

§ 558.404 Standards Specific to Agencies Licensed to Provide Personal Assistance Services

(a) In addition to meeting the standards in Subchapter C of this chapter (relating to Minimum Standards for All Home and Community Support Services Agencies), an agency holding a license with the category of personal assistance services must meet the standards of this section.

(b) A person who is not licensed to provide personal assistance services under this chapter may not indicate or imply that the person is licensed to provide personal assistance services by using the words "personal assistance services" or in any other manner.

(c) Personal assistance services, as defined in § 558.2 of this chapter (relating to Definitions), may be performed by an unlicensed person who is at least 18 years of age and has demonstrated competency, when competency cannot be determined through education and experience, to perform the tasks assigned by the supervisor. An unlicensed person who is under 18 years of age, is a high school graduate or is enrolled in a vocational educational program, and has demonstrated competency to perform the tasks assigned by the supervisor, may perform personal assistance services.

(d) The following tasks may be performed under a personal assistance services category:

(1) personal care as defined in § 558.2 of this chapter;

(2) health-related tasks provided by unlicensed personnel that may be delegated by an RN, or that an RN determines do not require delegation, in accordance with the agency's written policy adopted, implemented, and enforced to ensure compliance with the rules adopted by the Texas Board of Nursing in 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions);

(3) health-related tasks that are not the practice of professional nursing under the memorandum of understanding between HHSC and the Texas Board of Nursing; and

(4) health-related tasks that are delegated by a physician under the Texas Occupations Code Chapter 157.

(e) The agency must ensure that when developing its operational policies, the policies are considerate of principles of individual and family choice and control, functional need, and accessible and flexible services.

(f) In addition to the client record requirements in § 558.301(a)(9) of this chapter (relating to Client Records), the client file must include the following:

(1) documentation of determination of services based on an on-site visit by the supervisor where services will be primarily delivered and records of supervisory visits, if applicable;

(2) individualized service plan developed, agreed upon, and signed by the client or family and the agency. The individualized service plan must include:

(A) types of services, supplies, and equipment to be provided;

- (B) locations of services;
 - (C) frequency and duration of services;
 - (D) planned date of service initiation;
 - (E) charges for services rendered if the charges will be paid in full or in part by the client or significant other(s), or on request; and
 - (F) plan of supervision; and
- (3) documentation that the services have been provided according to the individualized service plan.

(g) In addition to the written policies required by § 558.245 of this chapter (relating to Staffing Policies) the agency must adopt and enforce a written policy addressing the supervision of personnel with input from the client or family on the frequency of supervision.

(1) Supervision of personnel must be in accordance with the agency's policies and applicable State laws and rules, including rules adopted by the Texas Board of Nursing in 22 TAC Chapter 225.

(2) A supervisor must be a licensed nurse or have completed two years of full-time study at an accredited college or university. An individual with a high school diploma or general equivalence diploma (GED) may substitute one year of full-time employment in a supervisory capacity in a health care facility, agency, or community-based agency for each required year of college.

(3) The client in a client managed attendant care program funded by HHSC or the Department of Assistive and Rehabilitative Services is not required to meet the standard in paragraph (2) of this subsection.

(h) Tube feedings and medication administration through a permanently placed gastrostomy tube (g-tube) in accordance with subsection (d)(3) of this section may be performed by an unlicensed person only after successful completion of the training and competency program and procedures described in paragraphs (1) - (5) of this subsection.

(1) The training and competency program for the performance of g-tube feedings by an unlicensed person must be taught by an RN, physician, physician assistant (PA), or qualified trainer. A qualified trainer must:

(A) have successfully completed the training and competency program described in paragraphs (2) and (3) of this subsection taught by an RN, physician, or PA;

(B) have demonstrated upon return demonstration to an RN, physician, or PA the performance of the task and the ability to teach the task; and

(C) have been deemed competent by an RN, physician, or PA, to train unlicensed personnel in these procedures. Documentation of competency to perform, train, and teach must be maintained in the employee's or contractor's file. Competency must be evaluated and documented annually by an RN, physician, or PA .

