

## RULE ANALYSIS

**Introduction:** THE AMENDMENTS ARE SUBMITTED TO THE BOARD FOR CONSIDERATION AS A PROPOSED RULE

**Short Title:** Advanced Practice Registered Nurses

**Rule Numbers:** §§291.31, 291.34

**Statutory Authority:** Texas Pharmacy Act, Chapter 551-566 and 568-569, Occupations Code:

- (1) Section 551.002 specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; and
- (2) Section 554.051 gives the Board the authority to adopt rules for the proper administration and enforcement of the Act.

**Purpose:** The amendments, if adopted, implement the provisions of SB 406 passed by the 83<sup>rd</sup> Texas Legislature. The amendments update the reference to advance practice registered nurses and eliminate the reference to “carry out” an order.

1 TITLE 22 EXAMINING BOARDS  
2 PART 15 TEXAS STATE BOARD OF PHARMACY  
3 CHAPTER 291 PHARMACIES  
4 SUBCHAPTER B COMMUNITY PHARMACY (CLASS A)

5  
6 **§291.31 Definitions**  
7

8  
9 The following words and terms, when used in this subchapter, shall have the following  
10 meanings, unless the context clearly indicates otherwise.

11  
12 (1) – (2) (No change.)

13  
14 (3) Advanced practice **registered** nurse--A registered nurse **licensed** [approved] by the Texas  
15 Board of Nursing to practice as an advanced practice **registered** nurse on the basis of  
16 completion of an advanced education program. The term includes nurse practitioner, nurse  
17 midwife, nurse anesthetist, and clinical nurse specialist. **The term is synonymous with**  
18 **advanced nurse practitioner and advanced practice nurse.**  
19

20 (4) Automated checking device--A device that confirms that the correct drug and strength has  
21 been labeled with the correct label for the correct patient prior to delivery of the drug to the  
22 patient.

23  
24 (5) Automated compounding or counting device--An automated device that compounds,  
25 measures, counts, and/or packages a specified quantity of dosage units of a designated drug  
26 product.

27  
28 (6) Automated pharmacy dispensing systems--A mechanical system that performs operations  
29 or activities, other than compounding or administration, relative to the storage, packaging,  
30 counting, labeling, dispensing, and distribution of medications, and which collects, controls, and  
31 maintains all transaction information. "Automated pharmacy dispensing systems" does not  
32 mean "Automated compounding or counting devices" or "Automated medication supply  
33 devices."  
34

35 (7) Beyond use date--The date beyond which a product should not be used.

36  
37 (8) Board--The Texas State Board of Pharmacy.  
38

39 ~~[(9) Carrying out or signing a prescription drug order--The completion of a prescription drug~~  
40 ~~order presigned by the delegating physician, or the signing of a prescription by an advanced~~  
41 ~~practice nurse or physician assistant after the person has been designated with the Texas~~  
42 ~~Medical Board by the delegating physician as a person delegated to sign a prescription. As~~  
43 ~~specified in §157.056, of the Occupations Code, the following information must be provided on~~  
44 ~~each prescription:~~

45  
46 ~~—(A) patient's name and address;~~

47  
48 ~~—(B) the drug to be dispensed including the name, strength, and quantity of the drug;~~

49  
50 ~~—(C) directions to the patient regarding the taking of the drug and the dosage;~~  
51

52 —(D) the intended use of the drug, if appropriate;

53

54 —(E) the name, address, and telephone number of the physician;

55

56 —(F) the name, address, telephone number, identification number, and if the prescription is for  
57 a controlled substance, the DEA number of the advanced practice nurse or physician assistant  
58 completing the prescription drug order;

59

60 —(G) the date; and

61

62 —(H) the number of refills permitted.]

63

64 **(9)** [(10)] Confidential record--Any health-related record that contains information that identifies  
65 an individual and that is maintained by a pharmacy or pharmacist, such as a patient medication  
66 record, prescription drug order, or medication order.

