MEMORANDUM
Department of Aging and Disability Services
Regulatory Services Policy * Survey and Certification Clarification

TO: Regulatory Services
Regional Directors and State Office Managers

FROM: Veronda L. Durden
Assistant Commissioner
Regulatory Services

SUBJECT: Changes to Chapters 301 and 303, Occupations Code, Relating to Nursing Peer Review and Regulation of the Practice of Nursing, Resulting from Senate Bill 993 – S&CC 07-18

APPLIES TO: Nursing Facilities, Intermediate Care Facilities for Persons with Mental Retardation or a Related Condition, Assisted Living Facilities, Adult Day Care Facilities, and Home and Community Support Services Agencies

DATE: August 29, 2007

The purpose of this memorandum is to notify providers that Senate Bill 993, passed during the 80th legislative session, made changes to Chapters 301 and 303, Occupations Code, relating to nursing peer review and regulation of the practice of nursing. Please be advised that this memorandum does not address all changes resulting from Senate Bill 993. Review Senate Bill 993 for additional information regarding the changes identified below.

Section 301.002 was amended to add the definition of “chief nursing officer,” the registered nurse who is administratively responsible for the nursing services at a facility or agency.

Section 301.352 was amended to provide that a person may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the Texas Board of Nursing (TBN).

Section 301.401 was amended to add definitions of conduct by a nurse that is subject to reporting and "minor incident."

Section 301.402 was re-titled, “Mandatory Report by Nurse.” The section was amended to require a nurse who has reasonable cause to suspect that another nurse has engaged in conduct subject to reporting to report the nurse to either the TBN or a nursing peer review committee. A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a person who reports without malice under this section.

Section 301.4025, "Optional Report by Nurse," was added. Under this section, a nurse may report to the appropriate licensing board or accrediting body a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to certain
standards. In addition, a nurse may report to his/her employer any situation that the nurse has reasonable cause to believe exposes a patient to substantial risk of harm for the same reasons. A nurse who reports, without malice, under this section may not be suspended, terminated, or otherwise disciplined or discriminated against for making such a report.

Section 303.0015 was added. This section requires the establishment of a nursing peer review committee:

- for vocational nurses, if the person regularly employs, hires, or contracts for the services of 10 or more nurses; and
- for professional nurses, if the person regularly employs, hires, or contracts for the services of 10 or more nurses, at least five of whom are registered nurses.

Section 301.403 was amended to provide that the nursing peer review committee is not required to make a report to the TBN if the committee determines that the reported conduct was a minor incident or the nurse has already been reported to the TBN for the conduct.

Section 301.405 was amended to provide that, for persons required to establish a nursing peer review committee, when a disciplinary action is taken against a nurse because the nurse engaged in conduct subject to reporting to the TBN, a copy of the report must also be submitted to the committee. If the nursing peer review committee determines that there is reason to believe the nurse’s deficiency in care was the result of a factor beyond the nurse’s control, the conduct shall be reported to the patient safety committee or the chief nursing officer at the facility where the reported conduct occurred.

Section 301.407 was amended to allow a state agency that has reason to believe a nurse has engaged in conduct subject to reporting to report the nurse to the TBN or to a nursing peer review committee.

Section 301.457 was amended to provide that if the TBN determines there is reason to believe a nurse’s deficiency in care was the result of a factor beyond the nurse’s control, the TBN must report that determination to the patient safety committee or to the chief nursing officer at the facility where the conduct occurred.

Section 303.001 was amended to add the definition of “Patient Safety Committee”: a committee established for the purpose of addressing issues relating to patient safety, including certain medical staff and medical committees.

Subsection 303.005(i) requires that policies be adopted and implemented to inform nurses of their right to request a nursing peer review determination and the procedure for making such a request.

If you have questions regarding this memorandum, please contact a policy specialist in the Policy, Rules, and Curriculum Development Unit at (512) 438-3161.