

By: Orr

H.B. No. 696

A BILL TO BE ENTITLED

AN ACT

relating to a physician's authority to delegate prescribing acts to advanced practice nurses or physician assistants.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Subchapter B, Chapter 157, Occupations Code, is amended to read as follows:

SUBCHAPTER B. PRESCRIPTIVE AUTHORITY AGREEMENTS WITH ~~[DELEGATION TO]~~ ADVANCED PRACTICE NURSES AND PHYSICIAN ASSISTANTS

SECTION 2. Section 157.051, Occupations Code, is amended by adding Subdivisions (2-c) and (4) to read as follows:

(2-c) "Medication order" has the meaning assigned by Section 551.003.

(4) "Prescription drug order" means an order from a physician or a physician's designated agent to a pharmacist for a drug or device to be dispensed.

SECTION 3. Section 157.0511, Occupations Code, is amended to read as follows:

Sec. 157.0511. PHYSICIAN AUTHORITY ~~[PRESCRIPTION DRUG ORDERS]~~. (a) In a prescriptive authority agreement executed under Section 157.052, a physician may provide an advanced practice nurse or physician assistant authority to prescribe or order a dangerous drug or controlled substance, including authority to sign a prescription drug order or medication order. ~~[A physician's authority to delegate the carrying out or signing of a prescription~~

1 ~~drug order under this subchapter is limited to:~~

2 ~~(1) dangerous drugs; and~~

3 ~~(2) controlled substances to the extent provided by~~
4 ~~Subsection (b).]~~

5 (b) ~~[A physician may delegate the carrying out or signing of~~
6 ~~a prescription drug order for a controlled substance only if:~~

7 ~~(1) the prescription is for a controlled substance~~
8 ~~listed in Schedules III, IV, or V as established by the commissioner~~
9 ~~of public health under Chapter 481, Health and Safety Code;~~

10 ~~(2) the prescription is for a period not to exceed 30~~
11 ~~days;~~

12 ~~(3) with regard to the refill of a prescription, the~~
13 ~~refill is authorized after consultation with the delegating~~
14 ~~physician and the consultation is noted in the patient's chart; and~~

15 ~~(4) with regard to a prescription for a child less~~
16 ~~than two years of age, the prescription is made after consultation~~
17 ~~with the delegating physician and the consultation is noted in the~~
18 ~~patient's chart.~~

19 ~~(b-1) The board shall adopt rules that require a physician~~
20 ~~who delegates the carrying out or signing of a prescription drug~~
21 ~~order under this subchapter to maintain records that show when and~~
22 ~~to whom a delegation is made. The board may access the physician's~~
23 ~~records under this subsection as necessary for an investigation.~~

24 ~~(e)]~~ This subchapter does not modify the authority granted
25 by law for an advanced practice ~~[a licensed registered]~~ nurse or
26 physician assistant to administer or provide a medication,
27 including a controlled substance listed in Schedule II as

1 established by the commissioner of state [~~public~~] health services
2 under Chapter 481, Health and Safety Code, that is authorized by a
3 physician under a physician's order, standing medical order,
4 standing delegation order, or protocol.

5 SECTION 4. Section 157.052, Occupations Code, is amended to
6 read as follows:

7 Sec. 157.052. PRESCRIPTIVE AUTHORITY AGREEMENT
8 [~~PRESCRIBING AT SITES SERVING CERTAIN MEDICALLY UNDERSERVED~~
9 ~~POPULATIONS~~]. (a) A physician may enter into a prescriptive
10 authority agreement with an advanced practice nurse or physician
11 assistant. The prescriptive authority agreement must:

12 (1) identify the physician's and the advanced practice
13 nurse's or physician assistant's areas of practice and any
14 specialties;

15 (2) describe any limitations on the advanced practice
16 nurse's or physician assistant's authority to prescribe or order
17 dangerous drugs, controlled substances, or medical devices in
18 accordance with Section 157.055;

19 (3) describe a prescriptive authority quality
20 evaluation and improvement plan and specify methods for documenting
21 the implementation of the plan; and

22 (4) specify a process to ensure collaboration between
23 the physician and the advanced practice nurse or physician
24 assistant.

