Consideration of Proposed New 22 Tex. Admin. Code Chapter 228, Pertaining to Pain Management

Background: During the 83rd Legislative Session, several concerns were raised by legislators and industry regarding non-therapeutic prescribing practices in pain management settings. Several bills, including House Bill (HB) 1803, (effective January 1, 2014), Senate Bill (SB) 1643, (effective September 1, 2013), and SB 406 (effective November 1, 2013) were passed during the session in an effort to address some of the expressed concerns surrounding the issuance of controlled substances and the regulation of persons engaged in pain management.

Despite the fact that many APRNs practice in pain management settings, the Board has not adopted rules that specifically address this area of practice. The proposed new chapter is intended to prescribe minimum standards of nursing practice for APRNs providing pain management services.

The Board’s Advanced Practice Nursing Advisory Committee (Committee) met on May 31, 2013; July 1, 2013; and September 16, 2013, to discuss rules related to pain management. After its discussions, the Committee voted to recommended the proposed new chapter that is attached hereto as "Attachment A" to the Board.

Board Action: Move to approve the proposal of new 22 Tex. Admin. Code Chapter 228, pertaining to Pain Management, with authority for the General Counsel to make editorial changes as necessary to clarify rule and Board intent and to comply with the formatting requirements of the Texas Register. If no negative comments and no request for a public hearing are received, move to adopt proposed new 22 Tex. Admin. Code Chapter 228, Pertaining to Pain Management, as proposed.
Attachment “A”

Chapter 228. Pain Management.

(a) Definitions. The following words and terms when used in this chapter shall have
the following meanings unless the context clearly indicates otherwise:

(1) Controlled substance (also referred to as scheduled drugs)--A substance,
including a drug, adulterant, and dilutant, listed in Schedules I through V or Penalty Groups
1, 1-A, or 2 through 4 of Chapter 481, Health & Safety Code (Texas Controlled Substances
Act). The term includes the aggregate weight of any mixture, solution, or other substance
containing a controlled substance.

(2) Dangerous drug--A device or drug that is unsafe for self-medication and
that is not included in Schedules I through V or Penalty Groups 1 through 4 of Chapter 481,
Health & Safety Code. The term includes a device or drug that bears, or is required to
bear, the legend: “Caution: federal law prohibits dispensing without prescription” or “Rx
only” or another legend that complies with federal law.

(3) Device--An instrument, apparatus, implement, machine, contrivance,
implant, in vitro reagent, or other similar or related article, including a component part or
accessory, that is required under federal or state law to be ordered or prescribed by a
practitioner. The term includes durable medical equipment.

(3) Medication--A dangerous drug, controlled substance, non-prescription
drug, or device. For purposes of this chapter, the term also includes herbal and
naturopathic remedies.

(4) Non-prescription drug--A non-narcotic drug or device that may be sold
without a prescription and that is labeled and packaged in compliance with state or federal
(5) Pain management clinic--As defined in Chapter 168, Occupations Code.

(b) Purpose: This rule sets forth the minimum standards of nursing practice for an advanced practice registered nurse (APRN) who provides pain management services.

(1) The goal of pain management is to therapeutically treat the patient’s pain in relation to overall health, including physical function, psychological, social and work-related factors.

(2) Medications must be prescribed in a therapeutic manner that helps, rather than harms, the patient. Medications must be recognized to be pharmacologically appropriate and safe for the diagnosis for which the medication is being used.

(3) Proper treatment of pain must be based on careful and complete patient assessment and sound clinical judgment. Harm can result from failure to use sound clinical judgment, particularly in drug therapy. The APRN shall provide treatment of pain that is within the current standard of care and is supported by evidence based research.

(4) Documentation in patient records shall be legible, complete, and accurate. All consultations and referrals with the delegating physician and other health care providers shall be documented.

(5) Any treatment plan should be mutually agreed upon by the patient and the provider. Treatment of pain requires a reasonably detailed and documented plan of care to ensure that the patient’s treatment is appropriately monitored. A documented explanation of the rationale for the particular treatment plan is required for cases in which treatment with scheduled drugs is difficult to relate to the patient’s objective physical, radiographic, or laboratory findings. Ongoing consultation and referral to the delegating
physician and other health care providers shall be documented.

