



CNAP 09 Legislative Update #15 – SB 532 Saga & Thanks
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The Rollercoaster Saga of SB 532

This has been the most difficult week of the 81st Session. Events between Tuesday and Thursday invited a rollercoaster of emotions. Most are directly related to passage of SB 532 by Senator Dan Patrick (R-Houston, SD #5) and sponsored by Representative Garnet Coleman (D-Houston, HD #147). SB 532 finally passed the House on May 21st. It is the only bill in 2009 that will change prescriptive authority law for APNs so we gave our best efforts to improve this retail clinic bill as much as possible.

As you know from last week's update and two action alerts, we anticipated a series of amendments would be offered on Second Reading. The bill was set on the House General Calendar for Monday, but the House adjourned that day before it considered SB 532. Consideration of SB 532 finally began at 3:26 p.m. on Tuesday.

The first two amendments were offered by Rep. Coleman. The first increased the number of APNs and PAs to whom one physician can delegate prescriptive authority in primary practice, alternate practice and long-term care facilities from 3 full-time equivalents to 4 FTEs. The second amendment added a charity care site in which physicians who delegate to APNs in any type of site could also delegate to APNs who volunteer their services in a charity care clinic.

This language should sound familiar to you because it was in the original bill, but included both APNs and PAs. However, in the House Committee Substitute, the language was deleted at the request of the Texas Academy of Physician Assistants (TAPA). We requested the language be reinserted but limited to APNs since the PAs did not want to be included.

Then Rep. Coleman accepted an amendment offered by Rep. Rob Orr (R-Burleson, HD #58). That amendment added disaster relief sites to the charity care amendment and would permit physicians who already delegate prescriptive authority in any other site, to delegate to APNs who volunteer during a declared emergency or disaster, as well as at a charity care site.

Those three amendments were acceptable to the bill sponsor and therefore passed without controversy. However, before getting excited about adoption of the charity care and disaster relief amendments, keep reading. Over the following two days, those sites became the battle ground over which the lobbyists for TMA and TAPA showed just how little they care about improving health care for Texans who can't pay for it.

Rep. Wayne Christian (R-Center, HD #9) offered the fourth amendment. This was the one that had many APNs really excited. This amendment maintained the language in SB 532 as it pertained to PAs but replaced the language pertaining to APNs with the language that was in HB 1107 to permit Nursing Board-Granted Prescriptive Authority for APNs in Texas.

Rep. Christian had no expectation that this amendment would pass but he was courageous and believed in this issue so much that he was willing to spur an unprecedented debate on the House Floor. In 1989 and 1995 when there were major changes in prescriptive authority, those prescriptive authority provisions were included in huge rural health bills. Prescriptive authority for APNs and PAs was such a small portion of those bills, that it was never really debated. In the years from 1997 to 2003, APN bills were agreed to by medical organizations, so they passed unopposed and without any discussion on the House Floor. This time was different. We got the debate we needed to educate many more members and send the message that this is an issue that deserves their time and careful consideration.

Debate on Rep. Christian's amendment was halted after a few minutes by a Point of Order that was ultimately sustained. A Point of Order is a motion calling attention to a breach of the procedural rules. In this case Rep. Coleman challenged whether Rep. Christian's amendment was germane to the bill. The Speaker ruled it was not.

However, the substantive debate continued on amendment #5 offered by Rep. Rob Orr. This amendment would have standardized physician supervision in all sites by using language that is similar to supervision required in primary practices and hospitals. Like Rep. Christian, Rep. Orr was very well prepared and fought very hard for passage. In the end it was soundly defeated, (Read the article below to learn who voted for Rep. Orr's amendment.)

