SUBJECT: Changing how certain health care professionals prescribe drugs or devices

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, J.D. Sheffield, Zedler

0 nays

2 absent — Coleman, Laubenberg

SENATE VOTE: On final passage, March 13, 2013 — 31-0

WITNESSES: For — Gary Floyd, Texas Medical Association, Texas Pediatric Society, and Texas Academy of Family Physicians; Jean Gisler, Coalition for Nurses in Advanced Practice, Texas Nurse Practitioners, and Texas Nurses Association; Maureen Milligan, Teaching Hospitals of Texas; Todd Pickard, Texas Academy of Physician Assistants; (*Registered, but did not testify*: Amy Aaron, Tx Association of Neonatal Nurse Practitioners; Allen Beinke, Baptist Health System; Lara Boyet, Texas Nurse Practitioners; Jose E. Camacho, Texas Association of Community Health Centers; Jaime Capelo, Texas Academy of Physician Assistants; Brent Connett, Texas Conservative Coalition; Trish Conradt, Coalition for Nurses in Advanced Practice; Kevin Cooper, Texas Nurse Practitioners; Amanda Fredriksen, AARP; Melissa Gardner, Texans Care for Children; Suzanne Grantham, Psychiatric Advanced Practice Nurses of Texas; Michael Hazel, Texas Nurse Practitioners; Nelda Hunter, Harden Healthcare; Kathy Hutto, Greater Texas Chapter of National Association of Pediatric Nurse Practitioners; Kaden Norton, Texas Association of Benefit Administrators; Karen Reagan, Walgreen Company; Priscila Reid, Texas Nurse Practitioners; Kandice Sanaie, Texas Association of Business; Elizabeth Sjoberg, Texas Hospital Association; Andrew Smith, University Health System; Sandra Tallbear, Consortium of Texas Certified Nurse Midwives; Maxcine Tomlinson, Texas New Mexico Hospice Organization; David Williams, Texas Nurse Practitioner; James Willmann, Texas Nurses Association; Chris Yanas, Teaching Hospitals of Texas)

Against — (*Registered, but did not testify*: Angela Clark, Texas Clinical

Nurse Specialists; Krista Crockett, Texas Pain Society)

On — (*Registered, but did not testify*: Mari Robinson, Texas Medical Board; Scott Schalchlin, Texas Department of Aging and Disability Services; Katherine Thomas, Texas Board of Nursing; Rudy Villarreal, HHSC; Jolene Zych, Texas Board of Nursing)

BACKGROUND:

Under the Occupations Code, a physician may delegate the carrying out or signing of a prescription drug order for Schedule III, IV, V, and dangerous drugs. A physician may delegate to four advanced practice nurses or physician assistants. Advanced practice nurses and physician assistants must practice within 75 miles of the supervising physician. Physicians must supervise by being on-site at least 10 percent of operating hours and reviewing at least 10 percent of patient charts. The Texas Medical Board can waive or modify any of the requirements, but a physician may not be allowed to supervise more than six advanced practice nurses or physician assistants. There are separate procedures for prescribing at sites serving medically underserved populations.

Health and Safety Code, ch. 481 is the Texas Controlled Substances Act that establishes different categories ("schedules") of controlled substances.

DIGEST:

CSSB 406 would change how physicians delegate prescriptive authority to advanced practice registered nurses (APRNs) and physician assistants (PAs). It would allow APRNs and PAs to prescribe or order drugs and devices, including certain controlled substances, under a physician's supervision.

Definitions. CSSB 406 would define the following terms: device, health professional shortage area, hospital, medication order, nonprescription drug, physician group practice, practice serving a medically underserved population, prescribe or order a drug or device, prescription drug, and prescriptive authority agreement.

The bill would refer to an advanced practice *registered* nurse, replacing references to an advanced practice nurse. It would refer to the commissioner of the Department of State Health Services, replacing the commissioner of public health. It would amend the definition of practitioner.

Authority to delegate. A physician could delegate to an APRN or PA the prescribing or ordering of drugs and devices, including nonprescription drugs and Schedule II controlled substances. A physician could only delegate prescription authority for Schedule II drugs if the patient was in hospice, admitted to a hospital for emergency care, or admitted to a hospital for a stay intended to be longer than 24 hours. The bill would replace site-based delegation with practice-based delegation procedures.

To the extent allowed by federal law, APRNs and PAs acting under adequate physician supervision would be authorized to order and prescribe durable medical equipment and supplies under a state-run medical assistance program (e.g. Medicaid). A physician involved in the state-run pilot program that provided on-site health services to state employees would have to delegate prescriptive authority to an APRN or PA.

Prescriptive authority agreements. Physician delegation to APRNs and PAs would require a prescriptive authority agreement.

Limits. A physician could enter into agreements with up to seven APRNs or PAs. This cap would not apply to medically underserved areas or facility-based practices at hospitals, unless the physician were delegating in a freestanding clinic or center. The Texas Medical Board would have to allow a facility-based physician to delegate at more than one hospital or two long-term care facilities, if all requirements were met. The number of PAs a physician could supervise could not be less than the number of PAs to whom a physician could delegate prescription or ordering authority.

