

**Consideration of a Memorandum of Understanding: A Cooperative Agreement
between the Texas Board of Nursing and Texas Department of Aging and
Disability Services.**

Summary of Request

Consider a Memorandum of Understanding (MOU) between the Texas Department of Aging and Disability Services (DADS) and the Texas Board of Nursing (BON) to implement a statewide pilot wherein a Registered Nurse (RN) may determine when an Unlicensed Assistive Person can administer medication in addition to 22 Texas Administrative Code Chapter 225 and when telephone on call services in community based settings may be provided by Licensed Vocational Nurses (LVNs).

Background

The 22 Texas Administrative Code Chapter 225 *RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments with Stable and Predictable Conditions* was adopted because of the needs of many consumers who were receiving health services in community based settings where the more traditional institutional based models of care were too prescribed and costly.

DADS regulates numerous programs for many of these consumers including Home and Community-based Services (HCS) program, Texas Home Living (TXHmL) and Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) (small 1-8 bed and medium 9-13 bed facilities). These three programs provide nursing services to individuals with intellectual and developmental disabilities in private homes, family homes, small residential programs or group homes. Individuals receiving services in these settings often do not have a family member or a responsible adult who can advocate on their behalf, an essential component of Chapter 225, *RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions*.

In 2009, BON staff began to work with DADS HCS program staff on the application of Chapter 225 in their programs. Consequently, BON staff assisted in the development of educational resources and workshops designed for nurses and employers.

In July of 2010, staff presented information on delegation at a DADS conference and in August 2010 attended an external stakeholder's meeting where employers and provider associations were represented. During this meeting, DADS provided information regarding the BON's rules on RN Delegation and LVNs providing on call services in the community. During this meeting, employers indicated that it was their understanding that Unlicensed Assistive Personnel (UAP's) could administer medications without the

client or the client's responsible adult being involved in the management of their care, an essential component in the Board's rule. Additionally, the employers also indicated that they had a long standing history of LVNs independently providing on-call duties to address urgent/emergent issues in community settings which the Board considers outside the scope of LVN education and practice. Concerns were raised that addressing these two issues would be very costly and require extensive changes in how employers delivered services to the individuals in their care.

During the fall of 2010, BON staff continued to work with DADS, employers, and the provider associations in an attempt to reach consensus that would ensure the Board's mission of patient safety. The provider associations requested an exception to the BON rules because of the costs associated with only RNs providing on-call services and delegating the administration of medication to UAPs.

An MOU (See Attachment A) was developed and reflects an agreement between DADS and the BON, with input from an advisory committee, in developing two pilot programs that would allow a RN to determine when a UAP is permitted to administer medication not requiring delegation and when telephone on-call services may be provided by LVNs.

In addition, Representative Truitt has introduced HB 3611 that would make changes in the DADs regulations to permit a UAP to administer medications in these settings without RN delegation. The bill also calls for the BON, in conjunction with DADS, to implement a pilot study for LVNs providing telephonic on call services. If this legislation passes, the MOU would only address the pilot study for LVNs providing telephonic on call services as DADS would regulate UAPs administering medications.

Pros: The MOU reflects consensus of provider associations, DADS and the BON. Pilot programs would allow for evaluation of two new models to provide nursing services in community settings. New models may provide cost-savings to both employers and the State. Pilot programs ensure development of industry standards that would promote consistency across employment settings. Consistent standards that are based on evidence may promote safety.

Cons: Potential patient harm if UAPs incorrectly administer medications. Potential patient harm if LVNs fail to recognize significant changes in health status during on-call services.

Staff Recommendation: Move to approve the MOU between DADS and the BON contingent upon the enactment of HB 3611 or any other similar legislation by the 82nd Legislature. Should HB 3611 be enacted or any other similar legislation by the 82nd Legislature, the medication administration pilot program will be null and void. Should HB3611 be enacted, allow BON staff to edit the MOU to delete sections pertaining to administration of medications by UAP's outside RN delegation as this practice will be regulated by DADS. In addition, allow General Counsel to make editorial changes as necessary to clarify the MOU.

Memorandum of Understanding Between the Texas Department of Aging and Disability Services, And the Texas Board of Nursing

STATE OF TEXAS

COUNTY OF TRAVIS

Article I.

This Memorandum of Understanding (MOU) is entered into and between the TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES (DADS) and the TEXAS BOARD OF NURSING (Board), agencies of the State of Texas, as contracting parties.

Article II. Background and Purpose.

The purpose of this MOU is to outline the requirements that will apply to a state-wide pilot program implemented by DADS, wherein a Registered Nurse (RN) may determine when an Unlicensed Assistive Person (UAP) is permitted to administer medications in addition to 22 Texas Administrative Code, 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*) and when telephone on call services may be provided by Licensed Vocational Nurses (LVN).