When debate on the bill ended, there had been almost an hour of discussion about Advanced Practice Nurses and our potential to improve access to health care in Texas. Reducing and removing requirements for physician delegation and supervision of prescriptive authority for APNs was laid on the table for consideration. The efforts of Reps. Christian and Orr were also supported by Reps. Betty Brown (R-Terrell, HD #4), Donna Howard (D-Austin, HD #48), and John Davis (R-Houston, HD #129) who stood at the back microphone to extend debate and ask supportive questions. Hearing the commitment of these legislators was inspiring.

To view the debate on SB 532, go to www.house.state.tx.us/media/chamber/81.htm, then click on 5/19/09 – 1:00 p.m. – 7:36 p.m. and then move the arrow to hour 2: 31:20. The debate continues until hour 3:37:20. To save time, you can skip the time period from hour 2:53:30 to 3:02:30 during which the House Parliamentarian studied the Point of Order on Rep. Christian's amendment. No debate occurred during those 9 minutes.

Those of us who were in the House Gallery to witness the debate left encouraged and very pleased about the amendments that had improved the bill. That was definitely the high point of this rollercoaster saga. The following day would prove to be the lowest point.

On Wednesday, May 20th, SB 532 was on the House Calendar for final passage on Third Reading. We had no reason to think that any other amendments would be offered on the bill. We were wrong. Apparently at the urging of lobbyists for TMA and TAPA, Rep. Coleman added a Third Reading amendment. The new amendment only allows a physician to delegate prescriptive authority to an APN or PA providing charity care or care during a declared disaster if the APN or PA is also in a primary practice site where the physician and APN or PA are on-site together at least 50% of the time.

Obviously, the Third Reading amendment is not nearly as good for APNs who want to volunteer. This amendment does not permit APNs who have prescriptive authority based on practicing in medically underserved, alternate, and facility-based practices to prescribe at charity care or disaster relief sites. This will also prevent delegation to many APNs who prescribe for physicians' patients in hospitals, long-term care facilities, and school based clinics under the primary practice site provision, but do not spend 50% of the time at the same site as the physician.

Thursday, May 21st, dawned with renewed hope that an error in the amendment offered by Rep.

Coleman the previous day might result in the very best outcome for all concerned. The Third Reading amendment offered by Rep. Coleman on Wednesday failed to strip the original charity care and disaster relief site amendments from the bill. That meant, as SB 532 passed on Third Reading, it contained all the charity care and disaster relief provisions added the past two days and would allow the most APNs and PAs possible to prescribe when they volunteer at charity care and disaster relief sites.

But wait, the saga of SB 532 is not over! Later that morning, Rep. Coleman moved to reconsider the vote on SB 532 so the House could consider the right amendment. This time, the amendment stripped the authority of physicians to delegate prescriptive authority to APNs at charity care and disaster relief sites, and only granted that authority if the physician spends at least 50% of the time with the APN.

Briefly, there was renewed hope late on Thursday when we learned Senator Patrick already had the version of the bill passed on Third Reading, before the last amendment was adopted, and was ready to concur with that version. Unfortunately, he did not have the option after all.

We are fairly sure that very few, if any, legislators really know the effect of reconsidering that vote on SB 532 last Thursday and adopting that final amendment. Every APN needs to explain this to their Representative during the Interim. Tim Flynn, NP at the Texas Capitol, was not able to prescribe during a disaster before SB 532 passed, and he, and most other APNs, will not be able to prescribe at charity care and disaster relief sites after SB 532 goes into effect. It perfectly demonstrates how complicated, fickle and ridiculous site-based prescriptive authority really is.

As finally passed, SB 532 makes small changes that will help simplify or reduce the costs of supervision for some NPs and their delegating physicians, but legislators should be reminded that this bill is about "the ability of convenience care clinics to expand practice within this state." (Oral testimony of Cathy Clodfelter, Director, Field Operations, CVS/Caremark-Minute Clinic, at the Senate Health & Human Services Committee hearing on SB 532, 3/17/09). Read the list below to see if you might be one of the NPs this bill will help. (Those provisions that were included based on House Floor amendments are noted with an asterisk.)

