

BILL ANALYSIS

Senate Research Center

S.B. 406
By: Nelson
Health & Human Services
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 406 improves the process by which physicians may delegate and supervise the prescribing and ordering of drugs or devices to advanced practice registered nurses (APRNs) and physician assistants (PAs).

Specifically, S.B. 406:

- removes site-based requirements, such as mileage limitations and percentage of chart reviews, and replaces those requirements with a prescriptive authority agreement;
- establishes minimum standards for prescriptive authority agreements, such as face-to-face quality assurance meetings and chart review, but gives practitioners flexibility to determine specifics of the agreement, such as where the face-to-face meetings occur and the percentage of charts that must be reviewed;
- allows hospital-based practices and practices serving medically underserved populations to remain unlimited in the number of APRNs and PAs a physician may delegate prescriptive authority to;
- increases the number of APRNs and PAs a physician may delegate prescriptive authority to from four to seven at any other practice sites;
- ensures patient safety by improving communication and coordination between the Texas Medical Board, Texas Board of Nursing, and the Texas Physician Assistant Board regarding physicians, APRNs, and PAs who have entered into prescriptive authority agreements; and
- allows physicians to delegate prescriptive authority for Schedule II controlled substances to APRNs and PAs in hospitals and hospice.

As proposed, S.B. 406 amends current law relating to the delegation and supervision of prescriptive authority by physicians to certain advanced practice registered nurses and physician assistants.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Medical Board (TMB) is modified in SECTION 3 (Section 157.0511, Occupations Code), SECTION 8 (Section 156.056, Occupations Code), and SECTION 15 (Section 301.152, Occupations Code) of this bill.

Rulemaking authority of TMB is restricted in SECTION 4 (Section 157.0512, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Physician Assistant Board (PAB) is modified in SECTION 12 (Section 204.1565, Occupations Code) of this bill.

Rulemaking authority previously granted to PAB is rescinded in SECTION 13 (Section 204.202, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Board of Health is rescinded in SECTION 20 (Section 157.052, Occupations Code) of this bill.

Rulemaking authority previously granted to TMB is rescinded in SECTION 20 (Sections 157.053, 157.0541 and 157.0542, Occupations Code) of this bill.

Rulemaking authority is expressly granted to TMB in SECTION 22 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Subchapter B, Chapter 157, Occupations Code, to read as follows:

SUBCHAPTER B. DELEGATION TO ADVANCED PRACTICE REGISTERED NURSES AND PHYSICIAN ASSISTANTS

SECTION 2. Amends Section 157.051, Occupations Code, to define "advanced practice registered nurse," rather than "advanced practice nurse;" "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;" and to delete the definition of "carrying out or signing a prescription drug order."

SECTION 3. Amends Section 157.0511 by amending Subsections (a), (b) and (b-1), and adding a new Section (b-1), Occupations Code, as follows:

(a) Provides that a physician's authority to delegate the prescribing and ordering of a drug or device, rather than a physician's authority to delegate the carrying out or signing of a prescription drug order, under this subchapter is limited to certain drugs and controlled substances.

(b) Creates an exception under Subsection (b-1). Authorizes a physician to delegate prescribing or ordering of a drug or device, rather than to delegate the carrying out or signing of a prescription drug order, for a controlled substance only for certain prescriptions.

(b-1) Authorizes a physician to delegate the prescribing or ordering of a controlled substance listed in Schedule II as established by the commissioner of state health services under Chapter 481 (Texas Controlled Substances Act), Health and Safety Code, only:

(1) in a hospital facility-based practice under Section 157.054 (Prescribing at Facility-Based Practice Sites) and in accordance with policies approved by the facility's medical staff or a committee of the facility's medical staff as provided by the facility bylaws to ensure patient safety; or

(2) as part of the plan of care, for the treatment of a person that has executed a written certification of a terminal illness, has elected to receive hospice care, and is receiving hospice treatment from a qualified hospice provider.

(b-2) Redesignates existing Subsection (b-1) as Subsection (b-2). Requires the Texas Medical Board (TMB) to adopt rules that require a physician who delegates the prescribing or ordering of a drug or device, rather than a physician who delegates the carrying out or signing of a prescription drug order under this subchapter, to register with TMB the name and license number of the physician assistant or advanced practice registered nurse to whom a delegation is made.

