

BILL ANALYSIS

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C.S.S.B. 1857
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Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Board of Nursing's (BON) 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.

C.S.S.B. 1857 amends current law relating to the administration of medication for persons with intellectual and developmental disabilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 161, Human Resources Code, by adding Subchapter D-1, as follows:

SUBCHAPTER D-1. ADMINISTRATION OF MEDICATION FOR CLIENTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.

Sec. 161.091. DEFINITIONS. Defines, in this subsection, "administration of medication," "client," and "unlicensed person."

Sec. 161.092. APPLICABILITY. Provides that this subsection applies only to administration of medication provided to certain persons with intellectual and developmental disabilities who are served:

- (1) in a small facility with not less than one and not more than eight beds that is licensed and certified under Chapter 252 (Intermediate Care Facilities for the Mentally Retarded), Health and Safety Code;
- (2) in a medium facility with not less than nine and not more than 13 beds that is licensed and certified under Chapter 252, Health and Safety Code; or
- (3) by 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: the Home and Community-Based Services waiver program, or the Texas Home Living waiver program.

Sec. 161.093. ADMINISTRATION OF MEDICATION. (a) Authorizes an unlicensed person, notwithstanding other law, to provide administration of medication to a client without the requirement that a registered nurse delegate or oversee each administration if:

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

(b) Provides that the administration of medication other than the medication described by Subsection (a)(1) is subject to rules of the Texas Board of Nursing (BON) regarding the delegation of nursing tasks to unlicensed persons in independent living environments such as the facilities and programs listed in Section 161.092.

Sec. 161.094. DEPARTMENT DUTIES. (a) Requires DADS to ensure that the administration of medication by an unlicensed person under this subchapter is reviewed at least annually and after any significant change in a client's condition by a registered nurse or a licensed vocational nurse under the supervision of a registered nurse, and a

facility or program listed in Section 161.092 has policies to ensure that the determination of whether an unlicensed person is authorized to provide administration of medication to a client under Section 161.093 may be made only by a registered nurse.

(b) Requires DADS to verify that:

(1) each client is assessed to identify the client's needs and abilities regarding the client's medications;

(2) the administration of medication by an unlicensed person to a client is performed only by an unlicensed person who is authorized to perform that administration under Section 161.093; and

(3) the administration of medication to each client is performed in such a manner as to ensure the greatest degree of independence, including the use of an adaptive or assistive aid, device, or strategy as allowed under program rules.

(c) Requires DADS to enforce this subchapter.

Sec. 161.095. **LIABILITY.** (a) Authorizes a registered nurse performing a client assessment required under Section 161.093, or a registered nurse or licensed vocational nurse training an unlicensed person or determining whether an unlicensed person is competent to perform administration of medication under Section 161.093, to be held accountable or civilly liable only in relation to whether the nurse properly performed the assessment, conducted the training, and determined whether the unlicensed person is competent to provide administration of medication to clients.

(b) Authorizes BON to take disciplinary action against a registered nurse or licensed vocational nurse under this subchapter only in relation to whether the registered nurse properly performed the client assessment required by Section 161.093, the registered nurse or licensed vocational nurse properly trained the unlicensed person in the administration of medication, and the registered nurse or licensed vocational nurse properly determined whether an unlicensed person is competent to provide administration of medication to clients.

(c) Prohibits a registered nurse or licensed vocational nurse from being held accountable or civilly liable for the acts or omissions of an unlicensed person performing administration of medication.

Sec. 161.096. **CONFLICT WITH OTHER LAW.** Provides that this subchapter controls to the extent of a conflict with other law.

SECTION 2. (a) Requires BON and DADS to conduct a pilot program to evaluate licensed vocational nurses providing on-call services by telephone to clients, as defined by Section 161.091, Human Resources Code, as added by this Act, who are under the care of the licensed vocational nurses. Requires the licensed vocational nurses to use standardized and validated protocols or decision trees in performing telephone on-call services in the pilot program. Requires DADS to collect data to evaluate the efficacy of licensed vocational nurses performing telephone on-call services in the pilot program. Requires that the pilot program begin not later than September 1, 2011, and to end on August 31, 2012.

(b) Requires BON and DADS, in consultation with affected stakeholders, including public and private providers, registered and licensed vocational nurses employed by the facilities or providers of services listed in Section 161.092, Human Resources Code, as added by this Act, and other persons or entities the executive director of BON and the commissioner of DADS consider appropriate, to

(1) develop the goals and measurable outcomes of the pilot program;

(2) review the outcomes of the pilot program and make recommendations regarding potential regulatory or statutory changes; and

(3) on notice of unsafe or ineffective nursing care discovered in the pilot program, review the data or the outcomes and make recommendations for corrective action.

(c) Requires BON and DADS, not later than December 1, 2012, to submit a report detailing the findings of the pilot program and any jointly developed recommendations to the Senate Committee on Health and Human Services and the House Committee of Public Health.

(d) Provides that this section expires September 1, 2013.

SECTION 3. Requires DADS, in developing any policies, processes, or training curriculum required by Subchapter D-1, Chapter 161, Human Resources Code, as added by this Act, to convene an advisory committee of affected stakeholders, including public and private providers and registered and licensed vocational nurses employed by the facilities or providers of services listed in Section 161.092, Human Resources Code, as added by this Act, and other persons or entities DADS considers appropriate.

SECTION 4. Effective date: upon passage or September 1, 2011.