

By: Nelson, et al. S.B. No. 406
(Kolchorst, Coleman, Orr, Naishtat, Guerra, et al.)

Substitute the following for S.B. No. 406:

By: King of Taylor C.S.S.B. No. 406

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the practice of advanced practice registered nurses and
3 physician assistants and the delegation of prescriptive authority
4 by physicians to and the supervision by physicians of certain
5 advanced practice registered nurses and physician assistants.

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

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

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

11 SECTION 2. Section 157.051, Occupations Code, is amended to
12 read as follows:

13 Sec. 157.051. DEFINITIONS. In this subchapter:

14 (1) "Advanced practice registered nurse" has the
15 meaning assigned to that term by Section 301.152. The term includes
16 an advanced nurse practitioner and advanced practice nurse.

17 (2) [~~"Carrying out or signing a prescription drug~~
18 ~~order" means completing a prescription drug order presigned by the~~
19 ~~delegating physician, or the signing of a prescription by a~~
20 ~~registered nurse or physician assistant.~~

21 [~~(2-a)~~] "Controlled substance" has the meaning
22 assigned to that term by Section 481.002, Health and Safety Code.

23 (3) [~~(2-b)~~] "(3) "Dangerous drug" has the meaning assigned
24 to that term by Section 483.001, Health and Safety Code.

1 (4) "Device" has the meaning assigned by Section
2 551.003, and includes durable medical equipment.

3 (5) "Health professional shortage area" means:

4 (A) an urban or rural area of this state that:

5 (i) is not required to conform to the
6 geographic boundaries of a political subdivision but is a rational
7 area for the delivery of health services;

8 (ii) the secretary of health and human
9 services determines has a health professional shortage; and

10 (iii) is not reasonably accessible to an
11 adequately served area;

12 (B) a population group that the secretary of
13 health and human services determines has a health professional
14 shortage; or

15 (C) a public or nonprofit private medical
16 facility or other facility that the secretary of health and human
17 services determines has a health professional shortage, as
18 described by 42 U.S.C. Section 254e(a)(1).

19 (6) "Hospital" means a facility that:

20 (A) is:

21 (i) a general hospital or a special
22 hospital, as those terms are defined by Section 241.003, Health and
23 Safety Code, including a hospital maintained or operated by the
24 state; or

25 (ii) a mental hospital licensed under
26 Chapter 577, Health and Safety Code; and

27 (B) has an organized medical staff.

1 (7) "Medication order" has the meanings assigned by
2 Section 551.003 of this code and Section 481.002, Health and Safety
3 Code.

4 (8) "Nonprescription drug" has the meaning assigned by
5 Section 551.003.

6 (9) [~~3~~] "Physician assistant" means a person who
7 holds a license issued under Chapter 204.

8 (10) "Physician group practice" means an entity
9 through which two or more physicians deliver health care to the
10 public through the practice of medicine on a regular basis and that
11 is:

12 (A) owned and operated by two or more physicians;
13 or

14 (B) a freestanding clinic, center, or office of a
15 nonprofit health organization certified by the board under Section
16 162.001(b) that complies with the requirements of Chapter 162.

17 (11) "Practice serving a medically underserved
18 population" means:

19 (A) a practice in a health professional shortage
20 area;

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

23 (C) a public health clinic or a family planning
24 clinic under contract with the Health and Human Services Commission
25 or the Department of State Health Services;

26 (D) a clinic designated as a federally qualified
27 health center under 42 U.S.C. Section 1396d(1)(2)(B);

1 (E) a county, state, or federal correctional
2 facility;

3 (F) a practice:

4 (i) that either:

5 (a) is located in an area in which the
6 Department of State Health Services determines there is an
7 insufficient number of physicians providing services to eligible
8 clients of federally, state, or locally funded health care
9 programs; or

10 (b) is a practice that the Department
11 of State Health Services determines serves a disproportionate
12 number of clients eligible to participate in federally, state, or
13 locally funded health care programs; and

14 (ii) for which the Department of State
15 Health Services publishes notice of the department's determination
16 in the Texas Register and provides an opportunity for public
17 comment in the manner provided for a proposed rule under Chapter
18 2001, Government Code; or

19 (G) a practice at which a physician was
20 delegating prescriptive authority to an advanced practice
21 registered nurse or physician assistant on or before March 1, 2013,
22 based on the practice qualifying as a site serving a medically
23 underserved population.

24 (12) "Prescribe or order a drug or device" means
25 prescribing or ordering a drug or device, including the issuing of a
26 prescription drug order or a medication order.

27 (13) "Prescription drug" has the meaning assigned by

1 Section 551.003.

2 (14) "Prescriptive authority agreement" means an
3 agreement entered into by a physician and an advanced practice
4 registered nurse or physician assistant through which the physician
5 delegates to the advanced practice registered nurse or physician
6 assistant the act of prescribing or ordering a drug or device.

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

9 Sec. 157.0511. DELEGATION OF PRESCRIBING AND ORDERING DRUGS
10 AND DEVICES [~~PRESCRIPTION DRUG ORDERS~~]. (a) A physician's
11 authority to delegate the prescribing or ordering of a drug or
12 device [~~carrying out or signing of a prescription drug order~~] under
13 this subchapter is limited to:

- 14 (1) nonprescription drugs;
15 (2) dangerous drugs; and
16 (3) [~~(2)~~] controlled substances to the extent
17 provided by Subsections [~~Subsection~~] (b) and (b-1).