67

68 **(10)** [(11)] Controlled substance--A drug, immediate precursor, or other substance listed in  
69 Schedules I - V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or  
70 a drug, immediate precursor, or other substance included in Schedules I, II, III, IV, or V of the  
71 Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public  
72 Law 91-513).

73

74 **(11)** [(12)] Dangerous drug--A drug or device that:

75

76 (A) is not included in Penalty Group 1, 2, 3, or 4, Chapter 481, Health and Safety Code, and  
77 is unsafe for self-medication; or

78

79 (B) bears or is required to bear the legend:

80

81 (i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another  
82 legend that complies with federal law; or

83

84 (ii) "Caution: federal law restricts this drug to use by or on the order of a licensed  
85 veterinarian."

86

87 **(12)** [(13)] Data communication device--An electronic device that receives electronic  
88 information from one source and transmits or routes it to another (e.g., bridge, router, switch or  
89 gateway).

90

91 **(13)** [(14)] Deliver or delivery--The actual, constructive, or attempted transfer of a prescription  
92 drug or device or controlled substance from one person to another, whether or not for a  
93 consideration.

94

95 **(14)** [(15)] Designated agent--

96

97 (A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a  
98 practitioner to communicate prescription drug orders to a pharmacist;

99

100 (B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to  
101 whom the practitioner communicates a prescription drug order;

102

103 (C) an advanced practice **registered** nurse or physician assistant authorized by a practitioner  
104 to carry out or sign a prescription drug order for dangerous drugs under Chapter 157 of the  
105 Medical Practice Act (Subtitle B, Occupations Code); or

106  
107 (D) a person who is a licensed vocational nurse or has an education equivalent to or greater  
108 than that required for a licensed vocational nurse designated by the practitioner to communicate  
109 prescriptions for an advanced practice **registered** nurse or physician assistant authorized by  
110 the practitioner to sign prescription drug orders under Chapter 157 of the Medical Practice Act  
111 (Subtitle B, Occupations Code).

112  
113 **(15)** ~~[(16)]~~ Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription  
114 drug or device in the course of professional practice to an ultimate user or his agent by or  
115 pursuant to the lawful order of a practitioner.

116  
117 **(16)** ~~[(17)]~~ Dispensing error--An action committed by a pharmacist or other pharmacy personnel  
118 that causes the patient or patient's agent to take possession of a dispensed prescription drug  
119 and an individual subsequently discovers that the patient has received an incorrect drug  
120 product, which includes incorrect strength, incorrect dosage form, and/or incorrect directions for  
121 use.

122  
123 **(17)** ~~[(18)]~~ Dispensing pharmacist--The pharmacist responsible for the final check of the  
124 dispensed prescription before delivery to the patient.

125  
126 **(18)** ~~[(19)]~~ Distribute--The delivery of a prescription drug or device other than by administering or  
127 dispensing.

128  
129 **(19)** ~~[(20)]~~ Downtime--Period of time during which a data processing system is not operable.

130  
131 **(20)** ~~[(21)]~~ Drug regimen review--An evaluation of prescription drug orders and patient  
132 medication records for:

- 133  
134 (A) known allergies;
- 135  
136 (B) rational therapy-contraindications;
- 137  
138 (C) reasonable dose and route of administration;
- 139  
140 (D) reasonable directions for use;
- 141  
142 (E) duplication of therapy;
- 143  
144 (F) drug-drug interactions;
- 145  
146 (G) drug-food interactions;
- 147  
148 (H) drug-disease interactions;
- 149  
150 (I) adverse drug reactions; and
- 151  
152 (J) proper utilization, including overutilization or underutilization.
- 153

154 **(21)** [~~(22)~~] Electronic prescription drug order--A prescription drug order that is generated on an  
155 electronic application and transmitted as an electronic data file.

156  
157 **(22)** [~~(23)~~] Electronic signature--A unique security code or other identifier which specifically  
158 identifies the person entering information into a data processing system. A facility which utilizes  
159 electronic signatures must:

160  
161 (A) maintain a permanent list of the unique security codes assigned to persons authorized to  
162 use the data processing system; and

163  
164 (B) have an ongoing security program which is capable of identifying misuse and/or  
165 unauthorized use of electronic signatures.