25 (b) The physician and the advanced practice nurse or
26 physician assistant may specialize in different practice areas and
27 enter into a prescriptive authority agreement if the prescriptive

1 authority agreement demonstrates an appropriate link between the
2 specialty practice area of the physician and the specialty practice
3 area of the advanced practice nurse or physician assistant.

4 (c) The degree of collaboration between the physician and
5 the advanced practice nurse or physician assistant specified in the
6 prescriptive authority agreement may vary based on the advanced
7 practice nurse's or physician assistant's education, experience,
8 and skill in treating patients.

9 (d) Except as provided by Subsection (e), a physician may
10 enter into prescriptive authority agreements with not more than
11 eight advanced practice nurses and physician assistants or their
12 full-time equivalents, unless a reasonably prudent physician would
13 consider agreements with more than eight advanced practice nurses
14 and physician assistants to be safe based on:

15 (1) the advanced practice nurses' and physician
16 assistants' education, experience, knowledge, skills, and
17 abilities; and

18 (2) either:

19 (A) the type of patients served; or

20 (B) the extent to which access to care by a
21 medically underserved population is improved.

22 (e) The limitation on the number of prescriptive authority
23 agreements under Subsection (d) does not apply to an agreement at a
24 hospital licensed under Chapter 241, Health and Safety Code, or
25 owned or operated by this state, in which the physician and the
26 advanced practice nurses and physician assistants who are parties
27 to the agreement are authorized to practice.

1 (f) The board shall cooperate with the Texas Board of
2 Nursing in adopting rules under this subchapter to eliminate, to
3 the extent possible, conflicts between the rules adopted by each
4 board.

5 (g) This section shall be liberally construed to allow the
6 use of prescriptive authority agreements to safely and effectively
7 utilize the skills and services of advanced practice nurses and
8 physician assistants. ~~[In this section:~~

9 ~~[(1) "Health manpower shortage area" means:~~

10 ~~[(A) an urban or rural area of this state that:~~

11 ~~[(i) is not required to conform to the~~
12 ~~geographic boundaries of a political subdivision but is a rational~~
13 ~~area for the delivery of health service;~~

14 ~~[(ii) the secretary of health and human~~
15 ~~services determines has a health manpower shortage; and~~

16 ~~[(iii) is not reasonably accessible to an~~
17 ~~adequately served area;~~

18 ~~[(B) a population group that the secretary of~~
19 ~~health and human services determines has a health manpower~~
20 ~~shortage; or~~

21 ~~[(C) a public or nonprofit private medical~~
22 ~~facility or other facility that the secretary of health and human~~
23 ~~services determines has a health manpower shortage, as described by~~
24 ~~42 U.S.C. Section 254e(a)(1).~~

25 ~~[(2) "Medically underserved area" means:~~

26 ~~[(A) an area in this state with a medically~~
27 ~~underserved population;~~

1 ~~[(B) an urban or rural area designated by the~~
2 ~~secretary of health and human services as an area in this state with~~
3 ~~a shortage of personal health services or a population group~~
4 ~~designated by the secretary as having a shortage of those services,~~
5 ~~as described by 42 U.S.C. Section 300e-1(7); or~~

6 ~~[(C) an area defined as medically underserved by~~
7 ~~rules adopted by the Texas Board of Health based on:~~

8 ~~[(i) demographics specific to this state;~~

9 ~~[(ii) geographic factors that affect access~~
10 ~~to health care; and~~

11 ~~[(iii) environmental health factors.~~

12 ~~[(3) "Registered nurse" means a registered nurse~~
13 ~~recognized by the Texas Board of Nursing as having the specialized~~
14 ~~education and training required under Section 301.152.~~