(b) Evaluation of the Patient Seeking Treatment for Pain.

(1) The APRN shall ensure that a current and complete health history is documented in the patient record. The APRN shall perform and document a physical assessment that includes a problem-focused exam specific to the chief presenting complaint of the patient. At a minimum, this assessment must be performed and documented when prescribing and/or ordering a new medication or a refill of a medication for the patient.

(2) Pain assessment and documentation in the patient record shall include, as appropriate:

(A) The nature and intensity of the pain;

(B) All current and past treatments for pain, including relevant patient records from prior treating providers as available;

(C) Underlying conditions and co-existing physical and psychiatric disorders;

(D) The effect of pain on physical and psychological function;

(E) History and potential for substance misuse, abuse, dependence, addiction or other substance use disorder, including relevant validated, objective testing and risk stratification tools; and

(F) One or more recognized clinical indications for the use of a medication, if prescribed.

(c) Treatment Plan and Outcomes for Patients with Pain. The APRN who treats
patients with pain shall ensure that there is a written treatment plan documented in the patient record. Information in the patient record shall include, as appropriate:

1. A written explanation of how the medication(s) ordered/prescribed relate(s) to the chief presenting complaint and treatment of pain;
2. The name, dosage, frequency, and quantity of any medication prescribed and number of refills authorized;
3. Laboratory testing and diagnostic evaluations ordered;
4. All other treatment options that are planned or considered;
5. Plans for ongoing monitoring of the treatment plan and outcomes;
6. Subjective and objective measures that will be used to determine treatment outcomes, such as pain relief and improved physical and psychosocial function; and
7. Any and all consultations and referrals, including the date the consultation and/or referral was made; to whom the consultation and/or referral was made; the timeframe for completion of the consultation and/or referral; and the results of the consultation and/or referral; and
8. Documentation of informed consent, as required by subsection (d) of this section.

(d) Informed consent includes a discussion with the patient, a person(s) designated by the patient, or with the patient’s surrogate or guardian, if the patient is without medical decision-making capacity, of the risks and benefits of the use of medications for the treatment of pain. As appropriate, this discussion should be documented by either a written, signed document maintained in the patient record or a contemporaneous notation.
included in the patient record. Discussion of risks and benefits should include an explanation of the following:

(1) Diagnosis;

(2) Treatment plan;

(3) Expected therapeutic outcomes, including the realistic expectations for sustained pain relief, and possibilities for lack of pain relief;

(4) Non-pharmacological therapies;

(5) Potential side effects of treatments and drug therapy and how to manage common side effects;

(6) Adverse effects of medication use, including the potential for dependence, addiction, tolerance, and withdrawal; and

(7) Potential for impaired judgment and motor skills.

(e) If the treatment plan includes drug therapy beyond 90 days, the use of a written pain management agreement should be included, as appropriate. The written pain management agreement should outline patient responsibilities that, at a minimum require the patient to:

(1) Submit to laboratory testing for drug confirmation upon request of the APRN, the delegating physician, and/or any other health care providers;

(2) Adhere to the number and frequency of prescription refills;

(3) Use only one provider to prescribe controlled substances related to pain management, and to make consultations and referrals;

(4) Use only one pharmacy for all prescriptions for controlled substances related to pain management;
(5) Acknowledge potential consequences of non-compliance with the agreement; and

(6) Acknowledge processes following successful completion of treatment goals, including weaning of medications.

(f) Ongoing monitoring of the treatment of pain.

(1) The APRN shall see the patient for periodic review of the treatment plan at reasonable intervals.

(2) The periodic review shall include an assessment of the patient’s progress toward reaching treatment plan goals, taking into consideration the history of medication usage, as well as any new information about the pain, and the patient’s compliance with the pain management agreement.

(3) Each periodic review of the treatment plan shall be documented in the patient record.

(4) Any adjustment in the treatment plan based on individual needs of the patient shall be documented.

(5) Continuation or modification of the use of medications for pain management shall be based on an evaluation of progress toward treatment plan goals, as well as evaluation and consideration of any new factors that may influence the treatment plan.

(A) Progress or lack of progress in relieving pain and meeting treatment objectives shall be documented in the patient record. Progress may be indicated by the patient’s decreased pain, increased level of function, and/or improved quality of life.

