

Memorandum of Understanding (MOU) Revision

Summary of Request:

Request approval of revisions to the existing MOU between the BNE and the Department of Aging and Disability Services (DADS). This document must also be approved by the Commissioner for DADS before becoming effective.

Historical Perspective

The enabling legislation for this MOU was passed during the 73rd Texas Legislature (1993). The resulting amendment to the Texas Health and Safety Code chapter 142 mandated this MOU between the BNE and the agency regulating personal assistant services (PAS) provided by a Home and Community Support Services Agency (HCSSA). At the time of the initial statute, the controlling agency was the Texas Department of Health (TDH). With the reorganization of agencies in subsequent legislative sessions, PAS services are currently under the Department of Aging and Disability Services (DADS).

The MOU permits delivery of certain personal care services to be performed without RN involvement or delegation. Providing these services, many of which are funded by Medicaid, would be cost-prohibitive were it not for the exemption granted by the MOU.

As the current MOU was last revised in 1998, board staff, in conjunction with staff of DADS, convened a MOU Task Force in compliance with §142.016 of the Health and Safety Code. A public meeting of the MOU Task Force to discuss revisions to the MOU was held on November 3, 2006.

Discussion included that the MOU may need additional revisions within the next 1-2 years based on a lawsuit involving the Health and Human Services Division [Alberto N. vs. Hawkins, <http://www.hhsc.state.tx.us/medicaid/index.html>] that was just settled in May 2005. The lawsuit mandates accessibility of services provided to Medicaid beneficiaries under the age of 21 who are eligible to participate in the Early & Periodic Screening, Diagnosis, and Treatment (EPSDT) Program. As the 80th Legislative Session (2007) will be the first session since this lawsuit settled, the mandates of the lawsuit that require statutory changes have yet to occur. Therefore, the task force recognizes there will likely be a need to re-convene to make additional revisions to the MOU once additional legislative changes are implemented.

Additional comments on the proposed MOU revision document were received from DADS 12/21/06, and are included in the attached table for review.

Pros & Cons:

Pros: The MOU has not been revised since 1998. Even though additional changes may be needed following the upcoming legislative session, adopting the current revisions will provide an accurate document in relation to current agency names and tasks permitted under the MOU.

Cons: Retaining the 1998 version of the MOU would cause confusion since not only does "TDH" no longer exist, but the programs impacted by the MOU are now regulated by DADS.

Recommendations:

Move to adopt amended revised version of the MOU between the BNE and the Department of Aging and Disability Services, with provision for BNE legal counsel to make non-substantive changes in language for clarification purposes.

MEMORANDUM OF UNDERSTANDING

**Cooperative Agreement between the
Board of Nurse Examiners for the State of Texas
& the Department of Aging and Disability Services**

SECTION A: PURPOSE

The purpose of this MOU is to define circumstances under which the provision of health-related tasks or services by a home and community support services agency (HCSSA) does not constitute the practice of professional nursing.

This Memorandum of Understanding (MOU) sets forth the mutual understanding and agreement between the Board of Nurse Examiners for the State of Texas (BNE) and the Department of Aging and Disability Services (DADS) with regard to services that may be provided by a Home and Community Support Services Agency (HCSSA) regulated by DADS under Health and Safety Code chapter 142 and its rules at 40 Texas Administrative Code (TAC), chapter 97.

The BNE and DADS recognize the desire of individuals and their families to achieve the highest possible quality of life, independence, and integration with family and society. These goals are most often achieved when the individual's health-related needs can be met in the least restrictive environment. In order to assure the individual's safety in settings to which this MOU applies, the BNE and DADS believe that the individual or the individual's responsible adult must be able and willing to maintain oversight of services performed by unlicensed assistive personnel (UAP) under Section B.

This MOU is entered into by the above named agencies in compliance with section 142.016 of the Health and Safety Code. The provision of nursing services is regulated by the Board of Nurse Examiners, whether the task is performed by a nurse, or delegated by a professional registered nurse to a UAP. In independent living environments, however, it is recognized that a registered nurse (RN) would not be present to assess, plan, implement, and evaluate the provision of care and certain health-related services.

This distinction is noted in section 142.001(22-a) of the Health and Safety Code and 40 TAC § 97.2(63), which defines personal assistance services to include personal care and health related services performed under circumstances that are defined as not constituting the practice of professional nursing by the BNE. This MOU is applicable only to a HCSSA regulated by DADS under the Health and Safety Code chapter 142.