Article XX. Definitions

A. "Individual" means a person with an intellectual and developmental disability receiving services in a facility or program licensed and/or certified under Section B of this article.:-

B. "Unlicensed assistive person" means an individual, not licensed as a health care provider, who provides services in a facility or program licensed and/or certified under Section B of this article and:

a. who is monetarily compensated to provide certain health related tasks and functions in a complementary or assistive role to the licensed nurse in providing direct client care or carrying out common nursing functions;

b. providing those tasks and functions as a volunteer but does not qualify as a friend providing gratuitous care for the sick under Section 301.004(1), Occupations Code;

- c. a professional nursing student, not licensed as a nurse, providing care for monetary compensation and not as part of their formal education program; or
- d. includes, but is not limited to, nurse aides, orderlies, assistants, attendants, technicians, home health aides, medication aides permitted by a state agency, and other individuals providing personal care/assistance with health related services.

C. Pilot sites:

1. A small facility with one to eight beds or a medium facility with nine to thirteen beds that is licensed or certified under Chapter 252, Health and Safety Code; or

2. One of the following Section 1915(c) waiver programs administered by DADS, including:

- i. Home and Community-based Services (HCS) waiver; or
- ii. Texas Home Living (TXHmL) waiver.
- iii. Any program not specifically identified must be approved by DADS, in consultation with the Board and the advisory committee, prior to participation in the pilot program.

D. Operation Protocol: a comprehensive plan detailing all aspects of the two pilot programs that will be the working document to guide the two pilot programs described under Article XX.

Article III. Advisory Committee

DADS and the BON will convene an advisory committee to:

- a. Advise in the overall implementation of the two pilot programs described in Article II;
- b. Advise in the development of the Operation Protocol;
- c. Assist in the development of the goals and measurable outcomes as referenced under Article XX;
- d. Review outcomes of the pilots and advise DADS and the BON of future actions;
- e. Make recommendations for corrective actions when data indicate unsafe or non- efficacious nursing care resulting from either of the two pilot programs;
- f. Identify best practices that can be replicated without increasing costs; and
- g. Advise in the development of the two Legislative reports detailed under Article XX.

The advisory committee will include representatives from DADS, the BON, public and private providers, registered and licensed vocational nurses employed in the programs described in Article IV.B., and, individuals receiving services in those programs.

Article XX. Operational Protocol

An Operational Protocol will be developed by DADS and the BON in consultation with the advisory committee to:

- Detail the specifics of implementing both pilot program referenced in Article XX;
- Requirements for conducting the medication administration pilot program;
- Requirements for conducting the LVN on call pilot program;
- Requirements for data collection and evaluation; and
- Actions to be taken when data indicate that adverse actions are occurring because of the implementation of the pilot programs.

Article IV. Terms of Pilot Program.

A. The two pilot programs will allow UAPs to administer medications to individuals without RN delegation and LVNs to perform on call services for individuals in the pilot sites.

B. The medication administration pilot program permits an exception to Texas Occupation Code 301.002 (2) and will allow the UAP to administer oral medications, topical medications, and metered dose inhalers to an individual without delegation by a RN, when the medication or inhaler is routinely administered to the individual for a stable or predictable condition. The requirements regarding individual assessment, UAP training or deeming, evaluation of UAP competency and program requirements will be detailed in the Operational Protocol.

C. The LVN on call pilot program permits an exception to 22 TAC, §217.11 (2) under which LVNs may perform telephone on-call services for individuals in their care. The requirements for the LVN will be detailed in the Operational Protocol.

E. Data Collection

Measurable outcomes for evaluating of the pilot programs will be developed in consultation with the advisory committee. The data collected during the pilot programs must allow for the Board and DADS to determine if practices related to medication administration by UAPs and LVNs performing telephone on-call services in the pilot settings provide safe, efficacious nursing care. Data will be based on current data available to DADS upon the signing of this MOU or additional data that DADS may be required to collect as the result of direction by the 82nd Legislature (2011).

If information collected demonstrates that the pilot program results in unsafe or ineffective nursing care, the Board and DADS, in consultation with the advisory committee shall create a corrective action plan to be implemented by DADS immediately. If the pilot program

continues to result in unsafe or ineffective nursing care following the implementation of the corrective action plan, the BON and DADS will have the authority to terminate the MOU and the pilot program.

F. Length of the Pilot Program

The pilot programs will commence as soon as possible but no later than September 1, 2011 and will last at least four years. DADS and the BON will submit a status report regarding the pilot programs to the Legislature no later than December 1, 2012. A full report will be submitted to the Legislature no later than December 1, 2014 containing the following:

- Review and analysis of data collected by DADS
- Assessment of impact of the pilots on the delivery of services
- Assessment of impact of the pilots on assuring the health and safety of the individuals served in the programs under Article XX.
- Any recommendations for statutory and funding changes to support the successful practices piloted in the study.

The advisory committee will advise DADS and the Board in the development of both reports to the Legislature.

G. Training

All DADS surveyors and providers and nurses listed in Section XX. must be adequately trained about the terms of the MOU and the pilot programs prior to their commencement. DADS and the BON, with consultation by the Advisory Committee, will develop the content for training the surveyors, nurses and providers.

This MOU and Pilot Program do not exempt anyone from complying with Texas Occupations Code Chapter 301, subchapter I. and Chapter 303 pertaining to reporting violations and peer review.

Article V.

If HB 3611 or similar legislation is enacted by the Texas Legislature addressing the administration of medications by UAPs to individuals served under Article XX., then Section XX of this MOU is nullified.