18 (b) Except as provided by Subsection (b-1), a [A] physician
19 may delegate the prescribing or ordering of [~~carrying out or~~
20 ~~signing of a prescription drug order for~~] a controlled substance
21 only if:

22 (1) the prescription is for a controlled substance
23 listed in Schedule III, IV, or V as established by the commissioner
24 of the Department of State Health Services [~~public health~~] under
25 Chapter 481, Health and Safety Code;

26 (2) the prescription, including a refill of the
27 prescription, is for a period not to exceed 90 days;

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

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

8 (b-1) A physician may delegate the prescribing or ordering
9 of a controlled substance listed in Schedule II as established by
10 the commissioner of the Department of State Health Services under
11 Chapter 481, Health and Safety Code, only:

12 (1) in a hospital facility-based practice under
13 Section 157.054, in accordance with policies approved by the
14 hospital's medical staff or a committee of the hospital's medical
15 staff as provided by the hospital bylaws to ensure patient safety,
16 and as part of the care provided to a patient who:

17 (A) has been admitted to the hospital for an
18 intended length of stay of 24 hours or greater; or

19 (B) is receiving services in the emergency
20 department of the hospital; or

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

25 (b-2) The board shall adopt rules that require a physician
26 who delegates the prescribing or ordering of a drug or device
27 ~~[carrying out or signing of a prescription drug order under this~~

1 ~~subchapter]~~ to register with the board the name and license number
2 of the physician assistant or advanced practice registered nurse to
3 whom a delegation is made. The board may develop and use an
4 electronic online delegation registration process for registration
5 under this subsection.

6 (c) This subchapter does not modify the authority granted by
7 law for a licensed registered nurse or physician assistant to
8 administer or provide a medication, including a controlled
9 substance listed in Schedule II as established by the commissioner
10 of the Department of State Health Services [~~public health~~] under
11 Chapter 481, Health and Safety Code, that is authorized by a
12 physician under a physician's order, standing medical order,
13 standing delegation order, or protocol.

14 SECTION 4. Subchapter B, Chapter 157, Occupations Code, is
15 amended by adding Sections 157.0512, 157.0513, and 157.0514 to read
16 as follows:

17 Sec. 157.0512. PRESCRIPTIVE AUTHORITY AGREEMENT. (a) A
18 physician may delegate to an advanced practice registered nurse or
19 physician assistant, acting under adequate physician supervision,
20 the act of prescribing or ordering a drug or device as authorized
21 through a prescriptive authority agreement between the physician
22 and the advanced practice registered nurse or physician assistant,
23 as applicable.

24 (b) A physician and an advanced practice registered nurse or
25 physician assistant are eligible to enter into or be parties to a
26 prescriptive authority agreement only if:

27 (1) if applicable, the Texas Board of Nursing has

1 approved the advanced practice registered nurse's authority to
2 prescribe or order a drug or device as authorized under this
3 subchapter;

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

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

9 (B) is not currently prohibited by the Texas
10 Board of Nursing or the Texas Physician Assistant Board, as
11 applicable, from executing a prescriptive authority agreement; and

12 (3) before executing the prescriptive authority
13 agreement, the physician and the advanced practice registered nurse
14 or physician assistant disclose to the other prospective party to
15 the agreement any prior disciplinary action by the board, the Texas
16 Board of Nursing, or the Texas Physician Assistant Board, as
17 applicable.

18 (c) Except as provided by Subsection (d), the combined
19 number of advanced practice registered nurses and physician
20 assistants with whom a physician may enter into a prescriptive
21 authority agreement may not exceed seven advanced practice
22 registered nurses and physician assistants or the full-time
23 equivalent of seven advanced practice registered nurses and
24 physician assistants.

25 (d) Subsection (c) does not apply to a prescriptive
26 authority agreement if the prescriptive authority is being
27 exercised in:

1 (1) a practice serving a medically underserved
2 population; or

3 (2) a facility-based practice in a hospital under
4 Section 157.054.

5 (e) A prescriptive authority agreement must, at a minimum:

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

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

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

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

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

17 (6) provide a plan for addressing patient emergencies;

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

23 (8) if alternate physician supervision is to be
24 utilized, designate one or more alternate physicians who may:

25 (A) provide appropriate supervision on a
26 temporary basis in accordance with the requirements established by
27 the prescriptive authority agreement and the requirements of this

1 subchapter; and

2 (B) participate in the prescriptive authority
3 quality assurance and improvement plan meetings required under this
4 section; and

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

8 (A) chart review, with the number of charts to be
9 reviewed determined by the physician and advanced practice
10 registered nurse or physician assistant; and

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

15 (f) The periodic face-to-face meetings described by
16 Subsection (e)(9)(B) must:

17 (1) include:

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

21 (B) discussion of patient care improvement; and

22 (2) be documented and occur:

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

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

26 (ii) at least quarterly after the third
27 anniversary of the date the agreement is executed, with monthly

1 meetings held between the quarterly meetings by means of a remote
2 electronic communications system, including videoconferencing
3 technology or the Internet; or

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

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

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

16 (g) The prescriptive authority agreement may include other
17 provisions agreed to by the physician and advanced practice
18 registered nurse or physician assistant.

19 (h) If the parties to the prescriptive authority agreement
20 practice in a physician group practice, the physician may appoint
21 one or more alternate supervising physicians designated under
22 Subsection (e)(8), if any, to conduct and document the quality
23 assurance meetings in accordance with the requirements of this
24 subchapter.

25 (i) The prescriptive authority agreement need not describe
26 the exact steps that an advanced practice registered nurse or
27 physician assistant must take with respect to each specific

1 condition, disease, or symptom.

2 (j) A physician, advanced practice registered nurse, or
3 physician assistant who is a party to a prescriptive authority
4 agreement must retain a copy of the agreement until the second
5 anniversary of the date the agreement is terminated.

6 (k) A party to a prescriptive authority agreement may not by
7 contract waive, void, or nullify any provision of this section or
8 Section 157.0513.

9 (l) In the event that a party to a prescriptive authority
10 agreement is notified that the individual has become the subject of
11 an investigation by the board, the Texas Board of Nursing, or the
12 Texas Physician Assistant Board, the individual shall immediately
13 notify the other party to the prescriptive authority agreement.