1 **SECTION B: APPLICATION**
2

3 The BNE and DADS agree that the following services in the specific situations described do not
4 constitute the practice of professional nursing and may be performed by UAPs without RN
5 delegation or supervision for individuals who have stable and predictable conditions.
6

7 Stable and predictable conditions refer to situations where the individual's clinical and behavioral
8 status is determined to be non-fluctuating and consistent. A stable predictable condition involves
9 long term health care needs which are not recuperative in nature and do not require the regularly
10 scheduled presence of a registered nurse or licensed vocational nurse. Excluded by this definition
11 are situations where the individual's clinical and behavioral status is expected to change rapidly or
12 in need of the continuous/continual assessments and evaluation of a registered nurse or licensed
13 vocational nurse. The condition of individual's receiving hospice care in an independent living
14 environment where deterioration is predictable shall be deemed stable and predictable.
15

- 16 1. Personal care, to include feeding, preparing meals, transferring, toileting, ambulation and
17 exercise, grooming, bathing, dressing, routine care of hair and skin, and assistance with
18 medications that are normally self administered, may be provided for individuals by UAPs
19 in independent living environments.
20

21 An "independent living environment" is an individual's residence which may include a group
22 home, or foster home, or assisted living facility, as well as other settings including, but not
23 limited to school, work or church where the client participates in activities. The term does
24 **not** include settings in which nursing services are continuously provided.
25

- 26 2. Short term respite services limited to a maximum of thirty (30) consecutive days in which
27 the primary care giver acts as the individual's advocate and is being relieved of the care
28 giver role by a UAP. In this setting, the following nursing services may be provided by the
29 UAP:
30

- 31 (a) Provision of personal care as described in #1 above;
32
33 (b) Feeding and medication administration through a permanently placed feeding tube
34 provided the UAP has completed a training and competency program according to
35 40 TAC § 97.404(h);
36
37 (c) For those receiving regularly scheduled oral or topical medication normally
38 administered by the primary care giver, the UAP may administer these agents based
39 on specific instructions from the primary care giver.
40

41 (1) These tasks do not include:

- 42
43 (A) the calculation of any medication doses. Calculation of medication
44 doses does not include measuring a prescribed amount of liquid
45 medication and breaking a scored tablet for administration as
46 instructed by the primary care giver;
47
48 (B) administration of the initial dose of a medication that has not been
49 previously administered to the individual;
50
51 (C) administration of medications by any injectable route;
52

1 (D) administration of medications used for intermittent positive pressure
2 breathing or other methods involving medication inhalation
3 treatments;

4
5 (E) administration of medications by way of a tube inserted in a cavity of
6 the body other than by a permanently placed feeding tube.
7

- 8 3. The provision of (a), (b), and (c) above is limited to a 30 (thirty) day period for the
9 purpose of respite.
- 10
11 4. No other nursing functions may be provided by the UAP without the delegation and
12 supervision of an RN.
- 13
14 a. All other nursing services must be performed in accordance with the registered
15 nurse delegation rules 224 or 225.
- 16
17 b. This MOU does not apply to services provided in a non-respite situation where a RN
18 involved in care decisions has determined under Rule 225 that factors relating to the
19 client, listed in section 225.6 *RN Assessment of the Client*, are sufficient to warrant
20 RN exemption of said nursing services from delegation.
21
- 22 5. This MOU applies to the administration of medications in an assisted living facility (ALF),
23 provided this service is being performed by a HCSSA. If an individual residing in an ALF
24 requires medication administration but no HCSSA is involved, then DADS' rules at 40 TAC
25 § 92.41(j) govern this service.
26

27 SECTION C: EXAMPLES

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29 The following examples are intended to be neither all inclusive nor exhaustive of the guidance
30 expressed in this MOU.
31

32 1. A mother who provides care for her child with cerebral palsy plans to spend a long weekend
33 with her husband. A UAP is hired to provide routine care such as bathing, feeding, dressing,
34 and socialization. The child needs a morning and evening dose of Dilantin via percutaneous
35 endoscopic gastrostomy (PEG) tube. The UAP may administer the Dilantin because this is
36 a routine medication for this child provided the UAP has completed a training and
37 competency program according to 40 TAC § 97.404(h).
38

39 2. A young adult released from a burn center three days ago is being cared for by his family.
40 In addition to assistance with personal assistance services, he needs dressing changes daily
41 to his hands and forearms bilaterally, along with assistance taking pain medication as
42 needed. The individual's parents have been performing all of the above tasks, but they wish
43 to attend their niece's wedding out-of-state, and will be gone for a period of 3 consecutive
44 days.
45

46 Though the individual could direct a UAP in the performance of personal assistance services,
47 including assistance with oral pain medication as needed, the performance of dressing
48 changes to burns on the individual's hands and forearms is a nursing task and is related to
49 an acute condition (ie: acute conditions are considered to be unstable and unpredictable);
50 therefore, RN delegation under rule 224.7(2)(B) is required in order for the UAP to provide
51 the service of changing the burn dressings daily.
52

53 3. An individual with severe Parkinson's lives in his own apartment and needs assistance on
54 a daily basis with transferring, bathing, grooming, dressing, and exercise. A UAP may
55 provide these personal care services without RN delegation for this individual whose
56 condition is stable and predictable.