166  
167 **(23)** [~~(24)~~] Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per  
168 week or, if the pharmacy is open less than 60 hours per week, one-half of the time the  
169 pharmacy is open.

170  
171 **(24)** [~~(25)~~] Hard copy--A physical document that is readable without the use of a special device.

172  
173 **(25)** [~~(26)~~] Hot water--The temperature of water from the pharmacy's sink maintained at a  
174 minimum of 105 degrees F (41 degrees C).

175  
176 **(26)** [~~(27)~~] Medical Practice Act--The Texas Medical Practice Act, Subtitle B, Occupations Code,  
177 as amended.

178  
179 **(27)** [~~(28)~~] Medication order--A written order from a practitioner or a verbal order from a  
180 practitioner or his authorized agent for administration of a drug or device.

181  
182 **(28)** [~~(29)~~] New prescription drug order--A prescription drug order that:

183  
184 (A) has not been dispensed to the patient in the same strength and dosage form by this  
185 pharmacy within the last year;

186  
187 (B) is transferred from another pharmacy; and/or

188  
189 (C) is a discharge prescription drug order. (Note: furlough prescription drug orders are not  
190 considered new prescription drug orders.)

191  
192 **(29)** [~~(30)~~] Original prescription--The:

193  
194 (A) original written prescription drug order; or

195  
196 (B) original verbal or electronic prescription drug order reduced to writing either manually or  
197 electronically by the pharmacist.

198  
199 **(30)** [~~(31)~~] Part-time pharmacist--A pharmacist who works less than full-time.

200  
201 **(31)** [~~(32)~~] Patient med-pak--A package prepared by a pharmacist for a specific patient  
202 comprised of a series of containers and containing two or more prescribed solid oral dosage  
203 forms. The patient med-pak is so designed or each container is so labeled as to indicate the day  
204 and time, or period of time, that the contents within each container are to be taken.

205  
206 **(32)** [(33)] Patient counseling--Communication by the pharmacist of information to the patient or  
207 patient's agent in order to improve therapy by ensuring proper use of drugs and devices.  
208  
209 **(33)** [(34)] Pharmaceutical care--The provision of drug therapy and other pharmaceutical  
210 services intended to assist in the cure or prevention of a disease, elimination or reduction of a  
211 patient's symptoms, or arresting or slowing of a disease process.  
212  
213 **(34)** [(35)] Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the  
214 pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and  
215 rules pertaining to the practice of pharmacy.  
216  
217 **(35)** [(36)] Pharmacy technician--An individual who is registered with the board as a pharmacy  
218 technician and whose responsibility in a pharmacy is to provide technical services that do not  
219 require professional judgment regarding preparing and distributing drugs and who works under  
220 the direct supervision of and is responsible to a pharmacist.  
221  
222 **(36)** [(37)] Pharmacy technician trainee--An individual who is registered with the board as a  
223 pharmacy technician trainee and is authorized to participate in a pharmacy's technician training  
224 program.  
225  
226 **(37)** [(38)] Physician assistant--A physician assistant recognized by the Texas Medical Board  
227 as having the specialized education and training required under Subtitle B, Chapter 157,  
228 Occupations Code, and issued an identification number by the Texas Medical Board.  
229  
230 **(38)** [(39)] Practitioner--  
231  
232 (A) a person licensed or registered to prescribe, distribute, administer, or dispense a  
233 prescription drug or device in the course of professional practice in this state, including a  
234 physician, dentist, podiatrist, or veterinarian but excluding a person licensed under this Act;  
235  
236 (B) a person licensed by another state, Canada, or the United Mexican States in a health field  
237 in which, under the law of this state, a license holder in this state may legally prescribe a  
238 dangerous drug;  
239  
240 (C) a person practicing in another state and licensed by another state as a physician, dentist,  
241 veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration  
242 registration number and who may legally prescribe a Schedule II, III, IV, or V controlled  
243 substance, as specified under Chapter 481, Health and Safety Code, in that other state; or  
244  
245 (D) an advanced practice **registered** nurse or physician assistant to whom a physician has  
246 delegated the authority to **prescribe or order a drug or device** [~~carry out or sign prescription~~  
247 ~~drug orders~~] under §§157.0511, **157.0512** [~~157.052, 157.053~~], 157.054[ , ~~157.0541, or~~  
248 ~~157.0542~~], Occupations Code, or, for the purpose of this subchapter, a pharmacist who  
249 practices in a hospital, hospital-based clinic, or an academic health care institution and a  
250 physician has delegated the authority to sign a prescription for a dangerous drug under  
251 §157.101, Occupations Code.  
252  
253 **(39)** [(40)] Prepackaging--The act of repackaging and relabeling quantities of drug products  
254 from a manufacturer's original commercial container into a prescription container for dispensing  
255 by a pharmacist to the ultimate consumer.