14 (m) The prescriptive authority agreement and any amendments
15 must be reviewed at least annually, dated, and signed by the parties
16 to the agreement. The prescriptive authority agreement and any
17 amendments must be made available to the board, the Texas Board of
18 Nursing, or the Texas Physician Assistant Board not later than the
19 third business day after the date of receipt of request, if any.

20 (n) The prescriptive authority agreement should promote the
21 exercise of professional judgment by the advanced practice
22 registered nurse or physician assistant commensurate with the
23 advanced practice registered nurse's or physician assistant's
24 education and experience and the relationship between the advanced
25 practice registered nurse or physician assistant and the physician.

26 (o) This section shall be liberally construed to allow the
27 use of prescriptive authority agreements to safely and effectively

1 utilize the skills and services of advanced practice registered
2 nurses and physician assistants.

3 (p) The board may not adopt rules pertaining to the elements
4 of a prescriptive authority agreement that would impose
5 requirements in addition to the requirements under this section.
6 The board may adopt other rules relating to physician delegation
7 under this chapter.

8 (q) The board, the Texas Board of Nursing, and the Texas
9 Physician Assistant Board shall jointly develop responses to
10 frequently asked questions relating to prescriptive authority
11 agreements not later than January 1, 2014. This subsection expires
12 January 1, 2015.

13 Sec. 157.0513. PRESCRIPTIVE AUTHORITY AGREEMENT:
14 INFORMATION. (a) The board, the Texas Board of Nursing, and the
15 Texas Physician Assistant Board shall jointly develop a process:

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

20 (2) by which each board shall immediately notify the
21 other boards when a license holder of the board becomes the subject
22 of an investigation involving the delegation and supervision of
23 prescriptive authority, as well as the final disposition of any
24 such investigation; and

25 (3) by which each board shall maintain and share a list
26 of the board's license holders who have been subject to a final
27 adverse disciplinary action for an act involving the delegation and

1 supervision of prescriptive authority.

2 (b) If the board, the Texas Board of Nursing, or the Texas
3 Physician Assistant Board receives a notice under Subsection
4 (a)(2), the board that received notice may open an investigation
5 against a license holder of the board who is a party to a
6 prescriptive authority agreement with the license holder who is
7 under investigation by the board that provided notice under
8 Subsection (a)(2).

9 (c) The board shall maintain and make available to the
10 public a searchable online list of physicians, advanced practice
11 registered nurses, and physician assistants who have entered into a
12 prescriptive authority agreement authorized under Section 157.0512
13 and identify the physician, advanced practice registered nurse, or
14 physician assistant with whom each physician, advanced practice
15 registered nurse, and physician assistant has entered into a
16 prescriptive authority agreement.

17 (d) The board shall collaborate with the Texas Board of
18 Nursing and the Texas Physician Assistant Board to maintain and
19 make available to the public a list of physicians, advanced
20 practice registered nurses, and physician assistants who are
21 prohibited from entering into or practicing under a prescriptive
22 authority agreement.

23 Sec. 157.0514. PRESCRIPTIVE AUTHORITY AGREEMENT:
24 INSPECTIONS. If the board receives a notice under Section
25 157.0513(a)(2), the board or an authorized board representative may
26 enter, with reasonable notice and at a reasonable time, unless the
27 notice would jeopardize an investigation, a site where a party to a

1 prescriptive authority agreement practices to inspect and audit any
2 records or activities relating to the implementation and operation
3 of the agreement. To the extent reasonably possible, the board and
4 the board's authorized representative shall conduct any inspection
5 or audit under this section in a manner that minimizes disruption to
6 the delivery of patient care.

7 SECTION 5. Section 157.054, Occupations Code, is amended by
8 amending Subsections (a), (b), and (c) and adding Subsections (a-1)
9 and (b-1) to read as follows:

10 (a) One or more physicians [~~A physician~~] licensed by the
11 board may delegate, to one or more physician assistants or advanced
12 practice registered nurses acting under adequate physician
13 supervision whose practice is facility-based at a [~~licensed~~]
14 hospital or licensed long-term care facility, the administration or
15 provision of a drug and the prescribing or ordering of a drug or
16 device [~~carrying out or signing of a prescription drug order~~] if
17 each of the delegating physicians [~~physician~~] is:

18 (1) the medical director or chief of medical staff of
19 the facility in which the physician assistant or advanced practice
20 registered nurse practices;

21 (2) the chair of the facility's credentialing
22 committee;

23 (3) a department chair of a facility department in
24 which the physician assistant or advanced practice registered nurse
25 practices; or

26 (4) a physician who consents to the request of the
27 medical director or chief of medical staff to delegate the

1 prescribing or ordering of a drug or device [~~carrying out or signing~~
2 ~~of a prescription drug order~~] at the facility in which the physician
3 assistant or advanced practice registered nurse practices.

4 (a-1) The limits on the number of advanced practice
5 registered nurses or physician assistants to whom a physician may
6 delegate under Section 157.0512 do not apply to a physician under
7 Subsection (a) whose practice is facility-based under this section,
8 provided that the physician is not delegating in a freestanding
9 clinic, center, or practice of the facility.

10 (b) A physician's authority to delegate under Subsection
11 (a) is limited as follows:

12 (1) the delegation must be made under a physician's
13 order, standing medical order, standing delegation order, or
14 another order or protocol developed in accordance with policies
15 approved by the facility's medical staff or a committee of the
16 facility's medical staff as provided by the facility bylaws;

17 (2) the delegation must occur in the facility in which
18 the physician is the medical director, the chief of medical staff,
19 the chair of the credentialing committee, [~~or~~] a department chair,
20 or a physician who consents to delegate under Subsection (a)(4);

21 (3) the delegation may not permit the prescribing or
22 ordering of a drug or device [~~carrying out or signing of~~
23 ~~prescription drug orders~~] for the care or treatment of the patients
24 of any other physician without the prior consent of that physician;
25 and

26 (4) delegation in a long-term care facility must be by
27 the medical director and is limited to the prescribing or ordering

1 of a drug or device [~~carrying out and signing of prescription drug~~
2 ~~orders~~] to not more than seven [~~four~~] advanced practice registered
3 nurses or physician assistants or their full-time equivalents. [~~+~~
4 ~~and~~]

5 (b-1) A facility-based [~~(5) a~~] physician may not delegate at
6 more than one [~~licensed~~] hospital or more than two long-term care
7 facilities under this section unless approved by the board. The
8 facility-based physician may not be prohibited from delegating the
9 prescribing or ordering of drugs or devices under Section 157.0512
10 at other practice locations, including hospitals or long-term care
11 facilities, provided that the delegation at those locations
12 complies with all the requirements of Section 157.0512.