15 ~~[(4) "Site serving a medically underserved~~
16 ~~population" means:~~

17 ~~[(A) a site located in a medically underserved~~
18 ~~area;~~

19 ~~[(B) a site located in a health manpower shortage~~
20 ~~area;~~

21 ~~[(C) a clinic designated as a rural health clinic~~
22 ~~under 42 U.S.C. Section 1395x(aa);~~

23 ~~[(D) a public health clinic or a family planning~~
24 ~~clinic under contract with the Texas Department of Human Services~~
25 ~~or the Texas Department of Health;~~

26 ~~[(E) a site located in an area in which the Texas~~
27 ~~Department of Health determines there is an insufficient number of~~

1 ~~physicians providing services to eligible clients of federal,~~
2 ~~state, or locally funded health care programs; or~~

3 ~~[(F) a site that the Texas Department of Health~~
4 ~~determines serves a disproportionate number of clients eligible to~~
5 ~~participate in federal, state, or locally funded health care~~
6 ~~programs.~~

7 ~~[(b) After making a determination under this section that a~~
8 ~~site serves a medically underserved population, the Texas~~
9 ~~Department of Health shall publish notice of its determination in~~
10 ~~the Texas Register and provide an opportunity for public comment in~~
11 ~~the manner provided for a proposed rule under Chapter 2001,~~
12 ~~Government Code.~~

13 ~~[(c) At a site serving a medically underserved population, a~~
14 ~~physician licensed by the board may delegate to a registered nurse~~
15 ~~or physician assistant acting under adequate physician supervision~~
16 ~~the act of administering, providing, or carrying out or signing a~~
17 ~~prescription drug order, as authorized by the physician through a~~
18 ~~physician's order, a standing medical order, a standing delegation~~
19 ~~order, or another order or protocol as defined by the board.~~

20 ~~[(d) An advertisement for a site serving a medically~~
21 ~~underserved population must include the name and business address~~
22 ~~of the supervising physician for the site.~~

23 ~~[(e) Physician supervision is adequate for the purposes of~~
24 ~~this section if a delegating physician:~~

25 ~~[(1) is responsible for the formulation or approval of~~
26 ~~the physician's order, standing medical order, standing delegation~~
27 ~~order, or other order or protocol, and periodically reviews the~~

1 ~~order and the services provided patients under the order;~~

2 ~~[(2) is on-site to provide medical direction and~~
3 ~~consultation at least once every 10 business days during which the~~
4 ~~advanced practice nurse or physician assistant is on-site providing~~
5 ~~care;~~

6 ~~[(3) receives a daily status report from the advanced~~
7 ~~practice nurse or physician assistant on any problem or~~
8 ~~complication encountered; and~~

9 ~~[(4) is available through direct telecommunication~~
10 ~~for consultation, patient referral, or assistance with a medical~~
11 ~~emergency.]~~

12 SECTION 5. Section 157.055, Occupations Code, is amended to
13 read as follows:

14 Sec. 157.055. ORDERS AND PRESCRIPTIVE AUTHORITY AGREEMENTS
15 ~~[PROTOCOLS]~~. (a) A prescriptive authority agreement ~~[protocol]~~
16 or other order shall be defined in a manner that promotes the
17 exercise of professional judgment by the advanced practice nurse
18 and physician assistant commensurate with the education and
19 experience of that person. Under this section, a prescriptive
20 authority agreement or ~~[an]~~ order ~~[or protocol]~~ used by a
21 reasonable and prudent physician exercising sound medical judgment
22 ~~[+~~

23 ~~(1)]~~ is not required to:

24 (1) describe the exact steps that an advanced practice
25 nurse or a physician assistant must take with respect to each
26 specific condition, disease, or symptom; or ~~[and]~~

27 (2) ~~[may]~~ state the specific drugs, medical devices,

1 or types or categories of drugs [~~medications~~] that may be
2 prescribed or the specific drugs, medical devices, or types or
3 categories of drugs [~~medications~~] that may not be prescribed.

4 (b) A prescriptive authority agreement is considered a
5 protocol for the purpose of fulfilling any requirement for a
6 protocol imposed under any other law.