256  
257 **(40)**~~[(41)]~~ Prescription department--The area of a pharmacy that contains prescription drugs.

258  
259 **(41)** ~~[(42)]~~ Prescription drug--

260  
261 (A) a substance for which federal or state law requires a prescription before the substance  
262 may be legally dispensed to the public;

263  
264 (B) a drug or device that under federal law is required, before being dispensed or delivered, to  
265 be labeled with the statement:

266  
267 (i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another  
268 legend that complies with federal law; or

269  
270 (ii) "Caution: federal law restricts this drug to use by or on the order of a licensed  
271 veterinarian"; or

272  
273 (C) a drug or device that is required by federal or state statute or regulation to be dispensed  
274 on prescription or that is restricted to use by a practitioner only.

275  
276 **(42)** ~~[(43)]~~ Prescription drug order--

277  
278 (A) a written order from a practitioner or a verbal order from a practitioner or his authorized  
279 agent to a pharmacist for a drug or device to be dispensed; or

280  
281 (B) a written order or a verbal order pursuant to Subtitle B, Chapter 157, Occupations Code.

282  
283 **(43)** ~~[(44)]~~ Prospective drug use review--A review of the patient's drug therapy and prescription  
284 drug order or medication order prior to dispensing or distributing the drug.

285  
286 **(44)** ~~[(45)]~~ State--One of the 50 United States of America, a U.S. territory, or the District of  
287 Columbia.

288  
289 **(45)** ~~[(46)]~~ Texas Controlled Substances Act--The Texas Controlled Substances Act, Health and  
290 Safety Code, Chapter 481, as amended.

291  
292 **(46)** ~~[(47)]~~ Written protocol--A physician's order, standing medical order, standing delegation  
293 order, or other order or protocol as defined by rule of the Texas Medical Board under the Texas  
294 Medical Practice Act.

1 TITLE 22 EXAMINING BOARDS  
2 PART 15 TEXAS STATE BOARD OF PHARMACY  
3 CHAPTER 291 PHARMACIES  
4 SUBCHAPTER B COMMUNITY PHARMACY (CLASS A)

5  
6 **§291.34 Records**  
7

8 (a) (No change.)  
9

10 (b) Prescriptions.

11 (1) Professional responsibility.

12 (A) – (C) (No change.)  
13

14 (2) Written prescription drug orders.

15 (A) – (C) (No change.)  
16

17 (D) Prescription drug orders ~~from [carried out or signed by]~~ an advanced practice registered  
20 nurse, physician assistant, or pharmacist.  
21

22 (i) A pharmacist may dispense a prescription drug order that is:  
23

24 (I) ~~[carried out or]~~ signed by an advanced practice registered nurse or physician assistant  
25 provided the advanced practice registered nurse or physician assistant is practicing in  
26 accordance with Subtitle B, Chapter 157, Occupations Code, and  
27

28 (II) for a dangerous drug and signed by a pharmacist under delegated authority of a  
29 physician as specified in Subtitle B, Chapter 157, Occupations Code.  
30