13 (c) Physician supervision of the prescribing or ordering of
14 a drug or device [~~carrying out and signing of prescription drug~~
15 ~~orders~~] must conform to what a reasonable, prudent physician would
16 find consistent with sound medical judgment but may vary with the
17 education and experience of the particular advanced practice
18 registered nurse or physician assistant. A physician shall provide
19 continuous supervision, but the constant physical presence of the
20 physician is not required.

21 SECTION 6. Section 157.055, Occupations Code, is amended to
22 read as follows:

23 Sec. 157.055. ORDERS AND PROTOCOLS. A protocol or other
24 order shall be defined in a manner that promotes the exercise of
25 professional judgment by the advanced practice registered nurse and
26 physician assistant commensurate with the education and experience
27 of that person. Under this section, an order or protocol used by a

1 reasonable and prudent physician exercising sound medical
2 judgment:

3 (1) is not required to describe the exact steps that an
4 advanced practice registered nurse or a physician assistant must
5 take with respect to each specific condition, disease, or symptom;
6 and

7 (2) may state the types or categories of medications
8 that may be prescribed or the types or categories of medications
9 that may not be prescribed.

10 SECTION 7. Section 157.057, Occupations Code, is amended to
11 read as follows:

12 Sec. 157.057. ADDITIONAL IMPLEMENTATION METHODS. The board
13 may adopt additional methods to implement:

14 (1) a physician's prescription; or

15 (2) the delegation of prescriptive authority [~~the~~
16 ~~signing of a prescription under a physician's order, standing~~
17 ~~medical order, standing delegation order, or other order or~~
18 ~~protocol~~].

19 SECTION 8. Sections 157.059(b), (d), (e), (f), and (j),
20 Occupations Code, are amended to read as follows:

21 (b) A physician may delegate to a physician assistant
22 offering obstetrical services and certified by the board as
23 specializing in obstetrics or an advanced practice registered nurse
24 recognized by the Texas Board of Nursing as a nurse midwife the act
25 of administering or providing controlled substances to the
26 physician assistant's or nurse midwife's clients during intrapartum
27 and immediate postpartum care.

1 (d) The delegation of authority to administer or provide
2 controlled substances under Subsection (b) must be under a
3 physician's order, medical order, standing delegation order,
4 prescriptive authority agreement, or protocol that requires
5 adequate and documented availability for access to medical care.

6 (e) The physician's orders, medical orders, standing
7 delegation orders, prescriptive authority agreements, or protocols
8 must require the reporting of or monitoring of each client's
9 progress, including complications of pregnancy and delivery and the
10 administration and provision of controlled substances by the nurse
11 midwife or physician assistant to the clients of the nurse midwife
12 or physician assistant.

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

15 (1) seven [~~four~~] nurse midwives or physician
16 assistants or their full-time equivalents; and

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

19 (j) This section does not limit the authority of a physician
20 to delegate the prescribing or ordering of [~~carrying out or signing~~
21 ~~of a prescription drug order involving~~] a controlled substance
22 under this subchapter.

23 SECTION 9. Section 157.060, Occupations Code, is amended to
24 read as follows:

25 Sec. 157.060. PHYSICIAN LIABILITY FOR DELEGATED ACT.
26 Unless the physician has reason to believe the physician assistant
27 or advanced practice registered nurse lacked the competency to

1 perform the act, a physician is not liable for an act of a physician
2 assistant or advanced practice registered nurse solely because the
3 physician signed a standing medical order, a standing delegation
4 order, or another order or protocol, or entered into a prescriptive
5 authority agreement, authorizing the physician assistant or
6 advanced practice registered nurse to administer, provide,
7 prescribe, or order a drug or device [~~carry out, or sign a~~
8 ~~prescription drug order~~].

9 SECTION 10. Section 156.056, Occupations Code, is amended
10 to read as follows:

11 Sec. 156.056. CERTAIN VOLUNTEER SERVICES. (a) In this
12 section, "practice [~~site~~] serving a medically underserved
13 population" has the meaning assigned by Section 157.051 [~~157.052~~].

14 (b) The board by rule shall permit a license holder to
15 complete half of any informal continuing medical education hours
16 required under this subchapter by providing volunteer medical
17 services at a practice [~~site~~] serving a medically underserved
18 population other than a site that is a primary practice site of the
19 license holder.

20 SECTION 11. Subchapter C, Chapter 204, Occupations Code, is
21 amended by adding Section 204.1025 to read as follows:

22 Sec. 204.1025. DUTIES REGARDING PRESCRIPTIVE AUTHORITY
23 AGREEMENTS. The physician assistant board shall in conjunction
24 with the Texas Medical Board and the Texas Board of Nursing perform
25 the functions and duties relating to prescriptive authority
26 agreements assigned to the physician assistant board in Sections
27 157.0512 and 157.0513.

1 SECTION 12. Section 204.1565, Occupations Code, is amended
2 to read as follows:

3 Sec. 204.1565. INFORMAL CONTINUING MEDICAL EDUCATION. (a)
4 In this section, "practice [site] serving a medically underserved
5 population" has the meaning assigned by Section 157.051 [~~157.052~~].

6 (b) The physician assistant board by rule shall permit a
7 license holder to complete half of any informal continuing medical
8 education hours required to renew a license under this chapter by
9 providing volunteer medical services at a practice [site] serving a
10 medically underserved population, other than a site that is a
11 primary practice site of the license holder.

