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:
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) "Dangerous drug" has the meaning assigned
to that term by Section 483.001, Health and Safety Code.
(4) "Device" has the meaning assigned by Section 551.003, and includes durable medical equipment.

(5) "Health professional shortage area" means:

(A) an urban or rural area of this state that:
   (i) is not required to conform to the geographic boundaries of a political subdivision but is a rational area for the delivery of health services;
   (ii) the secretary of health and human services determines has a health professional shortage; and
   (iii) is not reasonably accessible to an adequately served area;

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

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

(6) "Hospital" means a facility that:

(A) is:
   (i) a general hospital or a special hospital, as those terms are defined by Section 241.003, Health and Safety Code, including a hospital maintained or operated by the state; or
   (ii) a mental hospital licensed under Chapter 577, Health and Safety Code; and

(B) has an organized medical staff.
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(7) "Medication order" has the meanings assigned by
Section 551.003 of this code and Section 481.002, Health and Safety
Code.

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

(9) "Physician assistant" means a person who
holds a license issued under Chapter 204.

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

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

or

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

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

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

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

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

(D) a clinic designated as a federally qualified
health center under 42 U.S.C. Section 1396d(1)(2)(B);
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(E) a county, state, or federal correctional facility;

(F) a practice:

(i) that either:

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

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

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

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

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

(13) "Prescription drug" has the meaning assigned by
Section 551.003.

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

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

Sec. 157.0511. DELEGATION OF PRESCRIBING AND ORDERING DRUGS AND DEVICES. (a) A physician's authority to delegate the prescribing or ordering of a drug or device under this subchapter is limited to:

(1) nonprescription drugs;

(2) dangerous drugs; and

(3) [as amended] controlled substances to the extent provided by Subsections (b) and (b-1).

(b) Except as provided by Subsection (b-1), a physician may delegate the prescribing or ordering of a controlled substance for a controlled substance only if:

(1) the prescription is for a controlled substance listed in Schedule III, IV, or V as established by the commissioner of the Department of State Health Services under Chapter 481, Health and Safety Code;

(2) the prescription, including a refill of the prescription, is for a period not to exceed 90 days;
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(3) with regard to the refill of a prescription, the refill is authorized after consultation with the delegating physician and the consultation is noted in the patient's chart; and

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

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

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

(A) has been admitted to the hospital for an intended length of stay of 24 hours or greater; or
(B) is receiving services in the emergency department of the hospital; or

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

(b-2) The board shall adopt rules that require a physician who delegates the prescribing or ordering of a drug or device [carrying out or signing of a prescription drug order under this
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subchapter) to register with the board the name and license number of the physician assistant or advanced practice registered nurse to whom a delegation is made. The board may develop and use an electronic online delegation registration process for registration under this subsection.

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

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

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

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

(1) if applicable, the Texas Board of Nursing has
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approved the advanced practice registered nurse's authority to
prescribe or order a drug or device as authorized under this
subchapter;

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

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

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

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

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

(d) Subsection (c) does not apply to a prescriptive
authority agreement if the prescriptive authority is being
exercised in:
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(1) a practice serving a medically underserved population; or

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

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

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

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

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

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

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

(6) provide a plan for addressing patient emergencies;

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

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

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

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

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

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

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

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

(1) include:

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

(B) discussion of patient care improvement; and

(2) be documented and occur:

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

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

(ii) at least quarterly after the third anniversary of the date the agreement is executed, with monthly
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meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet; or

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

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

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

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

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

(i) The prescriptive authority agreement need not describe the exact steps that an advanced practice registered nurse or physician assistant must take with respect to each specific
condition, disease, or symptom.

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

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

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

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

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

(o) This section shall be liberally construed to allow the
use of prescriptive authority agreements to safely and effectively
utilize the skills and services of advanced practice registered nurses and physician assistants.

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

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

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

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

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

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

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

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

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

Sec. 157.0514. PRESCRIPTIVE AUTHORITY AGREEMENT: INSPECTIONS. If the board receives a notice under Section 157.0513(a)(2), the board or an authorized board representative may enter, with reasonable notice and at a reasonable time, unless the notice would jeopardize an investigation, a site where a party to a
prescriptive authority agreement practices to inspect and audit any records or activities relating to the implementation and operation of the agreement. To the extent reasonably possible, the board and the board's authorized representative shall conduct any inspection or audit under this section in a manner that minimizes disruption to the delivery of patient care.

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

(a) One or more physicians licensed by the board may delegate, to one or more physician assistants or advanced practice registered nurses acting under adequate physician supervision whose practice is facility-based at a hospital or licensed long-term care facility, the administration or provision of a drug and the prescribing or ordering of a drug or device if each of the delegating physicians is:

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

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

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

(4) a physician who consents to the request of the medical director or chief of medical staff to delegate the
prescribing or ordering of a drug or device [carrying out or signing of a prescription drug order] at the facility in which the physician assistant or advanced practice registered nurse practices.