SECTION 4. Amends Subchapter B, Chapter 157, Occupations Code, by adding Sections 157.0512, 157.0513, and 157.0514, as follows:

Sec. 157.0512. **PRESCRIPTIVE AUTHORITY AGREEMENT.** (a) Authorizes a physician to delegate to an advanced practice registered nurse or physician assistant, acting under adequate physician supervision, the act of prescribing or ordering a drug or device as authorized through a prescriptive authority agreement between the physician and the advanced practice registered nurse or physician assistant, as applicable.

(b) Provides that a physician and an advanced practice registered nurse or physician assistant are eligible to enter into or be a party to a prescriptive authority agreement only if:

(1) the Texas Board of Nursing (BON) has approved the advanced practice registered nurse's authority to prescribe or order a drug or device as authorized in this Chapter this Subchapter;

(2) the advanced practice registered nurse or physician assistant:

(A) holds an active license to practice in this state as a registered nurse or physician assistant, as applicable, and is in good standing in this state; and

(B) is not currently prohibited by BON or PAB, as applicable, from executing a prescriptive authority agreement; and

(3) prior to executing a prescriptive authority agreement, an advanced practice registered nurse, physician assistant, and physician must disclose to the other prospective party any prior disciplinary action by TMB, BON, or PAB, as applicable.

(c) Prohibits the combined number of advanced practice registered nurses and physician assistants with whom a physician may enter into a prescriptive authority agreement, except as provided in Subsection (d), from exceeding seven advanced practice registered nurses and physician assistants or the full-time equivalent of seven advanced practice registered nurses and physician assistants.

(d) Provides that Subsection (c) does not apply to a prescriptive authority agreement if the prescriptive authority is being exercised in a practice serving a medically underserved population or a hospital facility-based practice in a hospital under Section 157.054.

(e) Requires that a prescriptive authority agreement, at a minimum:

(1) be in writing and signed and dated by the parties to the agreement;

(2) state the name, address, and all professional license numbers of the parties to the agreement;

(3) state the nature of the practice, practice locations, or practice settings;

(4) identify the types or categories of drugs or devices that may be prescribed or the types of categories of drugs or devices that may not be prescribed;

(5) provide a general plan for addressing consultation and referral;

(6) provide a plan for addressing patient emergencies;

(7) state the general process for communication and sharing of information between the physician and an advanced practice registered nurse or physician assistant to whom the physician has delegated prescriptive authority related to the care and treatment of patients;

(8) if alternate physician supervision is to be utilized, designate one or more alternate physicians who may provide appropriate supervision on a temporary basis in accordance with the requirements established by the prescriptive authority agreement and the requirements of this subchapter

and who may participate in the prescriptive authority quality assurance and improvement plan meetings required under this section; and

(9) describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that includes the following:

(A) chart review with the number of charts reviewed determined by the physician and advanced practice registered nurse or physician assistant;

(B) periodic face-to-face meetings of the advanced practice registered nurse or physician assistant with the physician at a location determined by the physician and advanced practice registered nurse or physician assistant. Requires that the meetings include sharing of information relating to patients' treatment and care, needed changes in patient care plans, and issues relating to referrals, and discussion of patient care improvement;

(C) that the periodic face-to-face meetings described in (9)(B) are required to be documented and occur:

(i) no less frequently than monthly for three years beginning on the date of execution of the agreement and no less frequently than quarterly after three years with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet; or

(ii) if during the seven-year period immediately preceding execution of the prescriptive authority agreement, the advanced practice registered nurse or physician assistant was in practice for at least five years that included the exercise of prescriptive authority with required physician supervision:

(a) no less frequently than monthly for one year beginning on the date of execution of the agreement; and

(b) no less frequently than quarterly after one year with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet.

(f) Authorizes the prescriptive authority agreement to include other provisions agreed to by the physician and advanced practice registered nurse or physician assistant.

(g) Authorizes the physician, if the parties to the prescriptive authority agreement practice in a physician group practice, to appoint one or more alternate supervising physicians designated under Subsection (e)(8) of this section, if any, to conduct and document the quality assurance meeting in accordance with the requirements of this Subchapter.

(h) Provides that the prescriptive authority agreement need not describe the exact steps that an advanced practice registered nurse or physician assistant must take with respect to each specific condition, disease, or symptom.

(i) Requires a physician, advanced practice registered nurse, or physician assistant who is a party to a prescriptive authority agreement to retain a copy of the agreement until the second anniversary of the date the agreement is terminated.

(j) Prohibits a party to a prescriptive authority agreement from waiving, voiding, or nullifying by contract any provision of this section or Section 157.0513.

