



COMMISSIONER  
Chris Traylor

September 13, 2011

To: Home and Community-based Service Providers

Subject: Information Letter No. 11-104  
Home and Community-based Services waiver transition

The Home and Community-based Services (HCS) waiver has transitioned to meet legislative requirements in the General Appropriations Act (Article II, Special Provisions, Section 48, Senate Bill 1, 81st Legislature, Regular Session, 2009) and the Texas Administrative Code (TAC) changes implemented June 1, 2010.

Based on the changes in the Texas Administrative Code, Title 40, Part I, Chapter 9, Subchapter D, Home And Community-Based Services (HCS) Program, a formal interdisciplinary team is no longer required to plan service delivery in the HCS program. Previously, this formal interdisciplinary team was allowed to fulfill registered nurse (RN) delegation requirements of the Texas Board of Nursing (BON) that an individual have a consumer responsible adult (CRA) if the individual was unable to participate in decisions about the overall management of his/her health care and nursing tasks. In an attempt to comply with changes in 40 TAC, Chapter 9 (D), BON staff recommends that when the RN is the only person available that can determine who serves as the CRA, because circumstances dictate the client cannot make the determination, the decision may not rest solely with the RN, but must be approved by an independent third party who has the best interest of the client as their priority, i.e., assessing RN, the program provider's CEO/designee and a person employed by the provider who is responsible for service delivery oversight.

The BON requires that a "client, if 16 or older, or client responsible adult [be] willing to participate in decisions about the overall management of the client's health care" for a task to be eligible for delegation by a Registered Nurse (RN) in an independent living environment for a stable and predictable condition. This is described in the Texas Administrative Code, Title 22, Part 11, Chapter 225, §§ 225.1 (a).

A client responsible adult (CRA) is defined as "an individual, 18 or older, normally chosen by the client, who is willing and able to participate in decisions about the overall management of a client's health care and to fulfill any other responsibilities required under this 22 TAC, Chapter 225 for the care of the client. The term includes, but is not limited to parent, foster parent, family member, significant other, or legal guardian" 22 TAC §§ 225.4 (5).

The Texas Department of Aging and Disability Services (DADS) and the BON have reached an agreement allowing a provider advocate committee (PAC) to act as a CRA if:

The provider advocate committee (PAC) acts as the CRA only in situations in which the individual cannot make decisions regarding health care and does not have a single identified adult that is willing and able to participate in decisions about the overall management of the individual's healthcare (22 TAC, §§ 225.1 (a) (2)).

The PAC has determined that the task(s) meet all three of the BON's criteria under 22 TAC, §§ 225.1 (a) (1-3): the individual is in an independent living environment; the PAC is acting as the individual's (CRA); the task(s) is for a *stable and predictable condition* (as defined by 22 TAC, §§ 225.4 (11)).

The PAC has reviewed the RN's comprehensive assessment, the nursing plan for training and verification of competency of the unlicensed person(s) as well as the level of supervision and frequency of supervisory visits required (22 TAC, §§ 225.9 (a) (1), (2) (A-B), (3) (A-E), (4), (b), (c)).

The PAC may only approve the delegation of allowable task(s) by an RN to unlicensed personnel as specified in 22 TAC, §§ 225.10 (1-12). The PAC does NOT allow Health Maintenance Activities to be performed by unlicensed personnel without RN delegation (22 TAC, §§ 225.4 (8) (A-D)).

The PAC membership must consist of at least the assessing RN, CEO/designee, and a person employed by the provider who is responsible for service delivery oversight. The PAC must review the decision for delegation on at least an annual basis or when changes in the individual's condition warrants a revision to previously approved delegated task(s) (22 TAC, §§ 225.1 (c)).

The PAC has determined that the delegation of tasks is appropriate and promotes safety for the individual. The PAC must approve the decision of the RN to delegate in writing.

The attached DADS Form 1591, "Provider Advocate Committee", is required to document compliance with these requirements. This process is designed to promote the safety of the individuals and demonstrate compliance with Texas law.

If you have any questions about the content of this letter, please contact the Regulatory Services Waiver Survey and Certification RN Coordinator at (806) 791-7565.

Sincerely,

*[signature on file]*

Veronda L. Durden  
Assistant Commissioner  
Regulatory Services

*[signature on file]*

Kathy Thomas, MN, RN  
Executive Director  
Texas Board of Nursing

### Provider Advocate Committee Acting as the Client's Responsible Adult

**Requirements:**

The Provider Advocate Committee (PAC) acts as the Client's Responsible Adult (CRA) only in situations in which the individual cannot make decisions regarding health care and does not have an identified adult who is willing and able to participate in decisions about the overall management of the individual's health care. (Texas Board of Nursing (BON) Texas Administrative Code (TAC) 22, Part II, §225.1 (a) (2)).

PAC may only approve the delegation of allowable task(s) by a Registered Nurse (RN) to unlicensed personnel as specified in TAC 22, Part II, §225.10 (1-12). PAC does NOT allow Health Maintenance Activities (HMAs) to be exempt from delegation. (BON TAC 22, Part II, § 225.4 (8) (A-D)).

PAC membership must consist of at least the assessing RN, the program provider's CEO/designee and a person employed by the provider who is responsible for service delivery oversight. PAC must review the decision for delegation on at least an annual basis or when changes in the individual's condition warrant a revision to a previously approved delegated task(s). (BON TAC 22, Part II, § 225.1 (c)).

PAC met on \_\_\_\_\_ and reviewed the proposed delegation of task(s) for \_\_\_\_\_.

Date Consumer's Name

PAC has determined that the following task(s) are being delegated by \_\_\_\_\_, RN.

Name of RN

Delegated tasks:

PAC has determined that the task(s) meet all three of the BON criteria under TAC 22, Part II, §225.1(a)(1-3):

- The individual is in an independent living environment (§225.1(a)(1));
- PAC is acting as the individual's CRA (§225.1(a)(2)); and
- The task(s) is for a stable or predictable condition (as defined by §225.4(11) and §225.1(a)(3)).
  
- PAC has reviewed the RN's comprehensive assessment, the nursing plan for training and verification of competency of the unlicensed person(s) and the level of supervision and frequency of supervisory visits required. BON TAC 22, Part II, (§225.1(a)(1), (2)(A-B), (3)(A-E), (4), (b), (c)).
  
- PAC has determined that delegation of the above task(s) **is** appropriate and promotes safety for the individual. PAC approves the RN's delegation decision.

**or**

- PAC has determined that delegation of the above task(s) **is not** appropriate and **does not** meet the BON requirement for RN delegation in TAC 22, Part II, §225. PAC does not approve the RN's delegation decision.

Explanation for denying delegation and alternative plan for care:

Print Name	Signature	Title	Date