(2) The minimum training program must include:

(A) a description of the g-tube placement, including its purpose;

(B) infection control procedures and universal precautions to be used when performing g-tube feedings or medication administration through a g-tube;

(C) a description of conditions that must be reported to the client or the primary caregiver,

or in the absence of the primary caregiver, to the agency administrator, supervisor, or the client's physician. The description of conditions must include a plan to be effected if the g-tube comes out or is not positioned correctly to ensure medical attention is provided within one hour;

(D) review of a written procedure for g-tube feeding or medication administration through a g-tube. The written procedure must be equivalent to current acceptable nursing standards of practice, including addressing the crushing of medications;

(E) conditions under which g-tube feeding or medication administration must not be performed; and

(F) demonstration of a g-tube feeding and medication administration to a client. If the trainee will become a qualified trainer, the demonstration must be done by the RN, PA, or physician. If the trainee will not become a qualified trainer, the demonstration may be done by an RN, PA, physician, or qualified trainer.

(3) The minimum competency evaluation must be documented and maintained in the employee's file and must include:

(A) a score of 100 percent on a written multiple-choice test that consists of situational questions to include the criteria in paragraph (2)(A) - (E) of this subsection and an evaluation of the trainee's judgment and understanding of the essential skills, risks, and possible complications of a g-tube feeding or medication administration through a g-tube;

(B) a skills checklist demonstrating that the trainee has successfully completed the necessary skills for a g-tube feeding and medication administration via g-tube, and if the trainee will become a qualified trainer, the skills checklist must also demonstrate the ability to teach another person to perform the task. The skills checklist must be completed by an RN, physician, or PA, if the trainee will become a qualified trainer. The skills checklist for a trainee who will not become a qualified trainer may be completed by an RN, physician, PA, or qualified trainer; and

(C) documentation of an accurate demonstration of the g-tube feeding and medication administration performed by the trainee as required by paragraph (2)(F) of this subsection. If the trainee will become a qualified trainer, documentation of competency to teach this task must be maintained in the file of the qualified trainer. The person responsible for the training of the trainee must document the successful demonstration of the g-tube feeding and medication administration via g-tube by the trainee and the trainee's competency to perform this task in the trainee's file.

(4) The client or primary caregiver must provide information on the client's g-tube feeding or medication administration to the agency supervisor. If the client is not capable of directing his or her own care, the client's primary caregiver must be present to instruct and orient the supervisor regarding the client's g-tube feeding and medication regime. A copy of the current regime including unique conditions specific to the client must be placed in the client's file by the agency supervisor and provided to the respite caregiver. The respite caregiver must be oriented by the client, the client's primary caregiver, or the agency supervisor. The supervisor of the delivery of these services must have successfully completed a training and competency program outlined in paragraphs (2) and (3) of this subsection or be a qualified trainer.

(5) Legend medications that are to be administered must be in a legally labeled container from a pharmacy that contains the name of the client. Instructions for dosages according to weight or age for over-the-counter drugs commonly given the client must be furnished by the primary caregiver to the respite caregiver performing the tube feeding or medication administration.

Notes

26 Tex. Admin. Code § 558.404

The provisions of this §558.404 adopted to be effective February 1, 2002, 26 TexReg 9159; amended to be effective June 29, 2003, 28 TexReg 4931; amended to be effective October 15, 2003, 28 TexReg 8955; amended to be effective May 1, 2008, 33 TexReg 1136; Transferred from Title 40, Chapter 97 by Texas Register, Volume 44, Number 15, April 12, 2019, TexReg 1893, eff. 5/1/2019; Amended by Texas Register, Volume 46, Number 15, April 9, 2021, TexReg 2431, eff. 4/25/2021