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

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

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

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

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

(4) delegation in a long-term care facility must be by the medical director and is limited to the prescribing or ordering
of a drug or device [carrying out and signing of prescription drug
orders] to not more than seven [four] advanced practice registered
nurses or physician assistants or their full-time equivalents.

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

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

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

Sec. 157.055. ORDERS AND PROTOCOLS. A protocol or other
order shall be defined in a manner that promotes the exercise of
professional judgment by the advanced practice registered nurse and
physician assistant commensurate with the education and experience
of that person. Under this section, an order or protocol used by a
reasonable and prudent physician exercising sound medical judgment:

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

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

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

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

(1) a physician's prescription; or

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

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

(b) A physician may delegate to a physician assistant specializing in obstetrics or an advanced practice registered nurse recognized by the Texas Board of Nursing as a nurse midwife the act of administering or providing controlled substances to the physician assistant's or nurse midwife's clients during intrapartum and immediate postpartum care.
The delegation of authority to administer or provide controlled substances under Subsection (b) must be under a physician's order, medical order, standing delegation order, prescriptive authority agreement, or protocol that requires adequate and documented availability for access to medical care.

The physician's orders, medical orders, standing delegation orders, prescriptive authority agreements, or protocols must require the reporting of or monitoring of each client's progress, including complications of pregnancy and delivery and the administration and provision of controlled substances by the nurse midwife or physician assistant to the clients of the nurse midwife or physician assistant.

The authority of a physician to delegate under this section is limited to:

(1) seven nurse midwives or physician assistants or their full-time equivalents; and

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

This section does not limit the authority of a physician to delegate the prescribing or ordering of a controlled substance under this subchapter.

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

Sec. 157.060. PHYSICIAN LIABILITY FOR DELEGATED ACT. Unless the physician has reason to believe the physician assistant or advanced practice registered nurse lacked the competency to
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perform the act, a physician is not liable for an act of a physician assistant or advanced practice registered nurse solely because the physician signed a standing medical order, a standing delegation order, or another order or protocol, or entered into a prescriptive authority agreement, authorizing the physician assistant or advanced practice registered nurse to administer, provide, prescribe, or order a drug or device [carry out, or sign a prescription drug order].

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

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

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

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

Sec. 204.1025. DUTIES REGARDING PRESCRIPTIVE AUTHORITY AGREEMENTS. The physician assistant board shall in conjunction with the Texas Medical Board and the Texas Board of Nursing perform the functions and duties relating to prescriptive authority agreements assigned to the physician assistant board in Sections 157.0512 and 157.0513.
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SECTION 12. Section 204.1565, Occupations Code, is amended
to read as follows:

Sec. 204.1565. INFORMAL CONTINUING MEDICAL EDUCATION.
(a) In this section, "practice [site] serving a medically
underserved population" has the meaning assigned by Section 157.051
[157.052].
(b) The physician assistant board by rule shall permit a
license holder to complete half of any informal continuing medical
education hours required to renew a license under this chapter by
providing volunteer medical services at a practice [site] serving a
medically underserved population, other than a site that is a
primary practice site of the license holder.

SECTION 13. Subsection (b), Section 204.202, Occupations
Code, is amended to read as follows:
(b) Medical services provided by a physician assistant may
include:
(1) obtaining patient histories and performing
physical examinations;
(2) ordering or performing diagnostic and therapeutic
procedures;
(3) formulating a working diagnosis;
(4) developing and implementing a treatment plan;
(5) monitoring the effectiveness of therapeutic
interventions;
(6) assisting at surgery;
(7) offering counseling and education to meet patient
needs;
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(8) requesting, receiving, and signing for the receipt of pharmaceutical sample prescription medications and distributing the samples to patients in a specific practice setting in which the physician assistant is authorized to prescribe pharmaceutical medications and sign prescription drug orders as provided by Section 157.0512 or [157.052, 157.053, 157.054, 157.0541, or 157.0542 or as otherwise authorized by physician assistant board rule];

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

(10) making appropriate referrals.

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

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

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

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

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

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

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

(D) the supervision or teaching of nursing;

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

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

(G) the performance of an act delegated by a physician under Section 157.0512, 157.052, 157.054, 157.058, or 157.059; and

(H) the development of the nursing care plan.

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

Sec. 301.005. REFERENCE IN OTHER LAW. (a) A reference in any other law to the former Board of Nurse Examiners means the Texas Board of Nursing.
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(b) A reference in any other law to an "advanced nurse practitioner" or "advanced practice nurse" means an advanced practice registered nurse.

