



COMMISSIONER
Chris Traylor

September 20, 2011

To: Home and Community-based Service Providers
Texas Home Living Providers

Subject: Information Letter No. 11-105
Changes in the Texas Human Resources Code resulting from Senate Bill (SB) 1857, (82nd Legislature, Regular Session 2011), related to the Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Waiver Programs

This letter provides guidance and identifies resources for providers regarding the application of the Texas Board of Nursing (BON) rules, the Nurse Practice Act (Texas Occupation Code, Title 3, Chapter 301, Nurses), SB 1857 (Human Resources Code, Title 11, Chapter 161, Subchapter D, Department of Aging and Disability Services, Powers and Duties of Department,) introduced in the 82nd Texas Legislature, Regular Session 2011, and program rules in the HCS and TxHmL waiver programs administered by DADS.

Specifically, this letter will clarify issues related to nursing scope and practice, including medication administration by unlicensed persons, on-call services provided by the licensed vocational nurse (LVN), and registered nurse (RN) delegation in the HCS and TxHmL waiver programs. Nurses are required to comply with standards associated with their licensure and they should contact the BON with any questions that relate to nursing practice. In addition, DADS has compiled written responses in a [Frequently Asked Questions \(FAQs\) for HCS/TxHmL Providers](#) document dated August 15, 2011, to provide program clarification to new operational standards outlined in the Human Resources Code, Chapter 161, Subchapter D. The FAQs are also available at www.dads.state.tx.us under Doing Business with DADS, then click on Resources for DADS Service Providers then click on HCS.

Comprehensive Nursing Assessments

The HCS and TxHmL waiver programs are designed to promote choice and self-determination for the individuals enrolled, while offering services and supports necessary to protect health and safety. An initial RN comprehensive nursing assessment provides health information to support individuals/legally authorized representatives and service planning teams to make informed choices about health-related services. The comprehensive assessment includes information on an individual's physical condition, health risks, and abilities. The assessment also serves as the basis for a nursing service plan and the type and amount of nursing services that will be provided through the HCS or TxHmL waiver. Individuals enrolled in HCS must have an initial comprehensive assessment.

An initial and annual RN comprehensive nursing assessment and nursing service plan must be completed for individuals receiving HCS foster/companion care, supervised living or residential support services. The comprehensive assessment will identify the nursing tasks to be performed by unlicensed staff and verify the competency of unlicensed staff to perform

those tasks. In addition, individuals who live in their own or their family's home and have *paid* unlicensed staff perform nursing tasks will also require a current comprehensive nursing assessment and nursing service plan. During the comprehensive assessment, the RN will evaluate the individual's ability to self administer medications and the individual's need for other nursing interventions. The nursing service plan will include these determinations along with a timeframe for re-evaluating the individual's nursing and medical needs, including tasks that are RN-delegated, or tasks that were determined to be health maintenance activities (HMAs) and therefore exempt from delegation.

The Human Resources Code, Chapter 161, Subchapter D permits the unlicensed caregiver to administer specified types of medication to an individual whose health status is stable or predictable without delegation or oversight of each administration by a registered nurse if the following criteria are met.

- 1) The medication must be:
 - an oral medication;
 - a topical medication; or
 - a metered dose inhaler;
- 2) The medication is administered to the individual for a stable or predictable condition, including PRN medications that the individual uses on a routine bases;
- 3) The individual has been personally assessed by a RN initially and in response to changes in the individual's health status, and the RN has determined that the individual's health status permits the administration of medication by an unlicensed person; and
- 4) The unlicensed person has been:
 - trained by a RN or licensed vocational nurse (under the direction of a RN) regarding proper administration of medication; or
 - determined to be competent by a RN or LVN (under the direction of a RN) regarding the proper administration of medication, including through a demonstration of proper administration technique by the unlicensed person.

The administration of any medication other than those described above is subject to the rules of the BON regarding delegation of nursing tasks to unlicensed persons in independent living environments.

The service planning team may determine that additional comprehensive nursing assessments are not necessary if an individual receives HCS supported home living or TxHmL services and the individual's health needs are met without using paid, unlicensed staff provided through the HCS or TxHmL waivers.

Client Responsible Adults (CRAs)

For individuals who receive HCS and TxHmL services and lack the capacity to self-direct their care and who do not have a family member, LAR, or advocate acting on their behalf, the provider may establish a Provider Advocate Committee (PAC) to function as the CRA. The provider, in conjunction with the assessing RN, must establish a PAC to determine whether or not delegation to an unlicensed person is appropriate. The PAC membership must include the provider's chief executive officer or designee, the assessing RN, and the person employed by the provider who is responsible for service delivery oversight, if applicable. (For more information refer to [Information Letter #11-104](#), September 13, 2011.)

Telephone Triage (On-Call Service) and Nursing Scope of Practice

As previously indicated, RNs and LVNs are responsible for knowing their scope of practice and adhering to their licensure requirements. Licensure requirements dictate the role of the licensed nurse when administering initial doses of medication (prescribed or over the counter), the supervision of unlicensed persons performing delegated tasks, and the evaluation of health conditions over the telephone without use of an established, validated protocol. Previously, the BON staff determined that a nurse must be licensed as a RN to perform telephone triage/on-call services. However, the Human Resources Code, Title 11, Chapter 161, Subchapter D includes language that instructs DADS and the BON to conduct a pilot program to evaluate the LVN's ability to provide on-call services by telephone to individuals with intellectual and developmental disabilities, including persons served in HCS and TxHmL waiver programs. LVNs involved in the pilot must use protocols or decision trees selected by DADS/BON in collaboration with an Advisory Committee and attend a DADS/BON sponsored training session prior to participating in the pilot. In addition, each participating provider and their contracted/employed nurses must sign a DADS/BON pilot participation agreement that will be available after each training session. The pilot began in September 2011 and will end in September 2015.

Training Opportunities

DADS, in collaboration with the BON, will be offering regional workshops beginning in October 2011 to providers and their nursing staff as an opportunity to learn and apply the BON rules and new instructions provided in SB 1857 related to the HCS and TxHmL waiver programs. Additional information regarding the workshops will be available at www.dads.state.tx.us under the "Calendar" tab.

If you have any questions regarding the information in this letter, please contact DADS Waiver Survey and Certification Nurse Coordinator at (806) 791-7565.

Sincerely,

[signature on file]

Veronda L. Durden
Assistant Commissioner
Regulatory Services

[signature on file]

Teresa Richard
Director
Center for Policy and Innovation

[signature on file]

Gary Jessee
Assistant Commissioner
Access & Intake

[signature on file]

Kathy Thomas, MN, RN
Executive Director
Texas Board of Nursing