88R2152 BEE-F

By:  Perry S.B. No. 160

A BILL TO BE ENTITLED

AN ACT

relating to the furnishing by pharmacists and dispensing by physicians of certain medications.

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

SECTION 1.  Section 483.001(11), Health and Safety Code, is amended to read as follows:

(11)  "Practice of pharmacy" has the meaning assigned by Section 551.003, Occupations Code [~~means:~~

[~~(A)  provision of those acts or services necessary to provide pharmaceutical care;~~

[~~(B)  interpretation and evaluation of prescription drug orders or medication orders;~~

[~~(C)  participation in drug and device selection as authorized by law, drug administration, drug regimen review, or drug or drug-related research;~~

[~~(D)  provision of patient counseling;~~

[~~(E)  responsibility for:~~

[~~(i)  dispensing of prescription drug orders or distribution of medication orders in the patient's best interest;~~

[~~(ii)  compounding and labeling of drugs and devices, except labeling by a manufacturer, repackager, or distributor of nonprescription drugs and commercially packaged prescription drugs and devices;~~

[~~(iii)  proper and safe storage of drugs and devices; or~~

[~~(iv)  maintenance of proper records for drugs and devices. In this subdivision, "device" has the meaning assigned by Subtitle J, Title 3, Occupations Code; or~~

[~~(F)  performance of a specific act of drug therapy management for a patient delegated to a pharmacist by a written protocol from a physician licensed by the state under Subtitle B, Title 3, Occupations Code~~].

SECTION 2.  Section 157.002(f), Occupations Code, is amended to read as follows:

(f)  Subsections (b) and (c) do not authorize a physician or a person acting under the supervision of a physician to keep a pharmacy, advertised or otherwise, for the retail sale of dangerous drugs, other than as authorized under Section 158.003 or 158.004, without complying with the applicable laws relating to the dangerous drugs.

SECTION 3.  Subchapter C, Chapter 157, Occupations Code, is amended by adding Section 157.102 to read as follows:

Sec. 157.102.  DELEGATION TO PHARMACIST TO FURNISH CERTAIN DRUGS. (a) In this section:

(1)  "Acute condition" means a condition or disease that begins abruptly, intensifies rapidly, and is generally not long-lasting.

(2)  "Pharmacist" has the meaning assigned by Section 551.003.

(3)  "Waived clinical laboratory test" means a clinical laboratory test that is classified as waived under federal regulations issued under the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Section 263a).

(4)  "Written protocol" means a physician's written order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the board.

(b)  Notwithstanding any other law, a pharmacist may furnish to a patient a prescription drug:

(1)  as provided by a physician's written protocol, to treat an acute condition that is identified through performance of one of the following tests, if the test is a waived clinical laboratory test:

(A)  a rapid strep test or rapid antigen detection test used in the identification of group A streptococcus (GAS);

(B)  a rapid influenza diagnostic test used in the identification of influenza types A and B; or

(C)  a rapid molecular or antigen detection test used in the identification of the SARS-CoV-2 (COVID-19) virus; or

(2)  the furnishing of which is authorized by an emergency rule adopted under an executive order or emergency authorization.

(c)  The board shall adopt rules jointly with the Texas State Board of Pharmacy to establish the minimum content of the written protocol required under Subsection (b). The written protocol may permit a pharmacist to furnish a prescription drug to a patient without an established physician-patient relationship.

(d)  A written protocol under this section must require notice to the patient's primary care physician, as identified by the patient if the patient has a primary care physician, and prescribe the period for providing the notice and the form of the notice, in accordance with prevailing practices for the provision of notice to a patient's primary care physician. The period for providing the notice may not be later than the 14th day after the date the drug is furnished by the pharmacist.

(e)  The board and the Texas State Board of Pharmacy shall enter into a memorandum of understanding regarding the regulation of pharmacists who furnish prescription drugs to patients under this section. The memorandum of understanding must be adopted by rule and provide that:

(1)  a pharmacist who furnishes prescription drugs to a patient under this section is subject only to the disciplinary authority of the Texas State Board of Pharmacy; and

(2)  an inspection of the practice location of a pharmacist who furnishes prescription drugs to a patient under this section must be conducted by the Texas State Board of Pharmacy.

