention, referral, or follow-up;
  - b. Formulation of the plan of nursing care and evaluation of the client's response to the care rendered;
  - c. Tasks that require nursing judgment or intervention;
  - d. Teaching and health counseling;
  - e. Administration of any injectable medications (intradermal, subcutaneous, intramuscular, intravenous, intraosseous, or any other form of injection) or intravenous therapy.
  - f. Receiving or transmitting verbal or telephone orders.
- The Board is still evaluating injections (point e.), as many advocates would like to see some injections allowed.
- Nebraska does not have a list such as this.

New York

- Statute contains a broad general exemption for paid or unpaid help as long as the aide does not advertise him/herself as providing such care:
  - "domestic care of the sick, disabled or injured by any family member, household member or friend, or person employed primarily in a domestic capacity who does not hold himself or herself out, or accept employment as a person licensed to practice nursing under the provision of this article; provided that if such person is remunerated, the person does not hold himself or herself out as one who accepts employment for performing such care"

New York (cont.)

- Statute also contains a specific exemption allowing aides serving home care or Medicaid patients to advertise themselves as providing such care. Nurses authorize and/or instruct:
  - "the providing of care by a person acting in the place of a person exempt under clause (i) of this paragraph, but who does hold himself or herself out as one who accepts employment for performing such care, where nursing services are under the instruction of a licensed nurse, or under the instruction of a patient or family or household member determined by a registered professional nurse to be self-directing and capable of providing such instruction, and any remuneration is provided under section thirty-six hundred twenty-two of the public health law [home care] or section three hundred sixty-five-f of the social service law [Medicaid]"

Delegation Discussion and Examples

Delegation Model

- "One person, one task"--Each task that a nurse delegates can only be used by the one aide to whom the task is delegated for the one consumer about whom the aide has been taught.
  - Having been taught to perform an insulin injection for Iris Jones, the aide cannot now perform insulin injections for other clients without further delegation.

Barriers to Delegation

- Though delegation is allowed in most states, in many cases it does not happen. Why?
  - Nurse uncertainty about what constitutes appropriate delegation and fear of losing her/his license for inappropriate delegation → easier to just perform the task herself/himself.
  - Regulatory restrictions on delegation
  - Nurse fears of being forced to delegate when they feel it is inappropriate to do so.
  - Payer rules may require a nurse to perform a task for reimbursement.

Strategies to Address Uncertainty

- Clarifying the delegation process—boards of nursing or nurse employers may address questions like:
  - What does the nurse need to verify?
  - How does the nurse document instructions?
  - How often should the nurse monitor?
  - How can the nurse prove compliance with the process?

Forms

- Oregon and Washington provide standardized forms for their state-employed contract nurses to use when delegating. They serve as checklists to help nurses with documentation.
  - Oregon: http://www.dhs.state.or.us/spd/tools_review/cm_change_review/crn/J.htm
  - Washington: http://www.aasa.dshs.wa.gov/Professional/nursedel/faq.htm#forms

Orientation or Training

- Both Oregon and Washington provide training for contract nurses; Washington also provides training for aides
  - Oregon Manual for Contract nurses: http://www.dhs.state.or.us/spd/tools_review/cm_change_review/crn/index.htm
  - Washington Training for Nurses: http://www.aasa.dshs.wa.gov/professional/nursedel/TOC.htm
  - Washington Caregiving Training: http://www.adsa.dshs.wa.gov/professional/training/fundamentals/

Instructional Aids

- Washington provides nurses with sample instructions they can use for tasks like:
  - Administering Ear Drops, Eye Drops or Ointments, Nasal Drops or Sprays, Oral Inhalation Therapy, Rectal Suppository or Cream,Vaginal Suppository or Cream
  - Non-sterile Dressing Changes
  - Glucometer Testing
  - Gastrostomy Feedings
  - Ostomy Care
  - Straight Clean Urinary Catheterization
  - http://www.aasa.dshs.wa.gov/Professional/nursedel/documents/NA Sample Instr.doc

