

## **MEMORANDUM OF UNDERSTANDING**

### **Cooperative Agreement between the Board of Nurse Examiners for the State of Texas & the Department of Aging and Disability Services**

#### **SECTION A: PURPOSE**

The purpose of this MOU is to define circumstances under which the provision of health-related tasks or services by a home and community support services agency (HCSSA) does not constitute the practice of professional nursing.

This Memorandum of Understanding (MOU) sets forth the mutual understanding and agreement between the Board of Nurse Examiners for the State of Texas (BNE) and the Department of Aging and Disability Services (DADS) with regard to services that may be provided by a Home and Community Support Services Agency (HCSSA) regulated by DADS under Health and Safety Code chapter 142 and its rules at 40 Texas Administrative Code (TAC), chapter 97.

The BNE and DADS recognize the desire of individuals and their families to achieve the highest possible quality of life, independence, and integration with family and society. These goals are most often achieved when the individual's health-related needs can be met in the least restrictive environment. In order to assure the individual's safety in settings to which this MOU applies, the BNE and DADS believe that the individual or the individual's responsible adult must be able and willing to maintain oversight of services performed by unlicensed assistive personnel (UAP) under Section B.

This MOU is entered into by the above named agencies in compliance with section 142.016 of the Health and Safety Code. The provision of nursing services is regulated by the Board of Nurse Examiners, whether the task is performed by a nurse, or delegated by a professional registered nurse to a UAP. In independent living environments, however, it is recognized that a registered nurse (RN) would not be present to assess, plan, implement, and evaluate the provision of care and certain health-related services.

This distinction is noted in section 142.001(22-a) of the Health and Safety Code and 40 TAC § 97.2(63), which defines personal assistance services to include personal care and health related services performed under circumstances that are defined as not constituting the practice of professional nursing by the BNE. This MOU is applicable only to a HCSSA regulated by DADS under the Health and Safety Code chapter 142.

#### **SECTION B: APPLICATION**

The BNE and DADS agree that the following services in the specific situations described do not constitute the practice of professional nursing and may be performed by UAPs without RN delegation or supervision for individuals who have stable and predictable conditions.

Stable and predictable conditions refer to situations where the individual's clinical and behavioral status is determined to be non-fluctuating and consistent. A stable predictable condition involves

long term health care needs which are not recuperative in nature and do not require the regularly scheduled presence of a registered nurse or licensed vocational nurse. Excluded by this definition are situations where the individual's clinical and behavioral status is expected to change rapidly or in need of the continuous/continual assessments and evaluation of a registered nurse or licensed vocational nurse. The condition of individual's receiving hospice care in an independent living environment where deterioration is predictable shall be deemed stable and predictable.

1. Personal care, to include feeding, preparing meals, transferring, toileting, ambulation and exercise, grooming, bathing, dressing, routine care of hair and skin, and assistance with medications that are normally self administered, may be provided for individuals by UAPs in independent living environments.

An "independent living environment" is an individual's residence which may include a group home, or foster home, or assisted living facility, as well as other settings including, but not limited to school, work or church where the client participates in activities. The term does **not** include settings in which nursing services are continuously provided.

2. Short term respite services limited to a maximum of thirty (30) consecutive days in which the primary care giver acts as the individual's advocate and is being relieved of the care giver role by a UAP. In this setting, the following nursing services may be provided by the UAP:

- (a) Provision of personal care as described in #1 above;
- (b) Feeding and medication administration through a permanently placed feeding tube provided the UAP has completed a training and competency program according to 40 TAC § 97.404(h);
- (c) For those receiving regularly scheduled oral or topical medication normally administered by the primary care giver, the UAP may administer these agents based on specific instructions from the primary care giver.