- 1 4. An individual with a cerebral vascular accident (CVA) 5-years ago has residual right-sided
2 paralysis of his right arm/hand and leg; his condition is now stable and predictable. The
3 individual needs ongoing assistance with meal preparation and grooming, as well as
4 reminders for daily oral medication. The UAP may provide these services without RN
5 delegation for this individual.
6
- 7 5. An individual with cerebral palsy usually has a UAP who assists with feeding, bathing,
8 grooming and transferring. The individual developed pneumonia and was hospitalized for
9 intravenous (IV) antibiotic treatment. The individual is now back home, but still requires IV
10 antibiotics via a peripherally inserted central catheter (PICC) line and Albuterol nebulizer
11 treatments every 12 hours. These tasks cannot be performed by the UAP under the
12 direction of the individual's primary care giver (individual's responsible adult) because:
13
- 14 A. IV medications and nebulizer treatments are related to the individual's acute
15 condition of pneumonia, and thus are not related to maintenance of a stable and
16 predictable condition;
17
- 18 B. IV medications (considered a nursing task) may not be performed independently by
19 the UAP under this MOU, and may also not be delegated under rule 225.12(5)(B);
20 and
21
- 22 C. Albuterol nebulizer treatments are not for routine maintenance in this instance as
23 they are related to the acute condition, so a UAP could not perform this task under
24 the MOU. A RN could determine if it was safe to delegate this task under rule
25 225.10(2).
26
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30 (Rev. 1/98; Rev. 1/07)
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32

MEMORANDUM OF UNDERSTANDING
Cooperative Agreement between
Board of Nurse Examiners and Texas Department of Health

WHEREAS, there is a growing preference for more consumer choice and control in the provision of health care service and a desire for delivery of these services in the community setting;

WHEREAS, the provision of nursing and health related services provided or delegated by registered nurses is regulated by the Board of Nurse Examiners (“BNE”);

WHEREAS, the provision of home and community support services are regulated by the Texas Department of Health (“TDH”);

WHEREAS, Acts 1993, 73rd Legislature, Chapter 800, amended Chapter 142 of the Health and Safety Code entitled Home and Community Support Services;

WHEREAS, Section 142.001 (20) of the Health and Safety Code defines personal assistance services to include health related tasks or services defined as not constituting the practice of professional nursing by the BNE through a Memorandum of Understanding with the TDH;

WHEREAS, Sec. 142.016 of the Health and Safety Code requires the BNE and the TDH to adopt a Memorandum of Understanding governing the circumstance under which the provision of health related tasks or services do not constitute the practice of professional nursing and will result in guidelines for licensed home and community support services agencies;

WHEREAS, the BNE and the TDH believe that health related services must be provided by licensed health care professionals or unlicensed persons functioning under the delegatory authority of the licensed professional unless explicitly authorized otherwise;

WHEREAS, the BNE and the TDH desire to clearly identify certain limited situations relating to the provision of specific health related tasks where a registered nurse would not be present to assess, plan, implement and evaluate the provision of care;

WHEREAS, it is essential for the health and safety of the client and the unlicensed person that the unlicensed person be appropriately qualified and competent as specified in 25 Texas Administrative Code, Sec. 115.26 relating to Standards for Personal Assistance Services;

WHEREAS, this MOU is applicable only to a home and community support services agency licensed by TDH;

NOW THEREFORE, the Board of Nurse Examiners and the Texas Department of Health agree that the following tasks in the specific situations described do not constitute the practice of professional nursing and may be performed by unlicensed persons without RN delegation or supervision for clients who have stable and predictable conditions:

1. Personal care, to include feeding, preparing meals, transferring, toileting, ambulation and exercise, grooming, bathing, dressing, routine care of hair and skin and assistance with medications that are normally self administered, may be provided for clients by qualified unlicensed persons in independent living environments. An "independent living environment" is a client's individual residence which may include a group home or foster home as well as other settings including, but not limited to school, work or church where the client participates in activities.
2. Short term respite services consist of no more than thirty (30) consecutive days in which the primary care giver acts as the client's advocate and is being relieved of the care giver role by a qualified unlicensed person.

In this setting, the following nursing services may be provided by the qualified unlicensed person:

- (a) when the task provided to the client is limited to the provision of personal care as described in Section 1, which in short-term respite services also includes feeding and medication administration through permanently placed gastrostomy tubes.
 - (b) for those clients receiving regularly scheduled oral or topical medication normally administered by the primary care giver, the qualified unlicensed person may administer these agents based on specific instructions from the primary care giver.
 - (1) These tasks do not include:
 - (A) the calculation of any medication doses. Calculation of medication doses does not include measuring a prescribed amount of liquid medication and breaking a scored tablet for administration as instructed by the primary care giver;
 - (B) administration of the initial dose of a medication that had not been previously administered to the client;
 - (C) administration of medications by any injectable route;
 - (D) administration of medications used for intermittent positive pressure breathing or other methods involving medication inhalation treatments;
 - (E) administration of medications by way of a tube inserted in a cavity of the body, other than by a permanently placed gastrostomy tube.
3. The provision of (a) and (b) above is limited to a 30 (thirty) day period for the purpose of respite. If the need for these respite services is greater than 14 (fourteen) days, then a registered nurse must make an assessment to determine that the client's condition continues to be stable and no changes in the delivery of services are required.
 4. To carry out the administration of feedings and medications through a permanently placed

gastrostomy tube, the unlicensed person must demonstrate competency based on rules approved by TDH.

