

**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

This report is to provide updates to the Board regarding the 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 regarding telephone on call services in community based settings provided by Licensed Vocational Nurses (LVNs).

Background

At the April 2011 Board meeting, the Board approved agenda item 7. 2 Consideration of a MOU: A Cooperative Agreement between the Board of Nursing and the Department of Aging and Disability Services. This report detailed a pilot program between the Board and DADS which would determine when an Unlicensed Assistive Personnel (UAP) could administer medications without RN delegation and when telephone on call services in community based settings could be provided by LVNs.

The report also reviewed that the 82nd Legislature was considering HB 3611 which would make changes to DADS regulations to permit UAP's to administer medications to clients receiving nursing services through certain DADS programs 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. The report clarified that if HB 3611 or any similar legislation were enacted by the 82nd Legislature, the medication administration pilot program would be null and void.

SB 1857, the identical companion bill to HB 3611 has been signed by the Governor and is effective immediately. BON staff have edited the MOU to delete sections pertaining to the administration of medications by UAP's outside RN delegation as this practice will be regulated by DADS. Consequently, the pilot study in the MOU solely pertains to the evaluation of LVNs providing on call telephone services in these settings. See Attachment A for the final MOU.

Staff Recommendation:

This report is for information only.

**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 between the TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES (DADS) and the TEXAS BOARD OF NURSING (Board), agencies of the State of Texas, as 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, and how the program relates to when telephone on-call services may be provided by a Licensed Vocational Nurse (LVN).

**Article III.
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 C of this article, as a "Pilot Site".
- B. "Unlicensed assistive person" or "UAP" means an individual, not licensed as a health care provider, who provides services in a facility or program licensed and/or certified under Section C of this article as a "Pilot Site" and who:
- i. 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;
 - ii. is 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;
 - iii. is a professional nursing student, not licensed as a nurse, providing care for monetary compensation and not as part of their formal education program; or
 - iv. 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 Site" means:
- i. 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
 - ii. One of the following Section 1915(c) waiver programs administered by DADS, including:
 - a. Home and Community-based Services (HCS) waiver; ~~or~~
 - b. Texas Home Living (TXHmL) waiver or,
 - c. Any other Section 1915(c) program not specifically identified, which is approved by DADS, in consultation with the Board and the Advisory Committee, prior to participation in the pilot program.
- D. "Operational Protocol" means a comprehensive plan detailing all aspects of the pilot program that will be the working document to guide the pilot program described under this MOU.

**Article IV.
Advisory Committee**

DADS and the BON will convene an Advisory Committee to:

- a. Advise in the overall implementation of the pilot program 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 VI;
- d. Review outcomes of the pilot and advise DADS and the BON of future actions;
- e. Make recommendations for corrective actions when data indicate unsafe or ineffective nursing care resulting from the pilot program;
- f. Identify best practices that can be replicated without increasing costs; and
- g. Advise in the development of the Legislative report detailed under Article VI.

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 III.C., and, individuals receiving services in those programs.

**Article V.
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 the pilot program referenced in Article II;
- Requirements for conducting the LVN on call pilot program;
- Requirements for data collection and evaluation for the pilot program; and
- Actions to be taken when data indicate that adverse consequences are occurring because of the implementation of the pilot program.

**Article VI.
Terms of Pilot Programs**

- A. The pilot program will allow LVNs to perform on call services for individuals in the pilot sites.
- B. 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.

C. Data Collection

Measurable outcomes for evaluating of the pilot program will be developed in consultation with the Advisory Committee. The data collected during the pilot program must allow for the Board and DADS to determine if practices related to 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 or the BON upon the signing of this MOU or additional data that DADS or the BON may be required to collect as the result of direction by the 82nd Legislature (2011). This section does not prevent DADS, the BON, or the Advisory Committee from collecting or reviewing additional data that may become available and relevant to pilot review.

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 this MOU and the pilot program.

D. Length of the Pilot Program

The pilot program 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 Senate Committee on Health and Human Services and the House Committee on Public Health no later than December 1, 2012. The report will:

- Review and analyze data collected by DADS
- Assess the impact of the pilot on the delivery of services
- Assess the impact of the pilot on assuring the health and safety of the individuals served in the programs under Article III, Section C
- Make 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 the report to the above mentioned legislative committees.

E. Training

All DADS surveyors, providers and nurses listed in programs referenced in Article III, Section C, must be adequately trained about the terms of the MOU and the pilot program 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.

Katherine A. Thomas, MN, RN
Executive Director
Texas Board of Nursing

Chris Traylor
Commissioner
Texas Department of Aging and Disability Services

Date Signed

Date Signed