

MEMORANDUM

Department of Aging and Disability Services (DADS) Regulatory Services Policy * Survey and Certification Clarification (S&CC)

TO: Regulatory Services
Regional Directors and State Office Managers

FROM: Veronda L. Durden
Assistant Commissioner
Regulatory Services

SUBJECT: S&CC 13-04 – Skilled Nursing Services in Assisted Living Facilities (ALFs)

APPLIES TO: ALFs

DATE: June 3, 2013

The purpose of this memorandum is to clarify the skilled nursing services that are permitted in an ALF.

A. Regulatory Authority

Unless expressly authorized by statute, Texas Health and Safety Code (HSC), §247.067(b) prohibits an ALF from providing “*ongoing services comparable to the services available in an institution licensed under Chapter 242.*” Chapter 242 applies to the licensing of nursing facilities.

Senate Bill (SB) 7 (82nd Texas Legislature, First Called Session, 2011) broadened the definition of an ALF at HSC, §247.002(1). SB 7 authorized an ALF to provide skilled nursing services for the following limited purposes:

- Coordination of resident care with outside home and community support services agencies (HCSSAs) licensed under HSC, Chapter 142 and other health care professionals
- Provision or delegation of personal care services and medication administration as described in HSC, §247.002
- Assessment of residents to determine the care required
- Delivery of temporary skilled nursing treatment for a minor illness, injury or emergency for periods of time that DADS can establish by rule

B. Provision or Delegation of Personal Care Services

SB 7 did not change the definition of “personal care services” in the ALF statute. The definition is at HSC, §247.002(5)(A), and it includes “*assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance.*” DADS will continue to interpret “personal care services” to mean assistance with feeding, dressing, moving or bathing or other personal needs or other personal maintenance that is consistent with providing assistance with activities of daily living (ADLs). The Board of Nursing (BON) rules at Texas Administrative Code (TAC), Title 22, Part 11, Chapter 225, §225.4(1) limit ADLs to: “*bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer/ambulation, positioning, range of motion, and assistance with self administered medications. The term does not include more specific tasks defined as health maintenance activities [HMAs]...*” The BON defines an HMA at 22 TAC §225.4(8) as a task that goes “*beyond ADLs because of the higher skill level required to perform*” the task.

C. Delivery of Temporary Skilled Nursing Treatment

As notified in Provider Letter 11-37 – “*Skilled Nursing Services in an ALF*,” DADS intends to propose rules that will allow facility staff to deliver temporary skilled nursing treatment (to include HMAs) for a minor illness, injury, or emergency, when a resident’s condition is not stable and predictable, and for up to 30 days per episode. The ALF is not required to treat the acute condition for 30 days, but can if it chooses to do so. A resident of an ALF has the right to contract with a HCSSA or with an independent health professional for nursing treatment, in accordance with HSC, §247.067(c).

Anyone interested in the proposed rules may subscribe to receive free electronic notices about future rule amendments. To do so, click on the “E-mail updates” tab on the DADS home page at www.dads.state.tx.us

D. Delegation by a Registered Nurse (RN)

1. In an ALF, an RN may delegate the delivery of **temporary** skilled nursing treatment for a minor illness, injury, or emergency. **In these temporary situations**, the BON rules at 22 TAC Chapter 224, “*Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments*” would apply.
2. In an ALF, the BON rules at 22 TAC Chapter 225, “*RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions*,” apply only to situations meeting the following gatekeeping criteria at 22 TAC §225.1(a):
 - the client is in an independent living environment (*the BON considers an ALF an independent living environment*);
 - the client, if 16 or older, or client’s responsible adult is willing and able to participate in decisions about the overall management of the client’s health care; and
 - the task is for a stable, predictable condition as defined by Section 225.4 of the BON rules.

When RN delegation is being considered under Chapter 225, the RN must perform an assessment in accordance with 22 TAC §225.6 to determine if the task can be delegated or does not require delegation. If the situation does not meet the gatekeeping criteria at 22 TAC §225.1(a), the situation must not be considered for delegation in an ALF under Chapter 225.

3. If you have questions about when the BON rules allow delegation, you may contact the BON by calling (512) 305-7400 or by sending an email to webmaster@bon.texas.gov.

E. Assessment of Residents to Determine the Care Required

1. The comprehensive assessment required by TAC, Title 40, Part 1, Chapter 92, §92.41(c), relates to the initial assessment of a new resident and may continue to be completed by staff whom the ALF deems appropriate to perform the initial assessment.
2. In all cases, when a nurse is involved in the delivery of skilled nursing services, the nurse must follow the BON Standards of Nursing Practice at 22 TAC §217.11. Compliance with the BON Standards of Nursing Practice may involve a nurse performing a comprehensive nursing assessment, even when the ALF rules do not explicitly require them to do so. When delegation by an RN is being considered under Chapter 225, the RN must perform an assessment in accordance with 22 TAC §225.6.

If you have questions about this memorandum, please contact an ALF policy specialist in the Policy, Rules and Curriculum Development unit at (512) 438-3161.