31 (ii) Each practitioner shall designate in writing the name of each advanced practice  
32 registered nurse or physician assistant authorized to prescribe or order a drug or device  
33 ~~[carry out or sign a prescription drug order]~~ pursuant to Subtitle B, Chapter 157, Occupations  
34 Code. A list of the advanced practice registered nurses or physician assistants designated by  
35 the practitioner must be maintained in the practitioner's usual place of business. On request by  
36 a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization  
37 for a specific advanced practice registered nurse or physician assistant.  
38

39 (E) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled  
40 substance may be dispensed without a written prescription drug order of a practitioner on an  
41 official prescription form as required by the Texas Controlled Substances Act, §481.075.  
42

43 (3) – (6) (No change.)  
44

45 (7) Prescription drug order information.

46 (A) All original prescriptions shall bear:  
47

48 (i) name of the patient, or if such drug is for an animal, the species of such animal and the  
49 name of the owner;  
50  
51

52  
53 (ii) address of the patient, provided, however, a prescription for a dangerous drug is not  
54 required to bear the address of the patient if such address is readily retrievable on another  
55 appropriate, uniformly maintained pharmacy record, such as medication records;  
56  
57 (iii) name, address and telephone number of the practitioner at the practitioner's usual place  
58 of business, legibly printed or stamped and if for a controlled substance, the DEA registration  
59 number of the practitioner;  
60  
61 (iv) name and strength of the drug prescribed;  
62  
63 (v) quantity prescribed numerically and if for a controlled substance:  
64  
65 (I) numerically, followed by the number written as a word, if the prescription is written;  
66  
67 (II) numerically, if the prescription is electronic; or  
68  
69 (III) if the prescription is communicated orally or telephonically, as transcribed by the  
70 receiving pharmacist;  
71  
72 (vi) directions for use;  
73  
74 (vii) intended use for the drug unless the practitioner determines the furnishing of this  
75 information is not in the best interest of the patient;  
76  
77 (viii) date of issuance;  
78  
79 (ix) if a faxed prescription:  
80  
81 (I) a statement that indicates that the prescription has been faxed (e.g., Faxed to); and  
82  
83 (II) if transmitted by a designated agent, the name of the designated agent;  
84  
85 (x) if electronically transmitted:  
86  
87 (I) the date the prescription drug order was electronically transmitted to the pharmacy, if  
88 different from the date of issuance of the prescription; and  
89  
90 (II) if transmitted by a designated agent, the name of the designated agent; and  
91  
92 (xi) if issued by an advanced practice registered nurse or physician assistant in accordance  
93 with Subtitle B, Chapter 157, Occupations Code the:  
94  
95 (I) name, address, telephone number, and if the prescription is for a controlled substance,  
96 the DEA number of the supervising practitioner; and  
97  
98 (II) address and telephone number of the clinic where the prescription drug order was  
99 carried out or signed.  
100

101 (B) At the time of dispensing, a pharmacist is responsible for documenting the following  
102 information on either the original hard copy prescription or in the pharmacy's data processing  
103 system:

- 104  
105 (i) unique identification number of the prescription drug order;  
106  
107 (ii) initials or identification code of the dispensing pharmacist;  
108  
109 (iii) initials or identification code of the pharmacy technician or pharmacy technician trainee  
110 performing data entry of the prescription, if applicable;  
111  
112 (iv) quantity dispensed, if different from the quantity prescribed;  
113  
114 (v) date of dispensing, if different from the date of issuance; and  
115  
116 (vi) brand name or manufacturer of the drug product actually dispensed, if the drug was  
117 prescribed by generic name or if a drug product other than the one prescribed was dispensed  
118 pursuant to the provisions of the Act, Chapters 562 and 563.

119  
120 (8) – (10) (No change.)

121  
122 (c) – (d) (No change.)

123  
124 (e) Prescription drug order records maintained in a data processing system.

125  
126 (1) (No change.)

127  
128 (2) Records of dispensing.

129  
130 (A) – (B) (No change.)