Regulatory Specificity

- Kinds of things states specify
  - Factors to consider when delegating (client condition, type of task, aide experience)
  - What to verify when delegating (training, task observation)
  - Instruction to provide (demonstration, written--what to include)
  - Monitoring (frequency, in person or phone)
  - Tasks that can or cannot be delegated
- Ways to specify—from hardest to easiest to modify
  - Laws
  - Regulations
  - Advisory Opinions
  - Procedural Guidance Documents

Examples

- Flexible rules regarding tasks
  - North Dakota generally requires training as a medication assistant III before allowing delegation of medication administration
  - However, the rules allow for nurses to delegate a specific medication for a specific client (54-07-08), which allows for flexibility

Strategies to Address Liability

- North Dakota has language designed to address this issue.
  - Overall, nurses retain "professional accountability for nursing care when assigning or delegating nursing interventions" (Section 54-05-02-03.2 for RNs & 54-05-01-03.12 for LPNs)
  - However, further language states that nurses "retain accountability for individual delegation decisions and evaluation of the outcomes" (Sections 54-05-04-04.2e and 54-05-04-04.3e).
  - Rules further clarify that unlicensed assistive persons "retain accountability for the action of self" (Section 54-05-04-04.4a) and may "Not transfer the authority of a delegated nursing intervention to another unlicensed assistive person" (Section 54-05-04-04.4b).

Liability (cont.)

- Washington has similar language about individual accountability but also addresses the question of liability directly for nurses and aides:
  - "Nurses acting within the protocols of their delegation authority are immune from liability for any action performed in the course of their delegation duties." (RCW 18.79.260)
  - "Nursing assistants following written delegation instructions from registered nurses performed in the course of their accurately written, delegated duties shall be immune from liability" (RCW 18.88A.230(1)).

Liability (cont.)

- Oregon goes beyond the question of professional liability to address civil liability:
  - Nurses who delegate nursing care to an unlicensed person "shall not be subject to an action for civil damages for the performance of a person to whom nursing care is delegated unless the person is acting pursuant to specific instructions from the nurse or the nurse fails to leave instructions when the nurse should have done so." **ORS §678.036**

Strategies to Address Nurse/Aide Authority

- Washington protects the right of nurses and aides to refuse delegation:
  - RCW 18.79.260 (3)(d): "No person may coerce a nurse into compromising patient safety by requiring the nurse to delegate if the nurse determines that it is inappropriate to do so. Nurses shall not be subject to any employer reprisal or disciplinary action by the nursing care quality assurance commission for refusing to delegate tasks or refusing to provide the required training for delegation if the nurse determines delegation may compromise patient safety."
  - RCW 18.88A.230 (2). "Nursing assistants shall not be subject to any employer reprisal or disciplinary action by the secretary for refusing to accept delegation of a nursing task based on patient safety issues. No community-based care setting as defined in RCW 18.79.260(3)(e), or in-home services agency as defined in RCW 70.127.010, may discriminate or retaliate in any manner against a person because the person made a complaint or cooperated in the investigation of a complaint."

Nurse/aide authority (cont.)

- Oregon makes nurses mandated reporters of unsafe conditions, though nursing rules do not explicitly protect them from retaliation for doing so:
  - OAR 851-047-0000: "The Registered Nurse is responsible for: (a) Assessing a client situation to determine whether or not delegation of a task of nursing care could be safely done; (b) Safely implementing the delegation process; (c) Following the Board's process for delegation as described in these rules; and **(d) Reporting unsafe practices to the facility owner, administrator and/or the appropriate state agency(ies)**."

Nurse/aide authority (cont.)