(B) Objective evidence of improved or diminished function shall be
monitored. Information from the patient, family members, or other caregivers should be considered in determining the patient’s response to treatment.

(C) If the patient’s progress is unsatisfactory, the current treatment plan should be reevaluated, with consideration given to the use of other therapeutic modalities and/or services of other providers.

(6) Continuation of the use of scheduled drugs shall include consultation with the delegating physician and documentation of such consultation in the patient record, as required for delegation of prescriptive authority for controlled substances pursuant to §157.0511 and §168.201, Occupations Code.

(g) Consultation and Referral. In certain situations, further evaluation and treatment may be indicated.

(1) Patients who are at risk for substance use disorders or addiction require special attention. Consideration should be given to consultation with and/or referral to a provider who is an expert in the treatment of patients with substance use disorders.

(2) Patients with chronic pain and histories of substance use disorders or with co-existing psychological and/or psychiatric disorders may require consultation with and/or referral to an expert in the treatment of such patients. Consideration should be given to consultation with and/or referral to a provider who is an expert in the treatment of patients with these histories and/or disorders.

(3) Information regarding the consideration of consultation and/or referral under this subsection should be documented in the patient record.

(h) Pain management clinics in the state of Texas. Prior to providing pain management services in these settings, APRNs who practice in pain management clinics
shall verify that the clinic has been properly certified as a pain management clinic by the Texas Medical Board and that the certification is current.

(1) The APRN shall be available on site with the physician at least 33 percent of a pain management clinic’s total operating hours.

(2) The APRN shall comply with the requirements of §168.201, Occupations Code for review of 33 percent of patient charts in pain management clinics.

(3) The APRN shall ensure that s/he is in compliance with all other requirements for delegation of prescriptive authority for medications as set forth in Board rule.

(4) An APRN who owns or operates a clinic in this state that meets the definition of a pain management clinic under this section is exempt from the certification requirements of the Texas Medical Board if:

(A) the APRN is treating patients in the APRN’s area of specialty; and

(B) the APRN personally uses other forms of treatment with the issuance of a prescription to the majority of the APRN’s patients. A treatment under this subparagraph must be within the current standard of care, supported by evidence based research, and consistent with the treatment plan.

(5) APRNs shall not own or operate a pain management clinic.
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) ["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.
(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(l)(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 [PRESCRIPTION DRUG ORDERS]. (a) A physician's authority to delegate the prescribing or ordering of a drug or device [carrying out or signing of a prescription drug order] under this subchapter is limited to:

(1) nonprescription drugs;
(2) dangerous drugs; and
(3) [421] controlled substances to the extent provided by Subsections [Subsection] (b) and (b-1).

(b) Except as provided by Subsection (b-1), a [A] physician may delegate the prescribing or ordering of [carrying out or signing of a prescription drug order 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 [public health] 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;
(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
section 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
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:
(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
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.

(q) 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 licensed 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

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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

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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-l) A facility-based [\(5\) 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.
(d) 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.

(e) 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.

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

(1) [four] 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.

(j) This section does not limit the authority of a physician to delegate the prescribing or ordering of a controlled substance under this subchapter.
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.
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.
(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;
(B) 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 at [sites in] which an advanced practice [a] 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, 157.053, 157.054, 157.0541, 157.0542, 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.
(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 [approved] 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 [carry out a prescription drug order] under Section 157.0512 or 157.054 [157.052]; [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 [assigning an identification number to a registered nurse who provides the board with] evidence of completing the specialized
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) [(b)(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[4] 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.
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[, 157.0541, 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,
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 [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 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 delegated 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 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.
S.B. No. 406

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
S.B. No. 1643

AN ACT
relating to the monitoring of prescriptions for certain controlled
substances; providing penalties.

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

SECTION 1. Section 481.002, Health and Safety Code, is
amended by amending Subdivisions (20) and (32) and adding
Subdivision (54) to read as follows:

(20) "Hospital" means:

(A) a general or special hospital as defined by
Section 241.003 [(Texas Hospital Licensing Law)]; [or]

(B) an ambulatory surgical center licensed under
Chapter 243 [(by the Texas Department of Health)] and approved by the
federal government to perform surgery paid by Medicaid on patients
admitted for a period of not more than 24 hours; or

(C) a freestanding emergency medical care
facility licensed under Chapter 254.