5. No other nursing functions may be provided by the unlicensed person without the delegation and supervision of an RN.

The following examples are meant to be neither all inclusive nor exhaustive. They are intended to exemplify the principles expressed in this MOU.

1. A mother who provides around-the-clock care for her child with cerebral palsy plans to spend a long weekend with her husband. An unlicensed, trained provider is hired to provide routine care such as bathing, feeding, dressing, socialization. The child needs an a.m. and p.m. dose of Dilantin. The unlicensed person may administer the dose because it is a routine medication for this child and is administered orally.
2. A young adult released from a burn center three days ago is being cared for by his family. He needs sterile dressing changes three times per day and the administration of pain medication as needed. These skills were taught to the family prior to discharge from the burn unit by a registered nurse. The care givers wish to attend their daughter's wedding but must have someone to bathe, clean the wounds and redress the burns for a three-day period. An unlicensed person could not provide these services without RN delegation. This client does not have a stable, predictable condition.
3. A client with paraplegia living in his own apartment needs assistance on a daily basis with transferring, bathing, grooming, dressing and exercise. An unlicensed person may provide these personal care services without RN delegation for this client who has a stable and predictable condition.
4. A client with post-traumatic head injury lives in a group home. The client's condition is stable and predictable at this time. The client needs ongoing assistance with meal preparation and grooming. The unlicensed person may provide these services without RN delegation for this client.
5. A client with cerebral palsy usually has an unlicensed person who assists with feeding, bathing, grooming and transferring. The client developed pneumonia and was hospitalized for IV antibiotic treatment. The client has been discharged but requires continued treatment with antibiotics and respiratory treatments. These services cannot be provided by the unlicensed person.

**Attachment #1
Comparison Chart: MOU Revisions
Task Force vs. DADS Recommended Language**

Task Force Revisions	DADS Recommended Changes to Task Force Language	BNE Staff Comments
<p>MEMORANDUM OF UNDERSTANDING</p> <p style="text-align: center;">Cooperative Agreement between the Board of Nurse Examiners for the State of Texas & the Department of Aging and Disability Services</p> <p>SECTION A: PURPOSE</p> <p>The purpose of this MOU is to define circumstances under which the provision of health-related tasks or services by a HCSSA does not constitute the practice of professional nursing.</p> <p>This Memorandum of Understanding (MOU) sets forth the mutual understanding and agreement between the Board of Nurse Examiners for the State of Texas (BNE) and the Department of Aging and Disability Services (DADS) with regard to services that may be provided by a Home and Community Support Services Agency (HCSSA) regulated by DADS under Health and Safety Code Chapter 142 and its rules at 40 Texas Administrative Code (TAC), chapter 97.</p>	<p>SECTION A: PURPOSE</p> <p>The purpose of this MOU is to define circumstances under which the provision of health-related tasks or services by <u>a home and community support services agency (HCSSA)</u> does not constitute the practice of professional nursing.</p>	<p>Agree to revised language.</p>

Task Force Revisions	DADS Recommended Changes to Task Force Language	BNE Staff Comments
<p><u>The BNE and DADS recognize the desire of client's and their families to achieve the highest possible quality of life, independence, and integration with family and society. These goals are most often achieved when the client's health-related needs can be met in the least restrictive environment. In order to assure the client's safety in settings to which this MOU applies, the BNE and DADS believe that the client or his/her responsible adult must be able and willing to maintain oversight of care tasks performed by unlicensed assistive personnel [section B].</u></p>	<p>The BNE and DADS recognize the desire of clients <u>individuals</u> and their families to achieve the highest possible quality of life, independence, and integration with family and society. These goals are most often achieved when the individual's clients <u>individual's</u> health-related needs can be met in the least restrictive environment. In order to assure the individual's clients <u>individual's</u> safety in settings to which this MOU applies, the BNE and DADS believe that the client or that client's his/her <u>that client's his/her</u> responsible adult must be able and willing to maintain oversight of care tasks performed by unlicensed assistive personnel (<u>UAP</u>) (section B).</p>	<p>Agree to change references from "client" to "individual"; however, for consistency stick with the term "individual throughout the entire MOU.</p> <p>...the client <u>individual</u> or the individual's that client's his/her <u>individual's that client's his/her</u> responsible adult must be able and willing to maintain oversight of services performed by unlicensed assistive personnel (<u>UAP</u>) (section B).</p>
<p>This MOU is entered into by the above named agencies in compliance with §142.016 of the Health and Safety Code. The provision of nursing services is regulated by the Board of Nurse Examiners, whether the task is performed by a nurse, or delegated by a professional registered nurse to unlicensed assistive personnel. In independent living environments, however, it is recognized that a registered nurse would not be present to assess, plan, implement, and evaluate the provision of care and certain health-related tasks. that the following services do not constitute the practice of professional nursing in the prescribed set of circumstances.</p>	<p>This MOU is entered into by the above named agencies in compliance with section 142.016 of the Health and Safety Code. The provision of nursing services is regulated by the Board of Nurse Examiners, whether the task is performed by a nurse, or delegated by a professional registered nurse to <u>a UAP.</u> unlicensed assistive personnel. In independent living environments, however, it is recognized that a registered nurse <u>(RN)</u> would not be present to assess, plan, implement, and evaluate the provision of care and certain health-related <u>services</u>tasks.</p>	<p>Agree to revised language.</p>

