

BILL ANALYSIS

Senate Research Center
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H.B. 2703
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

For the past 20 plus years, individuals and facilities engaged in the practice of orthotics and prosthetics have been required to obtain a license under Chapter 605 (Orthotists and Prosthetists), Occupations Code. Currently, the Texas Orthotics and Prosthetics Act establishes the legal sources of orthotic and prosthetic prescriptions as licensed physicians, chiropractors, or podiatrists. However, the Centers for Medicare and Medicaid Services (CMS) recognizes physician assistants' and nurse practitioners' abilities to order orthoses and prostheses covered by the Medicare program. Their prescriptive authority is vested when they meet the requirements defined in the Medicare Benefit Policy Manual, their services are within the scope of practice defined by their state and they are treating the Medicare beneficiary for a condition in which the item is needed.

Recently, the Texas Board of Orthotics and Prosthetics issued an advisory note that indicated the long held practice of accepting prescriptions for orthotics and prosthetics treatment from nurse practitioners and physician assistants, even under the delegation and supervision of a licensed physician is not allowed under the Texas Orthotics and Prosthetics Act. As a result, licensed orthotic and prosthetic professionals cannot measure, design, fabricate, assemble, fit, adjust, or service an orthosis or prosthesis without an order from a licensed physician, chiropractor, or podiatrist. Any licensed individual who is discovered to be practicing orthotics or prosthetics without an appropriate prescription from a licensed physician, chiropractor, or podiatrist could be subject to enforcement action which may include administrative, civil, and criminal penalties.

This interpretation of the Texas Orthotics and Prosthetics Act is inconsistent with the federal CMS guidelines, which recognizes nurse practitioners' and physician assistants' abilities to provide prescriptions for orthotics and prosthetics services under their delegated authority from a licensed physician. In many rural areas, underserved areas, and veteran medical settings orthotics and prosthetics prescriptions are provided by physician assistants or nurse practitioners working under the delegated authority and supervision of a licensed physician. Unfortunately, if not corrected this could lead to a loss of access to orthotics and prosthetics care in many areas of the state.

H.B. 2703 amends the Texas Orthotics and Prosthetics Act to correct inconsistencies between statutes governing the delegated authority of nurse practitioners and physician assistants and the Texas Orthotics and Prosthetics Act, as well as making the state laws consistent with federal statutes and guidelines. This bill in no way expands the scope of practice of any health care provider in Texas.

H.B. 2703 amends current law relating to the regulation of orthotists and prosthetists.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 605.002(14) and (18), Occupations Code, to redefine, respectively, in this chapter, "orthotics" and "prosthetics."

SECTION 2. Amends Section 605.2515, Occupations Code, as follows:

Sec. 605.2515. ADDITIONAL LICENSE: DEVICE MANUFACTURER. Provides that a person licensed to practice orthotics or prosthetics who measures, designs, fabricates, fits, assembles, adjusts, or services an orthosis or a prosthesis under an order from a licensed physician, chiropractor, or podiatrist, or an advanced practice nurse or physician assistant acting under the delegation and supervision of a licensed physician as provided by Subchapter B (Delegation to Advanced Practice Nurses and Physician Assistants), Chapter 157 (Authority of Physician to Delegate Certain Medical Acts), for a specific patient is exempt from licensing as a device manufacturer under Subchapter L (Device Distributors and Manufacturers), Chapter 431 (Texas Food, Drug, and Cosmetic Act), Health and Safety Code. Provides that a person licensed to practice orthotics or prosthetics who fabricates or assembles an orthosis or a prosthesis without an order from a licensed physician, chiropractor, or podiatrist, or an advanced practice nurse or physician assistant acting under the delegation and supervision of a licensed physician, as provided by Subchapter B, Chapter 157, and rules adopted by the Texas Medical Board, for a specific patient is required to be licensed as a device manufacturer under Subchapter L, Chapter 431, Health and Safety Code.

SECTION 3. Effective date: September 1, 2011.