12 SECTION 13. Section 204.202(b), Occupations Code, is
13 amended to read as follows:

14 (b) Medical services provided by a physician assistant may
15 include:

16 (1) obtaining patient histories and performing
17 physical examinations;

18 (2) ordering or performing diagnostic and therapeutic
19 procedures;

20 (3) formulating a working diagnosis;

21 (4) developing and implementing a treatment plan;

22 (5) monitoring the effectiveness of therapeutic
23 interventions;

24 (6) assisting at surgery;

25 (7) offering counseling and education to meet patient
26 needs;

27 (8) requesting, receiving, and signing for the receipt

1 of pharmaceutical sample prescription medications and distributing
2 the samples to patients in a specific practice setting in which the
3 physician assistant is authorized to prescribe pharmaceutical
4 medications and sign prescription drug orders as provided by
5 Section 157.0512 or [~~157.052, 157.053,~~] 157.054[~~, 157.0541, or~~
6 ~~157.0542~~ or as otherwise authorized by physician assistant board
7 rule];

8 (9) prescribing or ordering a drug or device [~~signing~~
9 ~~or completing a prescription~~] as provided by Subchapter B, Chapter
10 157; and

11 (10) making appropriate referrals.

12 SECTION 14. Section 204.204, Occupations Code, is amended
13 by adding Subsection (c) to read as follows:

14 (c) The number of physician assistants a physician may
15 supervise in a practice setting may not be less than the number of
16 physician assistants to whom a physician may delegate the authority
17 to prescribe or order a drug or device in that practice setting
18 under Subchapter B, Chapter 157.

19 SECTION 15. Section 301.002(2), Occupations Code, is
20 amended to read as follows:

21 (2) "Professional nursing" means the performance of an
22 act that requires substantial specialized judgment and skill, the
23 proper performance of which is based on knowledge and application
24 of the principles of biological, physical, and social science as
25 acquired by a completed course in an approved school of
26 professional nursing. The term does not include acts of medical
27 diagnosis or the prescription of therapeutic or corrective

1 measures. Professional nursing involves:

2 (A) the observation, assessment, intervention,
3 evaluation, rehabilitation, care and counsel, or health teachings
4 of a person who is ill, injured, infirm, or experiencing a change in
5 normal health processes;

6 (B) the maintenance of health or prevention of
7 illness;

8 (C) the administration of a medication or
9 treatment as ordered by a physician, podiatrist, or dentist;

10 (D) the supervision or teaching of nursing;

11 (E) the administration, supervision, and
12 evaluation of nursing practices, policies, and procedures;

13 (F) the requesting, receiving, signing for, and
14 distribution of prescription drug samples to patients at practices
15 at [sites in] which an advanced practice [a] registered nurse is
16 authorized to sign prescription drug orders as provided by
17 Subchapter B, Chapter 157;

18 (G) the performance of an act delegated by a
19 physician under Section 157.0512 [~~157.052, 157.053~~], 157.054,
20 [~~157.0541, 157.0542,~~] 157.058, or 157.059; and

21 (H) the development of the nursing care plan.

22 SECTION 16. Section 301.005, Occupations Code, is amended
23 to read as follows:

24 Sec. 301.005. REFERENCE IN OTHER LAW. (a) A reference in
25 any other law to the former Board of Nurse Examiners means the Texas
26 Board of Nursing.

27 (b) A reference in any other law to an "advanced nurse

1 practitioner" or "advanced practice nurse" means an advanced
2 practice registered nurse.

3 SECTION 17. Section 301.152, Occupations Code, is amended
4 to read as follows:

5 Sec. 301.152. RULES REGARDING SPECIALIZED TRAINING. (a)
6 In this section, "advanced practice registered nurse" means a
7 registered nurse licensed [~~approved~~] by the board to practice as an
8 advanced practice registered nurse on the basis of completion of an
9 advanced educational program. The term includes a nurse
10 practitioner, nurse midwife, nurse anesthetist, and clinical nurse
11 specialist. The term is synonymous with "advanced nurse
12 practitioner" and "advanced practice nurse."

13 (b) The board shall adopt rules to:

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

16 (2) establish:

17 (A) any specialized education or training,
18 including pharmacology, that an advanced practice [~~a~~] registered
19 nurse must have to prescribe or order a drug or device as delegated
20 by a physician [~~carry out a prescription drug order~~] under Section
21 157.0512 or 157.054 [~~157.052~~]; [~~and~~]

22 (B) a system for approving an advanced practice
23 registered nurse to prescribe or order a drug or device as delegated
24 by a physician under Section 157.0512 or 157.054 on the receipt of
25 [~~assigning an identification number to a registered nurse who~~
26 ~~provides the board with~~] evidence of completing the specialized
27 education and training requirement under Paragraph (A)

1 ~~[Subdivision (1)(A)]~~; and

2 (C) a system for issuing a prescription
3 authorization number to an advanced practice registered nurse
4 approved under Paragraph (B) [~~(2) approve a registered nurse as an~~
5 ~~advanced practice nurse~~]; and

6 (3) concurrently [~~initially approve and biennially~~]
7 renew any license or approval granted to an advanced practice
8 registered nurse under this subsection and a license renewed by the
9 advanced practice registered nurse under Section 301.301 [~~an~~
10 ~~advanced practice nurse's authority to carry out or sign a~~
11 ~~prescription drug order under Chapter 157]~~.

12 (c) At a minimum, the rules adopted under Subsection (b)(2)
13 [~~(b)(3)~~] must:

14 (1) require completion of pharmacology and related
15 pathophysiology [~~pathology~~] education for initial approval; and

16 (2) require continuing education in clinical
17 pharmacology and related pathophysiology [~~pathology~~] in addition
18 to any continuing education otherwise required under Section
19 301.303[~~, and~~

20 [~~(3) provide for the issuance of a prescription~~
21 ~~authorization number to an advanced practice nurse approved under~~
22 ~~this section~~].

