

BILL ANALYSIS

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S.B. 2438
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas has a critical shortage of primary care providers statewide with 432 Primary Care Health Professional Shortage Areas (HPSAs) in urban, suburban, and rural areas. Advanced practice registered nurses (APRNs), including nurse practitioners, certified nurse midwives, and clinical nurse specialists, are nationally board certified, state-licensed, and state-regulated health care providers who play a key role in providing primary care.

To practice under current law, an APRN must find a physician to grant them delegated authority to practice what their training and licensing already allows them to do, and this delegation agreement must be maintained for the APRN's entire career. Physicians are not required to agree to delegate authority, and if they do, are under no requirement to provide care for the APRN's patients, be in the same area of the state as the APRN, or even practice in the same specialty. Each delegation agreement between an APRN and a physician can differ, and the physician can impose restrictions, above and beyond state law, on how the APRN can practice nursing. Delegating physicians either charge APRNs directly for these agreements, or the entity that employs the physician and APRN, such as a practice group, hospital, or clinic, bears the cost.

All branches of the military, the federal health care services, and almost half of the other states do not require these delegation agreements. Consequently, military APRNs are discharging to other states, Texas-educated APRNs are leaving for our neighboring states, and other APRNs are choosing not to move to Texas.

Several studies in recent years have found care led by APRNs is safe and offers value and that the removal of restrictions on APRN licenses is associated with increased quality and decreased cost.

Additionally, APRNs are the only health care professionals subject to regulations promulgated by two different state licensing boards: The Texas Medical Board and the Texas Board of Nursing. This overregulation is duplicative and causes inefficiencies at the agency level as well as causes APRNs to spend time dealing with cumbersome regulations when they could be treating patients.

Keeping more APRNs in Texas and removing the requirement for unnecessary, expensive, and many times, unfair pay-to-play delegation agreements will allow APRNs to see more patients at a lower cost.

S.B. 2438 would change the requirement of lifetime delegation from a physician to a 12-month period of delegation before a nurse practitioner, certified nurse midwife, or clinical nurse specialist could practice on their own. For those APRNs who meet this requirement, the bill would increase the number of continuing education hours to 48 contact hours every two years, the same number physicians must complete. The bill would also place these APRNs under the exclusive regulatory authority of the Texas Board of Nursing by amending Subchapter H, Chapter 301, of the Occupations Code.

APRNs would still be required by law to collaborate with physicians when the needs of a patient exceed their scope of practice or population focus. The bill would make no other changes to an APRN's scope of practice.

As proposed, S.B. 2438 amends current law relating to the authority of certain advanced practice registered nurses.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Board of Nursing (BON) in SECTION 1.003 (Section 301.357, Occupations Code) of this bill.

Rulemaking authority previously granted to BON is modified in SECTION 1.002 (Section 301.152, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1.001. Amends Section 301.002, Occupations Code, as follows:

- (2) Defines "professional nursing" for purposes of this chapter (Nurses). Provides that the term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures, except as performed by an advanced practice registered nurse authorized to practice by the Texas Board of Nursing (BON) under Section 301.357. Makes conforming changes.
- (6) Defines "controlled substance" for purposes of this chapter.
- (7) Defines "dangerous drug" for purposes of this chapter.
- (8) Defines "device" for purposes of this chapter.
- (9) Defines "nonprescription drug" for purposes of this chapter.
- (10) Defines "prescribe or order a drug or device" for purposes of this chapter.

SECTION 1.002. Amends Section 301.152(b), Occupations Code, as follows:

(b) Requires BON to adopt rules to:

- (1) makes no change to this subdivision;
- (2) establish:
 - (A) any specialized education or training, including pharmacology, that an advanced practice registered nurse is required to have to prescribe or order a drug or device as delegated by a physician under Section 157.0512 (Prescriptive Authority Agreement) or 157.054 (Prescribing at Facility-Based Practice Sites) or authorized by BON under Section 301.358;
 - (B) makes a conforming change to this paragraph; and
 - (C) makes no change to this paragraph; and
- (3) makes no changes to this subdivision.

SECTION 1.003. Amends Subchapter H, Chapter 301, Occupations Code, by adding Sections 301.357 and 301.358, as follows:

Sec. 301.357. INDEPENDENT PRACTICE BY CERTAIN ADVANCED PRACTICE REGISTERED NURSES. (a) Requires BON to authorize the practice under this section

of an advanced practice registered nurse who is a nurse practitioner, nurse midwife, or clinical nurse specialist, has practiced for at least 1,000 hours under the delegation of a physician under Chapter 157 (Authority of Physician to Delegate Certain Medical Acts), and applies for authorization under this section in the manner prescribed by BON.