- Concerns in California over staffing concerns in acute care settings led to a statutory prohibition in these settings requiring that they:
  - "shall not assign unlicensed personnel to perform nursing functions in lieu of a registered nurse and may not allow unlicensed personnel to perform functions under the direct clinical supervision of a registered nurse that require a substantial amount of scientific knowledge and technical skills, including, but not limited to, any of the following:
    - "Administration of medication.
    - Venipuncture or intravenous therapy.
    - Parenteral or tube feedings.
    - Invasive procedures including inserting nasogastric tubes, inserting catheters, or tracheal suctioning.
    - Assessment of patient condition.
    - Educating patients and their families concerning the patient's health care problems, including postdischarge care.
    - Moderate complexity laboratory tests." Quoted from **§2725.3(a);** See also NPR-B-29 (2000), accessed April 26, 2007 from http://www.rn.ca.gov/practice/pdf/npr-b-29.pdf

Teaching vs. Delegation

- Nurses are trained that part of their practice involves teaching—particularly to consumers and their families. However, they are also trained to feel responsible for nursing care that consumers receive, whether or not they provide that care directly.
- This can lead to conflicted feelings for nurses—when they teach, are they responsible for care that may be provided as a result of the teaching?

Teaching vs. Delegation (cont.)

- Nurse leaders recognize this, but it may not be reflected in rules.
  - BON executive May, 2006: "[We need to] try to get clearer on delegation versus teaching, particularly in self directed care, or even in a number of other settings … I can teach someone to do something--I am not delegating that to them. … that's … difficult to tease apart."

Teaching vs. Delegation (cont.)

- Oregon draws a distinction between the two in its rules:
  - “"Delegation" means that a Registered Nurse authorizes an unlicensed person to perform tasks of nursing care in selected situations and indicates that authorization in writing. The delegation process includes nursing assessment of a client in a specific situation, evaluation of the ability of the unlicensed persons, teaching the task, ensuring supervision of the unlicensed persons and re-evaluating the task at regular intervals. For the purpose of these rules, the unlicensed person, caregiver or certified nursing assistant performs tasks of nursing care under the Registered Nurse's delegated authority.” **OAR 851-047-0010 (7).**
  - “"Teaching," for the purpose of Division 47, means providing instructions for the proper way to administer noninjectable medications and/or perform a task of nursing care. Teaching may include presentation of information in a classroom setting or informally to a group, discussion of written material and/or demonstration of a technique/procedure.” **OAR 851-047-0010 (23).**

Teaching vs. Delegation (cont.)

- In its implementation of teaching in the rules, teaching begins to look more like delegation, in that nurses must provide comprehensive written instructions and have responsibility for periodic inspection or reevaluation. However, the intervals are not specified as they are with delegation, but rather are left to the nurse's discretion.

The Oregon Model

- Often held up as an example of progressive long-term care policy
- Important to recognize that it is an evolving and at times contentious process in which stakeholders may disagree on specifics, but attempt to move forward based on a person-centered philosophy of cost-effective long-term care.

The Oregon Model

- The involvement of nurses in the Oregon Model of community based care was not a given. It could have gone the way of pure consumer direction
  - In May 2006, a former state agency leader told us of discussions that had taken place with the board of nursing "I would say, if we can't get past this we won't be able to use nurses—it wasn't that we wouldn't do home care … because we had authority to do it, it was that we would unfortunately not be able to use nurses, and that's the wrong answer. So, it was very important to have that give and take in discussion and I'm very appreciative that we were able to do that"

The Oregon Model

- The Board of Nursing in Oregon has concerns about the nurse role in various settings, including home and community based, but they continue to collaborate with state agencies, revise nursing regulations to refine delegation and teaching, and think about how best to support nurses.

UAP Certification Examples

- North Dakota's Medication Assistant Certification Program
  - See links from http://www.ndbon.org/unlicensed/unlicensed.shtml
- North Carolina's Nurse Aide I and II and Medication Aide Programs
  - See links from http://www.ncbon.com/index.asp
- Washington Caregiving Training (mentioned earlier)
  - See http://www.adsa.dshs.wa.gov/professional/training/fundamentals/

UAP Certification

- Advantages
  - May put less of a teaching burden on the nurse by ensuring some common background
  - Formal recognition of UAP skills may be beneficial for UAP's career
- Disadvantages
  - Costly and time consuming—less flexibility for consumers
  - May involve training UAP about things he/she will never encounter
  - May put nurse too much at ease regarding UAP competence
- Bottom Line Questions
  - What will UAP be expected to do, what do they need to know to accomplish those tasks, and what is the most effective way to teach them?

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