7 SECTION 6. Section 157.056, Occupations Code, is amended to
8 read as follows:

9 Sec. 157.056. PRESCRIPTION INFORMATION. The following
10 information must be provided on each prescription subject to this
11 subchapter:

- 12 (1) the patient's name and address;
- 13 (2) the drug to be dispensed;
- 14 (3) directions to the patient regarding the taking of
15 the drug and the dosage;
- 16 (4) the intended use of the drug, if appropriate;
- 17 (5) the name, address, and telephone number of the
18 physician;
- 19 (6) the name, address, telephone number, and
20 identification number of the advanced practice [~~registered~~] nurse
21 or physician assistant [~~completing or~~] signing the prescription
22 drug order;
- 23 (7) the date; and
- 24 (8) the number of refills permitted.

25 SECTION 7. Section 157.057, Occupations Code, is amended to
26 read as follows:

27 Sec. 157.057. ADDITIONAL IMPLEMENTATION METHODS. The

1 board may adopt additional methods to implement:

2 (1) a physician's prescription; or

3 (2) the delegation of the signing of a prescription
4 under a physician's order, standing medical order, standing
5 delegation order, or other order [~~or protocol~~].

6 SECTION 8. Sections 157.059(d), (e), (f), (i), and (j),
7 Occupations Code, are amended to read as follows:

8 (d) The delegation of authority to administer or provide
9 controlled substances under Subsection (b) must be under a
10 physician's order, medical order, standing delegation order, or
11 prescriptive authority agreement [~~protocol~~] that requires adequate
12 and documented availability for access to medical care.

13 (e) The physician's orders, medical orders, standing
14 delegation orders, or prescriptive authority agreements
15 [~~protocols~~] must require the reporting of or monitoring of each
16 client's progress, including complications of pregnancy and
17 delivery and the administration and provision of controlled
18 substances by the nurse midwife or physician assistant to the
19 clients of the nurse midwife or physician assistant.

20 (f) The authority of a physician to delegate under this
21 section is limited to:

22 (1) eight [~~three~~] nurse midwives or physician
23 assistants or their full-time equivalents; and

24 (2) the designated facility at which the nurse midwife
25 or physician assistant provides care.

26 (i) This section authorizes a physician to delegate the act
27 of administering or providing a controlled substance to a nurse

1 midwife or physician assistant but does not require physician
2 delegation of:

3 (1) further acts to a nurse midwife; or

4 (2) the administration of medications by a physician
5 assistant or advanced practice [~~registered~~] nurse other than as
6 provided by this section.

7 (j) This section does not limit the authority of a physician
8 to delegate the [~~carrying out or~~] signing of a prescription drug
9 order involving a controlled substance under this subchapter.

10 SECTION 9. Section 157.060, Occupations Code, is amended to
11 read as follows:

12 Sec. 157.060. PHYSICIAN LIABILITY FOR DELEGATED ACT. Unless
13 the physician has reason to believe the physician assistant or
14 advanced practice nurse lacked the competency to perform the act, a
15 physician is not liable for an act of a physician assistant or
16 advanced practice nurse solely because the physician signed a
17 prescriptive authority agreement, a standing medical order, a
18 standing delegation order, or another order [~~or protocol~~]
19 authorizing the physician assistant or advanced practice nurse to
20 administer, provide, [~~carry out,~~] or sign a prescription drug
21 order.

22 SECTION 10. The following statutes are repealed:

23 (1) Section 157.051(2), Occupations Code;

24 (2) Section 157.053, Occupations Code;

25 (3) Section 157.054, Occupations Code;

26 (4) Section 157.0541, Occupations Code; and

27 (5) Section 157.0542, Occupations Code.

1 SECTION 11. The changes in law made by this Act apply only
2 to a delegation by a physician to an advanced practice nurse or
3 physician assistant under Subchapter B, Chapter 157, Occupations
4 Code, on or after the effective date of this Act.

5 SECTION 12. This Act takes effect September 1, 2009.