Task Force Revisions	DADS Recommended Changes to Task Force Language	BNE Staff Comments
<p>This distinction is noted in section 142.001(22a) of the Health and Safety Code and 40 TAC § 97.2(63) which define personal assistance services to include personal care and health related <u>services</u> performed under circumstances that are defined as not constituting the practice of professional nursing by the BNE. This MOU is applicable only to a home and community support service agency regulated by DADS under Health and Safety Code Chapter 142.</p>	<p>This distinction is noted in section <u>142.001(22-a)</u> of the Health and Safety Code and 40 TAC <u>97.2(63)</u>, which define personal assistance services to include personal care and health related tasks <u>services</u> performed under circumstances that are defined as not constituting the practice of professional nursing by the BNE. This MOU is applicable only to a home and community support service agency <u>HCSSA</u> regulated by DADS under <u>the</u> Health and Safety Code Chapter 142.</p>	<p>Agree to revised language except correct rule notation is 40 TAC § 97.2(63) as listed.</p>

Task Force Revisions	DADS Recommended Changes to Task Force Language	BNE Staff Comments
<p>SECTION B: APPLICATION</p> <p>The Board of Nurse Examiners and the Department of Aging and Disability Services agree that the following tasks in the specific situations described do not constitute the practice of professional nursing and may be performed by unlicensed assistive persons without RN delegation or supervision for clients who have stable and predictable conditions:</p>	<p>SECTION B: APPLICATION</p> <p>The BNE Board of Nurse Examiners and the Texas Department of Health and DADS Department of Aging and Disability Services agree that the following services tasks in the specific situations described do not constitute the practice of professional nursing and may be performed by unlicensed assistive persons UAPs without RN delegation or supervision for clients individuals who have stable and predictable conditions.</p> <p><u>Stable and predictable conditions as defined in 22 TAC §225.4(11) refer to situations “where the client’s individual’s clinical and behavioral status is determined to be non-fluctuating and consistent. A stable predictable condition involves long term health care needs which are not recuperative in nature and do not require the regularly scheduled presence of a registered nurse or licensed vocational nurse. Excluded by this definition are situations where the client’s individual’s clinical and behavioral status is expected to change rapidly or in need of the continuous/continual assessments and evaluation of a registered nurse or licensed vocational nurse. The condition of clients individual’s receiving hospice care in an independent living environment where deterioration is predictable shall be deemed stable and predictable.”</u></p>	<p>Stable and predictable conditions as defined in 22 TAC §225.4(11) refer to situations “where the individual’s clinical and behavioral status is determined to be non-fluctuating and consistent.....</p> <p>-</p> <p>Rationale: BNE staff agree to the addition of the definition of stable and predictable; however, the Task Force deleted other proposed references to Rules 224 and 225 unless applicable to <i>exclusions</i> from the MOU, stating that since the MOU deals w/situations where there is no RN involvement, it is confusing to add references to the RN delegation rules, even citing them as a source. Therefore, staff agree to the addition provided the rule reference is dropped.</p> <p>Also change “client” to “Individual” (see blue and red at left)</p>

Task Force Revisions	DADS Recommended Changes to Task Force Language	BNE Staff Comments
<p>1. Personal care, to include feeding, preparing meals, transferring, toileting, ambulation and exercise, grooming, bathing, dressing, routine care of hair and skin and assistance with medications that are normally self administered, may be provided for clients by qualified unlicensed <u>assistive</u> persons (UAPs) in independent living environments. An "independent living environment" is a client's individual residence which may include a group home or foster home as well as other settings including, but not limited to school, work or church where the client participates in activities.</p>	<p>1. Personal care, to include feeding, preparing meals, transferring, toileting, ambulation and exercise, grooming, bathing, dressing, routine care of hair and skin, and assistance with medications that are normally self administered, may be provided for <u>individuals</u> by qualified unlicensed assistive persons <u>UAPs</u> in independent living environments.</p> <p>An "independent living environment" is an <u>client's individual's</u> residence which may include a group home, or foster home, <u>or assisted living facility</u> as well as other settings including, but not limited to school, work or church where the client participates in activities. <u>The term does not include settings in which nursing services are continuously provided. [22TAC §225.4(9)].</u></p> <p><i>{Rationale by DADS: Would like to include the above statement to emphasize that this does not apply to nursing facilities. Sometimes, a hospice, which is a HCSSA, may provide services to a resident in a nursing facility}.</i></p>	<p>Agree to revised language in first paragraph.</p> <p>Agree to add last sentence to second paragraph since this clarifies where the MOU is not applicable. Suggest bolding "not" to emphasize. To avoid confusion, delete rule reference.</p>