131  
132 (C) The data processing system shall have the capacity to produce a daily hard copy printout  
133 of all original prescriptions dispensed and refilled. This hard copy printout shall contain the  
134 following information:

135  
136 (i) unique identification number of the prescription;

137  
138 (ii) date of dispensing;

139  
140 (iii) patient name;

141  
142 (iv) prescribing practitioner's name; and the supervising physician's name if the prescription  
143 was issued by an advanced practice **registered** nurse, physician assistant or pharmacist;

144  
145 (v) name and strength of the drug product actually dispensed; if generic name, the brand  
146 name or manufacturer of drug dispensed;

147  
148 (vi) quantity dispensed;

149  
150 (vii) initials or an identification code of the dispensing pharmacist;

151

152 (viii) initials or an identification code of the pharmacy technician or pharmacy technician  
153 trainee performing data entry of the prescription, if applicable;  
154  
155 (ix) if not immediately retrievable via computer display, the following shall also be included  
156 on the hard copy printout:  
157  
158 (I) patient's address;  
159  
160 (II) prescribing practitioner's address;  
161  
162 (III) practitioner's DEA registration number, if the prescription drug order is for a controlled  
163 substance;  
164  
165 (IV) quantity prescribed, if different from the quantity dispensed;  
166  
167 (V) date of issuance of the prescription drug order, if different from the date of dispensing;  
168 and  
169  
170 (VI) total number of refills dispensed to date for that prescription drug order; and  
171  
172 (x) any changes made to a record of dispensing.  
173  
174 (D) – (K) (No change.)  
175  
176 (3) (No change.)  
177  
178 (f) – (l) (No change.)  
179

AN ACT

relating to the practice of advanced practice registered nurses and physician assistants and the delegation of prescriptive authority by physicians to and the supervision by physicians of certain advanced practice registered nurses and 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. DELEGATION TO ADVANCED PRACTICE REGISTERED NURSES  
AND PHYSICIAN ASSISTANTS

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

Sec. 157.051. DEFINITIONS. In this subchapter:

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

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

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

(3) ~~[(2-b)]~~ "Dangerous drug" has the meaning assigned 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. Subsections (b), (d), (e), (f), and (j), Section  
20 157.059, 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.

4 (a) In this section, "practice [~~site~~] serving a medically  
5 underserved population" has the meaning assigned by Section 157.051  
6 [~~157.052~~].

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

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

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

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

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

21 (3) formulating a working diagnosis;

22 (4) developing and implementing a treatment plan;

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

25 (6) assisting at surgery;

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

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

9           (9) prescribing or ordering a drug or device [~~signing~~  
10 ~~or completing a prescription~~] as provided by Subchapter B, Chapter  
11 157; and

12           (10) making appropriate referrals.

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

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

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

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

1 diagnosis or the prescription of therapeutic or corrective  
2 measures. Professional nursing involves:

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

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

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

11 (D) the supervision or teaching of nursing;

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

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

19 (G) the performance of an act delegated by a  
20 physician under Section 157.0512 [~~157.052, 157.053~~], 157.054,  
21 [~~157.0541, 157.0542~~] 157.058, or 157.059; and

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

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

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

1        (b) A reference in any other law to an "advanced nurse  
2 practitioner" or "advanced practice nurse" means an advanced  
3 practice registered nurse.

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

6        Sec. 301.152. RULES REGARDING SPECIALIZED TRAINING.

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

14        (b) The board shall adopt rules to:

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

17                (2) establish:

18                        (A) any specialized education or training,  
19 including pharmacology, that an advanced practice [~~a~~] registered  
20 nurse must have to prescribe or order a drug or device as delegated  
21 by a physician [~~carry out a prescription drug order~~] under Section  
22 157.0512 or 157.054 [~~157.052~~]; [~~and~~]

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

1 education and training requirement under Paragraph (A)  
2 [~~Subdivision (1)(A)~~]; and

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

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

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

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

17 (2) require continuing education in clinical  
18 pharmacology and related pathophysiology [~~pathology~~] in addition  
19 to any continuing education otherwise required under Section  
20 301.303[, ~~and~~

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

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

1 SECTION 18. Subchapter D, Chapter 301, Occupations Code, is  
2 amended by adding Section 301.168 to read as follows:

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

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

10 (34) "Practitioner" means:

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

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

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

26 (D) an advanced practice registered nurse or  
27 physician assistant to whom a physician has delegated the authority

1 to prescribe or order a drug or device [~~carry out or sign~~  
2 ~~prescription drug orders~~] under Section 157.0511, 157.0512  
3 [~~157.052, 157.053~~], or 157.054[~~, 157.0541, or 157.0542~~].