1. Allows physician delegation of Schedules III-V, Controlled Substances, to include 90 day refills (not just 30 days like now).
- *2. In primary practice, alternate and long-term care sites, physicians will be permitted to delegate to four full-time equivalent APNs and/or PAs (increased from 3).
3. Adds a new site under the category of primary practice that is defined as a practice location where a PA or APN practices on-site with the physician more than 50 percent of the time and who provides:
 - (a) health services for established patients;
 - * (b) voluntary charity health care services at a clinic run or sponsored by a nonprofit organization; or
 - * (c) voluntary health care services at a temporary facility operated or sponsored by a governmental entity or non-profit organization during a declared disaster or emergency.
4. Makes several changes to the restrictions on alternate sites including:
 - (a) allowing the alternate site to be 75 miles from the delegating physician's primary practice site or residence. (Now the alternate site must be within 60 miles of the physician's practice.)
 - (b) requiring the physician to be on site 10% of the "hours of operation of the site each month that the PA or APN is acting with delegated prescriptive authority." (Currently, the requirement is 20% of the time each APN or PA is at that site.); and
 - (c) allowing the 10% chart review to be done electronically at a remote site.
5. Adds language that, if the TMB determines the types of services provided at the alternate site are limited in nature and duration (the types of services offered in a retail clinic, but may apply to other sites such as practices that only offer Texas Health Step exams or manages a limited range of conditions), and patient health care will not be adversely affected, the TMB may modify or waive the mileage limit, some supervision requirements, and raise the limit on the number of PAs or APNs to whom a physician may delegate to as many as a 6 to 1 ratio.

SB 532 also requires a physician to register with the Texas Medical Board (TMB) the name & license # of the APN or PA to whom the physician delegates prescriptive authority. For any NP who had prescriptive authority before 2005, this will sound familiar. The Texas Medical Board Sunset bill removed the registration requirement in 2005 because the TMB was not utilizing the data. The provision in SB 532 allows the TMB to use an electronic online registration process for this, and we hope the TMB will take advantage of that option.

We anticipate Senator Patrick will concur with the amendments added on the House Floor and SB 532 will be on the Governor's desk next week. We are confident the Governor will allow the bill to become law.

The provisions in SB 532 will go into effect on September 1, 2009. However, the bill does not require the Texas Medical Board to amend its rules until January 31, 2009. Stay alert for future articles and updates that explain implementation of SB 532.

Big Thanks Owed to 34 Representatives

Please take the time to view the hour-long debate that occurred as a result of Reps. Wayne Christian and Rob Orr's amendments that they offered from 3:26 to 4:30 on May 19th. They magnificently set the stage for the Interim and next session by promoting APNs' important role in meeting the primary care needs of Texans. Reps. Wayne Christian and Rob Orr both deserve a note from every APN in Texas thanking them for their courage and vision in championing APNs and our ability to improve health care in Texas.

Please thank Rep. Coleman for amending SB 532 to increase the delegation ratio to 1:4 and adding the charity care site and disaster relief sites. Although this bill does not go nearly as far as we would like, Rep. Coleman pledged from the House Floor to do his best to get an Interim charge to study advanced practice nursing before the next session starts. He told Kathy Hutto that he discussed this with Chair Kolkhorst and is committed to making it happen. He deserves a lot of thanks for that and encouragement to follow-up on the promise.

As mentioned before, during the debate on the House Floor, there were Representatives who came to the back mike to ask friendly questions in order to promote the debate. Those legislators include Reps. Betty Brown of Athens, Donna Howard of Austin, and John Davis of Houston.

Then there were the 34 legislators who voted in favor of Rep. Rob Orr's amendment to standardize physician supervision. If you live or work in one of these legislator's districts, you should take the time to write a personal note and thank them for their vote to support Rep. Rob Orr's amendment on SB 532 to standardize physician supervision in all sites where physicians may delegate prescriptive authority to Advanced Practice Nurses. The following are the Representatives who voted for the amendment listed in alphabetical order by last name.

