

BILL ANALYSIS

C.S.H.B. 2912
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

End-Stage Renal Disease (“ESRD”) facilities are licensed healthcare facilities which provide services and treatment for persons with kidney disease, including kidney dialysis services. The facilities are licensed and regulated by the Health Facility Licensing Compliance Division of the Texas Department of State Health Services (“DSHS”).

In 2003, an ESRD facility in the greater Harris County area was sanctioned by DSHS for violating agency rules governing physician verbal or telephonic orders for patients receiving services in the facility. A Licensed Dietitian in the facility received a verbal telephone order from a physician for the administration of a nutrition-related drug to a patient, entered the order in the patient’s medical record and transmitted the order to a facility nurse, who administered the drug by injection in accordance with the physician’s orders. The acts of the physician, licensed dietitian, and registered nurse in the sanctioned ESRD were all performed in accordance with medical protocols approved by the medical staff of the facility.

DSHS found that the licensed dietitian had violated an agency rule requiring that “all verbal or telephone orders shall be received by a licensed nurse or physician assistant [and] Orders relating to a specific service . . . may be received by the licensed professional responsible for providing the service . . . and countersigned by the physician within 15 calendar days.” The agency held that, the telephone order was not received by either a licensed nurse or physician assistant, nor was it received by the licensed professional responsible for providing the service; i.e., the nurse.

Similar conduct in other DSHS regions has not resulted in similar sanctions. The DSHS rule and sanction also may conflict with provisions of the Medical Practice Act authorizing physicians to delegate medical acts to non-physicians so long as the delegation meets the following general criteria: the act must be one which a physician would commonly delegate; the delegating physician must satisfy himself regarding the competence of the non-physician to perform the act;; the physician must provide adequate supervision in the performance of the act by the non-physician; and the physician must remain responsible for the acts of the non-physician.

The purpose of this Act is to clarify the authority of Licensed Dietitians to perform the act of receiving, entering into a patient’s medical record and transmitting medical orders to other healthcare practitioners when the dietitian is acting under appropriate forms of delegated medical authority granted in compliance with the Medical Practice Act.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

The substitute authorizes a licensed dietitian/nutritionist, acting within the scope of the dietitian/nutritionist’s license and consistent with medical direction or authorization, to accept, transcribe into a patient’s medical record, or transmit verbal or electronically transmitted orders, including medication orders, from a physician to another authorized healthcare professional which relate to medical nutrition therapy or related medical protocols, in both health care facility and private practice settings, so long as those acts are performed under the proper form of medical delegation of authority under the Medical Practice Act and rules of the Board of Medical Examiners.

The substitute similarly authorizes a licensed dietitian/nutritionist, acting within the scope of the dietitian/nutritionist's license and consistent with medical direction or authorization, to order medical laboratory tests relating to the implementation or provision of medical nutrition therapy and related medical protocols, in both health care facility and private practice settings, so long as those acts are performed under the proper form of medical delegation of authority under the Medical Practice Act and rules of the Board of Medical Examiners..

EFFECTIVE DATE

Upon passage, or, if the act does not receive the necessary vote, the Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute drafts the legislation in Texas Legislative council form. The bill makes conforming and technical changes. The bill renumbers sections accordingly.