23 (d) The signature of an advanced practice registered nurse
24 attesting to the provision of a legally authorized service by the
25 advanced practice registered nurse satisfies any documentation
26 requirement for that service established by a state agency.

27 SECTION 18. Subchapter D, Chapter 301, Occupations Code, is

1 amended by adding Section 301.168 to read as follows:

2 Sec. 301.168. DUTIES REGARDING PRESCRIPTIVE AUTHORITY
3 AGREEMENTS. The board shall in conjunction with the Texas Medical
4 Board and the Texas Physician Assistant Board perform the functions
5 and duties relating to prescriptive authority agreements assigned
6 to the board in Sections 157.0512 and 157.0513.

7 SECTION 19. Sections 551.003(34) and (45), Occupations
8 Code, are amended to read as follows:

9 (34) "Practitioner" means:

10 (A) a person licensed or registered to prescribe,
11 distribute, administer, or dispense a prescription drug or device
12 in the course of professional practice in this state, including a
13 physician, dentist, podiatrist, or veterinarian but excluding a
14 person licensed under this subtitle;

15 (B) a person licensed by another state, Canada,
16 or the United Mexican States in a health field in which, under the
17 law of this state, a license holder in this state may legally
18 prescribe a dangerous drug;

19 (C) a person practicing in another state and
20 licensed by another state as a physician, dentist, veterinarian, or
21 podiatrist, who has a current federal Drug Enforcement
22 Administration registration number and who may legally prescribe a
23 Schedule II, III, IV, or V controlled substance, as specified under
24 Chapter 481, Health and Safety Code, in that other state; or

25 (D) an advanced practice registered nurse or
26 physician assistant to whom a physician has delegated the authority
27 to prescribe or order a drug or device [~~carry out or sign~~

1 ~~prescription drug orders]~~ under Section 157.0511, 157.0512
2 [~~157.052, 157.053~~], or 157.054[, ~~157.0541, or 157.0542~~].

3 (45) "Written protocol" means a physician's order,
4 standing medical order, standing delegation order, or other order
5 or protocol as defined by rule of the Texas Medical [~~State~~] Board
6 [~~of Medical Examiners~~] under Subtitle B.

7 SECTION 20. Section 533.005(a), Government Code, is amended
8 to read as follows:

9 (a) A contract between a managed care organization and the
10 commission for the organization to provide health care services to
11 recipients must contain:

12 (1) procedures to ensure accountability to the state
13 for the provision of health care services, including procedures for
14 financial reporting, quality assurance, utilization review, and
15 assurance of contract and subcontract compliance;

16 (2) capitation rates that ensure the cost-effective
17 provision of quality health care;

18 (3) a requirement that the managed care organization
19 provide ready access to a person who assists recipients in
20 resolving issues relating to enrollment, plan administration,
21 education and training, access to services, and grievance
22 procedures;

23 (4) a requirement that the managed care organization
24 provide ready access to a person who assists providers in resolving
25 issues relating to payment, plan administration, education and
26 training, and grievance procedures;

27 (5) a requirement that the managed care organization

1 provide information and referral about the availability of
2 educational, social, and other community services that could
3 benefit a recipient;

4 (6) procedures for recipient outreach and education;

5 (7) a requirement that the managed care organization
6 make payment to a physician or provider for health care services
7 rendered to a recipient under a managed care plan not later than the
8 45th day after the date a claim for payment is received with
9 documentation reasonably necessary for the managed care
10 organization to process the claim, or within a period, not to exceed
11 60 days, specified by a written agreement between the physician or
12 provider and the managed care organization;

13 (8) a requirement that the commission, on the date of a
14 recipient's enrollment in a managed care plan issued by the managed
15 care organization, inform the organization of the recipient's
16 Medicaid certification date;

17 (9) a requirement that the managed care organization
18 comply with Section 533.006 as a condition of contract retention
19 and renewal;

20 (10) a requirement that the managed care organization
21 provide the information required by Section 533.012 and otherwise
22 comply and cooperate with the commission's office of inspector
23 general and the office of the attorney general;

24 (11) a requirement that the managed care
25 organization's usages of out-of-network providers or groups of
26 out-of-network providers may not exceed limits for those usages
27 relating to total inpatient admissions, total outpatient services,

1 and emergency room admissions determined by the commission;

2 (12) if the commission finds that a managed care
3 organization has violated Subdivision (11), a requirement that the
4 managed care organization reimburse an out-of-network provider for
5 health care services at a rate that is equal to the allowable rate
6 for those services, as determined under Sections 32.028 and
7 32.0281, Human Resources Code;

8 (13) a requirement that, notwithstanding any other
9 law, including Sections 843.312 and 1301.052, Insurance Code, the
10 organization:

11 (A) use advanced practice registered nurses and
12 physician assistants in addition to physicians as primary care
13 providers to increase the availability of primary care providers in
14 the organization's provider network; and

15 (B) treat advanced practice registered nurses
16 and physician assistants in the same manner as primary care
17 physicians with regard to:

18 (i) selection and assignment as primary
19 care providers;

20 (ii) inclusion as primary care providers in
21 the organization's provider network; and

22 (iii) inclusion as primary care providers
23 in any provider network directory maintained by the organization;

24 (14) a requirement that the managed care organization
25 reimburse a federally qualified health center or rural health
26 clinic for health care services provided to a recipient outside of
27 regular business hours, including on a weekend day or holiday, at a

1 rate that is equal to the allowable rate for those services as
2 determined under Section 32.028, Human Resources Code, if the
3 recipient does not have a referral from the recipient's primary
4 care physician;

5 (15) a requirement that the managed care organization
6 develop, implement, and maintain a system for tracking and
7 resolving all provider appeals related to claims payment, including
8 a process that will require:

9 (A) a tracking mechanism to document the status
10 and final disposition of each provider's claims payment appeal;