(k) Requires an individual, in the event a party to a prescriptive authority agreement is notified that he or she has become the subject of an investigation by TMB, BON, or PAB, to immediately notify the other party to the prescriptive authority agreement.

(l) Requires that the prescriptive authority agreement and any amendments be reviewed at least annually, dated, and signed by the parties to the agreement, and made available to TMB, BON, or PAB within three business days of receipt of request, if any.

(m) Requires that the prescriptive authority agreement promote the exercise of professional judgment by the advanced practice registered nurse or physician assistant commensurate with the advanced practice registered nurse's or physician assistant's education and experience and the relationship between the advanced practice registered nurse or physician assistant and physician.

(n) Requires that this section be liberally construed to allow the use of prescriptive authority agreements to safely and effectively utilize the skills and services of advanced practice registered nurses and physician assistants.

(o) Prohibits TMB from adopting rules pertaining to the elements of the prescriptive authority agreement that would impose requirements in addition to those required under this section. Provides that TMB, BON, and PAB will jointly develop Frequently Asked Questions (FAQs) by January 2014.

SECTION 5. Amends Chapter 157, Occupations Code, by adding Section 157.0513, as follows:

Sec. 157.0513. PRESCRIPTIVE AUTHORITY AGREEMENT: INFORMATION. (a) Requires TMB to develop a process jointly with BON and PAB:

(1) to exchange information regarding the names, locations, and license numbers of each physician, advanced practice registered nurse, and physician assistant who has entered into a prescriptive authority agreement;

(2) by which each board is required to immediately notify the other boards when one of its licensees becomes the subject of an investigation involving the delegation and supervision of prescriptive authority, as well as the final disposition of any such investigation; and

(3) for each board to maintain and share a list of its licensees who have been subject to a final adverse disciplinary action for an act involving the delegation and supervision of prescriptive authority.

(b) Authorizes TMB, BON or PAB to use a notice received under Section (a)(2) to open an investigation against a licensee who is a party to a prescriptive authority agreement with the licensee who is under investigation by the board that provided notice under Section (a)(2).

(c) Requires TMB to maintain and make available to the public an online searchable list of physicians, advanced practice registered nurses, and physician assistants who have entered into a prescriptive authority agreement authorized

under Section 157.0512 and identify the physician with whom each advanced practice registered nurse and physician assistant has entered into an agreement.

(d) Requires TMB to collaborate with BON and PAB to maintain and make available to the public a list of physicians, advanced practice registered nurses, and physician assistants who are prohibited from entering into or practicing under a prescriptive authority agreement.

SECTION 6. Amends Chapter 157, Occupations Code, by amending Section 157.0514, as follows:

Sec. 157.0514. PRESCRIPTIVE AUTHORITY AGREEMENT: INSPECTIONS. Authorizes TMB or an authorized TMB representative, if TMB is notified under Section 157.0513(a)(2), to enter, with reasonable notice and at a reasonable time, unless the notice would jeopardize an investigation, a site where a party to a prescriptive authority agreement practices to inspect and audit any records or activities relating to the implementation and operation of the agreement. Requires TMB and the TMB's authorized representative, to the extent reasonably possible, to conduct any inspection or audit under this subsection in a manner that minimizes disruption to the delivery of patient care.

SECTION 7. Amends Section 157.054, Occupations Code, as follows:

Sec. 157.054. PRESCRIBING AT FACILITY-BASED PRACTICE SITES. (a) Authorizes one or more physicians licensed by TMB to delegate, to one or more physician assistants or advanced practice registered nurses acting under adequate physician supervision whose practice is facility-based at a hospital as defined under Section 157.051 or licensed long-term care facility, the administration or provision of a drug and the prescribing or ordering of a drug or device, rather than the carrying out or signing of a prescription drug order, if the physician meets certain criteria. Makes conforming and nonsubstantive changes.

(a-1) Provides that the limits on the number of advanced practice registered nurses or physician assistants to whom a physician may delegate under Section 157.0512 do not apply to a physician under Subsection (a)(4) (relating to one or more physicians who consent to the request of the medical director or chief of medical staff to delegate the prescribing or ordering of a drug or device) whose practice is facility-based under this section, provided that the physician is not delegating in a freestanding clinic, center, or practice of the facility.

(b) Provides that a physician's authority to delegate under Subsection (a) is limited as follows:

(1) Makes no changes to this subdivision;

(2) requires the delegation to occur in the facility in which the physician consents to delegate under Subsection (a)(4), or holds certain titles.