Requirements. A prescriptive authority agreement would require the parties disclose any disciplinary actions. The APRN or PA would need to hold an active license, be in good standing in the state, and not be prohibited from executing an agreement. The Texas Board of Nursing would need to authorize an APRN's ability to prescribe or order drugs and devices.

Agreements would need to meet minimum requirements and include certain information, but could contain other agreed-to provisions. Among other things, the agreements would need to describe a quality assurance and improvement plan that had procedures for chart review and periodic in-person meetings. The bill would set certain requirements for the in-person meetings and specify how often the meetings had to occur. It would also establish requirements for supervision by alternate physicians.

Although the agreements would not have to describe the exact steps for specific conditions, diseases, or symptoms, the bill would establish other technical requirements regarding contract provisions, annual review, notification of investigations, and retention of copies. The agreements should promote the ability of an APRN or PA to exercise professional judgment and would need to be liberally construed to allow these professionals to safely and effectively utilize their skills.

The Texas Medical Board could adopt additional rules, but could not impose more requirements than established by the bill.

Investigations. The Texas Medical Board, Texas Board of Nursing, and Physician Assistant Board would have to jointly develop a process to exchange license-holder information, as well as notice of investigations and final adverse disciplinary decisions related to agreements. If any of the boards received a notice of investigation, that board could open their own investigation against one of their license holders who was part of the same agreement. If the Texas Medical Board received a notice of investigation, the board (or representative) could conduct a site inspection and audit. The inspection would have to be at a reasonable time, after reasonable notice, and would need to minimize disruptions to patient care.

Board requirements. The Texas Medical Board would need to maintain online a public, searchable list of physicians, APRNs, and PAs who had entered into agreements and would have to work with the other boards to maintain a publicly available list of individuals prohibited from entering into agreements.

The Texas Board of Nursing would have to adopt rules to license a registered nurse as an APRN and establish ways to train and approve APRNs to prescribe and order drugs and devices. The board would have to create a system to issue prescription authorization numbers and renew licenses.

The bill would contain a temporary provision expiring January 1, 2015, requiring the Texas Medical Board, the Texas Board of Nursing, and the Physician Assistant Board to jointly develop responses to frequently asked questions about the agreements by January 1, 2014.

The three boards would have to jointly perform the functions and duties

related to agreements and adopt the rules necessary to implement the bill by November 1, 2013.

Provider contracts. The executive commissioner of the Health and Human Services Commission (HHSC) would need to adopt rules that require managed care organizations and entities part of a state-run medical assistance program (e.g. Medicaid, Children's Health Insurance Program or CHIP) to make APRNs and PAs available as primary care providers. The organization or entity would need to treat APRNs and PAs the same as primary care physicians for the purposes of selecting and assigning primary care providers and creating the provider directory. Managed care organizations would also need to treat APRNs and PAs the same physicians when including them as primary care providers in the provider network.

Additional changes. The bill would make additional conforming amendments. It would repeal a number of provisions, including the requirements that:

- APRNs and PAs practice within 75 miles of the supervising physician;
- physicians be on-site at least 10 percent of operating hours and review at least 10 percent of patient charts; and
- the Texas Medical Board not authorize a physician to supervise more than six APRNs or PAs.

It would also repeal separate procedures for prescribing at sites serving certain medically underserved populations. The amount of time an APRN or PA had practiced under a physician's delegated prescriptive authority would have to include any applicable time before the bill's effective date.

The bill would take effect November 1, 2013.

SUPPORTERS SAY:

CSSB 406 would help alleviate health care workforce shortages by streamlining physician delegation procedures. Currently, the requirements for delegating prescriptive authority to advanced practice nurses and physician assistants are administratively burdensome and complex. Although these are highly trained health care professionals capable of independently making medical decisions, they are required to work under onerous, site-based supervision requirements. These requirements waste time and resources.

By removing site-based restrictions, this bill would give health care providers the flexibility to determine the delegation arrangement that best suited their unique needs. This would allow physicians, APRNs, and PAs to effectively use their training and skills to increase efficiency, promote uniformity, and improve patient care.

The bill would not increase the risk that schedule II controlled substances (e.g., oxycodone, morphine) would be abused because it would only allow an APRN or PA to prescribe these medications in hospitals or hospices. Although the bill would not establish detailed prescription procedures, it would limit the prescriptive authority to settings that had very strict policies already in place.

OPPONENTS SAY:

CSSB 406 could increase the risk that certain controlled substances would be inappropriately prescribed. Schedule II controlled substances are powerful drugs that are easily abused and cause an increasing number of overdose deaths. Although the bill would only allow an APRN or PA to prescribe these medications in certain settings, expanding the number of health care professionals who could order these medications necessarily increases the risk of abuse. Moreover, the bill would not establish adequate education or oversight requirements to justify the expansion of prescriptive authority.

OTHER OPPONENTS SAY:

CSSB 406 should go further to address how APRNs are regulated. Although physician assistants are licensed by a board specific to their profession, APRNs are regulated by the Texas Board of Nursing. APRNs should be managed by a separate board.