

## **BILL ANALYSIS**

Senate Research Center  
83R8661 EES-F

C.S.S.B. 406  
By: Nelson  
Health & Human Services  
2/15/2013  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

C.S.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).

C.S.S.B. 406 amends current law relating to the delegation of prescriptive authority by physicians to and the supervision by physicians of 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) and SECTION 10 (Section 156.056, Occupations Code).

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Rulemaking authority previously granted to PAB is rescinded in SECTION 13 (Section 204.202, Occupations Code) of this bill.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 Nursing is modified in SECTION 16 (Section 301.152, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Board of Health is rescinded in SECTION 22 (Section 157.052, Occupations Code) of this bill.

Rulemaking authority previously granted to TMB is rescinded in SECTION 22 (Sections 157.053, 157.0541 and 157.0542, Occupations Code) of this bill.

Rulemaking authority is expressly granted to TMB, BON, and PAB in SECTION 25 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, as follows:

Sec. 157.051. DEFINITIONS. Defines, in this subchapter, "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 deletes the definition of "carrying out or signing a prescription drug order."

SECTION 3. Amends Section 157.0511, Occupations Code, as follows:

Sec. 157.0511. New heading: DELEGATION OF PRESCRIBING AND ORDERING DRUGS AND DEVICES. (a) Provides that a physician's authority to delegate the prescribing or 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: nonprescription drugs, dangerous drugs, and controlled substances to the extent provided by Subsections (b) and (b-1).

(b) Authorizes a physician, except as provided by Subsection (b-1), to delegate the prescribing or ordering of a controlled substance, rather than to delegate the carrying out or signing of a prescription drug order for a controlled substance, only if the prescription meets certain conditions.

(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 the Department 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 who 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) 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.

(c) Provides that this subchapter does not modify the authority granted by law for a licensed registered nurse or physician assistant to administer or provide a medication, including a controlled substance listed in Schedule II as established by the commissioner of the Department of State Health Services, rather than the commissioner of public health, under Chapter 481, Health and Safety Code, that is authorized by a physician under a physician's order, standing medical order, standing delegation order, or protocol.

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 parties to a prescriptive authority agreement only if:

(1) if applicable, 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 under this subchapter;

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

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

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

(3) before executing the prescriptive authority agreement, the physician and the advanced practice registered nurse or physician assistant disclose to the other prospective party to the agreement 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 by 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 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 or 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 the sharing of information between the physician and the 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 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 to be reviewed determined by the physician and advanced practice registered nurse or physician assistant; and

(B) periodic face-to-face meetings between the advanced practice registered nurse or physician assistant and the physician at a location determined by the physician and the advanced practice registered nurse or physician assistant.

(f) Requires that the periodic face-to-face meetings described by Subsection (e)(9)(B):

(1) include:

(A) the sharing of information relating to patient treatment and care, needed changes in patient care plans, and issues relating to referrals; and

(B) discussion of patient care improvement; and

(2) be documented and occur:

(A) except as provided by Paragraph (B):

(i) at least monthly until the third anniversary of the date the agreement is executed; and

(ii) at least quarterly after the third anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet; or

(B) if during the seven years preceding the date the agreement is executed the advanced practice registered nurse or physician assistant for at least five years was in a practice that included the exercise of prescriptive authority with required physician supervision:

(i) at least monthly until the first anniversary of the date the agreement is executed; and

(ii) at least quarterly after the first anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet.

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

(h) Authorizes a 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), if any, to conduct and

document the quality assurance meetings in accordance with the requirements of this subchapter.

(i) 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.

(j) 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.

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

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

(m) Requires that the prescriptive authority agreement and any amendments be reviewed at least annually, dated, and signed by the parties to the agreement. Requires that the prescriptive authority agreement and any amendments be available to TMB, BON, or PAB not later than the third business day after the date of receipt of request, if any.

(n) 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 the physician.

(o) 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.

(p) Prohibits TMB from adopting rules pertaining to the elements of a prescriptive authority agreement that would impose requirements in addition to the requirements under this section.

(q) Requires TMB, BON, and PAB to jointly develop responses to frequently asked questions relating to prescriptive authority agreements not later than January 1, 2014. Provides that this subsection expires January 1, 2015.

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

(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 a license holder of the board 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) by which each board is required to maintain and share a list of the board's license holders who have been subject to a final adverse disciplinary action for an act involving the delegation and supervision of prescriptive authority.

(b) Authorizes the board that receives notice, if TMB, BON, or PAB received a notice under Subsection (a)(2), to open an investigation against a license holder of the board who is party to a prescriptive authority agreement with the license holder who is under investigation by the board that provided notice under Subsection (a)(2).

(c) Requires TMB to maintain and make available to the public a searchable online 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, advanced practice registered nurse, or physician assistant with whom each physician, advanced practice registered nurse, and physician assistant has entered into a prescriptive authority 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.

Sec. 157.0514. PRESCRIPTIVE AUTHORITY AGREEMENT: INSPECTIONS. Authorizes TMB or an authorized TMB representative, if TMB receives a notice 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 TMB's authorized representative, to conduct, to the extent reasonably possible, any inspection or audit under this section in a manner that minimizes disruption to the delivery of patient care.

SECTION 5. Amends Section 157.054, Occupations Code, by amending Subsections (a), (b), and (c) and adding Subsections (a-1) and (b-1), as follows:

(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 or licensed long-term care facility, the administration or provision of a drug and the prescribing or ordering of a drug or device if each of the delegating physicians meet 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) 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 that the delegation occur in the facility in which the physician consents to delegate 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), or in the facility in which the physician holds certain titles.