(3) prohibits the delegation from permitting the prescribing or ordering of a drug or device, rather than the carrying out and signing of prescription drug orders, for the care or treatment of the patients of any other physician without the prior consent of that physician; and

(4) requires the delegation in a long-term care facility to be by the medical director and is limited to the prescribing or ordering of a drug or device, rather than the carrying out and signing of prescription drug orders, to not more than seven, rather than four, advanced practice nurses or physician assistants or their full-time equivalents.

Deletes existing Subsection (5) prohibiting a facility-based physician from delegating at more than one licensed hospital or more than two long-term care facilities unless approved by TMB.

(c) Makes conforming changes.

(d) Makes no changes to this subsection.

SECTION 8. Amends Section 156.056(a) and (b), Occupations Code, as follows:

(a) Defines "practice serving a medically underserved population," rather than "site serving a medically underserved population" in this section.

(b) Requires TMB by rule to permit a license holder to complete half of any informal continuing medical education hours required under this subchapter by providing volunteer medical services at a practice, rather than a site, serving a medically underserved population other than a site that is a primary practice site of the license holder.

SECTION 9. Amends Section 157.057, Occupations Code, to authorize TMB to adopt additional methods to implement a physician's prescription or the delegation of prescriptive authority, rather than the delegation of the signing of a prescription under a physician's order, standing medical order, standing delegation order, or other order or protocol.

SECTION 10. Amends Section 157.059, Occupations Code, as follows:

Sec. 157.059. DELEGATION REGARDING CERTAIN OBSTETRICAL SERVICES.

(a) Makes no changes to this subsection.

(b) Authorizes a physician to delegate to a physician assistant offering obstetrical services and certified by TMB as specializing in obstetrics or an advanced practice registered nurse recognized by BON as a nurse midwife the act of administering or providing controlled substances to the physician's assistant's or nurse midwife's clients during intrapartum and immediate postpartum care.

(c) Makes no changes to this subsection.

(d) Adds prescriptive authority agreement to the criteria required for the delegation of authority to administer or provide controlled substances under Subsection (b).

(e) Makes no changes to this subsection.

(f) Provides that the authority of a physician to delegate under this section is limited to seven, rather than four, nurse midwives or physician assistants or their full-time equivalents.

(g)-(i) Makes no changes to these subsections.

(j) Provides that this section does not limit the authority of a physician to delegate the prescribing or ordering [of] a controlled substance under this subchapter, rather than the carrying out or signing of a prescription drug order involving a controlled substance under this subchapter.

SECTION 11. Amends Section 157.060, Occupations Code, as follows:

Sec. 157.060. PHYSICIAN LIABILITY FOR DELEGATED ACT. Provides that a physician, unless the physician has reason to believe the physician assistant or advanced practice registered nurse lacked the competency to perform an act, is not liable for an act of a physician assistant or advanced registered practice nurse solely because the physician

signed a standing medical order, a standing delegation order, or another order or protocol or entered into a prescriptive authority agreement authorizing the physician assistant or advanced practice registered nurse to administer, provide, prescribe or order a drug or device, rather than another order or protocol authorizing the physician assistance or advance practice nurse to administer, provide, carry out, or sign a prescription drug order. Makes conforming changes.

SECTION 12. Amends Sections 204.1565(a) and (b), Occupations Code, as follows:

(a) Defines "practice serving a medically underserved population," rather than "site serving a medically underserved population" in this section.

(b) Requires PAB by rule to permit a license holder to complete half of any informal continuing medical education hours required to renew a license under this chapter by providing volunteer medical services at a practice, rather than at a site, serving a medically underserved population, other than a site that is a primary practice site of the license holder.

SECTION 13. Amends Section 204.202(b), Occupations Code, as follows:

(b) Authorizes medical services provided by a physician to include:

(1)-(7) Makes no changes to these subdivisions;

(8) requesting, receiving, and signing for the receipt of pharmaceutical sample prescription medications and distributing the samples to patients in a specific practice setting in which the physician assistant is authorized to prescribe pharmaceutical medications and sign prescription drug orders as provided by Sections 157.0512 or 157.054, rather than as provided by Sections 157.052 (Prescribing at Sites Serving Certain Medically Underserved Populations), 157.053 (Prescribing at Physician Primary Practice Sites), 157.054, 157.0541 (Prescribing at Alternate Sites), or 157.0542 (Board Waiver of Delegation Requirements) or as otherwise authorized by PAB rule;

(9) prescribing or ordering a drug or device, rather than signing or completing a prescription, as provided by Subchapter B, Chapter 157; and

(10) Makes no changes to this subdivision.

