

By: Zaffirini

S.B. No. 1857

A BILL TO BE ENTITLED

AN ACT

relating to the administration of medication for persons with intellectual and developmental disabilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 161, Human Resources Code, is amended by adding Subchapter D-1 to read as follows:

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

Sec. 161.091. DEFINITIONS. In this subchapter:

(1) "Administration of medication" means:

(A) removing a unit or dose of medication from a previously dispensed, properly labeled container;

(B) verifying the medication with the medication order;

(C) giving the proper medication in the proper dosage to the proper client at the proper time by the proper administration route; and

(D) recording the time of administration and dosage administered.

(2) "Client" means a person with an intellectual and developmental disability who is receiving services from a facility or program listed in Section 161.092.

(3) "Unlicensed person" means an individual not licensed as a health care provider who provides services at or for a

1 facility or program listed in Section 161.092, including:

2 (A) a nurse aide, orderly, assistant, attendant,
3 technician, home health aide, medication aide with a permit issued
4 by a state agency, or other individual who provides personal health
5 care-related services;

6 (B) a person who is monetarily compensated to
7 perform certain health-related tasks and functions in a
8 complementary or assistive role to a licensed nurse who provides
9 direct client care or performs common nursing functions;

10 (C) a person who performs those tasks and
11 functions as a volunteer but does not qualify as a friend providing
12 gratuitous nursing care of the sick under Section 301.004,
13 Occupations Code; or

14 (D) a person who is a professional nursing
15 student who provides care for monetary compensation and not as part
16 of a formal educational program.

17 Sec. 161.092. APPLICABILITY. This subchapter applies only
18 to administration of medication provided to certain persons with
19 intellectual and developmental disabilities who are served:

20 (1) in a small facility with not less than one and not
21 more than eight beds that is licensed or certified under Chapter
22 252, Health and Safety Code;

23 (2) in a medium facility with not less than nine and
24 not more than 13 beds that is licensed or certified under Chapter
25 252, Health and Safety Code; or

26 (3) by one of the following Section 1915(c) waiver
27 programs administered by the Department of Aging and Disability

1 Services to serve persons with intellectual and developmental
2 disabilities:

3 (A) the Home and Community-Based Services waiver
4 program; or

5 (B) the Texas Home Living waiver program.

6 Sec. 161.093. ADMINISTRATION OF MEDICATION.

7 (a) Notwithstanding other law, an unlicensed person may provide
8 administration of medication to a client without the requirement
9 that a registered nurse delegate or oversee each administration if:

10 (1) the medication is:

11 (A) an oral medication;

12 (B) a topical medication; or

13 (C) a metered dose inhaler;

14 (2) the medication is administered to the client for a
15 stable or predictable condition;

16 (3) the client has been personally assessed by a
17 registered nurse initially and in response to significant changes
18 in the client's health status, and the registered nurse has
19 determined that the client's health status permits the
20 administration of medication by an unlicensed person; and

21 (4) the unlicensed person has been:

22 (A) trained by a registered nurse or licensed
23 vocational nurse under the direction of a registered nurse
24 regarding proper administration of medication; or

25 (B) determined to be competent by a registered
26 nurse or licensed vocational nurse under the direction of a
27 registered nurse regarding proper administration of medication,

1 including through a demonstration of proper technique by the
2 unlicensed person.

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

8 Sec. 161.094. DEPARTMENT DUTIES. (a) The department shall
9 ensure that:

10 (1) administration of medication by an unlicensed
11 person under this subchapter is reviewed at least annually and
12 after any significant change in a client's condition by a
13 registered nurse or a licensed vocational nurse under the
14 supervision of a registered nurse; and

15 (2) a facility or program listed in Section 161.092
16 has policies to ensure that the determination of whether an
17 unlicensed person may provide administration of medication to a
18 client under Section 161.093 may be made only by a registered nurse.

19 (b) The department shall verify that:

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

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

26 (3) the administration of medication to each client is
27 performed in such a manner as to ensure the greatest degree of

1 independence, including the use of an adaptive or assistive aid,
2 device, or strategy as allowed under program rules.

3 (c) The department shall enforce this subchapter.

4 Sec. 161.095. LIABILITY. (a) A registered nurse
5 performing a client assessment required under Section 161.093, or a
6 registered nurse or licensed vocational nurse training an
7 unlicensed person or determining whether an unlicensed person is
8 competent to perform administration of medication under Section
9 161.093, may be held accountable or civilly liable only in relation
10 to whether the nurse properly:

11 (1) performed the assessment;

12 (2) conducted the training; and

13 (3) determined whether the unlicensed person is
14 competent to provide administration of medication to clients.

15 (b) The Texas Board of Nursing may take disciplinary action
16 against a registered nurse or licensed vocational nurse under this
17 subchapter only in relation to whether:

18 (1) the registered nurse properly performed the client
19 assessment required by Section 161.093;

20 (2) the registered nurse or licensed vocational nurse
21 properly trained the unlicensed person in the administration of
22 medication; and

23 (3) the registered nurse or licensed vocational nurse
24 properly determined whether an unlicensed person is competent to
25 provide administration of medication to clients.

26 (c) A registered nurse or licensed vocational nurse may not
27 be held accountable or civilly liable for the acts or omissions of

1 an unlicensed person performing administration of medication.

2 Sec. 161.096. CONFLICT WITH OTHER LAW. This subchapter
3 controls to the extent of a conflict with other law.

4 SECTION 2. (a) The Texas Board of Nursing and the
5 Department of Aging and Disability Services shall conduct a pilot
6 program to evaluate licensed vocational nurses providing on-call
7 services by telephone to clients, as defined by Section 161.091,
8 Human Resources Code, as added by this Act, who are under the care
9 of the licensed vocational nurses. The licensed vocational nurses
10 shall use standardized and validated protocols or decision trees in
11 performing telephone on-call services in the pilot program. The
12 department shall collect data to evaluate the efficacy of licensed
13 vocational nurses performing telephone on-call services in the
14 pilot program. The pilot program must begin not later than
15 September 1, 2011.

16 (b) The Texas Board of Nursing and the Department of Aging
17 and Disability Services, in consultation with affected
18 stakeholders, including public and private providers, registered
19 and licensed vocational nurses employed by the facilities or
20 providers of services listed in Section 161.092, Human Resources
21 Code, as added by this Act, and other persons or entities the
22 executive director of the board and the commissioner of the
23 department consider appropriate, shall:

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

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

1 changes; and

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

5 (c) Not later than December 1, 2012, the Texas Board of
6 Nursing and the Department of Aging and Disability Services shall
7 submit a report detailing the findings of the pilot program and any
8 jointly developed recommendations to the Senate Committee on Health
9 and Human Services and the House Committee on Public Health.

10 (d) This section expires September 1, 2015.

11 SECTION 3. In developing any policies, processes, or
12 training curriculum required by Subchapter D-1, Chapter 161, Human
13 Resources Code, as added by this Act, the Department of Aging and
14 Disability Services shall convene an advisory committee of affected
15 stakeholders, including public and private providers and
16 registered and licensed vocational nurses employed by the
17 facilities or providers of services listed in Section 161.092,
18 Human Resources Code, as added by this Act, and other persons or
19 entities the department considers appropriate.

20 SECTION 4. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2011.