11 (B) the contracting with physicians who are not
12 network providers and who are of the same or related specialty as
13 the appealing physician to resolve claims disputes related to
14 denial on the basis of medical necessity that remain unresolved
15 subsequent to a provider appeal; and

16 (C) the determination of the physician resolving
17 the dispute to be binding on the managed care organization and
18 provider;

19 (16) a requirement that a medical director who is
20 authorized to make medical necessity determinations is available to
21 the region where the managed care organization provides health care
22 services;

23 (17) a requirement that the managed care organization
24 ensure that a medical director and patient care coordinators and
25 provider and recipient support services personnel are located in
26 the South Texas service region, if the managed care organization
27 provides a managed care plan in that region;

1 (18) a requirement that the managed care organization
2 provide special programs and materials for recipients with limited
3 English proficiency or low literacy skills;

4 (19) a requirement that the managed care organization
5 develop and establish a process for responding to provider appeals
6 in the region where the organization provides health care services;

7 (20) a requirement that the managed care organization
8 develop and submit to the commission, before the organization
9 begins to provide health care services to recipients, a
10 comprehensive plan that describes how the organization's provider
11 network will provide recipients sufficient access to:

- 12 (A) preventive care;
- 13 (B) primary care;
- 14 (C) specialty care;
- 15 (D) after-hours urgent care; and
- 16 (E) chronic care;

17 (21) a requirement that the managed care organization
18 demonstrate to the commission, before the organization begins to
19 provide health care services to recipients, that:

20 (A) the organization's provider network has the
21 capacity to serve the number of recipients expected to enroll in a
22 managed care plan offered by the organization;

23 (B) the organization's provider network
24 includes:

25 (i) a sufficient number of primary care
26 providers;

27 (ii) a sufficient variety of provider

1 types; and

2 (iii) providers located throughout the
3 region where the organization will provide health care services;
4 and

5 (C) health care services will be accessible to
6 recipients through the organization's provider network to a
7 comparable extent that health care services would be available to
8 recipients under a fee-for-service or primary care case management
9 model of Medicaid managed care;

10 (22) a requirement that the managed care organization
11 develop a monitoring program for measuring the quality of the
12 health care services provided by the organization's provider
13 network that:

14 (A) incorporates the National Committee for
15 Quality Assurance's Healthcare Effectiveness Data and Information
16 Set (HEDIS) measures;

17 (B) focuses on measuring outcomes; and

18 (C) includes the collection and analysis of
19 clinical data relating to prenatal care, preventive care, mental
20 health care, and the treatment of acute and chronic health
21 conditions and substance abuse;

22 (23) subject to Subsection (a-1), a requirement that
23 the managed care organization develop, implement, and maintain an
24 outpatient pharmacy benefit plan for its enrolled recipients:

25 (A) that exclusively employs the vendor drug
26 program formulary and preserves the state's ability to reduce
27 waste, fraud, and abuse under the Medicaid program;

1 (B) that adheres to the applicable preferred drug
2 list adopted by the commission under Section 531.072;

3 (C) that includes the prior authorization
4 procedures and requirements prescribed by or implemented under
5 Sections 531.073(b), (c), and (g) for the vendor drug program;

6 (D) for purposes of which the managed care
7 organization:

8 (i) may not negotiate or collect rebates
9 associated with pharmacy products on the vendor drug program
10 formulary; and

11 (ii) may not receive drug rebate or pricing
12 information that is confidential under Section 531.071;

13 (E) that complies with the prohibition under
14 Section 531.089;

15 (F) under which the managed care organization may
16 not prohibit, limit, or interfere with a recipient's selection of a
17 pharmacy or pharmacist of the recipient's choice for the provision
18 of pharmaceutical services under the plan through the imposition of
19 different copayments;

20 (G) that allows the managed care organization or
21 any subcontracted pharmacy benefit manager to contract with a
22 pharmacist or pharmacy providers separately for specialty pharmacy
23 services, except that:

24 (i) the managed care organization and
25 pharmacy benefit manager are prohibited from allowing exclusive
26 contracts with a specialty pharmacy owned wholly or partly by the
27 pharmacy benefit manager responsible for the administration of the

1 pharmacy benefit program; and

2 (ii) the managed care organization and
3 pharmacy benefit manager must adopt policies and procedures for
4 reclassifying prescription drugs from retail to specialty drugs,
5 and those policies and procedures must be consistent with rules
6 adopted by the executive commissioner and include notice to network
7 pharmacy providers from the managed care organization;

8 (H) under which the managed care organization may
9 not prevent a pharmacy or pharmacist from participating as a
10 provider if the pharmacy or pharmacist agrees to comply with the
11 financial terms and conditions of the contract as well as other
12 reasonable administrative and professional terms and conditions of
13 the contract;

14 (I) under which the managed care organization may
15 include mail-order pharmacies in its networks, but may not require
16 enrolled recipients to use those pharmacies, and may not charge an
17 enrolled recipient who opts to use this service a fee, including
18 postage and handling fees; and

19 (J) under which the managed care organization or
20 pharmacy benefit manager, as applicable, must pay claims in
21 accordance with Section 843.339, Insurance Code; and

22 (24) a requirement that the managed care organization
23 and any entity with which the managed care organization contracts
24 for the performance of services under a managed care plan disclose,
25 at no cost, to the commission and, on request, the office of the
26 attorney general all discounts, incentives, rebates, fees, free
27 goods, bundling arrangements, and other agreements affecting the

1 net cost of goods or services provided under the plan.

2 SECTION 21. Section 671.001(b), Government Code, is amended
3 to read as follows:

4 (b) The pilot program must provide for the following:

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

10 (2) a licensed physician, who is employed by a state
11 governmental entity for purposes other than the pilot program or
12 whose services are acquired by contract, who will delegate to and
13 supervise the advanced practice registered nurse or physician
14 assistant under a prescriptive authority agreement under Chapter
15 157 [~~perform all supervisory functions described by Section~~
16 ~~157.052(e)~~], Occupations Code;

17 (3) appropriate office space and equipment for the
18 advanced practice registered nurse or physician assistant to
19 provide basic medical care to employees at the state office complex
20 where the nurse or physician assistant is located; and

21 (4) professional liability insurance covering
22 services provided by the advanced practice registered nurse or the
23 physician assistant.