(b) Provides that the scope of practice of an advanced practice registered nurse authorized to practice under this section includes:

- (1) ordering, performing, and interpreting diagnostic tests;
- (2) formulating primary and differential medical diagnoses and advanced assessments;
- (3) treating actual and potential health problems;
- (4) prescribing therapeutic and corrective measures, including nutrition and diagnostic support services, home health care, hospice care, physical therapy, and occupational therapy, and delegating and assigning the performance of therapeutic and corrective measures to assistive personnel;
- (5) to the extent authorized by BON under Section 301.358, prescribing, ordering, procuring, administering, and dispensing drugs and devices, including blood and blood products, controlled substances listed in Schedules II, III, IV, and V, dangerous drugs, and nonprescription drugs;
- (6) providing referrals to health care agencies, health care providers, and community resources;
- (7) serving as the primary care provider of record; and
- (8) performing other acts that require education and training consistent with professional standards and that are commensurate with the advanced practice registered nurse's education, licensure, and demonstrated competencies and experience.

(c) Requires an advanced practice registered nurse authorized to practice by BON under this section to practice as a licensed independent practitioner in accordance with standards established and recognized by BON to protect the public health and safety.

(d) Provides that an advanced practice registered nurse authorized to practice by BON under this section is accountable to patients, the nursing profession, and BON for:

- (1) complying with the requirements of this chapter;
- (2) providing quality advanced nursing care;
- (3) recognizing the nurse's limits of knowledge;
- (4) planning for the management of situations beyond the nurse's expertise; and
- (5) consulting with or referring patients to other health care providers as appropriate.

(e) Provides that this section does not limit or modify the scope of practice of a nurse who is not authorized to practice by BON under this section.

(f) Requires BON by rule to:

(1) prescribe the application process for authorization to practice under this section; and

(2) establish guidelines for continuing education for advanced practice registered nurses authorized to practice under this section, including:

(A) a requirement that the advanced practice registered nurse complete not less than 48 hours of continuing education in each two-year period as a condition of license renewal; and

(B) a provision authorizing the advanced practice registered nurse to complete up to 24 hours of the continuing education required under Paragraph (A) through informal self-study or attendance at hospital lectures.

Sec. 301.358. PRESCRIBING AND ORDERING AUTHORITY OF ADVANCED PRACTICE REGISTERED NURSE. (a) Authorizes BON to authorize an advanced practice registered nurse authorized to practice by BON under Section 301.357 to prescribe and order drugs and devices, including controlled substances listed in Schedules III, IV, and V, dangerous drugs, and nonprescription drugs.

(b) Authorizes BON to authorize an advanced practice registered nurse authorized to practice by BON under Section 301.357 to prescribe and order controlled substances listed in Schedule II only:

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

(A) has been admitted to the hospital and is expected to remain in the hospital for a period of 24 hours or more; or

(B) is receiving services in the emergency department of the hospital; 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.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.001. Amends Section 671.001(b), Government Code, as follows:

(b) Requires the pilot program developed by the Employees Retirement System of Texas (ERS) to provide certain health services to state employees at a selected location to provide the following:

(1) makes no changes to this subdivision;

(2) if applicable, a licensed physician, who is employed by a state governmental entity for purposes other than the pilot program or whose services are acquired by contract, who will delegate to and supervise the advanced practice registered nurse or physician assistant under a prescriptive authority agreement under Chapter 157, Occupations Code; and

(3)–(4) makes no changes to these subdivisions.

SECTION 2.002. Amends Section 481.002(39), Health and Safety Code, to redefine "practitioner" to include an advanced practice registered nurse authorized to prescribe and order drugs and devices under Section 301.358, Occupations Code, for purposes of this chapter (Texas Controlled Substances Act).

SECTION 2.003. Amends Section 481.073(a), Health and Safety Code, to add BON to a list of governmental entities to which a practitioner who designates an agent to communicate prescriptions is required to make the designation available for inspection by investigators.

SECTION 2.004. Amends Section 481.074(d), Health and Safety Code, to make a conforming change.

SECTION 2.005. Amends Section 481.076(c), Health and Safety Code, to make a conforming change.

SECTION 2.006. Amends Sections 483.001(4), (12), and (13), Health and Safety Code, as follows:

(4) Makes a conforming change to the definition of "designated agent" for purposes of this chapter (Dangerous Drugs).

(12) Defines, for purposes of this chapter, "practitioner" as:

(A) a person licensed by the Texas Medical Board (TMB), Texas State Board of Dental Examiners (TSDBE), Texas Optometry Board (TOB), or State Board of Veterinary Medical Examiners (TBVME) to prescribe and administer dangerous drugs or the Texas Department of Licensing and Regulation, with respect to podiatry, to prescribe and administer dangerous drugs;

(B) makes no changes to this paragraph;

(C)-(D) makes nonsubstantive changes to these paragraphs; or

(13) makes conforming changes to the definition of "prescription" for purposes of this chapter.

SECTION 2.007. Amends Section 483.042(a), Health and Safety Code, to make conforming changes.