(3) Makes a conforming change; and

(4) requires that the delegation in a long-term care facility be by the medical director and is limited to the prescribing or ordering of a drug or device to not

more than seven, rather than four, advanced practice registered nurses or physician assistants or their full-time equivalents. Makes conforming changes.

(b-1) Redesignates existing Subdivision (5) as Subsection (b-1). Prohibits a facility-based physician from delegating at more than one hospital, rather than licensed hospital, or more than two long-term care facilities under this section unless approved by TMB. Prohibits the facility-based physician from being prohibited from delegating the prescribing or ordering of drugs or devices under Section 157.0512 at other practice locations, including hospitals or long-term care facilities, provided that the delegation at those locations complies with all the requirements of Section 157.0512.

(c) Makes conforming changes.

SECTION 6. Amends Section 157.055, Occupations Code, to make conforming changes.

SECTION 7. 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 signing of a prescription under a physician's order, standing medical order, standing delegation order, or other order or protocol.

SECTION 8. Amends Sections 157.059(b), (d), (e), (f), and (j), Occupations Code, as follows:

(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, rather than an advanced practice nurse, recognized by BON as a nurse midwife the act of administering or providing controlled substances to the physician assistant's or nurse midwife's clients during intrapartum and immediate postpartum care.

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

(e) Makes a conforming change.

(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.

(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 9. Amends Section 157.060, Occupations Code, to provide 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 practice registered 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 to administer, provide, carry out, or sign a prescription drug order.

SECTION 10. Amends Section 156.056, Occupations Code, as follows:

Sec. 156.056. CERTAIN VOLUNTEER SERVICES. (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 11. Amends Subchapter C, Chapter 204, Occupations Code, by adding Section 204.1025, as follows:

Sec. 204.1025. DUTIES REGARDING PRESCRIPTIVE AUTHORITY AGREEMENTS. Requires PAB, in conjunction with TMB and BON, to perform the functions and duties relating to prescriptive authority agreements assigned to PAB in Sections 157.0512 and 157.0513.

SECTION 12. Amends Section 204.1565, Occupations Code, as follows:

Sec. 204.1565. INFORMAL CONTINUING MEDICAL EDUCATION. (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 that medical services provided by a physician assistant 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 Section 157.0512 or 157.054, rather than as provided by Section 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 Section 301.005, Occupations Code, as follows:

Sec. 301.005. REFERENCE IN OTHER LAW. (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Provides that a reference in any other law to an "advanced nurse practitioner" or "advanced practice nurse" means an advanced practice registered nurse.

SECTION 16. Amends Section 301.152, Occupations Code, as follows:

Sec. 301.152. RULES REGARDING SPECIALIZED TRAINING. (a) Defines "advanced practice registered nurse" in this section.

(b) Requires BON 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;

(B) a system for approving an advanced practice registered nurse to prescribe or order a drug or device as delegated by a physician under Section 157.0512 or 157.054 on the receipt of evidence of completing the specialized education and training requirement under Paragraph (A); and

(C) a system for issuing a prescription authorization number to an advanced practice registered nurse approved under Paragraph (B); and

(3) concurrently renew any license or approval granted to an advanced practice registered nurse under this subsection and a license renewed by the advanced practice registered nurse under Section 301.301 (License Renewal).

Deletes text of existing Subsection (b) requiring BON to adopt rules to establish any specialized education or training, including pharmacology, that a registered nurse must have to carry out a prescription drug order under Section 152.052, and a system for assigning an identification number to a registered nurse who provides BON with evidence of completing the specialized education and training requirement under Subdivision (1)(A); 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 (Authority of Physician to Delegate Certain Medical Acts).

(c) Requires that the rules adopted under Subsection (b)(2), rather than Subsection (b)(3), at a minimum, require completion of pharmacology and related pathophysiology, rather than pathology, education for initial approval; and require continuing education in clinical pharmacology and related pathophysiology in addition to any continuing education otherwise required under Section 301.303 (Continuing Competency). 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 17. Amends Subchapter D, Chapter 301, Occupations Code, by adding Section 301.168, as follows:

Sec. 301.168. DUTIES REGARDING PRESCRIPTIVE AUTHORITY AGREEMENTS. Requires BON in conjunction with TMB and PAB to perform the functions and duties relating to prescriptive authority agreements assigned to BON in Sections 157.0512 and 157.0513.

SECTION 18. Amends Sections 551.003(34) and (45), Occupations Code, to redefine "practitioner" and "written protocol."

SECTION 19. Amends Section 671.001(b), Government Code, 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, provide for the following:

(1) a licensed advanced practice registered 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 licensed physician who meets certain criteria who will delegate to and supervise the advanced practice registered nurse or physician assistant under 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 conforming changes.

SECTION 20. Amends Section 481.002(39), Health and Safety Code, to redefine "practitioner."

SECTION 21. Amends Section 483.001(12), Health and Safety Code, to redefine "practitioner."

SECTION 22. 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 23. 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 immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 24. Requires that the calculation under Chapter 157, Occupations Code, as amended by this Act, of the amount of time an advanced practice registered nurse or physician assistant has practiced under the delegated prescriptive authority of a physician under 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 before the effective date of this Act.

SECTION 25. Requires TMB, BON, and PAB to adopt the rules necessary to implement the changes in law made by this Act not later than December 31, 2013.

SECTION 26. Effective date: September 1, 2013.