(32) "Patient" means a human for whom or an animal for
which a drug:

(A) is administered, dispensed, delivered, or
prescribed by a practitioner; or

(B) is intended to be administered, dispensed,
delivered, or prescribed by a practitioner.

(54) "Health information exchange" means an
organization that:
(A) assists in the transmission or receipt of health-related information among organizations transmitting or receiving the information according to nationally recognized standards and under an express written agreement;

(B) as a primary business function, compiles or organizes health-related information that is designed to be securely transmitted by the organization among physicians, health care providers, or entities within a region, state, community, or hospital system; or

(C) assists in the transmission or receipt of electronic health-related information among physicians, health care providers, or entities within:

(i) a hospital system;

(ii) a physician organization;

(iii) a health care collaborative, as defined by Section 848.001, Insurance Code;

(iv) an accountable care organization participating in the Pioneer Model under the initiative by the Innovation Center of the Centers for Medicare and Medicaid Services; or

(v) an accountable care organization participating in the Medicare shared savings program under 42 U.S.C. Section 1395jjj.

SECTION 2. Section 481.076, Health and Safety Code, is amended by amending Subsections (a) and (e) and adding Subsections (a-1) and (a-2) to read as follows:

(a) The director may not permit any person to have access to
information submitted to the director under Section 481.074(q) or

2 481.075 except:

3 (1) an investigator for the Texas Medical Board, the
4 Texas State Board of Podiatric Medical Examiners, the State Board
5 of Dental Examiners, the State Board of Veterinary Medical
6 Examiners, the Texas Board of Nursing, or the Texas State Board of
7 Pharmacy;
8 (2) an authorized officer or member of the department
9 engaged in the administration, investigation, or enforcement of
10 this chapter or another law governing illicit drugs in this state or
11 another state; or
12 (3) if the director finds that proper need has been
13 shown to the director:
14 (A) a law enforcement or prosecutorial official
15 engaged in the administration, investigation, or enforcement of
16 this chapter or another law governing illicit drugs in this state or
17 another state;
18 (B) a pharmacist or a pharmacy technician, as
19 defined by Section 551.003, Occupations Code, acting at the
direction of a pharmacist or a practitioner who is a physician,
dentist, veterinarian, podiatrist, or advanced practice nurse or is
a physician assistant described by Section 481.002(39)(D) or a
nurse licensed under Chapter 301, Occupations Code, acting at the
direction of a practitioner and is inquiring about a recent
Schedule II, III, IV, or V prescription history of a particular
patient of the practitioner; or
20 (C) a pharmacist or practitioner who is inquiring
about the person's own dispensing or prescribing activity.

(a-1) A person authorized to receive information under Subsection (a)(3)(B) or (C) may access that information through a health information exchange, subject to proper security measures to ensure against disclosure to unauthorized persons.

(a-2) A person authorized to receive information under Subsection (a)(3)(B) may include that information in any form in the medical or pharmacy record of the patient who is the subject of the information. Any information included in a patient's medical or pharmacy record under this subsection is subject to any applicable state or federal confidentiality or privacy laws.

(e) The director shall remove from the information retrieval system, destroy, and make irretrievable the record of the identity of a patient submitted under this section to the director not later than the end of the 36th [12th] calendar month after the month in which the identity is entered into the system. However, the director may retain a patient identity that is necessary for use in a specific ongoing investigation conducted in accordance with this section until the 30th day after the end of the month in which the necessity for retention of the identity ends.

SECTION 3. Subsection (a), Section 481.127, Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly gives, permits, or obtains unauthorized access to information submitted to the director under Section 481.074(q) or 481.075.

SECTION 4. Chapter 481, Health and Safety Code, is amended by adding Subchapter I to read as follows:
S.B. No. 1643

SUBCHAPTER I. INTERAGENCY PRESCRIPTION MONITORING WORK GROUP

Sec. 481.351. INTERAGENCY PRESCRIPTION MONITORING WORK GROUP. The interagency prescription monitoring work group is created to evaluate the effectiveness of prescription monitoring under this chapter and offer recommendations to improve the effectiveness and efficiency of recordkeeping and other functions related to the regulation of dispensing controlled substances by prescription.