Task Force Revisions	DADS Recommended Changes to Task Force Language	BNE Staff Comments
<p>2. Short term respite services consist of no more than thirty (30) consecutive days in which the primary care giver acts as the client's advocate and is being relieved of the care giver role by an unlicensed assistive person (UAP). In this setting, the following nursing services may be provided by the UAP:</p>	<p>2. Short term respite services <u>limited to a maximum</u> consist of no more than thirty (30) consecutive days in which the primary care-giver acts as the <u>individual's client's</u> advocate and is being relieved of the care-giver role by an unlicensed assistive person <u>an qualified unlicensed assistive person</u> -UAP. In this setting, the following nursing services may be provided by the <u>qualified unlicensed person</u> -UAP:</p>	<p>Agree to revised language.</p>
<p>(a) when the task provided to the client is limited to the provision of personal care as described in Section #1 above, which in short-term respite services also includes feeding and medication administration through a permanently placed gastrostomy feeding a tubes.</p>	<p>(a) when the task provided to the client is limited to the Provision of personal care as described in #1 above which in short-term respite services also includes feeding and medication administration through a permanently placed gastrostomy feeding a tubes.</p>	<p>Agree to revised language.</p>
	<p><u>(b) Feeding and medication administration through a permanently placed gastrostomy feeding tube provided the UAP has completed a training and competency program according to 40 TAC §97.404(h);</u></p>	<p>Clarification language—deleted under (a) and (#4) below, and replaced as stand-alone statement here; agree to change, except keep revised language re: <u>feeding</u> tube vs gastrostomy tube (see change at left).</p>

Task Force Revisions	DADS Recommended Changes to Task Force Language	BNE Staff Comments
<p>(b) for those clients receiving regularly scheduled oral or topical medication normally administered by the primary care giver, the <u>UAP</u> may administer these agents based on specific instructions from the primary care giver.</p>	<p>(b-c) For those clients receiving regularly scheduled oral or topical medication normally administered by the primary care-giver, the UAP may administer these agents based on specific instructions from the primary care giver.</p>	<p>Agree to revised language.</p>
<p>(c)(1) These tasks do not include:</p> <p>(A) the calculation of any medication doses. Calculation of medication doses does not include measuring a prescribed amount of liquid medication and breaking a scored tablet for administration as instructed by the primary care giver;</p>	<p>(c)(1) These tasks do not include:</p> <p>(A) the calculation of any medication doses. Calculation of medication doses does not include measuring a prescribed amount of liquid medication and breaking a scored tablet for administration as instructed by the primary care-giver;</p>	<p>No change.</p>

Task Force Revisions	DADS Recommended Changes to Task Force Language	BNE Staff Comments
<p>(c)(1) (B) administration of the initial dose of a medication that had not been previously administered to the client;</p> <p>(C) administration of medications by any injectable route;</p>	<p>(c)(1) (B) administration of the initial dose of a medication that had not been previously administered to the <u>individual</u> client;</p> <p>(C) administration of medications by any injectable route;</p>	<p>Agree to revised language.</p>
<p>(c)(1) (D) administration of medications used for intermittent positive pressure breathing or other methods involving medication inhalation treatments;</p> <p>(E) administration of medications by way of a tube inserted in a cavity of the body, other than by a permanently placed gastrostomy tube.</p>	<p>(c)(1) (D) administration of medications used for intermittent positive pressure breathing or other methods involving medication inhalation treatments;</p> <p>(E) administration of medications by way of a tube inserted in a cavity of the body other than by a permanently placed gastrostomy tube.</p>	<p>Deleted comma; Agree to revised language except: gastrostomy feeding tube.</p>
<p>3. The provision of (a) and (b) above is limited to a 30 (thirty) day period for the purpose of respite.</p>	<p>3. The provision of (a), (b), and (<u>c b</u>) above is limited to a 30 (thirty) day period for the purpose of respite.</p>	<p>Addition necessary to include addition of new subsection (b) in this time frame limitation for respite services.</p>

Task Force Revisions	DADS Recommended Changes to Task Force Language	BNE Staff Comments
<p>4. To carry out the administration of feedings and medications through a permanently placed gastrostomy tube, the unlicensed person must demonstrate competency based on DADS Rule 40 TAC § 97.404(h).</p>	<p>4. To carry out the administration of feedings and medications through a permanently placed gastrostomy tube, the unlicensed person must demonstrate competency based on DADS Rule 40 TAC § 97.404(h).</p>	<p>Agree with deletion here; added as new (2)(b) above.</p>
<p>5. No other nursing functions may be provided by the unlicensed person without the delegation and supervision of an RN.</p> <p>a. To carry out the administration of feedings and medications through a permanently placed feeding tube, the unlicensed assistive person must demonstrate competency based upon the DADS Rule 40 TAC § 97.404(h).</p>	<p>5.4. No other nursing functions may be provided by the unlicensed person UAP without the delegation and supervision of an RN.</p> <p>a. To carry out the administration of feedings and medications through a permanently placed feeding tube, the UAP unlicensed assistive person must demonstrate complete a training and competency based upon the program according to 40 TAC § 97.404(h).</p>	<p>Agree to “UAP” however 4(a) is redundant of 2(a) language, and is confusing placed under #4; recommend delete 4(a).</p> <p>a. To carry out the administration of feedings and medications through a permanently placed feeding tube, the UAP unlicensed assistive person must demonstrate complete a training and competency based upon the program according to 40 TAC § 97.404(h).</p>