(1) These tasks do not include:

- (A) the calculation of any medication doses. Calculation of medication doses does not include measuring a prescribed amount of liquid medication and breaking a scored tablet for administration as instructed by the primary care giver;
- (B) administration of the initial dose of a medication that has not been previously administered to the individual;
- (C) administration of medications by any injectable route;
- (D) administration of medications used for intermittent positive pressure breathing or other methods involving medication inhalation treatments;
- (E) administration of medications by way of a tube inserted in a cavity of the body other than by a permanently placed feeding tube.

3. The provision of (a), (b), and (c) above is limited to a 30 (thirty) day period for the purpose of respite.
4. No other nursing functions may be provided by the UAP without the delegation and supervision of an RN.
  - a. All other nursing services must be performed in accordance with the registered nurse delegation rules 224 or 225.
  - b. This MOU does not apply to services provided in a non-respite situation where a RN involved in care decisions has determined under Rule 225 that factors relating to the client, listed in section 225.6 *RN Assessment of the Client*, are sufficient to warrant RN exemption of said nursing services from delegation.
5. This MOU applies to the administration of medications in an assisted living facility (ALF), provided this service is being performed by a HCSSA. If an individual residing in an ALF requires medication administration but no HCSSA is involved, then DADS' rules at 40 TAC § 92.41(j) govern this service.

### **SECTION C: EXAMPLES**

The following examples are intended to be neither all inclusive nor exhaustive of the guidance expressed in this MOU.

1. A mother who provides care for her child with cerebral palsy plans to spend a long weekend with her husband. A UAP is hired to provide routine care such as bathing, feeding, dressing, and socialization. The child needs a morning and evening dose of Dilantin via percutaneous endoscopic gastrostomy (PEG) tube. The UAP may administer the Dilantin because this is a routine medication for this child provided the UAP has completed a training and competency program according to 40 TAC § 97.404(h).
2. A young adult released from a burn center three days ago is being cared for by his family. In addition to assistance with personal assistance services, he needs dressing changes daily to his hands and forearms bilaterally, along with assistance taking pain medication as needed. The individual's parents have been performing all of the above tasks, but they wish to attend their niece's wedding out-of-state, and will be gone for a period of 3 consecutive days.

Though the individual could direct a UAP in the performance of personal assistance services, including assistance with oral pain medication as needed, the performance of dressing changes to burns on the individual's hands and forearms is a nursing task and is related to an acute condition (ie: acute conditions are considered to be unstable and unpredictable); therefore, RN delegation under rule 224.7(2)(B) is required in order for the UAP to provide the service of changing the burn dressings daily.

3. An individual with severe Parkinson's lives in his own apartment and needs assistance on a daily basis with transferring, bathing, grooming, dressing, and exercise. A UAP may provide these personal care services without RN delegation for this individual whose condition is stable and predictable.

4. An individual with a cerebral vascular accident (CVA) 5-years ago has residual right-sided paralysis of his right arm/hand and leg; his condition is now stable and predictable. The individual needs ongoing assistance with meal preparation and grooming, as well as reminders for daily oral medication. The UAP may provide these services without RN delegation for this individual.
  
5. An individual with cerebral palsy usually has a UAP who assists with feeding, bathing, grooming and transferring. The individual developed pneumonia and was hospitalized for intravenous (IV) antibiotic treatment. The individual is now back home, but still requires IV antibiotics via a peripherally inserted central catheter (PICC) line and Albuterol nebulizer treatments every 12 hours. These tasks cannot be performed by the UAP under the direction of the individual's primary care giver (individual's responsible adult) because:
  - A. IV medications and nebulizer treatments are related to the individual's acute condition of pneumonia, and thus are not related to maintenance of a stable and predictable condition;
  - B. IV medications (considered a nursing task) may not be performed independently by the UAP under this MOU, and may also not be delegated under rule 225.12(5)(B); and
  - C. Albuterol nebulizer treatments are not for routine maintenance in this instance as they are related to the acute condition, so a UAP could not perform this task under the MOU. A RN could determine if it was safe to delegate this task under rule 225.10(2).