SECTION 4.  Chapter 158, Occupations Code, is amended by adding Section 158.004 to read as follows:

Sec. 158.004.  DISPENSING OF CERTAIN DRUGS. (a) In this section, "acute condition" and "waived clinical laboratory test" have the meanings assigned by Section 157.102.

(b)  Notwithstanding any other law, a physician may dispense to the physician's patient a prescription drug:

(1)  to treat an acute condition that is identified through performance of one of the following tests, if the test is a waived clinical laboratory test:

(A)  a rapid strep test or rapid antigen detection test used in the identification of group A streptococcus (GAS);

(B)  a rapid influenza diagnostic test used in the identification of influenza types A and B; or

(C)  a rapid molecular or antigen detection test used in the identification of the SARS-CoV-2 (COVID-19) virus;

(2)  that is an antibiotic; or

(3)  the dispensing of which is authorized by an emergency rule adopted under an executive order or emergency authorization.

(c)  The board and the Texas State Board of Pharmacy shall enter into a memorandum of understanding regarding the regulation of physicians who dispense prescription drugs to the physicians' patients under this section. The memorandum of understanding must be adopted by rule and provide that:

(1)  a physician who dispenses prescription drugs to the physician's patient under this section is subject only to the disciplinary authority of the board; and

(2)  an inspection of the practice location of a physician who dispenses prescription drugs to the physician's patient under this section must be conducted by the board.

SECTION 5.  Section 551.003(33), Occupations Code, is amended to read as follows:

(33)  "Practice of pharmacy" means:

(A)  providing an act or service necessary to provide pharmaceutical care;

(B)  interpreting or evaluating a prescription drug order or medication order;

(C)  participating in drug or device selection as authorized by law, and participating in drug administration, drug regimen review, or drug or drug-related research;

(D)  providing patient counseling;

(E)  being responsible for:

(i)  dispensing a prescription drug order or distributing a medication order;

(ii)  compounding or labeling a drug or device, other than labeling by a manufacturer, repackager, or distributor of a nonprescription drug or commercially packaged prescription drug or device;

(iii)  properly and safely storing a drug or device; or

(iv)  maintaining proper records for a drug or device;

(F)  performing for a patient a specific act of drug therapy management delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with Subtitle B; [~~or~~]

(G)  administering an immunization or vaccination under a physician's written protocol; or

(H)  furnishing a prescription drug to a patient under a physician's written protocol under Section 157.102.

SECTION 6.  Section 551.004(b), Occupations Code, is amended to read as follows:

(b)  This subtitle does not prevent a practitioner from:

(1)  administering a drug to a patient of the practitioner; or

(2)  dispensing a prescription drug to a patient as provided by Section 158.004.

SECTION 7.  Subchapter B, Chapter 562, Occupations Code, is amended by adding Section 562.058 to read as follows:

Sec. 562.058.  TRAINING REQUIRED TO FURNISH CERTAIN DRUGS. (a) A pharmacist may not furnish a prescription drug under Section 157.102 unless the pharmacist has completed a training program that is approved by the board and is relevant to the condition treated by the drug.

(b)  The board shall adopt rules jointly with the Texas Medical Board to establish the minimum content of the training program required under Subsection (a).

SECTION 8.  Section 563.051(d), Occupations Code, is amended to read as follows:

(d)  This section does not authorize a physician or a person acting under the supervision of a physician to keep a pharmacy, advertised or otherwise, for the retail sale of dangerous drugs, other than as authorized under Section 158.003 or 158.004, without complying with the applicable laws relating to the dangerous drugs.

SECTION 9.  Not later than January 1, 2024, the Texas State Board of Pharmacy and the Texas Medical Board shall adopt the rules required under Sections 157.102, 158.004, and 562.058, Occupations Code, as added by this Act.

SECTION 10.  This Act takes effect September 1, 2023.