24 SECTION 22. Subchapter D, Chapter 62, Health and Safety
25 Code, is amended by adding Section 62.1551 to read as follows:

26 Sec. 62.1551. INCLUSION OF CERTAIN HEALTH CARE PROVIDERS IN
27 PROVIDER NETWORKS. Notwithstanding any other law, including

1 Sections 843.312 and 1301.052, Insurance Code, the executive
2 commissioner of the commission shall adopt rules to require a
3 managed care organization or other entity to ensure that advanced
4 practice registered nurses and physician assistants are available
5 as primary care providers in the organization's or entity's
6 provider network. The rules must require advanced practice
7 registered nurses and physician assistants to be treated in the
8 same manner as primary care physicians with regard to:

9 (1) selection and assignment as primary care
10 providers;

11 (2) inclusion as primary care providers in the
12 provider network; and

13 (3) inclusion as primary care providers in any
14 provider network directory maintained by the organization or
15 entity.

16 SECTION 23. Section 481.002(39), Health and Safety Code, is
17 amended to read as follows:

18 (39) "Practitioner" means:

19 (A) a physician, dentist, veterinarian,
20 podiatrist, scientific investigator, or other person licensed,
21 registered, or otherwise permitted to distribute, dispense,
22 analyze, conduct research with respect to, or administer a
23 controlled substance in the course of professional practice or
24 research in this state;

25 (B) a pharmacy, hospital, or other institution
26 licensed, registered, or otherwise permitted to distribute,
27 dispense, conduct research with respect to, or administer a

1 controlled substance in the course of professional practice or
2 research in this state;

3 (C) a person practicing in and licensed by
4 another state as a physician, dentist, veterinarian, or podiatrist,
5 having a current Federal Drug Enforcement Administration
6 registration number, who may legally prescribe Schedule II, III,
7 IV, or V controlled substances in that state; or

8 (D) an advanced practice registered nurse or
9 physician assistant to whom a physician has delegated the authority
10 to prescribe or order a drug or device [~~carry out or sign~~
11 ~~prescription drug orders~~] under Section 157.0511, 157.0512
12 [~~157.052, 157.053~~], or 157.054, [~~157.0541, or 157.0542,~~]
13 Occupations Code.

14 SECTION 24. Section 483.001(12), Health and Safety Code, is
15 amended to read as follows:

16 (12) "Practitioner" means [~~a person licensed~~]:

17 (A) a person licensed by the Texas [~~State Board~~
18 ~~of~~] Medical Board [~~Examiners~~], State Board of Dental Examiners,
19 Texas State Board of Podiatric Medical Examiners, Texas Optometry
20 Board, or State Board of Veterinary Medical Examiners to prescribe
21 and administer dangerous drugs;

22 (B) a person licensed by another state in a
23 health field in which, under the laws of this state, a licensee may
24 legally prescribe dangerous drugs;

25 (C) a person licensed in Canada or Mexico in a
26 health field in which, under the laws of this state, a licensee may
27 legally prescribe dangerous drugs; or

1 (D) an advanced practice registered nurse or
2 physician assistant to whom a physician has delegated the authority
3 to prescribe or order a drug or device [~~carry out or sign~~
4 ~~prescription drug orders~~] under Section 157.0511, 157.0512
5 [~~157.052, 157.053~~], or 157.054, [~~157.0541, or 157.0542,~~]
6 Occupations Code.

7 SECTION 25. Section 32.024, Human Resources Code, is
8 amended by adding Subsection (gg) to read as follows:

9 (gg) Notwithstanding any other law, including Sections
10 843.312 and 1301.052, Insurance Code, the department shall ensure
11 that advanced practice registered nurses and physician assistants
12 may be selected by and assigned to recipients of medical assistance
13 as the primary care providers of those recipients. The department
14 must require that advanced practice registered nurses and physician
15 assistants be treated in the same manner as primary care physicians
16 with regard to:

17 (1) selection and assignment as primary care
18 providers; and

19 (2) inclusion as primary care providers in any
20 directory of providers of medical assistance maintained by the
21 department.

22 SECTION 26. Subchapter B, Chapter 32, Human Resources Code,
23 is amended by adding Section 32.03141 to read as follows:

24 Sec. 32.03141. AUTHORITY OF ADVANCED PRACTICE REGISTERED
25 NURSES AND PHYSICIAN ASSISTANTS REGARDING DURABLE MEDICAL
26 EQUIPMENT AND SUPPLIES. To the extent allowed by federal law, an
27 advanced practice registered nurse or physician assistant acting

1 under adequate physician supervision and to whom a physician has
2 delegated the authority to prescribe and order drugs and devices
3 under Chapter 157, Occupations Code, may order and prescribe
4 durable medical equipment and supplies under the medical assistance
5 program.

6 SECTION 27. Sections 157.052, 157.053, 157.0541, and
7 157.0542, Occupations Code, are repealed.

8 SECTION 28. The calculation under Chapter 157, Occupations
9 Code, as amended by this Act, of the amount of time an advanced
10 practice registered nurse or physician assistant has practiced
11 under the delegated prescriptive authority of a physician under a
12 prescriptive authority agreement shall include the amount of time
13 the advanced practice registered nurse or physician assistant
14 practiced under the delegated prescriptive authority of that
15 physician before the effective date of this Act.

16 SECTION 29. Not later than November 1, 2013, the Texas
17 Medical Board, the Texas Board of Nursing, and the Texas Physician
18 Assistant Board shall adopt the rules necessary to implement the
19 changes in law made by this Act.

20 SECTION 30. This Act takes effect November 1, 2013.