The 83rd Texas Legislature passed legislation to simplify the process by which physicians supervise and delegate to Physician Assistants (PAs) and Advance Practice Registered Nurses (APRNs). This article summarizes the rules recently adopted by the Texas Medical Board (TMB) to implement SB 406 (83R).[1] The major changes effectuated by these rules are the removal of site-based restrictions and the addition of prescriptive authority agreements, whereby physicians can more effectively engage PAs and APRNs in collaborative practice.

New Terms and Phrases. The final rules scrap the definition for Medically Underserved Area and instead define a practice serving a medically underserved population. Other defined terms and phrases shift the focus of the rules governing delegation: hospital, medication order, physician group practice, prescriptive authority agreement, device, and facility-based practice site, to highlight a few. The final rules do not change the definition for a standing delegation order, except to point out that a standing delegation order and a prescriptive authority agreement are separate and distinct as defined by the rule.

Expanded Delegation of Prescribing and Ordering Drugs and Devices. Under SB 406, physicians may now delegate the prescribing or ordering of Schedule II controlled substances in a hospital facility-based practice, consistent with hospital policy, if the patient has been admitted to the hospital for 24 hours or longer or if the patient is receiving services in the emergency department. Physicians may also delegate the prescribing of Schedule II drugs as part of a plan of care for a terminal patient receiving hospice treatment from a qualified hospice provider. Otherwise, the final rule retains the current limits on a physician’s authority to delegate the prescribing or ordering of a drug or device.

Use of Prescriptive Authority Agreements. In lieu of the previous site-based supervision requirements, prescriptive authority agreements are now required for delegation of the act of prescribing or ordering a drug or device in all practice settings except facility-based practices. A facility-based practices site is defined as a hospital or licensed long-term care facility, but does not include a freestanding clinic, center, or other medical practice associated with or owned or operated by a hospital or long-term care facility. Facility-based practices may continue to use protocols to provide written authorization of delegated authority, and the new rule
modifies the definition of protocol to note that the term is separate and distinct from prescriptive authority agreements, but that prescriptive authority agreements may reference or include the terms of a protocol(s).

Requirements for Prescriptive Authority Agreements. The final rule sets out minimum requirements for prescriptive authority agreements entered into by a physician and a PA or APRN through which the physician delegates the act of prescribing or ordering a drug or device to the PA or APRN. Generally speaking, these agreements must be in writing, specify the types or categories of drugs or devices that may or may not be prescribed, provide a general plan for addressing consultation and referral and the communication between the physician and the PA or APRN related to the care and treatment of patients. Prescriptive authority agreements must include a quality assurance and improvement plan that includes chart review and periodic face-to-face meetings between the physician and the PA or APRN. These agreements are not required to detail exact steps that a PA or APRN must take for each specific condition, disease, or symptom. Additional requirements detail retention of the agreement after termination, duty to notify the other party if one party is the subject of a board investigation, amendments to and annual review of the agreement, and provision of the agreement to the licensing boards upon request. The agreement should promote the exercise of the PA’s or APRN’s professional judgment commensurate with the PA’s or APRN’s education and experience and the relationship between the PA or APRN and the physician. Finally, the rule directs that it 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.”

Exceptions. Under the new law, physicians may now delegate to a total of seven (7) PAs and APRNs or their full-time equivalents. If a physician’s practice serves a medically underserved population as defined by the final rule, however, he/she is exempted from the limitation on the total number of PAs and APRNs with whom he/she may enter into a prescriptive authority agreement. The exemption also applies to physicians whose practices are facility-based, but facility-based physicians are limited to delegating at one hospital (unless otherwise approved by the Texas Medical Board). In order to delegate in a facility-based practice, a physician must be the facility’s medical director or chief of medical staff, chair of the credentialing committee, a department chair, or a physician who has consented to the request of the medical director or chief of medical staff to serve in such capacity. A physician who delegates in a facility-based practice may also delegate in other practices, where the cap of seven (7) total APRNs/PAs applies and prescriptive authority agreements must be in place. Delegation in long-term care facilities is limited to physicians who are medical directors, and these physicians may delegate at two (2) long-term care facilities. However, the long-term care medical director’s delegation is limited
to seven (7) FTEs.

Limitations on Liability of Physicians. The liability protections afforded to delegating physicians are retained, but expanded, in the final rules. Consistent with the legislation, a physician cannot be liable for an act of a PA or APRN solely because the physician entered into a prescriptive authority agreement, unless the physician has reason to believe the PA or APRN lacked the competency to perform the act. This extends the liability protection currently afforded to a physician who signs an order, a standing medical order, or a standing delegation order that directs a PA or APRN to take certain actions.

Implementation Details. Due to the time it may take for the Department of Public Safety (DPS) to register the PAs and APRNs with newly-delegated authority to prescribe or order Schedule II controlled substances, physicians may want to verify the registration of PAs and APRNs prior to engaging in this delegation. It is also worth noting that the Texas Medical Board responded to comments it received concerning the practice of certified registered nurse anesthetists by clarifying that the new rules do not require prescriptive authority agreements for the delegation and ordering of drugs and devices necessary for a nurse anesthetist to administer or perform anesthesia-related service pursuant to §157.058 of the Medical Practice Act.

The final rules adopted by the Texas Medical Board took effect on November 7, 2013, and a summary prepared by the Board – which contains a link to the final rules – is available here.

As directed by the legislation, the licensing boards will jointly prepare responses to frequently asked questions related to prescriptive authority agreements by January 1, 2014. Waller will update you as this information becomes available.

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UPDATE: The TMB has posted FAQs regarding prescriptive authority agreements (PAAs) here. It is important to remember that facility-based practices are exempt from the PAA requirement and may continue using protocols; however, freestanding clinics or other medical practices associated with or owned or operated by a hospital or long-term care facility must have a PAA in place. The Texas Medical Association and the Coalition for Nurses in Advanced Practice have provided sample agreements on their websites.
For additional information, please contact Fletcher Brown, a partner at Waller's Austin office, at 512-685-6423 or via email at fletcher.brown@wallerlaw.com.

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