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

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

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

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

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

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

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

1           (5) a requirement that the managed care organization  
2 provide information and referral about the availability of  
3 educational, social, and other community services that could  
4 benefit a recipient;

5           (6) procedures for recipient outreach and education;

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

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

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

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

25           (11) a requirement that the managed care  
26 organization's usages of out-of-network providers or groups of  
27 out-of-network providers may not exceed limits for those usages

1 relating to total inpatient admissions, total outpatient services,  
2 and emergency room admissions determined by the commission;

3 (12) if the commission finds that a managed care  
4 organization has violated Subdivision (11), a requirement that the  
5 managed care organization reimburse an out-of-network provider for  
6 health care services at a rate that is equal to the allowable rate  
7 for those services, as determined under Sections 32.028 and  
8 32.0281, Human Resources Code;

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

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

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

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

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

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

25 (14) a requirement that the managed care organization  
26 reimburse a federally qualified health center or rural health  
27 clinic for health care services provided to a recipient outside of

1 regular business hours, including on a weekend day or holiday, at a  
2 rate that is equal to the allowable rate for those services as  
3 determined under Section 32.028, Human Resources Code, if the  
4 recipient does not have a referral from the recipient's primary  
5 care physician;

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

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

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

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

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

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

1 provides a managed care plan in that region;

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

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

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

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

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

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

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

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

1 (ii) a sufficient variety of provider  
2 types; and

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

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

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

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

18 (B) focuses on measuring outcomes; and

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

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

26 (A) that exclusively employs the vendor drug  
27 program formulary and preserves the state's ability to reduce

1 waste, fraud, and abuse under the Medicaid program;

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

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

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

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

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

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

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

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

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

1 pharmacy benefit manager responsible for the administration of the  
2 pharmacy benefit program; and

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

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

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

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

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

1 goods, bundling arrangements, and other agreements affecting the  
2 net cost of goods or services provided under the plan.

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

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

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

11 (2) a licensed physician, who is employed by a state  
12 governmental entity for purposes other than the pilot program or  
13 whose services are acquired by contract, who will delegate to and  
14 supervise the advanced practice registered nurse or physician  
15 assistant under a prescriptive authority agreement under Chapter  
16 157 [perform all supervisory functions described by Section  
17 157.052(e)], Occupations Code;

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

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

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

27 Sec. 62.1551. INCLUSION OF CERTAIN HEALTH CARE PROVIDERS IN

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

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

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

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

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

19 (39) "Practitioner" means:

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

26 (B) a pharmacy, hospital, or other institution  
27 licensed, registered, or otherwise permitted to distribute,

1 dispense, conduct research with respect to, or administer a  
2 controlled substance in the course of professional practice or  
3 research in this state;

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

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

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

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

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

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

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

1 legally prescribe dangerous drugs; or

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

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

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

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

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

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

25 Sec. 32.03141. AUTHORITY OF ADVANCED PRACTICE REGISTERED  
26 NURSES AND PHYSICIAN ASSISTANTS REGARDING DURABLE MEDICAL  
27 EQUIPMENT AND SUPPLIES. To the extent allowed by federal law, an

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

7 SECTION 27. Sections 157.052, 157.053, 157.0541, and  
8 157.0542, Occupations Code, are repealed.

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

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

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

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 406 passed the Senate on March 13, 2013, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 17, 2013, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 406 passed the House, with amendment, on May 15, 2013, by the following vote: Yeas 146, Nays 0, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor