

BILL ANALYSIS

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S.B. 1857
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1857 will require the Board of Nursing (BON) to develop rules regarding assistance with self administration of medications in community-based programs that serve persons with intellectual and developmental disabilities without nurse delegation and supervision for each administration.

BON's current definition for assistance with self-administered medication includes "any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, pouring a predetermined quantity of liquid to be ingested, returning a medication to the proper storage area, and assisting in recording from a pharmacy."

This is the level to which the Department of Aging and Disability Services (DADS) has been surveying home and community-based providers for the last decade. Home and community-based nurses, sanctioned by DADS, have been making determinations that administering medications is based on the person's physical ability to take medications (even with hand over hand assistance). If a person can accomplish this physically, the registered nurse would not delegate medication administration but would recommend supervision of self-administered medication by unlicensed personnel.

The decision to delegate medication administration historically has not been based on the person's cognitive ability to administer his/her medications safely, but rather on the physical ability.

BON and DADS are on the verge of formalizing a new interpretation of what constitutes the self administration of medications in community-based programs that serve persons with intellectual and developmental disabilities, specifically the home and community-based services and intermediate care facility programs.

Currently, if a person can accomplish self administration physically on his or her own, then the registered nurse would not delegate medication administration but would recommend supervision of self-administered medication by an unlicensed person. DADS wants to require that the registered nurse delegate self administration of medications authority to unlicensed personnel under all circumstances.

Delegating authority by a registered nurse to unlicensed personnel is a rigorous process filled with paperwork and training. Given the high staff turnover of personnel at DADS, requiring delegation would mean registered nurses would be overburdened with training requirements. The cost to the home and community-based services program and the lack of registered nurses to do the delegation puts the program in jeopardy.

As proposed, S.B. 1857 amends current law relating to the administration of medications for persons with intellectual and developmental disabilities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Board of Nursing in SECTION 1 (Section 301.703, Occupations Code) in this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Chapter 301, Occupations Code, is amended to add a new Subchapter O to read as follows:

SUBCHAPTER O. ADMINISTRATION OF MEDICATIONS FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.

Sec. 301.701. DEFINITIONS. Defines, in this subsection, "assistance with self-administered medication," "administration of medication," "client," and "unlicensed person."

Sec. 301.702. APPLICABILITY. Provides that this subsection applies only to administration of medications provided to certain persons with intellectual and developmental disabilities who are served in:

- (1) a facility licensed and certified under Chapter 252 (Intermediate Care Facilities for the Mentally Retarded), Health and Safety Code; or
- (2) one of the following Section 1915(c) waiver programs administered by the Department of Aging and Disability Services (DADS) to serve persons with intellectual and developmental disabilities: Community Living Assistance and Support Services waiver, Home and Community Based Services waiver, or Texas Home Living waiver.

Sec. 301.703. ADMINISTRATION OF MEDICATION. (a) Requires the Texas Board of Nursing (BON) by rule to authorize the administration of medication by unlicensed persons without the requirement that a registered nurse delegate each administration of oral medication, topical medication, or metered dose inhaler.

(b) Requires that medications that must be administered other than those listed under subsection (a) are subject to BON's rules regarding the delegation of nursing tasks to unlicensed persons in independent living environments such as those listed in Section 301.702.

(c) Requires BON by rule to require that a licensed nurse assess each client with intellectual and developmental disabilities described by Section 301.702 to determine the appropriate level of assistance the client needs with the administration of medication, and establish criteria related to the necessary skills and knowledge that must be demonstrated to permit the client to have medications administered by an unlicensed person under this subchapter.

Sec. 301.704. UNLICENSED PERSONS AUTHORIZED TO PROVIDE ADMINISTRATION OF MEDICATION. (a) Authorizes an unlicensed person who is a member of the staff of a facility or an employee or contractor of a person licensed or certified to provide Section 1915(c) waiver program services as described by Section 301.702 to be authorized to administer medication to a client described by Section 301.702 only if the staff member, employee or contractor is trained by a registered nurse or licensed vocational nurse under the direction of a registered nurse regarding the requirements to administer medications.

SECTION 2. Requires the executive director of BON, in developing the rules required by Chapter 301 (Nurses), Subchapter O, Occupations Code, as added by this Act, to convene a work group of affected stakeholders, including public and private providers and registered and licensed vocational nurses employed by the facilities or providers of services described by Section 301.702, Occupations Code, as added by this Act, and other persons or entities the executive director of BON considers appropriate.

SECTION 3. Amends Chapter 161, Human Resources Code, to add a new Section 161.078, as follows:

Sec. 161.078. ASSISTANCE WITH ADMINISTRATION OF MEDICATIONS FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES. Requires DADS to ensure that medications administered by an unlicensed person under Chapter 301, Subchapter O, Occupations Code, are overseen by a registered nurse or a licensed vocational nurse under the supervision of a registered nurse, performed after receiving training to address the client's identified skill and knowledge deficits until the client demonstrates competence in independent medication management, and administered in such a way as to ensure the greatest degree of independence in determining the type of assistance needed, including the use of an adaptive or assistive aid, device, or strategy as allowed under program rule.

SECTION 4. Requires BON and DADS to enter into a memorandum of understanding regarding the administration of medications to persons with intellectual and developmental disabilities.

SECTION 5. Effective date: upon passage or September 1, 2011.