



INTERIM COMMISSIONER
Jon Weizenbaum

September 7, 2012

To: All Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Condition (ICFs/IID)

Subject: **Provider Letter 12-19** –Texas Board of Nursing (BON) Rules (**Replaces PL 12-04**)

The Texas Department of Aging and Disability Services (DADS) is issuing this letter to inform providers that some of the BON rules are more specific to the practice of professional nursing in Texas and may be viewed as more restrictive than the ICF/IID federal regulations.

Background

The federal regulations governing the ICF/IID program use the term “licensed nurse” and, in many cases, do not distinguish between a registered nurse (RN) and a licensed vocational nurse (LVN). In Texas, some distinctions are made because the RN and LVN legal scopes of practice are different and based on their respective programs of study.

The BON standards are more restrictive than the ICF/IID federal regulations and/or state licensure rules regarding:

- RN assessments for initial or annual staffings;
- RN participation in interdisciplinary team (IDT) meetings that discuss RN assessments or nursing service plans (NSPs);
- quarterly nursing physical examinations;
- LVN clinical supervision;
- nurses training individuals and staff on health-related topics; and
- supervision of self-administration of medication (SAM) training programs.

The BON rules at Texas Administrative Code (TAC), Title 22, Part 11, Chapter 217, list the standards of nursing practice:

- applicable to all nurses in [§217.11\(1\)](#);
- specific to an LVN in [§217.11\(2\)](#); and
- specific to an RN in [§217.11\(3\)](#).

Providers must comply with the more restrictive requirements. Effective February 1, 2012, ICF/IID providers must have policies and procedures regarding RN assessments for initial or annual staffings, RN participation in IDT meetings that discuss RN assessments or NSPs, quarterly nursing physical examinations, LVN clinical supervision, nurses training individuals and staff on health-related topics, and supervision of SAM training programs to comply with BON rules.

RN Assessments for Initial or Annual Staffings

42 Code of Federal Regulations (CFR) §483.440(c)(3)(v) (W216) requires an individual's nursing assessment for his or her initial staffing to include an assessment of his or her physical development and health. The Guidelines for W216 state that physical development includes the developmental history, results of the annual physical examination (conducted by a licensed physician, physician assistant, or nurse practitioner), and health assessment data (including a medication and immunization history), which may be compiled by a nurse. 42 CFR §483.440(f)(2) (W259) requires each individual's comprehensive functional assessment, which includes the nursing assessment, to be reviewed by the interdisciplinary team for relevancy and updated as needed. The assessments for initial or annual staffings must be comprehensive (i.e., relevant, accurate, complete, current and reflect the individual's observed functional status).

A nursing assessment for initial or annual staffings must be completed by an RN because, in Texas, a comprehensive nursing assessment is only within the legal scope of practice for an RN and is the basis from which an RN develops and implements the NSP under 22 TAC §217.11(3)(A)(i)-(iii).

Recommended Elements of an Initial or Annual RN Assessment

The RN must make a nursing judgment depending on the ICF/IID practice setting and the individual as to the elements of a nursing assessment; however, the recommended elements of a comprehensive nursing assessment may include the following.

1. Medication history (including the current medication regimen)
2. Health history
3. Most recent physical examination
4. Current assessment of individual's ability to self-administer medications
5. Support systems (individual's legally authorized representative and/or interdisciplinary team)
6. Documentation of the RN's delegation decisions and supervisory schedule (including Human Resource Code §[161.93](#) medication administration decisions, as required by Senate Bill (SB) 1857, which applies to an ICF/IID that has a capacity of 13 or fewer beds) and which type of nurse (RN or LVN) may conduct the quarterly nursing physical examinations
7. Current health information (including history of immunizations, nutrition, sleep, activity and substance use or abuse)
8. NSP that defines and describes nursing services to be provided and tells LVNs and unlicensed staff when to notify the RN (Components of NSP: Nursing Diagnoses/Concerns, Interventions and Goals/Outcomes)
9. Emergent changes to health status
10. Alterations to previous conditions
11. Biological, psychological, spiritual and social considerations (includes history of home life, work or school day, social life, spiritual life, coping skills, and mental status exam –mood, cognition, emotions, behaviors and communication)
12. Nursing reassessment needs and supervisory plans
13. Evaluation of nursing care component (the individual's responses to the NSP)

RN Participation in IDT Meetings that Discuss RN Assessments or NSPs

42 CFR §483.460(c)(1) (W332) requires a licensed nurse to participate, as appropriate, in the development, review and update of an individual program plan (IPP) as part of the IDT process. The Facility Practices for W332 state that a licensed nurse participates as a member of the IDT in the IPP process for all individuals on a medical care plan and, if individual needs dictate, for other individuals as well.