SECTION 14. Amends Section 301.002(2), Occupations Code, to redefine "professional nursing."

SECTION 15. Amends Sections 301.152(a) and (b), Occupations Code, as follows:

(a) Defines "advanced practice registered nurse," rather than advanced practice nurse" in this section.

(b) Requires TMB to adopt rules to:

(1) license a registered nurse as an advanced practice registered nurse;

(2) establish:

(A) any specialized education or training, including pharmacology, that an advanced practice registered nurse must have to prescribe or order a drug or device as delegated by a physician under Section 157.0512 or 157.054, rather than any specialized education or training, including pharmacology, that a registered nurse must have to carry out a prescription drug order under Section 157.052; and

(B) a system for:

(i) approving an advanced practice registered nurse to prescribe and order a drug or device as delegated by a physician under Section 157.0512 or 157.054 upon the providing of evidence of completing the specialized education and training requirement under Subdivision (A), rather than a system for assigning an identification number to a registered nurse who provides TMB with evidence of completing the specialized education and training requirement under Subdivision (1)(A); and

(ii) issuing a prescription authorization number to advanced practice registered nurses approved under this subchapter.

(3) renew the license issued under Subdivision (1) and the approval granted under Subdivision (2)(B) concurrently with renewal of the advanced practice registered nurse's professional nursing license under Section 301.301 (License Renewal).

Deletes existing text requiring TMB to adopt rules to approve a registered nurse as an advanced practice nurse and initially approve and biennially renew an advanced practice nurse's authority to carry out or sign a prescription drug order under Chapter 157.

(c) Requires that the rules adopted under Subsection (b)(2), rather than (b)(3), at a minimum require completion of certain pharmacology and pathophysiology, rather than pathology, education and continuing education. Deletes existing text requiring that the rules adopted under Subsection (b)(3), at a minimum, provide for the issuance of a prescription authorization number to an advanced practice nurse approved under this section.

(d) Makes conforming changes.

SECTION 16. Amends Sections 551.003(34) and (45), Occupations Code, to redefine "practitioner" and "written protocol."

SECTION 17. Amends Section 671.001, Government Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Requires that the pilot program, required to be developed and implemented by the Employees Retirement System of Texas to reduce the cost of health care and increase the wellness and productivity of state employees, to provide for the following:

(1) a licensed advanced practice registered nurse, rather than advanced practice nurse, as defined by Section 301.152, Occupations Code, or a licensed physician assistant as described by Chapter 204 (Physician Assistants), Occupations Code, who is employed by the state or whose services are acquired by contract, who will be located at a state office complex;

(2) a certain licensed physician who will delegate to and supervise the advanced practice registered nurse of physician assistant pursuant to a prescriptive authority agreement under Chapter 157, Occupations Code, rather than who will perform all supervisory functions described by Section 157.052(c) (relating to the delegation of certain medical acts by a physician licensed by TMB at a site serving a medically underserved population), Occupations code; and

(3)-(4) Makes a conforming change.

SECTION 18. Amends Section 481.002(39), Health and Safety Code, to redefine "practitioner."

SECTION 19. Amends Section 483.001(12), Health and Safety Code, to redefine "practitioner."

SECTION 20. Repealers: Sections 157.052 (Prescribing at Sites Serving Certain Medically Underserved Populations), 157.053 (Prescribing at Physician Primary Practice Sites), 157.0541 (Prescribing at Alternate Sites), and 157.0542 (Board Waiver of Delegation Requirements), Occupations Code.

SECTION 21. (a) Provides that the changes in law made by this Act apply only to a delegation of prescriptive authority by a physician to an advanced practice registered nurse or physician assistant made or amended on or after January 31, 2014. Provides that a delegation of prescriptive authority made or amended before January 31, 2014, is governed by the law in effect on the date the delegation was made or amended, and the former law is continued in effect for that purpose.

(b) Requires that any calculation under this Act requiring the amount of time an advanced practice registered nurse or physician assistant has practiced under the delegated prescriptive authority of a physician pursuant to a prescriptive authority agreement include the amount of time the advanced practice registered nurse or physician assistant practiced under the delegated prescriptive authority of that physician prior to the effective date of this Act.

SECTION 22. Requires TMB to adopt the rules necessary to implement the changes in law made by this Act not later than December 31, 2013.

SECTION 23. Effective date: September 1, 2013.