SECTION 2.008. Amends Section 32.03141, Human Resources Code, as follows:

Sec. 32.03141. AUTHORITY OF ADVANCED PRACTICE REGISTERED NURSES AND PHYSICIAN ASSISTANTS REGARDING DURABLE MEDICAL EQUIPMENT AND SUPPLIES. Authorizes the following persons, to the extent allowed by federal law, in addition to other health care practitioners authorized by federal law, to order and prescribe durable medical equipment and supplies under the medical assistance program:

(1) an advanced practice registered nurse authorized to prescribe and order drugs and devices under Section 301.358, Occupations Code; and

(2) creates this subdivision from existing text and deletes existing text relating to authorizing an advanced practice registered nurse or physician assistant acting under adequate physician supervision and to whom a physician has delegated the authority to prescribe and order drugs and devices under Chapter 157, Occupations Code, to order and prescribe durable medical equipment and supplies under the medical assistance program.

SECTION 2.009. Amends Section 843.312, Insurance Code, as follows:

Sec. 843.312. New heading: PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE REGISTERED NURSES. Makes conforming changes to this section.

SECTION 2.010. Amends Section 1301.001(1-a), Insurance Code, to make conforming and nonsubstantive changes to the definition of "health care provider" for purposes of this chapter (Preferred Provider Benefit Plans).

SECTION 2.011. Amends Section 1301.052, Insurance Code, as follows:

Sec. 1301.052. New heading: DESIGNATION OF ADVANCED PRACTICE REGISTERED NURSE OR PHYSICIAN ASSISTANT AS PREFERRED PROVIDER. Makes conforming changes to this section.

SECTION 2.012. Amends Section 1451.001(2), Insurance Code, to make conforming changes to the definition of "advanced practice registered nurse" for purposes of this chapter (Access to Certain Practitioners and Facilities).

SECTION 2.013. Amends Section 1451.104(c), Insurance Code, to make a conforming change.

SECTION 2.014. Amends Section 1451.06, Insurance Code, as follows:

Sec. 1451.106. New heading: SELECTION OF ADVANCED PRACTICE REGISTERED NURSE. Makes a conforming change to this section.

SECTION 2.015. Amends Section 1452.051(l), Insurance Code, to make a conforming change to the definition of "advanced practice nurse" for purposes of this subchapter (Standardized Forms).

SECTION 2.016. Amends Section 301.303(b), Occupations Code, to prohibit BON, except as provided by a rule adopted under Section 301.357(f), from requiring participation in more than a total of 20 hours of continuing education in a two-year licensing period.

SECTION 2.017. Amends Sections 551.003(14) and (34), Occupations Code, to redefine "designated agent" and "practitioner" for purposes of Chapters 551–566 (relating to the practice of pharmacy).

SECTION 2.018. Amends Section 563.053, Occupations Code, as follows:

Sec. 563.053. DISPENSING OF DANGEROUS DRUGS IN CERTAIN RURAL AREAS. (a) Makes a conforming change to the definition of "reimbursement for cost" for purposes of this section.

(a-1) Provides that this section applies to an advanced practice registered nurse only to the extent that the advanced practice registered nurse is authorized to prescribe and order drugs and devices under Section 301.358.

(b) Makes a conforming change to this subsection.

(c) Authorizes a physician who practices medicine or an advanced practice registered nurse who practices advanced practice registered nursing in an area described by Subsection (b) to:

(1) makes conforming changes to this subdivision; and

(2) makes no changes to this subdivision.

(d) Makes a conforming change to this subsection.

(e) Requires a physician who desires to dispense dangerous drugs under this section to notify both BON and TMB, rather than the Texas State Board of Medical Examiners, that the physician practices in an area described by Subsection (b). Requires an advanced practice registered nurse who desires to dispense dangerous drugs under this section to notify both the Texas State Board of Pharmacy and BON that the advanced practice registered nurse practices in an area described by Subsection (b). Authorizes the physician or advanced practice registered nurse to continue to dispense dangerous drugs in the area until the board determines, after notice and hearing, that the physician or advanced practice registered nurse no longer practices in an area described by Subsection (b).

SECTION 2.019. Amends Section 605.002(14), Occupations Code, to make conforming and nonsubstantive changes to the definition of "orthotics" for purposes of this chapter (Orthotists and Prosthetists).

SECTION 2.020. Amends Section 605.2515, Occupations Code, to make conforming and nonsubstantive changes.

ARTICLE 3. TRANSITION; CONFLICT WITH OTHER LEGISLATION; EFFECTIVE DATE

SECTION 3.001. Requires BON, not later than December 1, 2019, to adopt the rules necessary to implement the changes in law made by this Act.

SECTION 3.002. Provides that to the extent of any conflict, this Act prevails over another Act of the 86th Legislature, Regular Session, 2019, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 3.003. Effective date: September 1, 2019.