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

Sec. 301.152. RULES REGARDING SPECIALIZED TRAINING.

(a) In this section, "advanced practice registered nurse" means a registered nurse licensed by the board to practice as an advanced practice registered nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse."

(b) The board shall adopt rules to:

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

(2) establish:

(A) any specialized education or training, including pharmacology, that an advanced practice nurse must have to prescribe or order a drug or device as delegated by a physician under Section 157.0512 or 157.054; and

(B) a system for approving an advanced practice registered nurse to prescribe or order a drug or device as delegated by a physician under Section 157.0512 or 157.054 on the receipt of evidence of completing the specialized education or training.
education and training requirement under Paragraph (A) [Subdivision (1)(A)]; and

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

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

(c) At a minimum, the rules adopted under Subsection (b)(2) [(4b)(3)] must:

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

(2) require continuing education in clinical pharmacology and related pathophysiology [pathology] in addition to any continuing education otherwise required under Section 301.303[ and

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

(d) The signature of an advanced practice registered nurse attesting to the provision of a legally authorized service by the advanced practice registered nurse satisfies any documentation requirement for that service established by a state agency.
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SECTION 18. Subchapter D, Chapter 301, Occupations Code, is amended by adding Section 301.168 to read as follows:

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

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

(34) "Practitioner" means:

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

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

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

(D) an advanced practice registered nurse or physician assistant to whom a physician has delegated the authority
to prescribe or order a drug or device [carry out or sign
prescription drug orders] under Section 157.0511, 157.0512
[157.052, 157.053], or 157.054[157.054, or 157.0542].

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

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

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

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

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

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

(4) a requirement that the managed care organization
provide ready access to a person who assists providers in resolving
issues relating to payment, plan administration, education and
training, and grievance procedures;
(5) a requirement that the managed care organization provide information and referral about the availability of educational, social, and other community services that could benefit a recipient;

(6) procedures for recipient outreach and education;

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

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

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

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

(11) a requirement that the managed care organization's usages of out-of-network providers or groups of out-of-network providers may not exceed limits for those usages
relating to total inpatient admissions, total outpatient services, and emergency room admissions determined by the commission;

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

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

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

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

(i) selection and assignment as primary care providers;

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

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

(14) a requirement that the managed care organization reimburse a federally qualified health center or rural health clinic for health care services provided to a recipient outside of
regular business hours, including on a weekend day or holiday, at a
rate that is equal to the allowable rate for those services as
determined under Section 32.028, Human Resources Code, if the
recipient does not have a referral from the recipient's primary
care physician;

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

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

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

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

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

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

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

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

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

(A) preventive care;
(B) primary care;
(C) specialty care;
(D) after-hours urgent care; and
(E) chronic care;

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

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

(B) the organization's provider network includes:

(i) a sufficient number of primary care providers;
(ii) a sufficient variety of provider types; and

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

and

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

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

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

(B) focuses on measuring outcomes; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 62.1551. INCLUSION OF CERTAIN HEALTH CARE PROVIDERS IN
PROVIDER NETWORKS. Notwithstanding any other law, including Sections 843.312 and 1301.052, Insurance Code, the executive commissioner of the commission shall adopt rules to require a managed care organization or other entity to ensure that advanced practice registered nurses and physician assistants are available as primary care providers in the organization's or entity's provider network. The rules must require advanced practice registered nurses and physician assistants to be treated in the same manner as primary care physicians with regard to:

(1) selection and assignment as primary care providers;

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

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

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

(39) "Practitioner" means:

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

(B) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute,
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dispense, conduct research with respect to, or administer a
controlled substance in the course of professional practice or
research in this state;

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

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

Occupations Code.

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

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

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

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

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

(D) an advanced practice registered nurse or physician assistant to whom a physician has delegated the authority to prescribe or order a drug or device under Section 157.0511, 157.0512, or 157.054, Occupations Code.

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

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

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

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

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

Sec. 32.03141. AUTHORITY OF ADVANCED PRACTICE REGISTERED NURSES AND PHYSICIAN ASSISTANTS REGARDING DURABLE MEDICAL EQUIPMENT AND SUPPLIES. To the extent allowed by federal law, an
advanced practice registered nurse or physician assistant acting
under adequate physician supervision and to whom a physician has
dele gated the authority to prescribe and order drugs and devices
under Chapter 157, Occupations Code, may order and prescribe
durable medical equipment and supplies under the medical assistance
program.

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

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

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

SECTION 30. This Act takes effect November 1, 2013.
President of the Senate

S.B. No. 406

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.

Speaker of the House

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.

Secretary of the Senate

Chief Clerk of the House

Approved:

14 JUNE '13

Date

Governor