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<p>b. All other nursing tasks must be performed in accordance with the nurse delegation rules at 22 TAC 224 or 225.</p>	<p>b. All other nursing tasks must be performed in accordance with the nurse delegation rules at 22 TAC Chapters 224 or 225.</p>	<p>b.a. All other nursing tasksservices must be performed in accordance with the registered nurse delegation rules at 22 TAC Chapters 224 or 225.</p> <p>Rationale:</p> <ul style="list-style-type: none"> ● Rules 224 & 225 apply only to RNs; ● Change tasks to services for consistency; ● Refer simply to “rules” to remain consistent with principle of simplifying language to be more understandable to nurses and others not versed in legal semantics.

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<p>c. This MOU does not apply to ADL or HMA tasks in non-respite situations where a RN involved in care decisions has determined under Rule 225 that factors relating to the client listed in §225.6 RN Assessment of the Client are sufficient to warrant RN exemption of said ADL or HMA tasks from delegation.</p>	<p>c. This MOU does not apply to <u>ADLs or HMAs</u> tasks in non-respite situations where a <u>n RN</u> involved in care decisions has determined <u>under 22 TAC Rule Chapter</u> 225 that factors relating to the client listed in <u>22 TAC</u> 225.6 RN Assessment of the Client are sufficient to warrant RN exemption of said ADL or HMA tasks from delegation.</p>	<p>c.b. This MOU does not apply to <u>ADLs or HMAs services provided</u> in <u>a</u> non-respite situations where <u>a n RN</u> involved in care decisions has determined <u>under 22 TAC Rule Chapter</u> 225 that factors relating to the client listed in <u>22 TAC section</u> 225.6 RN Assessment of the Client are sufficient to warrant RN exemption of said <u>ADL or HMA tasks nursing services</u> from delegation.</p> <p>Rationale:</p> <ul style="list-style-type: none"> • ADL's and HMA's are defined in delegation rules, but not in MOU. These definitions were removed from the task force working draft as there is currently conflict between the definition of personal assistant services (PAS) and ADLs & HMAs. Suggest referencing <i>services or nursing services</i> for consistency. Services that may be exempt from delegation are clarified in Rule 225 language. • Disagree: "a" registered nurse is the correct form. No change. • Disagree w/ TAC references; as above, BNE opts to be more reader friendly to the average person/nurse, than correctly reference using technical terminology. No change.

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NA	<p><u>5. This MOU applies to the administration of medications in an assisted living facility (ALF), provided this service is being performed by a HCSSA. If an individual residing in an ALF requires medication administration but no HCSSA is involved, then DADS' rules at 40 TAC § 92.41(j) govern this service.</u></p>	<p>Agree to add language; clarifies limitations of applying MOU in ALF settings.</p>
<p>SECTION C: EXAMPLES</p> <p>The following examples are intended to be neither all inclusive nor exhaustive of the guidance expressed in this MOU.</p> <ol style="list-style-type: none"> 1. A mother who provides care for her child with cerebral palsy plans to spend a long weekend with her husband. An unlicensed <u>assistive</u> person (UAP) is hired to provide routine care such as bathing, feeding, dressing, socialization. The child needs an AM and PM dose of Dilantin via PEG tube. The UAP may administer the dose because this <u>is a</u> routine oral medication for this child. 	<p>SECTION C: EXAMPLES</p> <p>The following examples are intended to be neither all inclusive nor exhaustive of the guidance expressed in this MOU.</p> <ol style="list-style-type: none"> 1. A mother who provides care for her child with cerebral palsy plans to spend a long weekend with her husband. <u>A UAP</u> is hired to provide routine care such as bathing, feeding, dressing, socialization. The child needs a <u>morning and evening</u> dose of Dilantin via <u>percutaneous endoscopic gastrostomy</u> (PEG) tube. The UAP may administer the Dilantin because this is a routine medication for this child <u>provided the UAP has completed a training and competency program according to 40 TAC § 97.404(h).</u> 	<p>Agree to change/add revised language.</p>

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<p>2. A young adult released from a burn center three days ago is being cared for by his family. In addition to assistance with personal assistance services, he needs dressing changes daily to his hands and forearms bilaterally, along with assistance taking pain medication as needed. The client's parents have been performing all of the above tasks, but they wish to attend their niece's wedding out-of-state, and will be gone for a period of 3 consecutive days.</p> <p>Though the client could direct a UAP in the performance of personal assistance services, including assistance with oral pain medication as needed, the performance of dressing changes to burns on the client's hands and forearms is a nursing task and is related to an acute condition (ie: acute conditions are considered to be unstable and unpredictable); therefore, RN delegation [§224.7(2)(B)] is required for the UAP to provide the service of changing the burn dressings daily.</p>	<p>2. A young adult released from a burn center three days ago is being cared for by his family. In addition to assistance with personal assistance services, he needs dressing changes daily to his hands and forearms bilaterally, along with assistance taking pain medication as needed. The individual's parents have been performing all of the above tasks, but they wish to attend their niece's wedding out-of-state, and will be gone for a period of 3 consecutive days.</p> <p>Though the client could direct a UAP in the performance of personal assistance services, including assistance with oral pain medication as needed, the performance of dressing changes to burns on the individual's hands and forearms is a nursing task and is related to an acute condition (ie: acute conditions are considered to be unstable and unpredictable); therefore, RN delegation [22 TAC 224.7(2)(B)] is required in order for the UAP to provide the service of changing the burn dressings daily.</p>	<p>Agree to revised language except as below.</p> <p>...RN delegation under rule 224.7(2)(B) is required...</p> <p>Rationale: Consistency w/ board rule references in remainder of MOU (simple/readable vs. technical).</p>

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<p>3. A client with severe Parkinson's lives in his own apartment and needs assistance on a daily basis with transferring, bathing, grooming, dressing, and exercise. A UAP may provide these personal care services without RN delegation for this client whose condition is stable and predictable.</p>	<p>3. An individual with severe Parkinson's lives in his own apartment and needs assistance on a daily basis with transferring, bathing, grooming, dressing, and exercise. A UAP may provide these personal care services without RN delegation for this individual whose condition is stable and predictable.</p>	<p>Agree to revised language.</p>
<p>4. A client with a cerebral vascular accident (CVA) 5-years ago has residual right-sided paralysis of his right arm/hand and leg; his condition is now stable and predictable. The client needs ongoing assistance with meal preparation and grooming, as well as reminders for daily oral medication. The UAP may provide these services without RN delegation for this client.</p>	<p>4. An individual with a cerebral vascular accident (CVA) 5-years ago has residual right-sided paralysis of his right arm/hand and leg; his condition is now stable and predictable. The individual needs ongoing assistance with meal preparation and grooming, as well as reminders for daily oral medication. The UAP may provide these services without RN delegation for this individual.</p>	<p>Agree to revised language.</p>

Task Force Revisions	DADS Recommended Changes to Task Force Language	BNE Staff Comments
<p>5. A client with cerebral palsy usually has a UAP who assists with feeding, bathing, grooming and transferring. The client developed pneumonia and was hospitalized for IV antibiotic treatment. The client is now back home, but still requires IV antibiotics via a Peripherally Inserted Central Catheter (PICC) line and Albuterol nebulizer treatments every 12 hours. These tasks cannot be performed by the UAP under direction of the client's primary care giver (client's responsible adult) because:</p>	<p>5. <u>An individual</u> with cerebral palsy usually has a UAP who assists with feeding, bathing, grooming and transferring. The <u>individual</u> developed pneumonia and was hospitalized for <u>intravenous</u> (IV) antibiotic treatment. The <u>individual</u> is now back home, but still requires IV antibiotics via a peripherally inserted central catheter (PICC) line and Albuterol nebulizer treatments every 12 hours. These tasks cannot be performed by the UAP under the direction of the <u>individual's</u> primary care giver (<u>individual's</u> responsible adult) because:</p>	<p>Agree to revised language.</p>
<p>A. IV medications and nebulizer treatments are related to the client's acute condition of pneumonia, and thus are not related to maintenance of a stable and predictable condition;</p>	<p>A. IV medications and nebulizer treatments are related to the <u>individual's</u> acute condition of pneumonia, and thus are not related to maintenance of a stable and predictable condition;</p>	<p>Agree to revised language.</p>

Task Force Revisions	DADS Recommended Changes to Task Force Language	BNE Staff Comments
<p>B. IV medications (considered a nursing task) may not be performed independently by the UAP under this MOU, and may also not be delegated under 22TAC § 225.12(5)(B);</p>	<p>B. IV medications (considered a nursing task) may not be performed independently by the UAP under this MOU, and may also not be delegated under 22TAC 225.12(5)(B);</p>	<p>...and may also not be delegated under 22TAC § rule 225.12(5)(B);</p> <p>Rationale:</p> <p>Correct reference would be 22TAC § 225.12(5)(B); as with other BNE rule references, keep language simple.</p>
<p>C. Albuterol nebulizer treatments are not for routine maintenance in this instance as they are related to the acute condition, so a UAP could not perform this task under the MOU. A RN could determine if it was safe to delegate this task under 22TAC § 225.10(2).</p>	<p>C. Albuterol nebulizer treatments are not for routine maintenance in this instance as they are related to the acute condition, so a UAP could not perform this task under the MOU. A RN could determine if it was safe to delegate this task under 22TAC 225.10(2).</p>	<p>...delegate this task under 22TAC § rule 225.10(2).</p> <p>Rationale:</p> <p>Correct reference would be 22TAC § 225.10(2); as with other BNE rule references, keep language simple.</p>