In Texas, comprehensive nursing assessments and NSPs must be completed by an RN, because they are only within an RN's scope of practice under 22 TAC §217.11(3)(A)(i)-(iii). In addition, the RN must participate in IDT meetings in which these assessments and plans are discussed. This participation could be in person or telephonic.

Quarterly Nursing Physical Examinations

42 CFR §483.460(c)(3)(ii) (W335) permits an RN, a licensed practical nurse (LPN) or an LVN to perform a quarterly nursing physical examination. The Guidelines for W335 state the direct physical examination must "be by a licensed nurse" and that the term "licensed nurse," for the purposes of this requirement, means an RN, an LPN or an LVN.

However, because these examinations are reassessments to determine if an individual's condition has a change that would require modification of the NSP, it has been determined that during the comprehensive assessment and development of the NSP, an RN must include a statement as to whether the quarterly physical examinations must be conducted by an RN or may be conducted by an LVN.

If the RN assigns the LVN to perform the quarterly physical examination or reassessment and the LVN discovers a change in condition, the LVN must communicate that information to the RN. The RN may determine that further evaluation is necessary and whether a modification to the NSP is warranted.

LVN Clinical Supervision

42 CFR §483.460(d)(4) (W346) states that if a facility uses only LVNs to provide health services, it must have a formal arrangement with an RN to be available for consultation to the LVN.

22 TAC §[217.11](#)(2) states that the LVN practice is a directed scope of nursing practice under the supervision of a clinical supervisor such as an RN, advanced practice registered nurse, physician's assistant, physician, podiatrist, or dentist. Therefore, ICFs/IID must ensure each LVN has an appropriate clinical supervisor.

An LVN performing on-call services as part of the pilot program authorized by Senate Bill (SB) 1857, 82nd Legislature, Regular Session, 2011, must be clinically supervised by an RN or an advanced practice registered nurse.

Nurses Training Individuals and Staff on Health-related Topics

42 CFR §483.460(c)(5)(i)-(iii) (W340 – W342) permits an RN or an LVN to implement appropriate protective health measures, including training individuals and staff as needed in appropriate health and hygiene methods; controlling communicable diseases and infections, including instructing other personnel in methods of infection control; and training direct care staff in the detection of signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the individuals.

BON rules at 22 TAC §[217.11](#)(1)(F) state that nurses promote and participate in education and counseling to an individual and, where applicable, the family or significant other, based on health needs. 22 TAC §[217.11](#)(2)(C) states that an LVN may perform other acts that require education and training as prescribed by board rules and policies, commensurate with the LVN's experience, continuing education, and demonstrated LVN competencies.

Therefore, an RN may assign an LVN to deliver training to individuals and staff. The RN must determine what the training will cover and method of training delivery. If assigned, an LVN may carry out and reinforce the training. The LVN is accountable for how the training is delivered. The RN is accountable for the development of the training and for appropriately assigning a skilled and competent LVN to assist in the delivery of the training.

Supervision of SAM Training Programs

42 CFR §483.460(k)(4) (W371) states that individuals must be taught to administer their own medications if the IDT determines that self-administration of medications is an appropriate objective, and if the physician does not specify otherwise. The W371 Facility Practices state that, based on assessment results and IDT discussion, an individual is instructed in skills leading to self-administration of medication, when appropriate, based on the individual's functional abilities. An individual is not precluded from training based solely on diagnosis or level of functioning. The Facility Practices at 42 CFR §483.460(k)(6) (W373) state that individuals are supervised during self-administration training programs.

However, according to BON rules including 22 TAC §[225.7](#)(a)-(b) and §[225.8](#) (a)-(b), an unlicensed person who is supervising an individual's SAM training program is considered to be administering medications.

Therefore, SAM training programs are now allowed:

- via RN delegation of the individual's medication administration to an unlicensed person, and
- for ICFs/IID with a capacity of 13 or fewer beds only, under the provisions of Human Resources Code §§161.091 – 161.096.

An ICF/IID with a capacity of 13 or fewer beds should refer to Provider Letter [12-12](#) (Medication Administration by an Unlicensed Person and Clarification of the BON Delegation Rules) for further information about the Human Resources Code §§161.091 – 161.096.

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In the case where an unlicensed person cannot administer SAM training under the Human Resources Code §§161.091 – 161.096 and an RN chooses not to delegate the administration of medications to an unlicensed person and the individual's IDT has determined that SAM is an IPP objective, a licensed nurse must supervise (administer) the SAM training.

If you have questions regarding this letter, please contact an ICF/IID policy specialist in the Policy, Rules and Curriculum Development unit at (512) 438-3161.

Sincerely,

[signature on file]

Veronda L. Durden
Assistant Commissioner
Regulatory Services

VLD:dIm