Sec. 481.352. MEMBERS. The work group is composed of:

(1) the director or the director's designee;

(2) the commissioner of state health services or the commissioner's designee;

(3) the executive director of the Texas State Board of Pharmacy or the executive director's designee;

(4) the executive director of the Texas Medical Board or the executive director's designee;

(5) the executive director of the Texas Board of Nursing or the executive director's designee; and

(6) the executive director of the Texas Physician Assistant Board or the executive director's designee.

Sec. 481.353. MEETINGS. (a) The work group shall meet at least quarterly.

(b) The work group is subject to Chapter 551, Government Code.

(c) The work group shall proactively engage stakeholders and solicit and take into account input from the public.

Sec. 481.354. REPORT. Not later than December 1 of each
even-numbered year, the work group shall submit to the legislature its recommendations relating to prescription monitoring.

SECTION 5. Section 168.102, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) If an applicant for a certificate under this chapter is under investigation by the board for a violation of this subtitle, board rules, or other law relating to the prescription, dispensation, administration, supply, or sale of a controlled substance, the board may not make a decision on the application until the board has reached a final decision on the matter under investigation.

SECTION 6. Subsection (a), Section 168.202, Occupations Code, is amended to read as follows:

(a) A violation of this chapter or a rule adopted under this chapter is grounds for disciplinary action, including a temporary suspension or restriction under Section 164.059, against a pain management clinic certified under this chapter or an owner or operator of a clinic certified under this chapter.

SECTION 7. This Act takes effect September 1, 2013.
S.B. No. 1643

President of the Senate

I hereby certify that S.B. No. 1643 passed the Senate on April 25, 2013, by the following vote: Yeas 28, Nays 0; and that the Senate concurred in House amendments on May 25, 2013, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1643 passed the House, with amendments, on May 22, 2013, by the following vote: Yeas 144, Nays 2, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor
AN ACT
relating to controlled substance registration by physicians and the
regulation of persons engaged in pain management; changing the
payment schedule for a fee.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Section 481.061(c), Health and Safety Code, is
amended to read as follows:
(c) A separate registration is required at each principal
place of business or professional practice where the applicant
manufactures, distributes, analyzes, dispenses, or possesses a
controlled substance[. However], except that the director may not
require separate registration for:
(1) a physician licensed under Subtitle B, Title 3,
Occupations Code; or
(2) a practitioner engaged in research with a
nonnarcotic controlled substance listed in Schedules II through V
if the registrant is already registered under this subchapter in
another capacity.
SECTION 2. Section 481.063(g), Health and Safety Code, is
amended to read as follows:
(g) Except as otherwise provided by Section 481.0645 for a
physician licensed under Subtitle B, Title 3, Occupations Code,
a [A] registration is valid until the first anniversary of the date
of issuance and may be renewed annually under rules adopted by the
SECTION 3. Section 481.064, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Except as otherwise provided by Section 481.0645 for a physician licensed under Subtitle B, Title 3, Occupations Code, the director may charge a nonrefundable fee of not more than $25 before processing an application for annual registration and may charge a late fee of not more than $50 for each application for renewal the department receives after the date the registration expires. The director by rule shall set the amounts of the fees at the amounts that are necessary to cover the cost of administering and enforcing this subchapter. Except as provided by Subsection (b) or Section 156.004, Occupations Code, registrants shall pay the fees to the director. Not later than 60 days before the date the registration expires, the director shall send a renewal notice to the registrant at the last known address of the registrant according to department records, unless the registrant is a physician to whom notice of expiration is provided under Section 156.004, Occupations Code.

(a-1) Notwithstanding Subsection (a), the director shall continue to send renewal notices to registrants who are physicians. This subsection expires January 1, 2016.

SECTION 4. Subchapter C, Chapter 481, Health and Safety Code, is amended by adding Section 481.0645 to read as follows:

Sec. 481.0645. REGISTRATION, RENEWAL, AND FEES FOR
PHYSICIANS. (a) The registration under this chapter of a physician licensed under Subtitle B, Title 3, Occupations Code, is valid for a period of not less than two years and expires on the same date the physician's registration permit issued by the Texas Medical Board under Chapter 156, Occupations Code, expires.