Jimmie Don Aycock (R-Killeen, HD #54)
Dennis Bonnen (R-Angleton, HD #25)
Betty Brown (R-Terrell, HD #4)
Warren Chisum (R-Pampa, HD #88)
Wayne Christian (R-Center, HD #9)
Frank Corte (R-San Antonio, HD #122)
Myra Crownover (R-Lake Dallas, HD #64)
John Davis (R-Houston, HD #129)
Gary Elkins (R-Houston, HD #135)
Dan Flynn (R-Canton, HD #2)
Dan Gattis (R-Georgetown, HD #20)
Veronica Gonzales (D-McAllen, HD #41)

Kelly Hancock (R-North Richland Hills, HD #91)
Rick Hardcastle (R-Vernon, HD #68)
Patricia Harless (R-Spring, HD #126)
Harvey Hilderbran (R-Kerrville, HD #53)
Donna Howard (D-Austin, HD #48)
Bryan Hughes (R-Marshall, HD #5)
Todd Hunter (R-Corpus Christi, HD #32)
Carl Isett (R- Lubbock, HD #84)
Jim Jackson (R-Carrollton, HD #115)
Delwin Jones (R-Lubbock, HD #83)
Jim Keffer (R-Eastland, HD #60)
David McQuade Leibowitz (D-San Antonio, HD #117)
Eddie Lucio III (D-San Benito, HD #38)
Sid Miller (R-Stephenville, HD #59)
Rob Orr (R-Burleson, HD #58)
John Otto (R-Dayton, HD #18)
Diane Patrick (R-Arlington, HD #94)
John Smithee (R-Amarillo, HD #86)
David Swinford (R-Amarillo, HD #87)
Larry Taylor (R-League Cite, HD #24)
Randy Weber (R-Pearland, HD #29)
Beverly Woolley (R-Houston, HD #136)

Remember that some of these legislators were identified above as doing several things for us in the course of this debate, so please recognize them for those actions on our behalf, as well. Recognition of this type is so important to foster relationships with legislators that will translate into consistent support.

Failing to do so leaves the legislator very vulnerable to the pressure they will receive from physicians in their districts to vote with TMA next time. Our mission is to get those legislators re-elected, keep them supportive of our issues, and then to get 42 more House members to do the same.

Tuesday's vote was historic. This is the first indication of who will rise to support APNs. Admittedly, there are other factors that determine how a legislator votes on a given issue. A major influence is alliances and friendships with another legislator who is supporting or opposing a particular amendment. In this case, we probably lost a lot of democratic votes that might have gone our way if Rep. Coleman had not been on the other side of that amendment.

Before you assume your legislator voted against the Orr amendment, go to the House Journal entry for that vote at www.journals.house.state.tx.us/hjml/81r/pdf/81RDAY74FINAL.PDF. Then scroll about half way through to the top of page 4024. Look to see if your Representative was absent or present not voting. Fifteen members fall in that category, including Speaker Straus who rarely votes on any item except to break a tie.

Keep in mind that this was not a vote on Nursing Board-Granted Prescriptive Authority. It was a vote to simply reduce statutorily required physician supervision. This demonstrates how much work we really have to do before next session. We require 76 votes for Nursing Board-Granted Prescriptive Authority in the House and 21 in the Senate. We definitely have exciting challenges ahead. and I firmly believe our efforts in 2009 laid the foundation for our future success.

By the way, if you need something to inspire you to face those challenges ahead, read San Antonio Express business writer, David Hendricks' editorial dated May 23, 2009. David definitely calls it like he sees it so those of you in San Antonio might want to add him to your thank you list. You can access his article at http://www.mysanantonio.com/business/Legislature_shuts_door_on_nurse_care.html.