(a-1) Notwithstanding Subsection (a), a registration of a physician licensed under Subtitle B, Title 3, Occupations Code, that is in effect on January 1, 2014, expires on the date on which the physician's registration permit issued by the Texas Medical Board under Chapter 156, Occupations Code, expires. This subsection expires January 1, 2017.

(b) The director may charge a physician registered under this section a nonrefundable registration fee of not more than $50 and a late fee for each application submitted after the expiration of the grace period described by Section 156.004(b), Occupations Code.

(c) A physician may request the renewal of the physician's registration under this chapter by remitting the information required under Section 481.063 and the fee required under Subsection (b) to the Texas Medical Board. The Texas Medical Board must allow a physician to submit the information and pay the fee electronically.

(d) A physician requesting renewal under this section must meet all eligibility requirements under Section 481.063(e).

(e) The director shall adopt any rules necessary to administer this section. The director shall coordinate with the Texas Medical Board in the adoption of rules necessary under this
section to prevent any conflicts between rules adopted by the agencies and to ensure that administrative burden to physicians is minimized.

SECTION 5. Subchapter A, Chapter 156, Occupations Code, is amended by adding Section 156.0035 to read as follows:

Sec. 156.0035. RENEWAL OF CONTROLLED SUBSTANCE REGISTRATION. (a) The board shall accept the renewal application and fee submitted by a physician under Section 481.0645, Health and Safety Code, for a registration under Subchapter C, Chapter 481, Health and Safety Code.

(b) The board by rule shall adopt a procedure for submitting a registration renewal application and remitting the registration fee to the Department of Public Safety.

(c) The board shall coordinate a physician’s controlled substance registration renewal with the registration required under this chapter so that the times of registration, payment, and notice are the same and provide a minimum of administrative burden to the board and to physicians.

SECTION 6. Section 156.004, Occupations Code, is amended to read as follows:

Sec. 156.004. NOTICE OF EXPIRATION. (a) At least 60 days before the date on which a physician’s registration permit expires, the board shall send a registration permit renewal application notice to each physician at the physician’s last known address according to the board’s records:

(1) a [at least 30 days before the expiration date of the] registration permit renewal application notice; and
(2) a renewal notice for the physician's registration
with the Department of Public Safety under Subchapter C, Chapter

(b) The board shall provide for a 30-day grace period for
renewing the registration permit from the date of the expiration of
the permit.

SECTION 7. Section 168.002, Occupations Code, is amended to
read as follows:

Sec. 168.002. EXEMPTIONS. This chapter does not apply to:

(1) a medical or dental school or an outpatient clinic
associated with a medical or dental school;

(2) a hospital, including any outpatient facility or
clinic of a hospital;

(3) a hospice established under 40 T.A.C. Section
97.403 or defined by 42 C.F.R. Section 418.3;

(4) a facility maintained or operated by this state;

(5) a clinic maintained or operated by the United
States;

(6) a health organization certified by the board under
Section 162.001;

(7) a clinic owned or operated by a physician who
treats patients within the physician's area of specialty and who
personally uses other forms of treatment, including surgery, with
the issuance of a prescription for a majority of the patients; or

(8) a clinic owned or operated by an advanced practice
nurse licensed in this state who treats patients in the nurse's area
of specialty and who personally uses other forms of treatment with
the issuance of a prescription for a majority of the patients.

SECTION 8. Section 168.201, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) A person who owns or operates a pain management clinic is engaged in the practice of medicine.

SECTION 9. (a) The changes in law made to Subchapter C, Chapter 481, Health and Safety Code, by this Act apply only to a registration under that subchapter that expires on or after the effective date of this Act.

(b) The changes in law made to Chapter 156, Occupations Code, by this Act apply only to a registration permit under that chapter that expires on or after the effective date of this Act.

(c) An unexpired registration under Subchapter C, Chapter 481, Health and Safety Code, held by a physician on the effective date of this Act expires on the date on which the registration permit issued to the physician under Chapter 156, Occupations Code, expires.

SECTION 10. This Act takes effect January 1, 2014.
H.B. No. 1803

President of the Senate

Speaker of the House

I certify that H.B. No. 1803 was passed by the House on May 2, 2013, by the following vote: Yeas 145, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1803 on May 24, 2013, by the following vote: Yeas 144, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1803 was passed by the Senate, with amendments, on May 22, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: ___________________

Date

Governor